

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

5 UNITED STATES OF AMERICA,)
)
6 Plaintiff,) Case No. CR-S-04-119-KJD(LRL)
)
7 vs.)
)
8 IRWIN SCHIFF, CYNTHIA NEUN,)
 and LAWRENCE COHEN,)
9)
 Defendants.)
10)
11
12
13
14

15 REPORTER'S TRANSCRIPT OF JURY TRIAL (DAY 7)
16 Wednesday, September 21, 2005
17
18
19

20 APPEARANCES: (See Page 2)
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23

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

1 APPEARANCES:

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24 Also Present:

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

I N D E X

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

Kristy Morgan			--	--	--
	1580I	1601C			
		1621S			
		1721B			
Virginia Olen	1756N	1780B	--	--	--
M. Desgrosellier	1790I	--	--	--	--

EXHIBITS

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

73	--	1826
74	--	1850
75	--	1839
76	--	1816
129	--	1769
130	--	1775
131	1599	1777

Defendant Schiff's:

2069	1701	--
2070	1698	--
2106	1625	--
2107	1628	--

Defendant Neun's:

2506	1603	--
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Defendant Cohen's:

2843	1738	--
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1 LAS VEGAS, NEVADA; WEDNESDAY, SEPTEMBER 21, 2005; 9:06 A.M.

2 --oOo--

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

4 THE CLERK: All rise.

5 THE COURT: Are we ready to proceed?

6 MR. IGNALL: Yes, your Honor.

7 MR. SCHIFF: I'm not ready.

8 THE COURT: You're not ready?

9 MR. BOWERS: Can I help you, Irwin?

10 MR. SCHIFF: Don't tell me...

11 MR. BOWERS: Is there somethin' I could do to help?

12 MR. SCHIFF: Oh, God.

13 MR. BOWERS: I'll take that as a no.

14 MR. SCHIFF: Oh, son of a gun. Oh, god.

15 THE COURT: You ready now?

16 MR. SCHIFF: Ready to cross-examine you said?

17 THE COURT: Not --

18 MR. BOWERS: Not quite yet.

19 THE COURT: -- not yet.

20 MR. BOWERS: Soon. You'll have a few moments.

21 THE COURT: Okay. Bring the jury in.

22 (Kristy Morgan retakes the witness stand.)

23 THE CLERK: Ready?

24 THE COURT: Yes.

25 THE CLERK: Come on in.

1 (Jury enters the courtroom at 9:08 a.m.)

2 THE COURT: Please be seated.

3 Will counsel stipulate to the presence of the jury?

4 MR. IGNALL: Yes, your Honor.

5 MR. CRISTALLI: Yes, your Honor.

6 THE COURT: Mr. Bowers?

7 MR. BOWERS: Uh, yes. I'm sorry. Absolutely, Judge.

8 THE COURT: Mr. Schiff?

9 Proceed.

10

11

KRISTY MORGAN,

12

called as a witness on behalf of the Government, having been

13

previously duly sworn, was examined and testified further as

14

follows:

15

16

DIRECT EXAMINATION (Continued)

17

BY MR. IGNALL:

18

Q. Good morning, Ms. Morgan.

19

A. Good morning.

20

Q. I'd like to clarify one or two things that we went over

21

yesterday. If I could turn your attention to Exhibit 49, I

22

believe that's a frivolous letter addressed to Mr. Schiff. And

23

if we could pull that up on the screen.

24

A. Okay.

25

1 (Document displayed in open court.)

2 BY MR. IGNALL:

3 Q. I believe yesterday you told us that you drafted the form of
4 this letter.

5 A. Correct.

6 Q. Could you explain to me how that happened?

7 A. We have a procedure where if we feel that a letter needs to
8 go out to the taxpayer we can draft a letter personally and sign
9 it or we can draft a letter and have it approved by management.
10 Then it goes through what's called "the notice gatekeeper," who
11 works in headquarters, and they'll approve what that letter is
12 and make it a official IRS letter that can be used by anyone
13 that works at the Internal Revenue Service. Or they can just
14 say that it is for the use of a certain program. And this
15 letter is used for the Frivolous Filer Program.

16 Q. And is this letter designed to respond to a particular type
17 of tax return?

18 A. Yes.

19 Q. What type of tax return?

20 A. A type of tax return that is subject to the frivolous return
21 penalty.

22 Q. But are there different letters that go out to inform
23 taxpayers that they might be subject to the frivolous return
24 penalty?

25 A. Yes. There is approximately six different types.

1 Q. All right. And you said something about -- yesterday, I
2 think, about counsel reviewing this?

3 A. Yes. Anything that we do --

4 Q. All right. Can you explain to me who counsel is?

5 A. Area counsel are people that work in the field office and
6 they are attorneys hired by the Internal Revenue Service and
7 they give counsel to the employees or to management regarding
8 procedures on -- on their work.

9 Q. All right. And this letter in particular talks about, uh,
10 swearing to having zero income.

11 A. Right.

12 Q. Is that a particular item that you brought to area counsel?

13 A. It -- it is.

14 Q. And who made the determination that a return reporting zero
15 income is frivolous within the IRS and thus should get this
16 letter?

17 MR. SCHIFF: Objection. Hearsay.

18 THE COURT: Foundational. Overruled.

19 THE WITNESS: I -- I wrote the letter to counsel asking
20 them whether or not this type of document was frivolous and, in
21 turn, they write back in writing and give us a decision. So it
22 come from area counsel in Salt Lake City, which is approved by
23 his manager and is also approved by headquarters.

24 BY MR. IGNALL:

25 Q. All right.

1 MR. SCHIFF: Objection. Do you have copies of
2 correspondence of -- of that kind of discussion?

3 THE COURT: You're not -- you can ask that on
4 cross-examination.

5 MR. SCHIFF: Okay. All right. Well, there's no
6 foundation, Judge.

7 THE COURT: There is foundation.

8 MR. SCHIFF: All right.

9 THE COURT: She just gave it. Overruled.

10 BY MR. IGNALL:

11 Q. As a matter of IRS procedure, what type -- what criteria are
12 there in the return that generates this particular form letter
13 that we're looking at in Exhibit 49?

14 A. Usually it's a tax return that has certain types -- we call
15 them arguments. It may be based that they don't have to pay
16 taxes on constitutional issues, religious issues, they'll alter
17 the jurat. There's approximately 30 different types of --

18 Q. How about --

19 A. -- arguments.

20 Q. -- how about the letter that we're looking at in Exhibit 49?
21 Is there one particular type of argument that generates this
22 letter?

23 A. Yes.

24 Q. What argument is that?

25 A. That is the U.S. v. Long zero return.

1 Q. And did you give -- is that the name you gave to that type
2 of return?

3 A. That -- yeah, that's internally what we call it. It had a
4 number. I don't remember the number because each argument has a
5 number. And this letter would change, paragraph 2 would change,
6 based on what type of argument was on the tax return.

7 Q. All right. How did you, when you worked in the Frivolous
8 Filer Program, determine whether a return, you know, was one of
9 these -- I think you said a zero U.S. v. Long return?

10 A. We would look at the base of the return, page 1 and 2, and
11 then the attachments.

12 Q. All right. If I could turn your attention now to
13 Exhibit 42. Now -- let me back up one -- one second there.

14 Ms. Morgan, are you an accountant or lawyer yourself?

15 A. No.

16 Q. Are you familiar with IRS procedures as part of your
17 employment?

18 A. Yes.

19 Q. If I could turn your attention to Exhibit 42, can you tell
20 us what that document is?

21 A. This is a certificate of a U.S. individual income tax return
22 Form 1040 for Irwin Schiff for tax year ending December 31st,
23 1999.

24 Q. All right. If you look at the first page, what number is
25 written on line 22 under the Income section?

1 A. On line 22, it shows zero.

2 Q. If I could flip two more pages to where it says page 3 of 4
3 on the bottom of it --

4 A. Yes.

5 Q. -- do you recognize this attachment?

6 A. Yes, I do.

7 Q. What -- how do you recognize this?

8 A. This is the same attachment that is attached to all as what
9 we have identified as U.S. v. Long returns.

10 Q. And how -- from looking at this, how can you tell that?

11 A. Basically it's always page 3 and 4. It's in the same
12 format, not always the same font but it has the same basic
13 verbiage.

14 Q. Is there anything in particular you look for to make that
15 determination?

16 A. Usually we're --

17 MR. SCHIFF: Objection. She hasn't made a
18 determination. She said she -- she has made no determination.

19 THE COURT: No, she didn't say that.

20 MR. SCHIFF: Well, she --

21 THE COURT: She didn't say she hasn't made. The
22 question was did you look at that form to make the
23 determination --

24 MR. SCHIFF: Well, she --

25 THE COURT: -- is there anything in that particular

1 form that --

2 MR. SCHIFF: -- did she make determinations of whether
3 returns are frivolous or not?

4 THE COURT: No. She looks to see how it's categorized.

5 MR. SCHIFF: Okay. But she doesn't --

6 THE COURT: Well, she --

7 MR. SCHIFF: -- she just used --

8 THE COURT: -- she may --

9 MR. SCHIFF: -- the word "determination."

10 THE COURT: -- testify to that. She may testify to
11 that later. But your objection is overruled.

12 THE WITNESS: Could you repeat the question, please?

13 BY MR. IGNALL:

14 Q. Is there anything in particular that as a matter of IRS
15 policy you look for to determine whether this was one of the
16 these zero Long returns?

17 A. Once we've read the two-page attachment, usually it was a
18 requirement, we will scan it and look for certain items on
19 certain paragraphs. And what we look for is them stating
20 U.S. v. Long and then the very first couple of paragraphs are
21 usually the same.

22 Q. And if I could turn your attention now -- we can hold that
23 one out -- but, also, if I could turn your attention to
24 Exhibit 68, which is probably not right in front of you. We
25 could probably put it on the screen to make it easier.

1 Ms. Morgan, I don't think that's up with you yet.

2 A. It is not.

3 Q. I'll put it on the screen. Hopefully we can put it on the
4 right-hand side of the screen.

5 THE CLERK: Mr. Ignall, I've provided the witness with
6 the exhibit.

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

8 (Document displayed in open court.)

9 BY MR. IGNALL:

10 Q. All right. If I could turn your attention to what is the --
11 probably the third page after the certification of exhibit --
12 let's back up.

13 Can you tell us what Exhibit 68 is?

14 A. 68 is the certified copy of the U.S. individual income tax
15 return for Ann Kennedy for the year ending December 31st, 2000.

16 Q. All right. And, if you skip ahead to the third page after
17 that certification, do you see an attachment?

18 A. Yes.

19 Q. And is that what we see on the right-hand side of your
20 screen as well?

21 A. Yes, it is.

22 Q. All right. And do you -- do you recognize that attachment?

23 A. Yes.

24 Q. What is that attachment?

25 A. This is the same type of attachment that's attached to all

1 of U.S. v. Long.

2 Q. And how does that compare to the attachment we're looking at
3 in Exhibit 42?

4 A. (Reviewing documents.)

5 Q. And maybe we could -- is it possible to blow up the top half
6 of each of those? Not really. Well...

7 A. They are basically the same verbiage.

8 Q. All right.

9 A. They start out the same.

10 Q. If we could go back to Exhibit 42.

11 A. (Complies.) Okay.

12 Q. If you look at the first page after the certification of
13 Exhibit, uh, 42, what does that say on line 12 after "Business
14 income"? What -- what number is written in there?

15 A. On line 12, it reported zero.

16 Q. All right. Earlier you mentioned that there was a
17 particular code attached to what you say is this type of return,
18 is that the zero -- how do you describe these tax returns?

19 A. We -- we give them a number.

20 Q. Did you give it a name before?

21 A. It has a name and a number.

22 Q. Yeah. But -- and, when you search the IRS database, do you
23 do it by number or name?

24 A. They do it by number.

25 Q. All right. And I think you testified yesterday that you

1 searched the IRS database by number to see how many of this type
2 of returns --

3 A. Correct.

4 Q. -- the IRS got?

5 What time period were you searching?

6 A. We requested the time period from January 1st, 1998, through
7 December 31st, 2002.

8 Q. And what number did you come up for the total number of
9 returns?

10 A. The total number of returns was 3,435 returns.

11 Q. I'd like to turn your attention to Exhibit 59, which I hope
12 it in front of you or perhaps in the box.

13 MR. CRISTALLI: I'm sorry. I didn't hear the year
14 on --

15 MR. NEIMAN: '98 to 2002.

16 MR. CRISTALLI: '98 to 2002. Thank you.

17 (Pause in the proceedings.)

18 THE WITNESS: I have that document.

19 BY MR. IGNALL:

20 Q. And I'm sorry. The time period that you ran that search was
21 that a time period that you were working in the Frivolous Return
22 Unit?

23 A. No. That time period was just recently while I was in
24 Criminal Investigations.

25 Q. Now, I'm not asking when you ran the -- the search. But you

1 said it was from nineteen -- what time period did you run? It
2 was from 1998 till...

3 A. The end of December, 2002.

4 Q. Okay. When -- when did you leave the Frivolous Return Unit?

5 A. I left the Frivolous Return Unit in June of 2002.

6 Q. All right. Thank you.

7 If I could turn your attention to Exhibit 59, which is
8 on the screen but somewhat faint. Let me try and blow up the
9 top half and see if it looks any better. Not so much.

10 All right. Can you tell me what Exhibit 59 is?

11 A. This is the Form 3050, the Certification of Lack of Record.
12 It's dated August 23rd, 2005, for Cynthia Neun.

13 Q. And what -- and what does this form indicate?

14 A. It certifies that there was no U.S. individual income tax
15 return Form 1040 filed for tax periods December 31st, 1993,
16 through 2004.

17 Q. If I could turn your attention, now, to Exhibit 64, which
18 I'm hoping is also in the box.

19 A. Yes, I have that document.

20 Q. All right. Do you recognize this document?

21 A. I do.

22 Q. What is this document?

23 A. This is a response to a letter sent out regarding the
24 frivolous return penalty.

25 Q. All right. What do you mean by a response?

1 A. Because of the date stamps that are shown on the return,
2 that shows that it was received by the Internal Revenue Service.

3 First of all, July 16th of 2000 it come into the
4 service center. That's a requirement as far as date stamping it
5 in. The second state -- date stamp it says, "RECEIVED JUL
6 24[th], 2000," "FRP" that stands for Frivolous Return Program.

7 So, in turn, it was received; someone read that and
8 made the determination that it needed to go to the Frivolous
9 Return Program.

10 Q. However, this is a letter that originally was sent out by
11 the IRS?

12 A. Yes.

13 Q. And what does -- what -- what type of letter is this? Do
14 you recognize this type of letter?

15 A. This is the same type of letter that was sent out regarding
16 the frivolous return penalty --

17 Q. But no -- in response to a tax return?

18 A. In -- in response to a tax return.

19 Q. And who was this addressed to?

20 A. This is addressed to Lawrence N. Cohen.

21 Q. And what tax period does this concern?

22 A. It's addressing the 1999 tax period.

23 Q. And when did the original letter go to Mr. Cohen?

24 A. The date of the letter is June 12th, 2000.

25 Q. All right. So, now, I'm -- I may not have followed that

1 answer before.

2 What does it mean that this letter was received back by
3 the IRS?

4 A. The letter went out -- 'cuz as we send them, the only date
5 it goes out is the date of the letter, which is date stamped as
6 it's mailed. When the response comes back and sent back from
7 the taxpayer, then the process is to date stamp that in so that
8 we know what date the correspondence is received.

9 Correspondence is usually worked by the earliest date received
10 so that we're trying to, uh, service the taxpayer timely.

11 Q. Did -- when you were working in the Frivolous Return Unit,
12 did you get correspondence back from taxpayers who'd gotten this
13 frivolous penalty notice letter?

14 A. Yes.

15 Q. What volume of correspondence did you get back?

16 A. There was numerous correspondence. And it was a -- a large,
17 I believe, a four- or five-page letter regarding the frivolous
18 return penalty.

19 Q. And did the IRS have to respond to that letter?

20 A. No.

21 Q. Why not?

22 A. The -- the policy was that once we sent the letter and
23 informed the taxpayer that they were subject to the penalty they
24 had that opportunity to change their position. If they chose
25 not to, they were informed; then we assessed the frivolous

1 return penalty.

2 Q. What happens if the taxpayer files a tax return within --
3 what time period is it?

4 A. It said 30 days, but we usually waited 45 days to give them
5 a chance for mailing time, vacations.

6 Q. What would happen with respect to this frivolous return
7 penalty if the taxpayer filed a tax return within those 45 days?

8 A. If it was a valid return with the income information that
9 computed tax, made a self-assessment, we would process the
10 return and there would be no penalty assessed.

11 Q. If you could turn your attention to Exhibit 65.

12 A. (Complies.)

13 Q. Do you recognize Exhibit 65?

14 A. Yes, I do.

15 Q. What is Exhibit 65?

16 A. This is a statutory Notice of Deficiency.

17 Q. And who is this addressed to?

18 A. It's addressed to Lawrence N. Cohen.

19 Q. And what's the date of this notice?

20 A. The date of the notice is June 8th, 2001.

21 Q. And what taxpayer period does this cover?

22 A. This covers the tax period ending December 31st, 1999.

23 Q. And what is a Notice of Deficiency?

24 A. This is a legal notice that goes out with the proposed
25 amount of tax owed and it gives the taxpayer the opportunity to

1 bring in their books and records; to agree to that amount of
2 tax; to make an appointment and talk with someone, like an
3 Appeals' officer, regarding their tax liability; or to petition
4 Tax Court.

5 Q. All right. If I could turn your attention to Exhibit 65A.

6 A. (Complies.)

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

9 (Document displayed in open court.)

10 BY MR. IGNALL:

11 Q. I'm sorry. Do you recognize Exhibit 65A?

12 A. Yes, I do.

13 Q. What is Exhibit 65A? And I apologize for how faint this is
14 on the screen.

15 A. That's fine. I have --

16 Q. You have it.

17 A. -- the original.

18 This is a Certification of Lack of Record, Form 3050,
19 for Lawrence N. Cohen for tax period ending December 31st, 2001,
20 through December 31st, 2004.

21 Q. And what does this form, the Certification of Lack of
22 Record, indicate about, um, the person named here, Lawrence N.
23 Cohen?

24 A. It certifies that there was no tax returns filed for those
25 tax periods.

1 Q. As of what date? I'm sorry. Did we say?

2 A. The date is August 30th, 2005.

3 Q. Thank you.

4 MR. BOWERS: I'm sorry, your Honor. Did we address the
5 date that that certification was talking about when it showed no
6 returns filed?

7 THE COURT: Yes. It was for periods December 31st,
8 2001, through December 31st, 2004. Those are the, uh, tax
9 return years.

10 MR. BOWERS: Thank you, Judge. I'm -- I'm sharing my
11 exhibit book with the Government right now. So --

12 MR. IGNALL: And I appreciate that.

13 MR. BOWERS: That's all right.

14 MR. IGNALL: Thank you.

15 MR. BOWERS: No problem. Thank you.

16 MR. IGNALL: All right. Court's indulgence for one
17 moment?

18 THE COURT: Yes.

19 (Discussion between Mr. Ignall and

20 Mr. Neiman.)

21 BY MR. IGNALL:

22 Q. All right. If I could turn your attention to Exhibit 43.

23 And I'm gonna ask about 45 -- 44, 45, and 46.

24 A. (Complies.) Okay. 43.

25 Q. Yes. Do you have that in front of you?

1 A. I do.

2 Q. All right. Do you recognize this document?

3 A. I do.

4 Q. What -- what is this document?

5 A. This is the certified copy of the U.S. individual income tax
6 return for Irwin A. Schiff for the tax period ending December
7 31st, 2000.

8 Q. And, if I could turn your attention to line 12 under the
9 Income section where it says "Business income," what amount is
10 reported on line 12?

11 A. The amount reported on line 12 is zero.

12 Q. All right. If I could turn your attention to the next page
13 of Exhibit 43.

14 A. (Complies.)

15 Q. Down at the bottom, is there something written in under
16 "Paid Preparer's Use Only"?

17 A. Yes.

18 Q. All right. Can you read that signature?

19 A. The signature is Cynthia Neun and it's dated 4-12-02.

20 Q. All right. Thank you.

21 If I could turn your attention to Exhibit 44. Do you
22 recognize this document?

23 A. Yes.

24 Q. What is this document?

25 A. This is the certified Form 1040 for Irwin A. Schiff for the

1 tax period ending December 31st, 2001.

2 Q. And, again, if I ask you to look at line 12, "Business
3 income," what number is reported there?

4 A. Zero.

5 Q. And, if I could turn your attention to the next page looking
6 down at the bottom, is there anything written in under "Paid
7 Preparer's Use Only"?

8 A. There is a signature.

9 Q. And can you read that signature?

10 A. Cynthia Neun.

11 Q. And is there a date?

12 A. 4-12-02.

13 Q. All right. If I could turn your attention to Exhibit 45.

14 A. (Complies.)

15 Q. Do you recognize this document?

16 A. I do.

17 Q. What is this?

18 A. This is also a certified return for Irwin A. Schiff for the
19 tax period ending December 31st, 2002.

20 Q. And, again, if I turn your attention to line 12, "Business
21 income," under the Income section, what number is written in
22 there?

23 A. The amount is zero.

24 Q. All right. And if I can turn your attention to the next
25 page under the signature section, is anything written in under

1 the "Sign Here"?

2 A. The signature --

3 Q. Yes.

4 A. -- is Irwin A. Schiff.

5 Q. And what does it say above the signature on the form?

6 A. The actual jurat --

7 Q. Yes.

8 A. -- part?

9 Q. What does that say?

10 A. It says, "Under penalties of perjury, I declare ... I have
11 examined this return and accompanying schedules and statements,
12 and to the best of my knowledge and belief, ... are true,
13 correct, and complete. Declaration of preparer (other than
14 taxpayer) ... based on ... information of which preparer has ...
15 knowledge of."

16 Q. Thank you.

17 MR. IGNALL: May I have one moment, your Honor?

18 THE COURT: You may.

19 (Discussion between Mr. Ignall and

20 Mr. Neiman.)

21 MR. IGNALL: We're almost done, your Honor.

22 THE COURT: All right.

23 (Pause in the proceedings.)

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

25 THE COURT: You may.

1 (Government's Exhibit No. 131, marked for
2 identification.)

3 BY MR. IGNALL:

4 Q. Ms. Morgan, I'm gonna hand you what we've marked as
5 Government Exhibit 131. Do you -- Ms. Morgan, do you recognize
6 this document?

7 A. Yes, I do.

8 Q. What is this document? Describe it without reading it to
9 us.

10 A. Usually it is in response to the letter that goes out
11 regarding the frivolous return penalty or in response --

12 Q. I'm sorry. We need to back up a little bit here.

13 Is -- how -- how do you recognize this letter?

14 A. I've seen numerous of them coming in.

15 Q. You don't actually recognize this exact letter?

16 A. Not the exact letter, no. It's -- it's a letter that we've
17 seen come into the Frivolous Return Program many times.

18 Q. All right.

19 MR. IGNALL: Your Honor, at this point the Government
20 moves Exhibit 131 into evidence. And, for a matter of clarity,
21 this is a letter written by Virginia Olen, who is the
22 Government's next witness. And I don't know if there's
23 objection. If there is, we would move to admit it conditionally
24 based on Ms. Olen's testimony that she indeed sent it.

25 MR. BOWERS: Either way. I'm sure she'll lay a

1 foundation. Whatever's easier for the Court.

2 MR. CRISTALLI: I think it should be come through
3 Ms. Olen to be perfectly honest with you.

4 THE COURT: All right.

5 MR. CRISTALLI: I don't mind, you know, us dealing --
6 you know, referring to it at this particular point. But I don't
7 think it is an exhibit.

8 THE COURT: It has been marked, and you may question
9 from it. Admission is reserved for the author.

10 MR. IGNALL: Okay.

11 THE COURT: You've laid a sufficient foundation. You
12 can question the witness --

13 MR. IGNALL: All right.

14 THE COURT: -- regarding the document.

15 MR. IGNALL: All right.

16 BY MR. IGNALL:

17 Q. And, when you worked in the Frivolous Return Program, how
18 many letters that looked like that did you see?

19 A. We've seen hundreds of letters that resembled this type
20 of -- of letter.

21 Q. Is there anything in particular about that letter that you
22 can identify as being similar to the other ones that you
23 received in the Frivolous Return Program?

24 A. Yeah. It -- it quotes different court cases. But, also,
25 the thing that jumps out is always that "I am not prepared to

1 take that risk" has been something that's been in all of
2 those -- those letters.

3 Q. All right. Thank you.

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

6 MR. IGNALL: All right. No further questions, your
7 Honor.

8

9

CROSS-EXAMINATION

10 BY MR. CRISTALLI:

11 Q. Good morning, Ms. Morgan.

12 A. Good morning.

13 Q. Um, Ms. Morgan, first of all, I want to talk to you a little
14 bit about, um, the identification of, uh, these particular, um,
15 zero returns and how you identify them.

16 Basically I think it's your testimony that the zero
17 returns with this attachment go into a certain database;
18 correct?

19 A. Right.

20 Q. Somebody has to process them and -- and identify them in
21 order to put them in a database; correct?

22 A. Right.

23 Q. Um, and you are not the one who, um, reviewed and processed
24 each of the 3,000 of those, uh, returns?

25 A. No. That would be the responsibility of the group that I

1 worked with, the tax examiners.

2 Q. Are they all in your office, all of those individuals who --
3 who would have reviewed those particular returns?

4 A. At -- at the time I worked in the Frivolous Return Program,
5 yes. There was 12 people that worked there; we were all in the
6 same group.

7 Q. Uh, but you yourself would not have independent, direct
8 knowledge of each and every one of those returns; correct?

9 A. Not necessarily, no.

10 Q. So it would be the responsible -- responsibility of those
11 other examiners, um, to make the appropriate determination as to
12 the call -- the qualification of that particular return to put
13 it in the right database. True?

14 A. If they had questions, then they would bring to me for
15 technical advice.

16 Q. Okay. Now, the Government said that -- or showed you a few
17 of those returns that you would have identified as going into
18 one particular database and they talked a little bit about the
19 similarities with regard to those returns.

20 However, Ms. Morgan, there's no way for you to be able
21 to positively identify each and every one of those particular
22 returns as being contributed to the teachings of Mr. Irwin
23 Schiff; correct?

24 A. Me looking at them visually? No. We would -- we would rely
25 on the computer database.

1 Q. Correct. Okay.

2 Um, now, you had spoken a little bit about, um, the way
3 that you identify those particular -- those particular, um,
4 returns as, um -- as Long returns; correct?

5 A. Yes.

6 Q. And that's based on the decision of the United States v.
7 Long; correct?

8 A. Correct.

9 Q. Okay.

10 MR. CRISTALLI: May I have this marked as an exhibit?

11 THE CLERK: Have you premarked anything?

12 MR. CRISTALLI: I did not. I just found this. I'm
13 sorry.

14 THE CLERK: Okay. I just need to know in case I
15 have --

16 MR. CRISTALLI: I apologize.

17 THE CLERK: I think you have marked a couple.

18 MR. CRISTALLI: I may have.

19 THE CLERK: So would it be safe in putting 2506 on
20 this?

21 MR. CRISTALLI: Think it would.

22 (Defendant Neun's No. 2506, marked for
23 identification.)

24 (Exhibit shown to Government counsel.)

25 MR. CRISTALLI: Court's indulgence.

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

3 BY MR. CRISTALLI:

4 Q. Um, Ms. Morgan, before I go any further, you said that you
5 were [sic] employed with the IRS for how long of a period of
6 time?

7 A. 21 years.

8 Q. Um, and, ma'am, as a employee for the IRS for 21 years,
9 would it be safe to say that you would be, um, familiar with,
10 um, memorandums and letters and internal memorandums that come
11 out of the office from the, uh, Revenue Service?

12 A. If they come across my desk, you know, I would read them.
13 But I'm not familiar with every single one.

14 Q. Okay. Let me approach and see if you recognize this
15 particular document.

16 MR. CRISTALLI: May I, your Honor?

17 THE COURT: You may.

18 BY MR. CRISTALLI:

19 Q. Do you recognize this document in terms of where it came
20 from and what department it came from?

21 A. (Reviewing document.) I can tell you what department it
22 come from --

23 Q. Okay.

24 A. -- because of the letterhead.

25 Q. Okay.

1 A. It comes from the Department of Treasury, Internal Revenue
2 Service, in Washington, D.C.

3 Q. Okay. And, during the course of your employ with the
4 Internal Revenue Service, have you reviewed correspondence from
5 that particular office in the past?

6 A. Yes.

7 Q. Okay. Thank you.

8 MR. CRISTALLI: Your Honor, I'd like to move for the
9 admission of Defendant's Exhibit 2506.

10 MR. IGNALL: Objection. I'm not sure what the
11 relevance is. And, also, Ms. Morgan didn't say she'd actually
12 seen that document. I'm not sure how it's -- how she could have
13 relied on it or how it's relevant to her testimony on direct
14 examination.

15 THE COURT: I'm not sure you can get it in through this
16 witness. The mere fact that she recognized the -- or could read
17 the letterhead does not mean that she is familiar with it or
18 can -- can even identify it as authentic. I'm not sure she's --
19 she's capable of authenticating it.

20 Beyond that, uh, the issue of relevance is one that I
21 think I'd need to -- I'd need to see the document to address.

22 MR. CRISTALLI: May I just ask Ms. Morgan one
23 question -- additional question in terms of trying to establish
24 a better foundation with regard to this?

25 THE COURT: You may.

1 MR. CRISTALLI: Thank you.

2 May I approach again?

3 THE COURT: You may.

4 BY MR. CRISTALLI:

5 Q. Ms. Morgan, if you could just take a look at this document
6 and see, um, I'm gonna direct your attention to specifically --
7 and you could look at the whole document, but I'm most
8 interested in page, uh, 4 here.

9 If you could peruse this document and see if you had --
10 if you're familiar with internal documentation from the Internal
11 Revenue Service, uh, containing information consistent with this
12 memorandum, if you would.

13 A. So, the paragraph is on page --

14 Q. 4.

15 A. -- 4. Okay. (Reviewing document.)

16 As far as the document itself, I have not seen that.

17 Q. Okay.

18 A. Okay. As far as --

19 Q. Content?

20 A. -- reading the paragraph, I have talked with our area
21 counsel regarding --

22 Q. Okay.

23 A. -- this --

24 Q. I'll talk to you specifically about that without introducing
25 the document.

1 Um, so if -- you had an opportunity, obviously, to
2 review that portion of the document which I directed you to.
3 And basically that's, um -- that's -- it contains information
4 regarding, uh, United States v. Long; correct?

5 A. It is.

6 Q. And you said that you have had discussions with internal
7 counsel with regard to that particular decision. True?

8 A. Correct.

9 Q. Okay. Now -- and that's the decision, um, that is cited in
10 these, uh, zero returns that you class- -- classify in one
11 particular databank; correct?

12 A. That is included in the attachments.

13 Q. Correct. Uh, attached to the 1040?

14 A. Right.

15 Q. Okay. And that's a, uh, United States Supreme Court
16 decision on the United States Court of Appeals from the Ninth
17 Circuit. True?

18 A. True.

19 Q. Okay. And the discussion basically is that there -- there
20 is nothing that can be calculated from a blank or -- but a zero,
21 like other figures, has any significance. And basically it was
22 a holding from the Circuit which stated that -- let me just
23 refer to this so I can get it right here.

24 And basically it would -- it would be safe to say that
25 the Long has a holding that says that a zero return is not,

1 uh -- is not considered a fraudulent return. Would that be an
2 accurate statement?

3 A. As far as, you know, being able to interpret U.S. v. Long,
4 I'm not an attorney. I can't, you know, interpret that
5 decision.

6 Q. Would it be safe to say that it's authority that is, um,
7 opposing authority for which the, uh, Internal Revenue Service
8 relies on? For example, the Internal Revenue Service relies on
9 case law that supports a position. United States v. Long
10 supports a position that is opposite of that, um, that the
11 Internal Revenue Service relies on.

12 Would that be an accurate statement?

13 A. I don't know.

14 Q. You don't know that.

15 A. I -- I can tell you what drives a return into the program --

16 Q. Okay.

17 A. -- the Frivolous Return Program.

18 Q. Okay. But you -- you have had some discussion with regard
19 to that particular case, um, with, uh, internal counsel --

20 A. Yes.

21 Q. -- for the Internal Revenue Service?

22 And was that -- was that discussion basically not the
23 content of the holding of the case, but, rather, if you get this
24 type of return that you need to file it in a certain databank?

25 A. Counsel told us that if we received a return with just

1 zeroes with no attachment stating frivolous positions, it would
2 not come to our program.

3 Q. Okay.

4 A. If it had the attachments stating frivolous positions, then
5 it would be subject to the penalty.

6 Q. Okay. So if the 1040 -- 1040 with zeroes absent any
7 attachments would not come into your office, would not go into
8 the, uh -- the -- five -- the frivolous databank as identified
9 by you here today; correct?

10 A. It would not -- correct.

11 Q. Okay.

12 A. It would not be worked in our area.

13 Q. Now, um, there was a exhibit that the Government had, uh,
14 posted up here and -- I'm sorry -- I think -- I'm sorry. I
15 don't remember what the exhibit was. But it was basically, uh,
16 um, a no return statement, uh, from 1993 to 2004 as it related
17 to Cynthia Neun. Do you recall that?

18 A. Yes. A Certification of Lack of Record.

19 Q. I'm sorry?

20 A. The Certification of Lack of Record.

21 Q. And that -- I mean, obviously somebody must have instructed
22 you to do some research to determine whether or not certain, uh,
23 income tax was paid from '93 to 2004 with regard to Cynthia
24 Neun; correct?

25 A. Right.

1 Q. Um, and you did not do any research that predated 1993,
2 correct, as it related to Cynthia Neun?

3 A. That's -- the instructions were for those specific years and
4 disclosure allows us only to look at those specific years.

5 Q. Okay. So whoever instructed you instructed you to do it
6 from 1993 to 2004; correct?

7 A. Correct.

8 Q. And so, um, you would not be able -- be able to testify here
9 today as it related to Cynthia Neun whether or not she paid
10 taxes prior to 1993; correct?

11 A. I could not.

12 Q. Okay. Now, there is something called a, um, uh, individual
13 master file. True?

14 A. There is an individual master file, yes.

15 Q. And it's classified as an IMF file or an IMF; right?

16 A. Yes, that's the term we use. Yes.

17 Q. And basically that -- for the members of the jury, that
18 would be and state -- correct me if I'm wrong, that'll be --
19 that would be a file of an individual's tax history?

20 A. Right. It's the records maintained by the Internal Revenue
21 Service regarding filings, adjustments, payments, refunds.

22 Q. And that would contain an individual's complete history of
23 their taxes. True?

24 A. It -- it contained certain information. But we also have
25 laws that after a -- at least seven years that information would

1 not be available.

2 Q. Okay. Um, prior to you coming into court here today, as I
3 believe you identified yourself as a witness -- I'm sorry. What
4 was your title again?

5 A. As a court witness.

6 Q. Court witness.

7 So that means you probably testify a lot; correct?

8 A. I do testify at both criminal and civil trials --

9 Q. Okay.

10 A. -- yes.

11 Q. Would it be your practice to review IMF files before coming
12 in and testifying on -- on -- on a specific individual,
13 obviously, that you're testifying in regard to?

14 A. On the years that I am instructed to only.

15 Q. Okay. Um, so -- but, if the IMF file contained information
16 that predates those years for which you've been requested to
17 review, you would also have that knowledge, would you not?

18 A. That would -- could be on the transcript. But disclosure
19 will not allow me to testify regarding that.

20 Q. And, in this particular case, you do not know whether or
21 not, um, Cynthia Neun had filed tax returns predating 1993;
22 correct?

23 A. I do not know.

24 Q. Okay. Now, during the periods of time 1993 to 2004, you,
25 um -- you testified that there was no return, certification of

1 no returns, filed on behalf of Ms. Cynthia Neun. True?

2 A. I'd have to refresh my memory by looking at the exhibit.

3 Q. Um, I mean, I thought that's what your testimony was. But
4 you can -- you can refer to your notes or the tran- -- or that
5 exhibit to refresh your recollection.

6 A. (Reviewing documents.)

7 MR. CRISTALLI: Your Honor, I can approach and probably
8 refresh the witness's recollection really quickly on this issue.
9 I have it right in front of me.

10 MR. IGNALL: Your Honor, I believe it's Exhibit 59.

11 MR. CRISTALLI: Yeah, it is.

12 THE WITNESS: 59?

13 MR. BOWERS: Put it on the screen. Do you want to put
14 it on the screen real quickly?

15 MR. CRISTALLI: Yeah. You can put it on the screen if
16 you want -- if we could.

17 THE WITNESS: Okay. I have it.

18 MR. CRISTALLI: Okay. It'll be good to have on the
19 screen anyway.

20 (Document displayed in open court.)

21 BY MR. CRISTALLI:

22 Q. Okay. So you recognize that document; correct?

23 A. Yes.

24 Q. And that's a Certification of Lack of Record as related to
25 Cynthia Neun. True?

1 A. Correct.

2 Q. Okay. And there's inherently nothing wrong with that
3 particular document, the fact that there was no return filed by
4 a particular individual; correct?

5 A. Uh, I'm not understanding --

6 Q. Well --

7 A. -- when you're stating what's wrong with it.

8 MR. IGNALL: Objection, your Honor. I think the
9 witness's testimony on direct was just that this says there
10 wasn't a return filed.

11 MR. CRISTALLI: Okay.

12 THE COURT: Correct.

13 MR. IGNALL: She didn't opine anything beyond that.

14 BY MR. CRISTALLI:

15 Q. Well, I mean, you worked at the IRS for a long period of
16 time. The mere fact that some -- that there is records of a --
17 of a lack of record of a filing does not suggest that there's
18 any wrongdoing by any -- by that particular individual.

19 Correct? That there's -- that in and of itself does not
20 generate a red flag for the Internal Revenue Service.

21 A. That someone has not filed?

22 Q. Right.

23 A. No. It just certifies that there was no rec- -- no returns
24 filed for this specific taxpayer --

25 Q. And --

1 A. -- for these specific years.

2 Q. Thank you.

3 And, if somebody's not making money for that period of
4 time or is collecting disability, they would not be required to
5 file a return. True?

6 A. The requirements to file that is something that the taxpayer
7 themselves would make.

8 Q. The taxpayer themselves would have to make --

9 A. Right.

10 Q. -- that determination.

11 But there are, um, situations wherein the taxpayer
12 would not have to be required to file if that taxpayer was, for
13 example, receiving disability or wasn't making enough money to
14 require that person to file. Would that be an accurate
15 statement?

16 A. That -- that's a possibility that they may not be required
17 to file.

18 Q. Okay. Now, you can -- now, this -- this Certification of
19 Lack of Record for Cynthia Neun from the periods of December
20 31st, 1993, through December 31st, 2004, is much different than
21 the frivolous returns that go into your -- your databank, um,
22 that you discussed on your direct, uh, examination. True?

23 A. Right. There is nothing -- would not be anything in the
24 database regarding a frivolous filed --

25 Q. Right.

1 A. -- return.

2 Q. And there was nothing -- today there was no -- there was no
3 1040's, um, with the attachments that were specific to Cynthia
4 Neun that cited the Long decision; correct?

5 A. According to the Certification of Lack of Record.

6 Q. Correct.

7 And would it be also -- you can take that down now --
8 would it be safe to say, then, as far as your office is
9 concerned, once you get the, um -- once you get that particular
10 return with the attachment, the Long attachment on it, you put
11 it in a -- in a particular database; correct?

12 A. Yes.

13 Q. Okay. Um, once it goes into that database, you send out a
14 letter in response to that, a frivolous letter; correct?

15 A. We send out the letter informing the taxpayer they filed a
16 frivolous return.

17 Q. Okay. And, um, you said that -- you basically just say it's
18 a frivolous return. You need to amend the return. True?

19 A. Right. We give them the opportunity to change and file a
20 corrected return.

21 Q. Okay. And, um, you don't give them anything, though, um, in
22 terms of legal positions or legal support, um, that would dispel
23 the holding in United States v. Long for which they supported
24 their position on?

25 A. In -- in the letter, there is publications that go out

1 regarding positions.

2 Q. Do you have -- do you have a copy of that?

3 A. I do not have a copy with me.

4 Q. During --

5 A. It's --

6 Q. -- during your direct examination, did you cite to any of
7 those publications in response to the letters that were --
8 attached to the letters that were sent out in response to those
9 1040's with the attachment?

10 A. The letter will usually list what publications are sent
11 out --

12 Q. Okay.

13 A. -- on the second page.

14 Q. So the frivolous letter response?

15 A. The frivolous letter itself.

16 Q. Okay. But you don't have any of those documents here today;
17 correct?

18 A. Not in the courtroom --

19 Q. Okay.

20 A. -- no.

21 Q. Um, now, it would be safer to say as far as your, um,
22 department is concerned that letter would put the taxpayer on
23 notice; correct?

24 A. Yes. We're trying to educate them what -- what they're
25 doing.

1 Q. Okay.

2 A. So they can avoid the penalty.

3 Q. Now, Cynthia Neun, uh, never received a frivolous, uh,
4 letter, correct --

5 A. Not --

6 Q. -- to the best of your knowledge?

7 A. -- not to my knowledge.

8 Q. Therefore, she would have never received -- she would have
9 never received the information that your office puts together
10 and sends out to taxpayers in response to their 1040 filings
11 with the Long attachment. True?

12 MR. IGNALL: Objection. This asks for speculation.
13 She can testify whether IRS records indicate that Ms. Neun got
14 one directed to her but whether she found out about it some
15 other way I think is beyond the scope of her direct and her
16 knowledge.

17 THE COURT: Sustained.

18 BY MR. CRISTALLI:

19 Q. Okay, um, there was no 1040 -- uh, 1040 Long returns based
20 on your review -- and you are the person that's testifying here
21 on behalf of the government -- for Cynthia Neun; correct?

22 A. According to this Certification of Lack of Record, yes.

23 Q. And therefore she would not have received a frivolous
24 response by the Internal Revenue Service; correct?

25 A. Regarding the penalty.

1 Q. Correct. Or any letter for that matter.

2 A. That's not correct.

3 Q. Well, she didn't file a 1040 Long return.

4 A. There's also letters that -- if you file frivolous
5 correspondence, there's the same type of letter that would go
6 out.

7 Q. So that goes -- okay. Wait a second. I'm just -- I'm
8 talking specifically about the 1040 Long attachment database.
9 That's a specific database. True?

10 A. Right.

11 Q. That's what you testified on direct examination --

12 A. Right.

13 Q. -- to; correct?

14 A. And it's the history of what the individual sends in --

15 Q. Correct.

16 A. -- be it returns, correspondence, the examination. All
17 activity.

18 Q. So, now, it's some -- okay. Now, I'm a little confused.

19 So now it's not just the 1040 return with the Long
20 attachment, that database. It's somethin' different now.

21 A. It's the same database. It just maintains a history for the
22 tax examiner of actions taken upon the account.

23 Q. Well, here -- here's what I'm trying to get at. The
24 Government put up two doc- -- two documents side by side that
25 were attachments to the 1040 returns that are consistent with

1 one another. Correct?

2 A. Yes.

3 Q. That's the only thing they discussed with you in terms of
4 that particular database; correct?

5 A. Correct.

6 Q. Okay. So if Ms. Neun did not file a 1040 person- -- we're
7 talking about herself -- 1040 with Long attachments, she would
8 not have received a frivolous letter in -- in -- from the
9 Internal Revenue Service. True?

10 A. Regarding the 1040, yes.

11 Q. Okay. Now, in that letter that you, um, the -- the -- the
12 letter in -- the frivolous letter generated by the Internal
13 Revenue Service, it basically -- the only thing it says is that,
14 um, the only income derived from corporate activities is taxable
15 and, since you had no such income, no liability for taxes. I
16 mean, that's basically the -- and -- and then in response to
17 that it just says there's no support for the law with regard to
18 that. But there is no case law cited on that particular
19 document. True?

20 A. There's no case law, no.

21 Q. Okay.

22 A. The publication states that.

23 Q. But we don't have any publications here today; correct?

24 A. I don't have them with me, no.

25 Q. Um, now, Ms. Morgan, um, are you aware of the fact that, uh,

1 the State of Nevada is in the Ninth Circuit Court of Appeals?

2 A. Yes.

3 Q. Okay.

4 MR. CRISTALLI: Your Honor, I don't have any further
5 questions.

6 THE COURT: Okay.

7 MR. CRISTALLI: Thank you.

8 THE COURT: Mr. Bowers.

9 MR. BOWERS: Um, I was gonna go after Mr. Schiff.

10 THE COURT: Okay.

11 Mr. Schiff.

12 MR. SCHIFF: Yes.

13 (Pause in the proceedings.)

14 MR. SCHIFF: Excuse me, your Honor.

15 (Pause in the proceedings.)

16 MR. SCHIFF: Can I just take five minutes? I had...

17 THE COURT: Mr. Bowers, you go next.

18 MR. SCHIFF: Oh, I'm sorry. Here they are.

19 MR. BOWERS: May Mr. Schiff go, your Honor?

20 THE COURT: Pardon?

21 MR. BOWERS: I'm assuming Mr. Schiff may cover some of
22 my material.

23 THE COURT: Okay.

24 MR. BOWERS: And the same may not be the --

25 THE COURT: He appears to --

1 MR. BOWERS: Yeah.

2 THE COURT: -- have found his questions.

3

4 CROSS-EXAMINATION

5 BY MR. SCHIFF:

6 Q. Good morning, Ms. Morgan.

7 A. Good morning.

8 Q. Um, now, I just want to clarify something.

9 Though his Honor said that you were not an attorney or
10 accountant and not an expert in tax law, you apparently have a
11 very important position at the IRS; is that correct?

12 A. I feel it's an important --

13 Q. Okay.

14 A. -- position.

15 Q. In connection with that position, did you get training
16 itself in the law and where to find statutes referenced in the
17 Internal Revenue Code?

18 A. No. We -- we rely on our counsel to do that for us. We
19 work with --

20 Q. In other words, if you saw a reference to a statute, you
21 wouldn't know how to find it in the Internal Revenue Code. Is
22 that what you're saying?

23 A. I could find it in the Internal Revenue Code, but I would
24 not be interpreting that.

25 Q. Well --

1 A. Area counsel would do that.

2 Q. All right. The reason I say this is that, if I understand
3 you correctly, how did -- you said the frivolous penalty was
4 imposed -- when you impose the frivolous penalty, how did you --
5 did I hear you correctly when you said you called the U.S.
6 Attorney? Can you just condense that and explain how the
7 frivolous penalty is imposed?

8 A. We don't work with the U.S. Attorney. We work with area
9 counsel that's hired --

10 Q. Okay. I'm sorry.

11 A. -- by IRS.

12 Q. So the -- is it the area counsel who tells you to impose a
13 frivolous penalty?

14 A. Would you like me to explain the process of how that --

15 Q. Well, I think you explained it. But, yeah, do it. Please.

16 A. When we receive a frivolous return if it's something that
17 has not been identified, my responsibility was to write area
18 counsel and ask them whether or not it's subject to the
19 frivolous return penalty. They in turn would research case law,
20 the Code. They would come up with a decision. It's then passed
21 through their manager and then it can also be passed through
22 national office counsel for approval. And, in turn, we get a
23 written decision back stating, yes --

24 Q. Okay.

25 A. -- U.S. v. Long --

1 Q. Okay.

2 A. -- type of return with this attachment is subject to the
3 frivolous return penalty.

4 Q. Okay. And, in connection how -- in connection with the
5 frivolous penalties that were imposed upon me or sent to me, was
6 there any document that said who actually determined, uh -- who
7 imposed the penalty itself? Who made the determination?

8 A. Who made --

9 Q. Was there any doc- -- yeah.

10 A. Who made the determination?

11 Q. Yeah. Was -- was there any document that explained who --
12 who -- who particularly made the determination?

13 A. That would be the responsibility of the person that would be
14 assigned the case.

15 Q. But in -- in the documents that you've provided us, there
16 was no document that stated who imposed the frivolous penalty
17 itself; is that correct?

18 A. Who imposed it or --

19 Q. Yes. Who determined it.

20 A. Who determined it? Area counsel determined --

21 Q. But there was no document that you supplied us that stated
22 who imposed -- who took responsibility.

23 A. Once the determination is made by the -- by area counsel,
24 that becomes part of our procedures and guidelines or our
25 Internal Revenue manual to assess the penalty.

1 Q. Let me -- I don't think you're being responsive, but I don't
2 think you're doing it deliberately. I want to make my question
3 simple.

4 With the documents that were supplied to me, there was
5 no document -- for instance, the friv- -- the frivolous penalty
6 says we have determined that your -- all right. But there was
7 no document that specifically said who determined the frivolous
8 penalty. That's all I want to know. Yes or no, was there a
9 document that you have?

10 A. Again, my answer is, is area counsel determined that --

11 Q. So --

12 A. -- specific document is subject --

13 Q. So --

14 A. -- all of those documents are. They are all --

15 Q. All right.

16 A. -- treated the same.

17 Q. Let me -- let me read to you if I can. If I can. Here. Do
18 you want to see this?

19 (Document shown to Government counsel.)

20 MR. SCHIFF: All right.

21 BY MR. SCHIFF:

22 Q. Let me read to you Code Section 6801 which --

23 MR. IGNALL: Objection, your Honor. Perhaps we don't
24 disagree with the Code section. But, if Mr. Schiff's gonna read
25 it piecemeal, we feel that might be --

1 MR. SCHIFF: I mean, you can read it. It says how --

2 THE COURT: Wait a minute.

3 MR. SCHIFF: -- a frivolous penalty is imposed.

4 THE COURT: Well --

5 MR. SCHIFF: It says --

6 MR. IGNALL: If he wants to ask the witness how they
7 impose it, that's fine. But to introduce the law piecemeal as
8 opposed to the Court's --

9 MR. SCHIFF: Section --

10 THE COURT: Hold on.

11 MR. SCHIFF: Can I just --

12 THE COURT: No, no. Not yet.

13 MR. SCHIFF: Do I have to show it?

14 (Document shown to counsel.)

15 THE CLERK: Should this be marked, your Honor?

16 MR. SCHIFF: Do you want to mark this.

17 THE CLERK: Yes. It's Exhibit 2106.

18 (Defendant Schiff's Exhibit No. 2106, marked
19 for identification.)

20 THE COURT: You haven't asked to approach.

21 MR. SCHIFF: Can I approach the witness?

22 THE COURT: No, not yet. I said wait.

23 MR. IGNALL: Mr. Schiff, may I look at that?

24 (Document handed to Government counsel.)

25 MR. IGNALL: All right. Thank you.

1 THE COURT: All right. Now, what is -- what is the
2 relevance of this?

3 MR. SCHIFF: The relevance, it's directly related to --
4 relevant to a frivolous penalty and how a penalty gets assessed.

5 THE COURT: Well --

6 MR. SCHIFF: It says --

7 THE COURT: No. You're not going to read it. You can
8 hand it to me. I don't think -- I don't think your question is
9 relevant. Hand me the document.

10 THE CLERK: I can get it, Judge.

11 THE COURT: Take it from him.

12 MR. SCHIFF: Well...

13 (Document handed to the Court.)

14 THE COURT: The record reflects that you have
15 identified the Code section that you wish to read as Code
16 Section 6801.

17 MR. SCHIFF: Is that -- I took -- is that 6801? Yeah.

18 THE COURT: No, it's not. The one you have highlighted
19 and I assume that's the one you want to read is Section 6751.

20 MR. SCHIFF: If I can see it, I don't -- it's the one
21 that I've highlighted that's the one I think is relevant. Well,
22 me -- I just --

23 THE COURT: Here. Show it to him.

24 MR. SCHIFF: If I could see the document again. The
25 statute is -- I'm sorry. 60- -- 67- -- it's 6751. 6751. I

1 just want to ask her if she can read the statute.

2 THE COURT: I've read it and it doesn't matter. It's
3 irrelevant.

4 MR. SCHIFF: Can we have a sidebar conference on this?

5 THE COURT: No, you can't.

6 MR. SCHIFF: Are you telling me this is not relevant?

7 THE COURT: I am completely familiar with this
8 argument.

9 MR. SCHIFF: You just --

10 THE COURT: And I have ruled numerous times it doesn't
11 matter.

12 MR. SCHIFF: I can't have sidebar on this?

13 THE COURT: No. Move to your next question.

14 BY MR. SCHIFF:

15 Q. Okay. I think Mr. Cristalli already established that in
16 conjunction with your position you read memorandum and internal
17 documents bearing on the examination of tax returns; is that
18 correct?

19 A. Those that pertain to my job.

20 Q. Yes. Which is examination, I understand, of tax returns.

21 A. Right now it is in criminal investigations.

22 Q. All right.

23 MR. SCHIFF: I would like to move to put this document
24 into, uh, evidence. It's called, "Examination of Returns [um],
25 Internal Revenue Document 4.10.7."

1 MR. IGNALL: Have you marked this, Mr. Schiff?

2 MR. SCHIFF: No. I -- no, I didn't mark it. I -- I
3 just -- in the light of her testimony, I -- so I didn't think I
4 was gonna use this --

5 THE COURT: If you --

6 MR. SCHIFF: -- as an exhibit.

7 THE COURT: -- if you wish to use it, you have it
8 marked.

9 THE CLERK: It's 2107.

10 (Document reviewed by Government counsel.)

11 (Defendant Schiff's Exhibit No. 2107, marked
12 for identification.)

13 THE CLERK: I just need to put a clip on this.

14 THE COURT: Let me see it when you finish, Ms. Clerk.

15 THE CLERK: I'm going to put a clip on it so it doesn't
16 fall apart and the judge has asked to see it.

17 (Document handed to the Court.)

18 THE CLERK: Do you want me to give it to the witness?

19 THE COURT: Hand it back to him. Let's see what his
20 question is.

21 THE CLERK: Mr. Schiff.

22 (Exhibit handed to Mr. Schiff.)

23 MR. SCHIFF: Okay. Thank you.

24 THE COURT: What is your question?

25 MR. SCHIFF: Well, I want to know if she's seen this

1 document.

2 THE COURT: Approach.

3 (Witness handed the document by Mr. Schiff.)

4 THE WITNESS: (Reviewing document.)

5 THE COURT: Your question?

6 MR. SCHIFF: Pardon me?

7 THE COURT: Your question is?

8 BY MR. SCHIFF:

9 Q. Okay. So -- so isn't that document, uh, gives instructions
10 or recommendations on -- on -- no -- on the sources and
11 priorities in which you are to judge, uh, tax returns and --
12 is -- is that what -- well --

13 MR. IGNALL: Objection, your Honor.

14 BY MR. SCHIFF:

15 Q. -- what is the document about?

16 MR. IGNALL: I think the original foundational question
17 has to be does she recognize --

18 MR. SCHIFF: All right.

19 MR. IGNALL: -- the document.

20 BY MR. SCHIFF:

21 Q. All right. Do you recognize this document?

22 A. This actual document, no. This is from something called
23 "The" -- "The Digital Daily." And that's -- that's not --

24 Q. But you recognize that as an IRS document?

25 A. It contains reference to different processes but not as an

1 IRS document, no.

2 Q. Well, it's on the Web site. But, anyway, what would -- what
3 would the purpose of that document be?

4 MR. IGNALL: Objection, your Honor. She said she
5 doesn't recognize that particular document.

6 THE COURT: Sustained.

7 MR. IGNALL: The defendant can ask her if she's
8 familiar with the Internal Revenue Code manual in general I
9 think, but...

10 BY MR. SCHIFF:

11 Q. Well, doesn't that document list -- doesn't that document
12 state at the beginning that the primary source --

13 THE COURT: You're not --

14 MR. SCHIFF: I'm sorry?

15 THE COURT: You're not going to testify.

16 MR. SCHIFF: Okay. All right.

17 BY MR. SCHIFF:

18 Q. What is the --

19 THE COURT: She doesn't recognize it. The objection
20 has been sustained. Move on to a new --

21 MR. SCHIFF: I can't go -- I can't go through --

22 THE COURT: No, you can't.

23 MR. SCHIFF: -- that document.

24 THE COURT: Go on to a new question.

25 MR. SCHIFF: Okay.

1 BY MR. SCHIFF:

2 Q. Okay. Now, getting back to all the returns that you [sic]
3 submitted, uh, the returns --

4 THE COURT: Wait a minute.

5 BY MR. SCHIFF:

6 Q. -- government documents --

7 THE COURT: No. She didn't submit any returns.

8 MR. SCHIFF: Well, all -- the government documents 2257
9 contain tax returns that I filed for the years 203 [sic] to 1979
10 with the exception of the years 1990, 1991, 1995, and 1979.

11 BY MR. SCHIFF:

12 Q. So those are tax returns that I filed during a 30-year
13 period; is that correct?

14 A. I would have to look at the exhibits to...

15 Q. Well, I see -- well, all right. All right. All right.

16 The Government's -- here. I have couple of -- let me
17 see. The Government submitted the tax returns that I filed for
18 the year 2003. You wanna -- you wanna check 'em? That was --

19 A. Do you know the exhibit number?

20 Q. -- Exhibit 46, the Government's Exhibit 46 --

21 A. 46. Okay.

22 Q. -- was the tax returns that I filed for the years [sic]
23 2003. Do you want to verify that?

24 A. Yes.

25 Q. Okay.

1 A. Under certification, yes, that is the --

2 Q. And then the --

3 A. -- 2003.

4 Q. -- Government submitted tax returns that I filed for the
5 year 2002.

6 A. Which is Exhibit...

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

9 THE WITNESS: 45.

10 MR. SCHIFF: I want to save time. I don't have -- I
11 just wanna --

12 BY MR. SCHIFF:

13 Q. So the Government submitted the tax returns that I filed for
14 the year 2002?

15 A. Yes. Exhibit --

16 Q. Is that correct?

17 A. -- 45. Correct.

18 Q. Plus the 4340, which was the Government's Exhibit 22.

19 A. Which is a record of the account.

20 Q. Right.

21 So -- all right. Now, next the Government submitted
22 the tax returns that I filed for the year 2001. And that was
23 the Government's Exhibit 22 [sic]?

24 A. The tax return or the --

25 Q. Well -- um, well, let me see. No. No, no, no. They said

1 no return filed. I'm sorry.

2 Oh, they submitted the tax return. The tax return was
3 Government's Exhibit 44.

4 A. Correct. For 2001.

5 Q. But they didn't, um, submit a 4340 for that year?

6 A. I would have to look at the exhibits.

7 Q. Well, Government's Exhibit 22 said no return posted for this
8 tax period.

9 THE COURT: You're referring to Exhibit 22?

10 MR. SCHIFF: 22, yes.

11 THE WITNESS: And which tax year, please?

12 BY MR. SCHIFF:

13 Q. The year -- the year was 2001. However --

14 THE COURT: Wait a minute. Let her...

15 MR. SCHIFF: Your Honor, it might save time if I told
16 you all the returns they filed with the exception of only a
17 few -- the Government filed --

18 MR. IGNALL: Your Honor, I think we'd stipulate to
19 which returns are included in these exhibits, so...

20 MR. SCHIFF: Well, I -- I went through 'em. If I may,
21 your Honor --

22 MR. IGNALL: If he wants to ask her a question about a
23 particular document, we wouldn't object to that.

24 MR. SCHIFF: If I may, your Honor, they submitted
25 returns that I filed for all the years 1979 to 2003, including

1 4340's which says the assessment with the exception of the years
2 1990, 1991, 1995, and 1979. Now, if you do the math, that comes
3 out to 30 years.

4 THE COURT: 1979?

5 MR. SCHIFF: Nine -- right. No. Yeah.

6 THE COURT: That's what you just said, 1979.

7 MR. SCHIFF: There's no return shown for 1979.

8 THE COURT: With the exception of years 1990, 1991,
9 1995, and 1979?

10 MR. SCHIFF: Yeah. If you go to 1979, the -- the
11 4340 -- 1979, Exhibit 22, was the 4340 for 1979, but no return
12 was provided for that year.

13 THE WITNESS: Is that a question? You're asking me --
14 I have the 4340.

15 BY MR. SCHIFF:

16 Q. Yeah. Well --

17 A. I can -- I can interpret that for you.

18 Q. Well, did the Government submit a return that I filed for
19 the year 1979?

20 A. The return?

21 Q. The tax return, an income tax return.

22 A. There is no tax return, but that would be because of the
23 laws that we maintain things and after seven years then the
24 returns are destroyed. We cannot maintain tax returns forever.
25 There is certain rules --

1 Q. Well, I -- I --

2 MR. SCHIFF: I don't want to testify, your Honor. But
3 I didn't file -- I can -- I went to Tax Court. They admitted
4 that no return was filed.

5 MR. IGNALL: Objection, your Honor. I think this
6 mischaracterizes the witness's testimony. She could look at the
7 1979 Certificates of Assessments and Payments and Other
8 Specified matters and determined what happened --

9 THE COURT: Correct.

10 MR. IGNALL: -- as opposed whether --

11 MR. SCHIFF: Well, your Honor --

12 MR. IGNALL: -- there's a tax return in evidence.

13 THE COURT: She doesn't have the tax return itself
14 because of the seven-year --

15 MR. SCHIFF: I didn't file --

16 THE COURT: -- policy.

17 MR. SCHIFF: -- a tax return for that year. I'll so
18 swear an oath to it.

19 MR. IGNALL: Objection, your Honor. I don't think the
20 witness testified to that. She's just saying --

21 THE COURT: No.

22 MR. IGNALL: -- that wouldn't exist even if he had or
23 hadn't.

24 THE COURT: Correct.

25 MR. IGNALL: She could still testify to what the

1 Form 4340 says for 1979.

2 MR. SCHIFF: Well -- well -- all right. All right.

3 The -- the Government submitted tax returns that I
4 filed for the year 1980, '81, '82, '83, '84. It's strange they
5 didn't file [sic] one for '79, just the previous year.

6 THE COURT: You just said you didn't file one for '79.

7 MR. SCHIFF: I -- I didn't file one. That's why they
8 don't have it.

9 THE COURT: Well, what's the point?

10 MR. SCHIFF: Well, I just -- I'm just clarifying what
11 went in. That's all. And I'm --

12 BY MR. SCHIFF:

13 Q. All I said is you did not produce a return for '79. That's
14 all I said.

15 A. The return --

16 Q. And there's no return.

17 A. Return.

18 THE COURT: Well, that's a statement.

19 THE WITNESS: But the 4340 reflects the information.

20 BY MR. SCHIFF:

21 Q. Yeah, right. But the 4340 -- excuse me. There seems to be
22 some papers... Okay. That's all I said.

23 Okay. Now -- now, the question I'm gonna ask is: Does
24 the Government with all those returns that went in indicate that
25 all those returns were processed by the IRS? All these returns

1 were processed that -- that you provided?

2 A. Were they processed?

3 Q. Yes.

4 A. Not necessarily.

5 Q. They weren't processed?

6 A. No. They were received. But --

7 Q. Pardon me?

8 A. They were received, not necessarily processed.

9 Q. Well -- well, can you tell me which returns were not
10 processed?

11 A. The returns that don't -- do not have a document locator
12 number would not be processed.

13 Q. Well, which returns would that be?

14 THE COURT: Do you want her to go through the returns
15 one by one?

16 MR. SCHIFF: All right. Let me do this.

17 BY MR. SCHIFF:

18 Q. Okay. Let's go to the first -- let's go to the last return,
19 my 2003 return.

20 THE COURT: Exhibit number?

21 MR. SCHIFF: Yeah. That's -- that was Exhibit 46.

22 BY MR. SCHIFF:

23 Q. Okay.

24 A. Okay. I have --

25 Q. Okay. Go to --

1 A. -- Exhibit 46.

2 Q. -- Government's Exhibit 46.

3 A. I have that exhibit.

4 Q. Okay. Okay. I don't -- that is the return I filed for the
5 year 2003; is that correct?

6 A. That is the return that was received in the Internal Revenue
7 Service Frivolous Filer Program --

8 Q. Pardon?

9 A. That is a return that was received in the Frivolous Filer
10 Department July 16th, 2001.

11 Q. Okay. Now, the 4340 that accompanied certified...

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

14 MR. SCHIFF: I'm looking for...

15 (Pause in the proceedings.)

16 BY MR. SCHIFF:

17 Q. The year 2003... It says, "Certificate of Official Record."

18 So do -- do -- was there -- I don't have -- was there a 4340?

19 You have the -- was there a 43- --

20 THE COURT: Who are you asking the question?

21 MR. SCHIFF: -- a 4340. I don't -- I don't seem to
22 have it here. Maybe I...

23 THE COURT: Are you asking the witness or are you
24 asking --

25 MR. SCHIFF: Yes.

1 THE COURT: -- the Government?

2 BY MR. SCHIFF:

3 Q. Was there a 40- -- was -- what is a 4340?

4 A. That's a Certificate of Assessments, Payments, and Other
5 Specified --

6 Q. Okay.

7 A. -- Matters regarding a specific year.

8 Q. Okay. So that shows you presumably what you did with your
9 return.

10 Was there such a document -- for some reason I don't
11 have it -- was there such a document filed in connection with
12 the tax return that is shown as Government's Exhibit 46?

13 A. I'm -- I'm checking right now. And so far I have not seen
14 the 4340.

15 MR. IGNALL: Your Honor, I can clarify this. I don't
16 believe there is a 4340 for that tax year because that's not one
17 of the charged tax years --

18 MR. SCHIFF: Okay.

19 MR. IGNALL: -- under the 7202(2) counts.

20 MR. SCHIFF: Okay. Let's go to the next...

21 BY MR. SCHIFF:

22 Q. Okay. For the year 2002 --

23 THE COURT: Exhibit number?

24 BY MR. SCHIFF:

25 Q. For the year 2002 --

1 THE COURT: Exhibit number?

2 BY MR. SCHIFF:

3 Q. Exhibit No. 22.

4 A. 22.

5 Q. -- there is a 4340.

6 A. For which year, please?

7 THE COURT: 2002.

8 THE WITNESS: 2002.

9 BY MR. SCHIFF:

10 Q. Oh, God.

11 And it shows -- the Government's document shows return
12 filed and tax assessed; is that correct?

13 THE COURT: Give us the Bates number, Mr. Schiff.

14 MR. SCHIFF: Uh, Exhibit 22.

15 THE COURT: Exhibit 22. What is the number at the
16 bottom of the page. DS...

17 MR. SCHIFF: That -- so there's a 4340...

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

20 BY MR. SCHIFF:

21 Q. DS008972. That is the 4340.

22 THE COURT: Hold on just a minute.

23 BY MR. SCHIFF:

24 Q. And the return... Uh, Document 45 --

25

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

3 MR. SCHIFF: I'll get --

4 THE COURT: I don't see --

5 MR. SCHIFF: -- the hang --

6 THE COURT: -- an 8972.

7 MR. SCHIFF: -- of this yet.

8 THE COURT: Mine ends at --

9 MR. SCHIFF: Okay.

10 THE COURT: -- 8970.

11 BY MR. SCHIFF:

12 Q. Document 45 --

13 MR. IGNALL: Your Honor, I think they are slightly out
14 of order. If you went back a couple of pages, it's in there.

15 THE COURT: Okay.

16 BY MR. SCHIFF:

17 Q. -- there is the return that I filed for the year 2002 --

18 THE COURT: Were you able to find it?

19 THE WITNESS: I'm able --

20 BY MR. SCHIFF:

21 Q. Okay. There's --

22 THE WITNESS: -- yes, I do have --

23 THE COURT: Okay.

24 THE WITNESS: -- the 4340.

25

1 BY MR. SCHIFF:

2 Q. -- the return that I filed for the year 2002.

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

5 BY MR. SCHIFF:

6 Q. Is that the -- is that my 2002 tax return that I filed for
7 the year 2002?

8 A. Okay. I can take that -- this document and I can marry it
9 up with the actual 2002 and match the document locator numbers
10 and tell you yes or no. Would you like me to do that?

11 Q. Well -- well, all I want -- you know, I wanna do it the
12 simplest way possible.

13 A. On Exhibit 45 shows a 2002 zero return and it does not have
14 a document locator number.

15 Q. Okay. It doesn't have a document locator.

16 A. No, it --

17 Q. In any case --

18 A. -- does not.

19 Q. -- is it a fact that I reported that I had zero income in
20 that year and I had zero taxes owed? Is that what I said --

21 A. On --

22 Q. -- on that document?

23 A. On the 4340 or on the --

24 Q. No. On --

25 A. -- return?

1 Q. -- on my tax return.

2 A. On your tax return on the 2002 year --

3 Q. Yes.

4 A. -- it shows all zeroes.

5 Q. That I swore under penalty of perjury that I had zero income
6 and zero liability?

7 A. Correct.

8 Q. Okay. Now, the 4340, which is Government Document 22 --
9 read what the first line says on -- on the Government's
10 document.

11 A. Certificate of Assessment, Payments, and Other Specified
12 Matters.

13 Q. No, no. Well, not -- the -- the first -- well, that's --
14 the first entry, return... That -- that would be the entry --
15 what entry was made on June 17th, 2003?

16 A. It says, "return filed and tax assessed."

17 Q. And what was assessed?

18 A. The assessment was zero.

19 Q. Okay. So the Internal Revenue Service obviously processed
20 that return and entered that I filed a return and they made some
21 kind of an assessment; is that right?

22 A. This is the return and the self-assessment that you made --

23 Q. All right.

24 A. -- on your tax return.

25 Q. All right. And they used my return to make those entries?

1 A. Yes.

2 Q. Okay. So -- so I assume it was processed by the IRS?

3 A. Right. It has a document locator --

4 Q. Okay.

5 A. -- number.

6 Q. Okay, okay. Government's Exhibit 41 -- I'm sorry. Strike
7 that.

8 THE COURT: He said never mind.

9 THE WITNESS: Never mind?

10 BY MR. SCHIFF:

11 Q. Okay. Government's Exhibit 40 --

12 A. 40?

13 Q. Yes.

14 -- that's the Government's Form 4340; is that correct?

15 A. No.

16 Q. Humm?

17 A. Exhibit 40?

18 Q. Exhibit 40 is a Certificate of Official Record.

19 A. Right.

20 Q. And it says for the tax year ending 1997.

21 A. That is a certified copy of the tax return.

22 Q. Well, there's a tax return here also, but -- I saw the
23 return. Oh, I'm sorry. Oh, I'm sorry. Exhibit 40 is the tax
24 return I filed for the year 1997.

25 A. Correct.

1 Q. Okay. And that's the year that I reported I earned no
2 taxable income.

3 A. The self-assessment is zero.

4 Q. And I had no tax liability; is that right?

5 A. According to the tax return.

6 Q. That's what I said.

7 Now, the Government -- what did the Government say with
8 respect to that document as shown in Exhibit 51?

9 A. 51?

10 Q. 51. Oh, hold it. That is for 1998. I did this at 2:00
11 o'clock in the morning. All right.

12 A. It's --

13 MR. SCHIFF: I'm sorry. Let me go back for a moment,
14 your Honor.

15 THE COURT: Okay.

16 BY MR. SCHIFF:

17 Q. All right. Government's Exhibit 41 is the tax return that I
18 filed in 1998?

19 THE COURT: You are back to 41?

20 MR. SCHIFF: Yeah, yeah.

21 THE COURT: Number 41.

22 THE WITNESS: Just a second. I haven't --

23 MR. SCHIFF: 41.

24 THE COURT: Hold on. Hold your question till --

25

1 BY MR. SCHIFF:

2 Q. So --

3 THE COURT: -- the witness finds the document.

4 BY MR. SCHIFF:

5 Q. -- the Government --

6 THE COURT: Hold your question till she finds the
7 document, please.

8 MR. BOWERS: Your Honor, I'm requesting maybe we can
9 take a short break. That may help Mr. Cohen [sic]. We're
10 well -- or Mr. Schiff organize these a little better. We're
11 well into the morning and I --

12 THE COURT: Yeah, it's --

13 MR. BOWERS: -- I personally could use it.

14 THE COURT: We're mid morning. So we are going to take
15 a break.

16 Be in recess about 15 minutes.

17 (Jury leaves the courtroom at 10:36 a.m.)

18 THE COURT: The witness may step out. I need to make a
19 couple rulings.

20 (Witness leaves the courtroom.)

21 THE COURT: Be seated.

22 MR. BOWERS: Your Honor, a couple of brief issues. Do
23 you want to address it when we get back though?

24 THE COURT: What?

25 MR. BOWERS: Couple brief issues, do you want to

1 address them now or after.

2 THE COURT: I'm gonna address some now. So --

3 MR. BOWERS: Okay. Well, one I'd just -- I'd renew my
4 motion to severe. I mean, Mr. Schiff's, you know, obviously
5 having a tough morning here and there's a spillover effect and
6 all of those same arguments as before. Mr. Cristalli, I
7 believe, is goin' to elaborate on that.

8 MR. CRISTALLI: Well, I mean, I've spoken to it
9 numerous times in the past, your Honor. Instead of, you know,
10 rehashing what I've previously stated, obviously I'm just going
11 to renew my previous motions on the same grounds that I have
12 stated previous to your Honor.

13 THE COURT: I've actually, you know --

14 MR. SCHIFF: Well --

15 THE COURT: Go ahead.

16 MR. SCHIFF: I, uh -- those documents that I want to
17 put in directly -- the -- the -- uh, statute said that all
18 frivolous penalties have to be, uh, signed by the immediate
19 supervisor and the person imposing the penalty. That's what the
20 law says. Now I -- I believe that was relevant.

21 Now, there are certain consist- --

22 THE COURT: Well, Mr. --

23 MR. SCHIFF: -- the reason I'm putting these
24 individual, uh, returns in -- and I tried to do it by doing it
25 altogether. I didn't want to go over it individual by

1 individual -- but there's certain inconsistencies involved in
2 those assessments which, uh, the counsel cannot recognize.

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

5 MR. SCHIFF: Oh, I'm sorry. I don't want to take up
6 everybody's time. But there are certain things that I recognize
7 on the assessments that I wanna cover.

8 MR. BOWERS: Well, point 'em out.

9 MR. SCHIFF: I --

10 MR. BOWERS: The returns are in.

11 MR. SCHIFF: -- I am. I'm gonna do that. But I was
12 putting this together about 2:00 or 3:00 o'clock in the morning.

13 Your Honor, when the Government submitted these --
14 there were a number of, uh, tax returns but they weren't tied in
15 with the 4340's and I had to separate them all and put them all
16 together so I would get them all for one given year. It wasn't
17 easy to do.

18 MR. BOWERS: The other --

19 THE COURT: Well...

20 MR. CRISTALLI: Just a -- just a short caveat to, um,
21 the renewal of the motion. It just -- it's apparent to me that
22 everything -- I mean, any short progress I may achieve on
23 cross-examination gets completely unwound and lost somewhere in
24 the shuffle. Um, I just want to add that to my previous motion.

25 MR. BOWERS: I think some of the jury's asleep, for the

1 record, or was. But nothing.

2 THE COURT: When the lights are off or...

3 MR. BOWERS: I know. I mean, you can't control that.
4 I just -- you know, in illustrating Mike's point that some facts
5 are lost in the process of Mr. Schiff -- in the process of
6 Mr. Schiff's cross-examination, I --

7 THE COURT: Well, if you see -- and I didn't -- I
8 haven't noticed any jurors sleeping.

9 MR. SCHIFF: Your Honor --

10 THE COURT: But, if -- if you see that and you're
11 convinced they are sleeping -- and -- and usually the tip-off is
12 the snore because people will close their eyes --

13 MR. BOWERS: Sure. Right. Yeah.

14 THE COURT: -- and, if they fall off the chair --

15 MR. BOWERS: Right.

16 THE COURT: -- I'm gonna notice that; if they snore --

17 MR. BOWERS: Maybe --

18 THE COURT: -- I'm gonna notice --

19 MR. BOWERS: I mean, you know a couple of --

20 THE COURT: -- that.

21 MR. BOWERS: -- them were technically on the chair,
22 but --

23 THE COURT: Yeah. Some of them --

24 MR. BOWERS: -- sliding. So...

25 THE COURT: -- some of them have closed their eyes. I

1 know someone who has probably one of the highest positions in
2 Clark County that closes his eyes to listen and everybody thinks
3 he's sleeping or arrogant, but he's actually listening to every
4 word. So if you have something --

5 MR. BOWERS: I'll wave or something.

6 THE COURT: -- other than closing of eyes, let me know.

7 With respect to the request for severance, uh, the --
8 the Court's ruling is the same. And -- and I've had severance
9 issues go up to the -- up to the Ninth Circuit. And so I am
10 pretty confident about -- about what the rules are for
11 severance, what the standards are, and I don't see that the
12 standards have been met in this case. In fact, the -- the --
13 notwithstanding the fact that you are hitched to, uh, each
14 other, any problems can be overcome with a jury instruction.
15 And maybe -- maybe being with Mr. Schiff has actually worked to
16 your advantage. I don't know.

17 With respect to the -- the Long case, I want to make it
18 real clear what the -- what the Long case is about because I --
19 I see a little bit of stretching of the envelope. Long really
20 dealt with a -- the issue of whether a person could be charged
21 with failure to file based on a zero return. That's all Long
22 says is that you can't be charged -- that's a Ninth Circuit
23 case -- you can't be charged with failure to file if you file a
24 zero return. But it dealt with -- nothing related to, uh,
25 frivolous penalties or other -- other sanctions that are

1 available.

2 With respect to the -- the necessary signature that
3 Mr. Schiff was trying to get in, the document shows that it was
4 signed by the Director of the Service Center. This Court has
5 ruled in numerous tax protestor cases as citing to Hughes v.
6 U.S., a Ninth Circuit decision, 953 F.2d 531, that the
7 delegation of authority from the Secretary of the Treasury/the
8 Commissioner of Internal Revenue to the Internal Revenue Service
9 employees constitutes valid delegation of power to collect taxes
10 by the Secretary to the Commissioner and redelegation by the
11 Commissioner to delegated officers -- officers and employees
12 pursuant to 26, U.S.C., Section 6301, 6303(A). So the -- the
13 signature issue is a nonissue as a matter of law.

14 MR. SCHIFF: First of all, I wanna say that the
15 Government's putting in 30 tax returns. There are
16 inconsistencies.

17 THE COURT: Well, you can bring them out if there are
18 inconsistencies. Just --

19 MR. SCHIFF: I am.

20 THE COURT: -- make sure that you -- make sure that
21 it's important and make sure that you tell the witness the
22 document. At first you said 41, then you said strike 41, and
23 directed her to 40 and then you changed your mind and went back
24 to 41. Uh, you're -- you're taking a lot of time to do
25 virtually nothing.

1 MR. SCHIFF: I apologize. It won't happen again.

2 THE COURT: All right. Thank you.

3 MR. BOWERS: Just very, very briefly, your Honor.

4 THE COURT: Yes.

5 MR. BOWERS: In the event we somehow get Ms. Olen
6 before we a chance to talk again, the Government and I have made
7 some agreements about some material. Uh, and I -- and I
8 understand that she's potentially a little bit erratic. But
9 there was some agreements about things she wasn't gonna talk
10 about that I wanted to put on the record and -- and give other
11 counsel a chance to refute.

12 Um, she alleges that --

13 THE COURT: Who are we speaking of now?

14 MR. BOWERS: What's that?

15 THE COURT: Who? Which witness?

16 MR. BOWERS: This is gonna be Virginia Olen, which the
17 Government's indicated is the next witness.

18 She -- she's made some comments about Larry's wife's
19 marijuana usage. It's completely irrelevant and I don't wanna
20 have to stand up and object in court. She's talked about -- and
21 we're not conceding that, but it's just irrelevant -- she's
22 talked about, um, some scheme of a bankruptcy and stashing
23 currency and this kind of stuff. The Government and I have
24 agreed --

25 THE COURT: I'll try to stop her. I don't think the

1 Government's gonna try to elicit that out of her.

2 MR. NEIMAN: I've indicated to Mr. Bowers that the
3 Government is not going to elicit --

4 THE COURT: I hope not.

5 MR. NEIMAN: -- the bankruptcy, the using of credit
6 cards and taking money in Costa Rica, the use of marijuana,
7 the --

8 MR. BOWERS: The 403 issue regarding Larry's past
9 with --

10 MR. NEIMAN: Yeah.

11 MR. BOWERS: Yeah.

12 MR. NEIMAN: There is a --

13 MR. BOWERS: Okay.

14 THE COURT: None of that's gonna be brought up? All
15 right.

16 MR. NEIMAN: We're not --

17 THE COURT: Well, if you want to summarize what you
18 don't want her to get into, I mean, I'll try to be alert and --

19 MR. BOWERS: Well, I just did it: the issue with the
20 wife, this alleged stashing cash, Costa Rica, mobsters,
21 whatever --

22 THE COURT: Bankruptcy. All that --

23 MR. BOWERS: -- testimony went in. And there's --
24 there's an issue regarding -- well...

25 MR. NEIMAN: Do you want to do that one --

1 MR. BOWERS: We'll do that --

2 MR. NEIMAN: -- on a sidebar?

3 MR. BOWERS: -- at sidebar.

4 THE COURT: Okay.

5 MR. BOWERS: But we can do it later. It's very brief.

6 THE COURT: Thank you.

7 MR. BOWERS: Thank you, judge.

8 MR. NEIMAN: The Government's not -- if the time comes
9 when Mr. Cohen takes the stand, there may be some areas that the
10 Government could get into in there. But we're not gonna attempt
11 to get into this with this witness.

12 THE COURT: With this witness. All right.

13 MR. NEIMAN: Thank you.

14 THE COURT: Thank you.

15 (Recess from 10:45 a.m. to 11:02 a.m.)

16 THE CLERK: All rise.

17 We've been waiting for Ms. Neun.

18 THE COURT: Oh, okay.

19 Please be seated.

20 (Pause in the proceedings.)

21 MR. CRISTALLI: Your Honor, Ms. Neun is just in the
22 restroom. She'll be right out.

23 THE COURT: Okay.

24 MR. BOWERS: Oh. Can we take that sidebar real quick
25 and I'll give him the 403 issue?

1 MR. NEIMAN: Sure.

2 MR. BOWERS: Do you mind, Judge?

3 THE COURT: Okay.

4 MR. BOWERS: It'll just be brief.

5 MR. NEIMAN: Although the Government's not quite --

6 THE COURT: Sidebar.

7 (Sidebar conference was held as follows:)

8 MR. BOWERS: Um, Ms. Olen would offer some testimony

9 that Larry had a gambling problem in the past. Now, that's

10 nothing -- the Government, at least for now, seems to concede

11 that we don't need to talk about that. So that was...

12 THE COURT: Okay.

13 MR. BOWERS: Okay.

14 MR. NEIMAN: Just for the record, the Government's not

15 going to elicit any testimony with regards to --

16 THE COURT: Okay.

17 MR. NEIMAN: -- Mr. Cohen's gaming habit from this

18 witness.

19 THE COURT: So we have Costa Rica --

20 MR. BOWERS: Which is a rather -- it ties into cash

21 some and loan shark stuff. It's pretty elaborate.

22 THE COURT: Cash, crafts. What else?

23 MR. CRISTALLI: Marijuana.

24 MR. BOWERS: His wife's allegedly some sort of pothead.

25 But she doesn't do it when she drives a cab, only before she

1 sings at the restaurant.

2 MR. NEIMAN: Yeah.

3 MR. BOWERS: That's what I mean, she's a lounge singer.

4 When you seeing this woman...

5 MR. NEIMAN: She's --

6 MR. BOWERS: So she must be a pothead if she's a lounge

7 singer.

8 MR. NEIMAN: This coming witness is a feisty one to say

9 the least.

10 THE COURT: All right.

11 MR. BOWERS: Thank you, Judge.

12 (Sidebar conference concluded and the

13 following is held in open court:)

14 THE CLERK: Okay. Go on in.

15 (Jury enters the courtroom at 11:05 p.m.)

16 THE COURT: Please be seated.

17 Will counsel stipulate to the presence of the jury?

18 MR. IGNALL: Yes, your Honor.

19 MR. CRISTALLI: Yes, your Honor.

20 MR. BOWERS: Yes, Judge.

21 THE COURT: Thank you.

22 MR. SCHIFF: Yes, your Honor.

23 THE COURT: Thank you.

24 Go ahead, Mr. Schiff.

25 MR. SCHIFF: Okay.

1 BY MR. SCHIFF:

2 Q. Okay. I'm going... Okay. For 1997 --

3 THE COURT: Exhibit.

4 BY MR. SCHIFF;

5 Q. -- 1997 -- it's Exhibit 40 -- uh, I filed a return -- do you
6 have it?

7 A. I do.

8 Q. All right. I filed a return claiming I had zero taxable
9 income with a zero liability; is that correct?

10 A. That is correct.

11 Q. Okay. On the government's 4340, Exhibit 22, the government
12 posted on its records --

13 THE COURT: Hold on. Which page number are you
14 referring to?

15 MR. SCHIFF: DS008957.

16 THE COURT: 8957. Just a moment.

17 (Pause in the proceedings.)

18 THE COURT: Okay.

19 BY MR. SCHIFF:

20 Q. And the Government -- do you have that exhibit?

21 A. I have the exhibit.

22 Q. Okay. Now, the government entered on its 4340 that I filed
23 a return and it assessed a tax; is that correct?

24 A. It shows the tax that was assessed, the self-assessment, on
25 the tax return.

1 Q. And it shows the assessment was made on 4-24-1998; is that
2 correct?

3 A. That's the date that the return was received.

4 Q. Oh, the assessment was 12-06-1999.

5 A. Correct.

6 Q. Okay. Now, the next document is for the year 1996.

7 THE COURT: Identify the exhibit number.

8 MR. SCHIFF: Yeah.

9 BY MR. SCHIFF:

10 Q. Um, the Government's Exhibit 39 um, it shows a filed a
11 return, is that correct, reporting --

12 A. I haven't --

13 Q. -- zero income?

14 A. -- found 39 yet.

15 THE COURT: Hold on.

16 THE WITNESS: Sorry.

17 THE COURT: Hold on.

18 THE WITNESS: Okay. I have Exhibit 39.

19 THE COURT: Go ahead.

20 BY MR. SCHIFF:

21 Q. That's the return I filed; is that correct?

22 A. It's a 1040 for 1996; shows Irwin A. Schiff.

23 Q. Right. Okay.

24 So they got my return for that year.

25 A. That's correct.

1 Q. Okay. And in Document 22, DS008954, the government entered
2 on its 4340 --

3 THE COURT: Hold on a minute.

4 BY MR. SCHIFF:

5 Q. -- that I filed a return --

6 A. It shows a return was received.

7 Q. -- and a tax was assessed --

8 A. It's a zero tax self-assessment.

9 Q. -- on 12-0-99?

10 A. Correct.

11 Q. All right.

12 MR. SCHIFF: Your Honor, I'm just verifying the entries
13 here. I'm not commenting --

14 MR. IGNALL: Your Honor, we'd stipulate to the accuracy
15 of the entries being the same as the information being reported
16 on those tax returns.

17 MR. SCHIFF: No, they are not. If I can say -- I'm
18 just saying.

19 THE COURT: They are not? Okay. Well, let's --

20 MR. SCHIFF: They're not --

21 THE COURT: -- let's get to that.

22 MR. SCHIFF: Well, I'm gonna get there. Um...

23 THE COURT: Today?

24 MR. SCHIFF: No record of return filed. Okay.

25 THE COURT: Are you gonna get there today?

1 BY MR. SCHIFF:

2 Q. For -- for -- for 1995, they show no return, nothing. So we
3 can skip that year.

4 Okay. For 1994 --

5 THE COURT: Document?

6 MR. SCHIFF: Document 37.

7 BY MR. SCHIFF:

8 Q. Document 37 they show a return -- pardon me? -- they show
9 Exhibit 37, um, and the 4340 shown in Exhibit 22 shows a return
10 filed --

11 THE COURT: Wait a minute. Wait a minute.

12 Document what? What's the --

13 BY MR. SCHIFF:

14 Q. Shows a return --

15 THE COURT: -- Bates number? What's the Bates number
16 in Exhibit 22?

17 MR. SCHIFF: Exhibit 22.

18 THE COURT: And what is the Bates number?

19 MR. SCHIFF: Oh, the page -- well, it's DS008947.

20 THE WITNESS: -47?

21 MR. SCHIFF: Yeah, -47.

22 See, a lot of these returns were all given the same
23 exhibit number.

24 THE COURT: Well, that's okay. We just need time to...

25 THE WITNESS: I don't have a -47. Mine shows -48.

1 THE COURT: -48.

2 BY MR. SCHIFF:

3 Q. Well, have you verified --

4 THE COURT: You don't have -47?

5 THE WITNESS: Oh, on the bottom of the certification.

6 THE COURT: Oh, yeah, it's the certification. Okay.

7 BY MR. SCHIFF:

8 Q. Can you verify that?

9 A. I have it.

10 THE COURT: What's the question?

11 BY MR. SCHIFF:

12 Q. And you verified the fact that I filed a return showing zero
13 income and the 4340, which is Exhibit 22, shows that a return
14 was filed and the tax assessed 10-23-1995 --

15 A. Right.

16 Q. -- is that right?

17 A. That's correct.

18 Q. Okay.

19 MR. IGNALL: Your Honor, I'm gonna object to this line
20 of questioning. I'm not really sure what the relevance of this
21 is.

22 THE COURT: I'm trying to get it out of him, and he
23 says --

24 MR. SCHIFF: Well --

25 THE COURT: -- that there's a discrepancy somewhere --

1 MR. SCHIFF: Well --

2 THE COURT: -- down the line.

3 MR. SCHIFF: -- there's a lot of discrepancies. I just
4 haven't gotten to many yet.

5 THE COURT: Well, let's get to 'em.

6 MR. SCHIFF: And for certain years there's two returns
7 filed. And I'm -- I wanna -- and there's substitute returns
8 filed, which are not here.

9 THE COURT: Let's --

10 MR. SCHIFF: I'm just --

11 THE COURT: -- let's get to the point rather than --

12 MR. SCHIFF: I'm getting to the -- this was
13 complicated. They were separated in various exhibits.

14 Exhibit --

15 THE COURT: So far they've all been consistent. Now --

16 MR. SCHIFF: They are not --

17 THE COURT: -- let's get to --

18 MR. SCHIFF: Well, not yet --

19 THE COURT: -- what --

20 MR. SCHIFF: -- they are.

21 THE COURT: -- your point.

22 MR. SCHIFF: Okay.

23 BY MR. SCHIFF:

24 Q. In 19-- -- Exhibit 36 for the year 1993. Now, for the year
25 1993, I file a zero return; is that correct?

1 A. There is a certified return, Exhibit 36 --

2 Q. Okay.

3 A. -- for 1993.

4 Q. And showing no tax due.

5 A. Showing no self-assessment, yes.

6 Q. However, your Exhibit 22 shows that the return was
7 received --

8 THE COURT: Page number on 22?

9 MR. SCHIFF: Page number 8945. 8945.

10 BY MR. SCHIFF:

11 Q. -- that a tax was assessed on 5-08-1995; is that correct?

12 A. That's what the record shows on the 4340.

13 Q. That was correct. Okay.

14 Now, for the year 1992, it shows a filed a return
15 reporting zero income --

16 THE COURT: What's the exhibit number?

17 MR. SCHIFF: It's Exhibit 35. I think it was a
18 separate exhibit, 35.

19 Your Honor, I didn't object to any of these documents
20 going in. I figured I'd cover it later. I could have objected
21 all along the line, but I didn't.

22 THE COURT: Well, what's your point?

23 MR. SCHIFF: You're gonna see in a minute.

24 THE COURT: I'm waiting.

25

1 BY MR. SCHIFF:

2 Q. 35. And the government received this document, is that --
3 the 4340 shows --

4 THE COURT: Now, where are you?

5 MR. SCHIFF: Um, that's on document DS008942.

6 BY MR. SCHIFF:

7 Q. And an assessment was made on 9-6-1999. Is that what it
8 shows?

9 A. Yes, it does.

10 Q. Okay. Now, for the year 1991 --

11 THE COURT: Mr. Schiff, I am asking you to get to the
12 point.

13 MR. SCHIFF: I'm going as fast as I can. I'll get to
14 the point when I get to the document I'm gonna get. Okay.
15 Here's one. Okay. Exhibit 22 --

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

18 BY MR. SCHIFF:

19 Q. Now, let's go to exhibit DS008935.

20 A. Which year, please?

21 Q. That's the 4340, Exhibit 22.

22 A. Which year, please?

23 Q. This is for the year 1990. Okay.

24 A. I have it.

25 Q. You have that one?

1 A. I do.

2 Q. Okay. Let's look at the 4340. Here it says "Substitute for
3 return," doesn't it?

4 A. It does.

5 Q. However, was that substitute for return included in the
6 documents that you submitted?

7 A. In the documents I submitted?

8 Q. Well, you know, in the documents that the Government
9 submitted.

10 A. I would have to have an exhibit and look at that.

11 Q. Okay. Do you -- is there a Code section that provides for
12 substitute for returns?

13 A. In our -- our Internal Revenue Service manual where we work
14 in the Frivolous Filer Department, the Substitute for Return
15 Program was developed for people that did not file voluntarily.

16 Q. Okay.

17 A. So we do do substitute for returns.

18 Q. Have you ever seen a statute that allows the IRS to make
19 substitutes for returns for people who don't file a return?

20 MR. IGNALL: Objection, your Honor. I'm still not sure
21 what the relevance of this is, especially given --

22 MR. SCHIFF: Okay.

23 MR. IGNALL: -- the witness's testimony on direct.

24 MR. SCHIFF: Okay.

25 THE COURT: Well, it --

1 MR. SCHIFF: Okay.

2 THE COURT: -- as we're looking here, 34, is a lack of
3 return. Exhibit --

4 MR. SCHIFF: All I'm saying here, your Honor --

5 THE COURT: Exhibit 34 shows you don't file a return.

6 MR. SCHIFF: Okay. What I'm saying here is this: The
7 IRS is claiming they filed a substitute for return. I wanna see
8 that substitute for return because I don't believe they are
9 authorized to do it. What --

10 MR. IGNALL: Objection, your Honor. That's a legal
11 conclusion that the --

12 THE COURT: Sustained.

13 MR. IGNALL: -- Court can instruct on the law and it's
14 incorrect.

15 MR. SCHIFF: Well --

16 THE COURT: Sustained.

17 MR. SCHIFF: -- can I ask the Government to produce
18 that substitute for return?

19 THE COURT: No, you can't.

20 MR. SCHIFF: Well, how do I know that the assessment is
21 correct?

22 THE COURT: Well, the -- you can question the witness
23 about the substitute return and -- and why it was used. But --

24 MR. SCHIFF: But --

25 THE COURT: -- whether it's legal is --

1 MR. SCHIFF: Your Honor --

2 THE COURT: -- is --

3 MR. SCHIFF: -- you told me --

4 MR. IGNALL: And, your Honor, just to be clear, the
5 assessed taxes that are issued in this case do not concern the
6 year 1990; they concern the years 1979 through 1984, I believe.

7 MR. SCHIFF: Your Honor --

8 MR. IGNALL: This document is relevant to show that
9 there were no payments made on any of the years.

10 MR. SCHIFF: These --

11 MR. IGNALL: But there was no assessment for the year
12 1990 to begin with.

13 MR. SCHIFF: These entries, if I may, show that in my
14 view the IRS takes on authority that no law allows them to do.
15 Now, all I'm saying is they are saying that they provided a
16 substitute for return for me. Is it unreasonable for me to say
17 let's see it?

18 THE COURT: Well, it has very little to do with the
19 issues in this case or with the charges, as pointed out by the
20 prosecutor. So...

21 MR. SCHIFF: Well, your Honor, if I may say, it -- it
22 goes to the reliability of these documents, all of 'em.

23 THE COURT: No, it doesn't go --

24 MR. SCHIFF: All right.

25 THE COURT: -- to the reliability.

1 MR. SCHIFF: All right. So, meanwhile, they are not
2 providing me with returns that they said they filed for me. I
3 didn't wanna -- your Honor, I'm --

4 THE COURT: Your next --

5 MR. SCHIFF: -- I'm not --

6 THE COURT: -- question.

7 MR. SCHIFF: -- I'm not questioning her on the entries.

8 THE COURT: I've -- I've sustained the Government's --

9 MR. SCHIFF: All right.

10 THE COURT: -- objection.

11 BY MR. SCHIFF:

12 Q. Now, let's go to the year 1989.

13 THE COURT: Document number --

14 MR. SCHIFF: Okay.

15 THE COURT: -- or exhibit number.

16 MR. SCHIFF: Yes. This is --

17 THE COURT: Are you --

18 MR. SCHIFF: -- Exhibit 32.

19 THE COURT: -- following the same line of questioning
20 as you --

21 MR. SCHIFF: No, no. It's gonna change right here.

22 THE COURT: All right.

23 BY MR. SCHIFF:

24 Q. This is Exhibit 32.

25 A. Exhibit 32.

1 Q. That is, again, a return that I filed claiming zero income;
2 is that correct?

3 A. That's correct.

4 Q. Okay. And what is the date of that document?

5 A. The date received --

6 Q. The date on the document. When did I sign the document?

7 A. Signed October 13th, 1990.

8 Q. Okay. Oh, just to clean up that, there is a 4340; is that
9 right? That's document DS008932.

10 A. For the --

11 Q. -- Exhibit 22 --

12 A. -- '89 year?

13 Q. -- showing that they received the document and they made an
14 assessment. Okay?

15 THE COURT: Just a minute.

16 THE WITNESS: So for nine -- for the 1989 Form 4340.

17 MR. SCHIFF: Yes. Well...

18 BY MR. SCHIFF:

19 Q. Yeah. Well -- well, they -- all I'm asking is that they
20 show they made an assessment from that return.

21 A. It shows --

22 Q. I'm -- I'm, um -- what I'm doing is I'm focusing right here
23 in the year 1989.

24 THE COURT: -8932 is a certification.

25 MR. SCHIFF: Pardon me?

1 THE COURT: -8932 is a certification. Are you
2 referring to -8933? -8933?

3 MR. SCHIFF: Okay. Hold on. Let me just -- okay.
4 I'll get to the -- all right.

5 BY MR. SCHIFF:

6 Q. However, on the Certificate of Official Record, it states
7 that they received this return, 1040 -- here look at the --

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

10 BY MR. SCHIFF:

11 Q. That shows a return filed and tax assessed; is that correct?

12 A. On the Form 4340.

13 Q. Yeah, yeah. For the year 1989.

14 A. Correct.

15 Q. Okay. And I filed that return, I signed it and filed it, on
16 October 13th, 1990. However, if we look at the Certificate of
17 Official Record, it states --

18 MR. SCHIFF: May I read it?

19 BY MR. SCHIFF:

20 Q. "I certify" --

21 MR. SCHIFF: Or should I have her read it, your Honor?

22 THE COURT: Are you referring to page -8934?

23 MR. SCHIFF: I'm -- right now I'm looking at the
24 Certificate -- the certification which was prepared on May 25th,
25 2005, saying that "I certify that the annexed is a true copy of

1 a United States ... Income Tax Return ... obtained by Revenue
2 [Officer] Robert Netcoh during a Probation Revocation hearing,
3 for Irwin Schiff," uh, for --

4 THE COURT: What are -- where are you reading from?

5 MR. SCHIFF: I'm reading --

6 THE COURT: What page?

7 MR. SCHIFF: -- I'm reading from page 1. I'm reading
8 from the front of the Certificate of Official Record. And the
9 Government is claiming --

10 THE COURT: Wait a minute.

11 Which -- which is -- what is your number that you're
12 reading from?

13 MR. SCHIFF: 32.

14 THE COURT: 32.

15 MR. SCHIFF: Yes.

16 MR. LEVENTHAL: Where are you reading from?

17 MR. SCHIFF: I'm reading from right here.

18 MR. LEVENTHAL: First page of Exhibit 32, your Honor.

19 THE COURT: Of Exhibit 32.

20 MR. LEVENTHAL: That's correct.

21 THE COURT: Okay. I'm a little bit --

22 MR. SCHIFF: Yes.

23 THE COURT: -- it's a little confusing because the --
24 the parallel in Exhibit 22 is 32.

25 MR. SCHIFF: Okay.

1 THE COURT: All right. Go ahead.

2 MR. SCHIFF: Okay.

3 THE COURT: You're asking her to read from --

4 MR. SCHIFF: Well --

5 THE COURT: -- Exhibit 32.

6 MR. SCHIFF: -- if I can read it.

7 BY MR. SCHIFF:

8 Q. They are saying that they received this return from me
9 during the course of the probation revocation hearing. Now, the
10 probation revocation hearing took place August 1, 1991. The
11 date I filed these returns was 10-13-1990.

12 How could they have received 'em at 8-1-1991 at a
13 revocation hearing? Can you explain that to me?

14 A. There was two separate documents filed. The
15 document 8-1-1991 was received in Andover. I can identify that
16 by the document locator number. The actual document that's
17 certified that you -- was received by Robert Netcoh was given to
18 him in, uh -- October 18th, 1990. So there's two --

19 Q. Well --

20 A. -- separate documents.

21 Q. -- how -- how do -- are you testifying that I gave these
22 documents to Robert Netcoh?

23 A. That's what the certification says.

24 Q. No. What it -- no, that's not what it says. It says I gave
25 it to him on 8-1-1991. It says -- the -- that's not what it

1 says.

2 A. No. The signature --

3 Q. The fact is -- I don't wanna testify. I -- I meant -- these
4 returns were mailed in to the government. This document says
5 that I turned in this document to Robert Netcoh at -- at a
6 probation revocation hearing.

7 When did -- what was the date of the probation
8 revocation hearing?

9 THE COURT: If you know.

10 MR. IGNALL: If she knows.

11 THE COURT: If you know.

12 THE WITNESS: I don't know.

13 BY MR. SCHIFF:

14 Q. Well, you'll see it on another document. The point is --

15 THE COURT: No. You can ask her questions. You --

16 BY MR. SCHIFF:

17 Q. Does this document say that the government secured this
18 document during a probation revocation hearing?

19 A. Which exhibit are you asking me?

20 Q. Pardon me?

21 A. Which exhibit, please?

22 Q. Exhibit 32.

23 A. Exhibit 32 states that's when that was received, yes.

24 Q. Are you saying that that's a true statement, that that's a
25 correct statement?

1 A. Yes, it is.

2 Q. You're saying it's a correct statement?

3 A. Yes.

4 Q. Okay, okay. We'll move on. Okay. You're saying this is a
5 correct statement. Okay. Even though the dates don't match.

6 In other words, the date of the revocation hearing was 8-1-1991

7 and the date on the zero return was about ten months before

8 that. Your -- your testimony is still the statement is

9 accurate.

10 THE COURT: She doesn't know the date of the revocation
11 hearing.

12 MR. SCHIFF: Well --

13 THE COURT: You haven't established that.

14 MR. SCHIFF: -- well, it's shown on another document.

15 THE COURT: Well --

16 MR. SCHIFF: Well, let's continue. But this is part --

17 this is what I'm saying, your Honor, that there are certain

18 inconsistencies here, one being -- one refers to a, uh, um,

19 substitute for return, which they don't have; now, here the

20 dates are inconsistent.

21 Let's go to the next document. This is for the year
22 1988.

23 THE COURT: Number? Exhibit number?

24 MR. SCHIFF: Exhibit 31.

25

1 BY MR. SCHIFF:

2 Q. And this shows that I filed a return -- incidentally, will
3 you verify that the zero returns are about nine pages long?

4 A. According to the certification, it says, "tax period ending
5 December 31[st], 1988, consisting of nine pages."

6 Q. Yeah. But I'm not going into the return itself. I'm not
7 trying -- I'm just trying to verify. Okay.

8 However, how did the government say it received my
9 return? Do you want to read what it says? "I certify that the
10 annexed" -- you can read it.

11 A. Do you want me to read the --

12 Q. Well, would it save time -- it says the same thing. The
13 government is claiming that it got this return at my revocation
14 hearing which took place -- in other words, the government is
15 claiming that they got this return at a revocation hearing; is
16 that correct?

17 A. According to the certification, yes.

18 Q. Okay. Okay. And, in any case, there was a 4340,
19 Exhibit 22. The government acknow- -- the government got that
20 return --

21 THE COURT: What is the page number of --

22 MR. SCHIFF: Um --

23 THE COURT: -- Exhibit 22?

24 MR. SCHIFF: -- 22. It's DS008929.

25

1 BY MR. SCHIFF:

2 Q. -- and the Government claims that it received a return and
3 its assessed a tax on 12-23-90- -- 1991. Is that correct?

4 A. That's correct.

5 Q. Okay.

6 THE COURT: Well --

7 MR. SCHIFF: Now, let's --

8 THE COURT: -- the government assessed a tax or the
9 government --

10 THE WITNESS: Processed.

11 THE COURT: -- processed a self-assessed?

12 MR. SCHIFF: Pardon me? I didn't hear that. The
13 Government -- I'm just --

14 THE COURT: Wait a minute.

15 As I understand your prior testimony, when the 4030 is
16 generated, it records the self-assessed tax.

17 THE WITNESS: That is correct. What is -- what is
18 stated on the tax return.

19 BY MR. SCHIFF:

20 Q. But this is merely a copy of other government records; is
21 that correct? This reflects that -- that assessment -- if I
22 understand it, doesn't that reflect an assessment that was made
23 officially and this merely reflects that it was made?

24 THE COURT: This is your self-assessment.

25 MR. SCHIFF: Yeah, but that --

1 THE COURT: This records your self-assessment, not the
2 government's assessment.

3 MR. SCHIFF: Well, but the government had to --

4 BY MR. SCHIFF:

5 Q. Is that recorded on a government document someplace? On a
6 40- -- Form 23C? Do you know what a Form 23C is?

7 A. I do.

8 Q. Okay. What is a Form 23C?

9 A. A Form 23C actually is the racks below that. In that column
10 you'll see an RAC 006.

11 Q. Oh, it refers to the 23C.

12 A. Right. And in --

13 Q. It says, "Assessment Date (23C)."

14 A. Right.

15 MR. BOWERS: Judge, I'm sorry --

16 THE WITNESS: And that's the official date that this
17 zero self-assessment was on the account.

18 BY MR. SCHIFF:

19 Q. Okay. So --

20 A. It's --

21 Q. -- the government officially --

22 A. -- a cumulative report from the RAC 006.

23 Q. Yeah. Well, the government officially recorded that on
24 its --

25 A. At that date.

1 Q. Exactly. Okay.

2 Now, the next date is the -- is 1987.

3 MR. IGNALL: Objection, your Honor. I still don't
4 understand the relevance of this --

5 MR. SCHIFF: You --

6 MR. IGNALL: -- line of inquiry.

7 MR. SCHIFF: -- I just pointed out that the date that
8 they received it was wrong. It'll be -- all right, all right.

9 Let -- all right. Let's move ahead then. Okay. Let's move --

10 I was going -- all right. Okay, okay. You wanna move ahead.

11 Okay, okay.

12 BY MR. SCHIFF:

13 Q. Let's move ahead to the year 1982.

14 THE COURT: Exhibit number?

15 MR. SCHIFF: Exhibit 54. Okay.

16 THE COURT: 1982.

17 MR. SCHIFF: Exhibit 54.

18 BY MR. SCHIFF:

19 Q. Now, Exhibit 54 --

20 THE COURT: Hold on a minute.

21 MR. IGNALL: Your Honor, those were introduced through
22 Special Agent Wenthe. So those may not be in front of
23 Ms. Morgan at the moment.

24 THE COURT: They may not be. 54 is probably not there.

25 MR. SCHIFF: Well, actually -- actually I should go to

1 the first one -- I shouldn't --

2 MR. BOWERS: Your Honor --

3 MR. SCHIFF: -- go to '82.

4 MR. BOWERS: -- just for the record, I believe --

5 MR. SCHIFF: Okay. Let me go --

6 MR. BOWERS: -- this witness has offered herself as
7 custodian of records for the IRS and, uh, a person knowledgeable
8 about IRS --

9 THE COURT: Well --

10 MR. BOWERS: -- business practices.

11 THE COURT: -- there's no question about that. The
12 question is does she have the documents in front of her.

13 MR. BOWERS: Oh, I apologize, your Honor.

14 THE COURT: She doesn't have it right now.

15 MR. SCHIFF: Okay. Okay. Skip that.

16 BY MR. SCHIFF:

17 Q. We'll go to 1985 because 1985 --

18 THE COURT: Now, wait a minute. You started out with
19 54. That's what we just took a few minutes to produce to the
20 witness. Are you abandoning that?

21 MR. SCHIFF: In the interest of brevity here, the '85,
22 '84, '83, '82, and '80 are all the same. So I wanna go to the
23 top, which was 1985.

24 THE COURT: All right. Give us --

25

1 BY MR. SCHIFF:

2 Q. In 1985 --

3 THE COURT: -- give us an exhibit number.

4 MR. SCHIFF: Exhibit 57.

5 THE COURT: Wait for the clerk to provide it.

6 MR. SCHIFF: You...

7 THE CLERK: I have that one.

8 THE WITNESS: Okay. I have it.

9 BY MR. SCHIFF:

10 Q. Okay. 1985 -- for the year 1985, Document 57 shows a return
11 for '85 in which I reported I had income -- can we put that on
12 the -- okay. Can you see it? -- 39,000 -- I earned 39,000.
13 Right?

14 A. Thirty-nine thousand --

15 Q. Yeah. And that's --

16 A. -- eight hundred fifty-four.

17 Q. -- 1. Page 2 I said my tax liability was 7,327.

18 A. Correct.

19 Q. Okay. Oh, incidentally, it was dated 8-1-1991; is that
20 right?

21 A. That's the signature date, yes.

22 Q. What was the date of -- oh, let's continue. Let's turn the
23 page, the next page, and it's marked "2 of 3." Do you wanna
24 read what that document says?

25 THE COURT: Which -- which document are you referring

1 to now?

2 MR. SCHIFF: I'm returning -- my tax return for that
3 year. It's page 3. It says -- I can read it. It's easier.

4 THE COURT: No, you're not going to read --

5 MR. SCHIFF: Okay.

6 THE COURT: -- that.

7 MR. SCHIFF: Well, is the witness gonna read it?

8 THE COURT: Well, you can --

9 MR. SCHIFF: Well, all right.

10 THE COURT: -- you can ask her questions --

11 MR. SCHIFF: I can ask --

12 THE COURT: -- subject to objection.

13 This is your -- this is your, uh, statement attached to
14 the tax return?

15 MR. SCHIFF: Right.

16 BY MR. SCHIFF:

17 Q. Now, doesn't that statement reveal that I filed this at the
18 probation hearing; I didn't believe the figures on it. I
19 indicate that I believed my prior returns were correct. But, in
20 order to save myself from going to jail, I accepted the
21 government's figures. I said, "In addition, I have been --

22 THE COURT: Wait a minute.

23 Is that a question?

24 MR. SCHIFF: Yeah. I'm sorry.

25

1 BY MR. SCHIFF:

2 Q. Isn't that what it says?

3 A. I'm trying to read it.

4 Q. Okay.

5 THE COURT: Let her read it.

6 THE WITNESS: (Reviewing document.)

7 MR. SCHIFF: Can we see the first paragraphs?

8 THE COURT: What is your question?

9 BY MR. SCHIFF:

10 Q. Well, I said I'm filing this --

11 THE COURT: What is your question?

12 BY MR. SCHIFF:

13 Q. My question is: That was the return that I filed at the
14 probation hearing; is that correct?

15 A. According to this certification, yes.

16 Q. Yeah. And what was the date of -- on that return?

17 A. The signature date is August 1st, 1991.

18 Q. 8-1-1991.

19 A. Correct.

20 Q. So that was the date of the probation hearing.

21 A. I don't know. That's the date the return was signed.

22 Q. Well, I indicate on here, do I not, in paragraph 4, uh --
23 what is one -- paragraph 3, what do I write in paragraph 3?

24 A. I can read the paragraph --

25 Q. Yeah. Please read it.

1 A. -- 3?

2 "Therefore, not to be in violation of the conditions of
3 my probation I have decided to accept the government's
4 determinations with respect to these amounts. Since I do not
5 have any books or records with which to challenge these figures
6 in any way."

7 Q. So I -- so would you conclude from that that these were
8 filed at the probation hearing? So --

9 MR. IGNALL: Objection to what she concludes from that.

10 THE COURT: Sustained.

11 MR. SCHIFF: All right.

12 BY MR. SCHIFF:

13 Q. Okay. And -- and that was dated 8-1-1991. Okay.

14 MR. IGNALL: And, your Honor, we'll stipulate, just as
15 the Government's witness Special Agent Wenthe testified, that
16 these were all filed at the probation revocation hearing on
17 August 1, 1991.

18 THE COURT: And I'm still trying to see the point --

19 BY MR. SCHIFF:

20 Q. Now, let's go --

21 THE COURT: -- of all of this.

22 BY MR. SCHIFF:

23 Q. -- let's go to the Government's document Exhibit 22.

24 THE COURT: Page.

25

1 BY MR. SCHIFF:

2 Q. I'm gonna get -- yeah. Let's go to Government Exhibit 22.

3 THE COURT: Page?

4 MR. SCHIFF: Uh, DS008917.

5 THE WITNESS: And which year?

6 MR. SCHIFF: Okay.

7 THE COURT: For which year? Same year?

8 MR. SCHIFF: Same year, 1985.

9 BY MR. SCHIFF:

10 Q. Before I go there -- before I go there, let's go to
11 Exhibit 28.

12 THE COURT: No. You --

13 MR. SCHIFF: I'm sorry. All right it's --

14 THE COURT: You stay on --

15 MR. SCHIFF: -- the same year. All right.

16 THE COURT: -- you stay on it.

17 MR. SCHIFF: All right. Okay.

18 THE COURT: You're not diverting anymore.

19 BY MR. SCHIFF:

20 Q. Exhibit 22 is the --

21 THE COURT: Wait until the witness finds --

22 BY MR. SCHIFF:

23 Q. -- 4340. Right?

24 THE COURT: Mr. Schiff --

25 MR. SCHIFF: Exhibit 22.

1 THE COURT: -- Mr. Schiff, wait until the witness finds
2 the document.

3 MR. SCHIFF: I'm sorry.

4 THE WITNESS: I have the document now.

5 MR. SCHIFF: Okay.

6 BY MR. SCHIFF:

7 Q. Exhibit 22. There's the government's 4340. It starts off
8 with a prompt assessment --

9 A. Yes.

10 Q. -- is that -- okay. I wanna come back to that document. I
11 wanted to verify it's there because this is all the same year.

12 Now go to Exhibit 28.

13 A. (Complies.)

14 Okay. Exhibit 28. I have that.

15 Q. Okay. Isn't Exhibit 28 another tax return they are
16 attributing to me for the year 1985?

17 A. This is the record for 1985.

18 Q. And that's my zero return --

19 A. Yes.

20 Q. -- that I filed before I filed the coerced return? Okay.

21 What does -- what does it say on the first paragraph? I --

22 doesn't -- do you want to read the first paragraph again?

23 A. The first paragraph of --

24 Q. Yeah --

25 A. -- of the --

1 Q. -- on the certification.

2 A. On the certification.

3 Q. Yeah, of my 1985 zero return.

4 A. So on the actual certification blue sheet you want me --

5 Q. Yeah.

6 A. -- to read the certification?

7 Q. Yeah.

8 A. "Is a true copy of a U S ... Income Tax Return (Form 1040)

9 obtained by Revenue Agent Robert Netcoh during a Probation ...

10 Hearing, for Irwin A. Schiff." It gives the Social Security

11 number and address for "tax period ending December 31[st],

12 1985."

13 Q. Okay. So on my prior return, the coerced return, they say

14 the.

15 Same thing. They say they got both returns at my

16 probation hearing. Aren't those what these two documents say?

17 A. The certifications are saying the same thing, yes.

18 Q. So, according to these documents, the government has

19 certified that they got my zero return and the coerced return at

20 the same time at the same date?

21 THE COURT: And what is your -- what is your point

22 about that?

23 MR. SCHIFF: The point is how could that happen? The

24 point is there's obviously --

25 THE COURT: Well, because the revenue agent got copies

1 during the course of the hearing --

2 MR. SCHIFF: No, no, no.

3 THE COURT. -- of everything. That's the evidence --

4 MR. SCHIFF: The evidence --

5 THE COURT: -- that was presented.

6 MR. SCHIFF: -- is the Government is claiming that they
7 got two different returns on the same day.

8 BY MR. SCHIFF:

9 Q. Incidentally, according to your records --

10 THE COURT: Wait a minute.

11 MR. SCHIFF: I'm sorry.

12 THE COURT: I want to find out what the point of all
13 this is. Someone gets a document at a revocation hearing,
14 whether it's old or new, and puts it into the record, what
15 difference does it make?

16 MR. SCHIFF: The difference I will say is this: I have
17 filed the returns which the Government had accepted. So my --
18 the claim with Judge Dorsey that I didn't file a return --

19 THE COURT: Well, we're not --

20 MR. SCHIFF: But --

21 THE COURT: -- gonna relitigate that hearing.

22 MR. SCHIFF: All right. The point is this --

23 THE COURT: We're not relitigating that hearing --

24 MR. SCHIFF: All right. Let me --

25 THE COURT: -- Mr. Schiff.

1 MR. SCHIFF: All right. Now let's go back.

2 THE COURT: Mr. Schiff --

3 MR. SCHIFF: All right.

4 THE COURT: -- this whole line of questioning is
5 irrelevant.

6 MR. SCHIFF: Doesn't it show that there's something
7 going on here where the government claims they got two return --

8 BY MR. SCHIFF:

9 Q. Incidentally, the Government is claiming I have to
10 returns --

11 THE COURT: No, no. You're not making speeches.

12 MR. SCHIFF: Okay. I'm not gonna make any speeches.

13 THE COURT: I've already ruled the inquiry -- the
14 course of inquiry is irrelevant.

15 MR. SCHIFF: Okay.

16 THE COURT: You are not to re-hearing --

17 MR. SCHIFF: Okay.

18 THE COURT: -- the probation revocation at this time.

19 MR. SCHIFF: Okay.

20 BY MR. SCHIFF:

21 Q. Let's go back -- let's go back to the 4340 for that year.

22 THE COURT: I don't think you understood my ruling.

23 MR. SCHIFF: I understand, your Honor. I'm not gonna
24 go --

25 THE COURT: This entire line of questioning is

1 irrelevant.

2 MR. SCHIFF: I'm not --

3 THE COURT: So if you're going into another of the same
4 issue --

5 MR. SCHIFF: No --

6 THE COURT: -- I'm telling --

7 MR. SCHIFF: -- it's a little different.

8 THE COURT: -- you not to.

9 MR. SCHIFF: It's a little different, your Honor.

10 THE COURT: It better be --

11 MR. SCHIFF: Your Honor --

12 THE COURT: -- a lot different.

13 MR. SCHIFF: -- I'm on trial for my life. And I think
14 I can -- if I can show that these returns --

15 THE COURT: That doesn't give you the right to bring in
16 things that are not relevant.

17 MR. SCHIFF: The Government brought in these returns
18 and they're -- and they're inconsistent.

19 BY MR. SCHIFF:

20 Q. Now --

21 THE COURT: They are not inconsistent.

22 MR. SCHIFF: Well, they are not inconsistent?

23 THE COURT: No.

24 MR. SCHIFF: Can I have a sidebar conference on this?

25 THE COURT: No.

1 BY MR. SCHIFF:

2 Q. Now, I skipped over some material. Now, I want you to go,
3 please, to Exhibit 22, the 4340?

4 THE COURT: Page?

5 MR. SCHIFF: Yeah.

6 THE COURT: Page?

7 MR. SCHIFF: Uh, DS0088918 [Sic].

8 THE WITNESS: And which year, please?

9 BY MR. SCHIFF:

10 Q. Pardon me?

11 A. Which year?

12 Q. 1985.

13 A. The 1985?

14 Q. Yes.

15 A. Okay.

16 Q. Let me ask you if you understand -- or if you know what is
17 the significance of -- in every year that we checked the first
18 entry was return filed and assessment made; is that correct?

19 A. On -- on some years --

20 Q. Yes.

21 A. -- yes.

22 Q. Well, what is -- what is the point of an assessment?

23 A. To assess the amount of tax on a tax return.

24 Q. And where does -- where is the assessment derived from?

25 A. It can be derived from an examination or a filed tax return.

1 Q. Are you familiar with Code Section 6201 which says the
2 secretary shall assess all taxes determined by the taxpayer --

3 MR. IGNALL: Objection, your Honor, on the same
4 irrelevant legal issue.

5 THE COURT: It is. Irrelevant.

6 BY MR. SCHIFF:

7 Q. All right. I asked you to look --

8 THE COURT: Sustained.

9 BY MR. SCHIFF:

10 Q. -- at the entries on that 4340. It starts off with a Prompt
11 Assessment; is that correct?

12 A. Correct.

13 Q. It doesn't show a return received, though, does it?

14 A. It does not show a return received.

15 Q. Yet the Government has pointed out that for that year they
16 got two returns; is that correct?

17 A. There is two different returns.

18 Q. So how come it's not reflected on the 4340?

19 A. I can't explain that.

20 Q. You can't explain that?

21 Did -- in other words, the year in which the Government
22 gets two returns on the 4340 they don't even show one return as
23 being received. Isn't that strange?

24 A. No.

25 Q. It's not strange?

1 A. It isn't strange.

2 Q. Is there any statute that allows a citizen to file two
3 returns for the same year showing different amounts in and
4 different amounts of income?

5 MR. IGNALL: Objection, your Honor. I'm not sure --

6 THE COURT: Sustained.

7 MR. IGNALL: -- what the relevance is and what her
8 opinion of the statute might say. She can testify to IRS
9 procedure.

10 MR. SCHIFF: The relevance --

11 THE COURT: Sustained.

12 MR. SCHIFF: The relevance, your Honor, is obviously
13 something fishy is going on here.

14 BY MR. SCHIFF:

15 Q. Have you -- is there any provision in the law that allows a
16 citizen -- incidentally, neither of these --

17 THE COURT: Will you ask the question.

18 MR. SCHIFF: I'm sorry.

19 BY MR. SCHIFF:

20 Q. Is there any provision in the law that you know of that
21 allows a private citizen to submit two different -- two
22 different tax returns showing different amounts?

23 A. As far as provision in the law --

24 Q. Yes.

25 A. -- I can explain normal business practices to where the IRS

1 can receive a return and then receive a second return which is
2 called a claim and change the amount owed. Those are two
3 separate returns.

4 Q. I'm -- I'm -- I'm a private citizen. I --

5 THE COURT: Don't argue with the witness.

6 MR. SCHIFF: Okay.

7 BY MR. SCHIFF:

8 Q. Is there a statute --

9 THE COURT: Let her finish her answer.

10 MR. SCHIFF: I'm sorry.

11 THE WITNESS: That is my knowledge is that there can be
12 different returns filed changing the amount owed. You might
13 change because you forgot --

14 BY MR. SCHIFF:

15 Q. Okay.

16 A. -- to enter some income. You maybe forgot some deductions
17 so you can file different --

18 Q. Okay. Well, are you --

19 A. -- returns.

20 Q. -- are you prepared -- or is the Government prepared to tell
21 me the statute that allows the IRS to do that.

22 MR. IGNALL: Objection, your Honor. I'm gonna request
23 an instruction that Mr. Schiff not go into his view of what the
24 law is --

25 MR. SCHIFF: Your Honor, I'm not --

1 THE COURT: Sustained.

2 MR. SCHIFF: -- giving my view of the law. I haven't
3 even stated my view of the law.

4 THE COURT: Sustained.

5 MR. SCHIFF: All I asked is there is a law that allows
6 you to do it. The witness is telling me about internal IRS
7 policy. As a private citizen, I don't know what their internal
8 policy is. All I know is I look at the law.

9 THE COURT: She has already stated she is not a lawyer;
10 she is not required to give you legal opinions.

11 MR. SCHIFF: I'm not --

12 THE COURT: That's what --

13 MR. SCHIFF: Could we --

14 THE COURT: -- you're asking her.

15 MR. SCHIFF: -- have a sidebar on this?

16 THE COURT: No.

17 MR. SCHIFF: Your Honor, look, I am not asking her for
18 legal opinions. I just asked her for one simple question,
19 whether she knows that there's a law that allows for the IRS to
20 change what you put on your return. And I'm not asking for
21 internal IRS policy. I'm not privy to that. All I know is I
22 look at the Internal Revenue Code.

23 BY MR. SCHIFF:

24 Q. Now, is there any provision -- if you don't know, you don't
25 know -- is there any provision in the law --

1 MR. IGNALL: Objection.

2 MR. SCHIFF: Maybe the U.S. Attorney knows it.

3 THE COURT: Sustained.

4 MR. SCHIFF: All right.

5 BY MR. SCHIFF:

6 Q. So, in other words, these documents show -- and I only went
7 into one year -- for five years the government had two returns
8 and made no entry on my 4340's that they received a return.

9 Now -- now, let's go -- just one more on this.

10 THE COURT: Last question --

11 MR. SCHIFF: I am saying --

12 THE COURT: -- is not a question.

13 MR. SCHIFF: -- the reason I'm --

14 THE COURT: Strike.

15 MR. SCHIFF: -- going over this -- there's
16 inconsistencies here, your Honor. And, if a person couldn't see
17 that, they would have to be declared legally blind.

18 BY MR. SCHIFF:

19 Q. Now, let's go to the year 1979.

20 THE COURT: Document? Exhibit?

21 MR. SCHIFF: All right. Okay. Your Honor, I haven't
22 asked her questions on the substance of these documents. Okay.

23 The --

24 THE COURT: Exhibit.

25 MR. SCHIFF: -- exhibit is -- oh, it's Exhibit 22.

1 THE COURT: Page?

2 MR. SCHIFF: DS008874.

3 BY MR. SCHIFF:

4 Q. Now, for the year 1979 --

5 THE COURT: Have you found it?

6 THE WITNESS: Excuse me, sir. I haven't found it yet.

7 BY MR. SCHIFF:

8 Q. Okay.

9 A. These are -- these are all --

10 Q. Okay.

11 A. -- scrambled. So just allow me a second to find it.

12 Q. Okay. Couple questions.

13 A. Okay. I have 1979.

14 Q. Okay. For the year 1979 -- the year '80, of course; '81 and
15 '82 -- for '80, '81, '82 they show two tax returns for each year
16 for '80 to '85. Now, let's go to '79.

17 There's no return showed for '79, is there?

18 A. There is a return filed and tax assessed.

19 Q. Yeah, yeah. On the -- right. On the 4340 shows return
20 filed and tax assessed. But there's no return, is there, for
21 that year?

22 A. As I said previously, there is a certain time frame, at
23 least seven years, where we hold tax returns, and then they are
24 destroyed. That's part of our procedures.

25 Q. All right. In the -- in the documents I've already filed,

1 the Government stipulated when I went to this Tax Court -- all
2 right. Let me get it. I have the document.

3 (Pause in the proceedings.)

4 MR. SCHIFF: I have a stipulation here from the
5 Government with respect to 1979.

6 THE COURT: In this case you have a stipulation?

7 MR. SCHIFF: Well, it had to do with '79.

8 THE COURT: In this case you have a stipulation
9 regarding '79?

10 MR. SCHIFF: Well, the government stipulated that no
11 assessment had been made for '79. If they had -- if they had a
12 return, there would have been an assessment. I'll get their
13 stipulation. It's directly --

14 MR. IGNALL: Your Honor, I suspect Mr. Schiff is
15 talking about evidence from the Tax Court case from 1984, '85.
16 But I -- I don't know that.

17 MR. SCHIFF: Let me just get it and --

18 THE COURT: What are you referring to?

19 MR. SCHIFF: What I -- I wasn't -- it's here.

20 THE COURT: What stipulation are you referring to?

21 MR. SCHIFF: I'm referring that when I went to the Tax
22 Court trial the Government stipulated that with respect to the
23 year 1979 there had been no assessment. And I got their
24 signature on that stipulation. That's why there is no return.

25 I'll get it. I have it here. I thought it was right

1 in front. Geez, I got so many documents here. I'll get it in a
2 minute. Oh, let me see.

3 (Pause in the proceedings.)

4 MR. SCHIFF: Here stip- -- okay. Document 2070. 2070.
5 2070. Let's see.

6 THE COURT: Are you referring to Exhibit 2070?

7 MR. SCHIFF: Yeah, yeah. Yeah, yeah. Here. Let me
8 see. First stipu-- -- here it is.

9 THE COURT: Is it marked, Ms. Clerk?

10 THE CLERK: No.

11 MR. SCHIFF: It's 2070.

12 THE CLERK: It's part of his that he marked from his --

13 MR. SCHIFF: 2070.

14 THE CLERK: -- and so it is not officially received as
15 an exhibit.

16 MR. SCHIFF: Here is the document.

17 (Defendant Schiff's Exhibit No. 2070, marked
18 for identification.)

19 THE COURT: Show that to the Government.

20 MR. IGNALL: We actually have a copy of that one, your
21 Honor.

22 THE COURT: Show it to other counsel, other counsel,
23 and then have it marked by the clerk.

24 MR. IGNALL: Your Honor, I still object to the
25 relevance of this line of inquiry. But to speed things up, we

1 will stipulate to the point that I think Mr. Schiff is trying to
2 make is that he didn't voluntarily file an individual income tax
3 return for the year 1979.

4 MR. SCHIFF: Right. What I'm gonna say --

5 THE COURT: Is that your point?

6 MR. SCHIFF: Yeah.

7 THE COURT: You didn't --

8 MR. SCHIFF: So I didn't file a return for that year.

9 THE COURT: All right.

10 MR. SCHIFF: Okay.

11 BY MR. SCHIFF:

12 Q. The point I wanna make is: If you look at the 4340 for that
13 year they say "return filed & tax assessed." Is that correct?

14 Is that correct?

15 A. On the entry November 21st --

16 Q. Yeah. They said --

17 A. -- 1984?

18 Q. -- that they made an assessment on 5-20-1985.

19 A. A self-assessment of zero.

20 Q. And presumably they made that assessment from a return; is
21 that correct?

22 A. That is correct.

23 Q. Is that correct?

24 A. It could be correct. I -- I don't know for sure because --

25 Q. Well, presumably it -- it -- it made the assessment from a

1 return.

2 A. It says, "return filed & tax assessed" --

3 Q. Okay. So presumably the assessment came from the return; is
4 that correct?

5 A. Correct.

6 Q. But the Government just stipulated I filed no return for
7 that year. So how could they have made an assessment for a
8 return I didn't file?

9 A. I -- I was not there, Mr. Schiff. So I don't know.

10 Q. But this doesn't sound a little fishy to you?

11 A. It does not.

12 Q. Okay.

13 A. It sounds as normal business practice.

14 Q. Okay. Have you ever heard of a tax module? A tax module --

15 A. Yes.

16 Q. You heard of a tax module. What is a tax module?

17 A. That would be exactly what the 4340 is reflecting. It is
18 what's on the module.

19 Q. I didn't hear that.

20 A. What your 4340 is referring to, what reflects on the 4340,
21 the same information.

22 Q. When the government opens up an account for somebody for a
23 given year what are -- if I -- okay. Isn't that called the "tax
24 module" or "tax account"? Isn't that --

25 A. Yes. And --

1 Q. Yes.

2 A. -- and that's what --

3 Q. As a matter --

4 A. -- the 4340 shows.

5 Q. -- as a matter of fact, I would like to -- I have another
6 exhibit which I've marked here. It's Exhibit 2069. 2069.

7 Here. 2069.

8 (Defendant Schiff's Exhibit No. 2069, marked
9 for identification.)

10 BY MR. SCHIFF:

11 Q. Uh, are you familiar with transaction codes: TR 150,
12 Transaction Code 300? Are you familiar with those, um,
13 references?

14 A. I --

15 Q. Would you --

16 A. -- I am. And -- and that, again, is reflected --

17 Q. Okay.

18 A. -- on the 4340.

19 Q. You know what a Transaction Code 150 means?

20 A. Yes.

21 Q. Okay.

22 MR. SCHIFF: May I approach the witness with this
23 document?

24 THE COURT: Show the Government; show opposing --

25 MR. IGNALL: We've seen it --

1 THE COURT: -- counsel.

2 MR. IGNALL: -- your Honor.

3 (Document handed to the witness.)

4 BY MR. SCHIFF:

5 Q. So what does a Transaction Code 150 mean? Isn't that --
6 that's from the IRS -- like a decoding manual.

7 THE COURT: Are you asking her --

8 MR. SCHIFF: Well --

9 THE COURT: -- a question or telling her the answer?

10 MR. SCHIFF: -- well, I want --

11 BY MR. SCHIFF:

12 Q. What are you reading from? Can you explain?

13 A. This is this says, Schiff Report 4 dash --

14 Q. Okay.

15 A. -- 5 slash 6.

16 Q. I'm sorry. I -- I sent that report out to my subscribers.

17 But what does -- you recognize that as being, uh,
18 excerpts from the -- I think it's called "IDRS Manual"?

19 A. Not -- not a manual that I'm --

20 Q. Okay.

21 A. -- that I know.

22 Q. Well, would you --

23 MR. SCHIFF: May I approach the witness, your Honor?

24 THE COURT: You've already done it.

25

1 BY MR. SCHIFF:

2 Q. Okay. Would this be a correct explanation of what a
3 Transaction Code 150 is? You might read it.

4 A. (Reviewing document.)

5 MR. IGNALL: Your Honor, I object on the relevance as
6 well. I don't think Mr. Schiff can ask the witness, you know,
7 her interpretation of the Form 4340. But, beyond that, I'm not
8 sure really what the relevance of this document is --

9 THE COURT: Let me see what this is.

10 MR. SCHIFF: Your Honor, she said she was familiar with
11 the Transaction Code 150 and the Transaction Code 300.

12 THE COURT: Well, do you want to ask her what it is or
13 do you want to --

14 MR. SCHIFF: Yeah.

15 THE COURT: -- just have her --

16 MR. SCHIFF: Yeah.

17 BY MR. SCHIFF:

18 Q. What does a --

19 THE COURT: -- look at this?

20 BY MR. SCHIFF:

21 Q. -- Transaction Code 150 mean?

22 A. Okay. A 150 posts to the account when either a return is
23 filed, a substitute for return is started. That's what a 150
24 is, is --

25 Q. Is there any mention of a substitute return in the

1 definition of a trans- -- doesn't -- doesn't it say --

2 MR. IGNALL: Objection, your Honor.

3 BY MR. SCHIFF:

4 Q. -- is there any mention of a substitute return?

5 MR. IGNALL: Objection, your Honor. The document is
6 not in evidence. I'm not sure what the relevance of it is. The
7 witness has answered the question.

8 MR. SCHIFF: If I could -- I don't know the statute by
9 heart. I mean, the...

10 THE COURT: Well, what is the relevance?

11 MR. SCHIFF: The relevance is that according to that
12 document you cannot open up a tax module unless there is an
13 assessment from the original return. There's no mention of a
14 substitute return there.

15 THE COURT: This is your stuff.

16 MR. SCHIFF: Well, read it. It's not my stuff.

17 THE COURT: I'm not going to read it. It says, "Schiff
18 Report." This is your document.

19 MR. SCHIFF: It's -- well, I sent it out. I -- I
20 copied it.

21 THE COURT: I don't care what you sent out.

22 MR. SCHIFF: But it's not --

23 THE COURT: It's your document.

24 MR. SCHIFF: I could have covered it. That's not my
25 document.

1 THE COURT: It says right on it "Schiff Report." It's
2 your document.

3 BY MR. SCHIFF:

4 Q. Is that an accurate definition of a Transaction Code 150?

5 MR. SCHIFF: I don't want to argue with you, your
6 Honor.

7 THE COURT: I know you don't want to, but you do it
8 anyway. Control yourself.

9 MR. SCHIFF: I'm just trying to clarify -- that's not
10 my document. I sent out documents in Schiff Reports and I
11 labeled 'em. I could have -- I did that hurriedly last night.
12 So I just photocopied it from -- from a document that I sent
13 out.

14 BY MR. SCHIFF:

15 Q. The question is: Is that an accurate definition of a
16 Transaction Code 150?

17 A. Again, I --

18 THE COURT: Do you recognize this at all?

19 THE WITNESS: No, not --

20 THE COURT: No.

21 THE WITNESS: -- I know what --

22 THE COURT: That's the --

23 THE WITNESS: -- a 150 is.

24 THE COURT: -- answer. She doesn't recognize it.

25 MR. SCHIFF: All right.

1 THE COURT: It's fugitive to her.

2 MR. SCHIFF: This helps to explain, your Honor -- I can
3 testify -- why they've indicat- -- why they prepared a
4 substitute for return.

5 BY MR. SCHIFF:

6 Q. Because without a return, you can't open up a tax module,
7 can you?

8 A. I guess I don't understand the question.

9 Q. I am saying that pursuant to those -- those policies of the
10 IRS if a person does not file a return for which an assessment
11 can be made, you can't open up an account?

12 A. And that's where the substitute for return process comes in.

13 Q. Yeah. But there's no mention of a substitute for return in
14 that document nor in the law itself.

15 A. Again, I --

16 THE COURT: Strike. Statement of the law.

17 MR. SCHIFF: All right.

18 BY MR. SCHIFF:

19 Q. Can you cite a statute which provides that the IRS can
20 create substitutes? Incidentally --

21 THE COURT: Are you asking a question?

22 BY MR. SCHIFF:

23 Q. -- is there any statute that provides for it?

24 THE COURT: That you know of.

25

1 BY MR. SCHIFF:

2 Q. That you know of.

3 A. Statutewise, no. I can explain the Internal Revenue
4 procedures as I know them and -- and our -- what we do as far as
5 an examination process.

6 Q. Okay.

7 A. A statute, no.

8 Q. Are you familiar with Code section 6501(c)(3)?

9 A. Okay. No.

10 Q. You're not familiar with that at all?

11 A. No.

12 Q. Have you ever checked that section?

13 MR. SCHIFF: Do you wanna -- do you wanna check that
14 section, your Honor?

15 THE COURT: Pardon?

16 MR. IGNALL: Objection. The question's asked and
17 answered as to --

18 MR. SCHIFF: Well --

19 MR. IGNALL: -- whether she --

20 THE COURT: She said --

21 BY MR. SCHIFF:

22 Q. -- you know --

23 THE COURT: The question was --

24 BY MR. SCHIFF:

25 Q. -- you don't know --

1 THE COURT: -- asked and answered.

2 BY MR. SCHIFF:

3 Q. -- what it says?

4 MR. SCHIFF: Can I --

5 THE COURT: Did you hear?

6 MR. SCHIFF: -- suggest to her what it might say?

7 THE COURT: No.

8 MR. SCHIFF: Well, if she was qualified as an expert,
9 then I could have asked her. But she's not. So I --

10 BY MR. SCHIFF:

11 Q. Oh, incidentally, since you were not qualified as an
12 expert -- because I would like somebody to read that statute --
13 in all of the testimony that you have given, right, you have
14 not -- you have not testified -- in other words, in the -- in
15 the Indictment I am charged with giving false information, to
16 selling false -- but I don't believe it's correct -- none of
17 your testimony bears on those charges, does it?

18 MR. IGNALL: Objection, your Honor.

19 THE COURT: Sustained.

20 MR. SCHIFF: Well, I do wanna make that clear, your
21 Honor. I mean, none of her testimony bears on the -- provides
22 the Government with substance bearing on the charges against me
23 in the Indictment. She hasn't testified that any of my
24 documents are false or fraudulent. She said they are frivolous.

25 THE COURT: She has testified as to what your documents

1 are, what they show.

2 MR. SCHIFF: But, your Honor, this is why I asked if
3 she's an expert. I haven't -- I haven't cross-examined her on
4 the substance of these documents which, in my view, are phony.
5 I haven't -- I haven't bothered to cross-examine her because
6 she's not -- you said to me she's not an expert in taxes, so I
7 haven't bothered.

8 And I just wanna make it clear that the reason I
9 haven't done that is that she hasn't said she's familiar with
10 the law. And, if she's not familiar with the law, she's not,
11 uh, an expert enough to explain why the information that I put
12 on my tax returns is correct. All right. All right.

13 BY MR. SCHIFF:

14 Q. Let's go. Incidentally --

15 MR. IGNALL: Move to strike that whole --

16 THE COURT: Strike.

17 MR. IGNALL: -- argument here.

18 MR. SCHIFF: Well, I'm trying to explain why I
19 didn't -- all right. Can I -- I'll go to one of the returns I
20 filed. Okay.

21 MR. BOWERS: Your Honor --

22 MR. SCHIFF: I'll finish up.

23 THE COURT: Yes.

24 MR. BOWERS: Well, never mind.

25 MR. SCHIFF: All right.

1 MR. BOWERS: Sorry.

2 THE COURT: Did he say he was finishing?

3 MR. BOWERS: That's why I sat down.

4 THE COURT: Okay.

5 BY MR. SCHIFF:

6 Q. Can you just go to Document 42? It's a zero return that I
7 filed.

8 THE COURT: 42?

9 MR. SCHIFF: Yeah, 42.

10 THE WITNESS: Okay. I have that document.

11 BY MR. SCHIFF:

12 Q. Okay. Would you grant me that when the government uses
13 language presumably they use language in the normal sense of the
14 word. So when you say "frivolous," if somebody imposes a
15 frivolous penalty, we have to give the term "frivolous" its
16 normal and customary meaning. Is that right?

17 A. Yes.

18 Q. Okay. If I were to say that -- if I were to look up the
19 term "frivolous" -- this is from the American Heritage
20 Dictionary -- it states that frivolous means "unworthy of
21 serious attention, trivial, silly."

22 Would you say that's a pretty good description of
23 frivolous?

24 A. Also, I -- I've looked that up and it says "without merit."

25 Q. Without merit. Okay. Well, without merit. Okay.

1 Now, let's take a look -- well, what -- what was the
2 year in which I had a frivolous return penalty? All right.
3 Well -- well, the Government says my zero returns are frivolous;
4 right?

5 A. Yes.

6 Q. You said my zero returns are frivolous. Okay.

7 Now, let's take a look at the -- let's go to
8 Document 44, Exhibit 44. That's the, uh, zero return that I
9 filed for the year 2001. Now, isn't it a fact that I based --

10 A. Just a second, sir.

11 Q. Do you have it?

12 A. I do not have 44 yet in front of me.

13 THE COURT: Do you have 44?

14 THE CLERK: Oh, I'm sorry.

15 (Pause in the proceedings.)

16 THE CLERK: I think she does somewhere.

17 MR. SCHIFF: Your Honor, could I have a sidebar on
18 this, please?

19 THE COURT: We're going to take a break in a minute and
20 I'll allow you to address the Court outside the presence of the
21 jury.

22 MR. SCHIFF: I just want to -- just one little thing,
23 but I just wanna address it because...

24 BY MR. SCHIFF:

25 Q. Isn't it a fact --

1 THE COURT: Wait a minute.

2 BY MR. SCHIFF:

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

4 THE COURT: Wait a minute.

5 MR. SCHIFF: I'm sorry.

6 THE COURT: Okay. We're going to take our noon break.

7 We'll be in recess until 1:30.

8 The jury is instructed not to discuss the case among

9 themselves or with others, to not form any conclusions until the

10 case is submitted to you for deliberation. Thank you.

11 (Jury leaves the courtroom at it 12:11 p.m.)

12 THE COURT: All right. Just leave it out. We'll pick

13 up at that point right after lunch.

14 (Witness leaves the courtroom.)

15 THE COURT: Okay. Your --

16 MR. SCHIFF: Okay.

17 THE COURT: -- request for a sidebar.

18 MR. SCHIFF: Okay. It's not my intention to question

19 her on the substance of my return because you already said she's

20 not a lawyer and she doesn't have the knowledge. I was gonna

21 save it to when you put on somebody who is an expert who will

22 testify that this stuff is -- that my material is false.

23 But I -- I want to --

24 THE COURT: It's already happened.

25 MR. SCHIFF: Pardon me?

1 THE COURT: I don't know if you recognize it's already
2 happened. We've had people testify as to what your --

3 MR. SCHIFF: I didn't -- I didn't hear what --

4 THE COURT: -- income was.

5 MR. SCHIFF: -- you said, your Honor.

6 THE COURT: All right.

7 MR. SCHIFF: What has already happened?

8 THE COURT: We've had witnesses who testified to your
9 income --

10 MR. SCHIFF: Yeah. But --

11 THE COURT: -- for years that you reported zero.

12 MR. SCHIFF: But -- yeah. But that's -- but, your
13 Honor, you didn't question -- you didn't tell me anybody who was
14 on the stand who was an expert on that stuff. That's what
15 they -- I'll admit that I put zeroes. But I also put on my
16 return that the reason I believe I have zero income, I cited
17 Merchant's Loan & Trust v. Smietanka and ten other cases.

18 Now, I haven't gone into those cases. But what I want
19 to simply say that my return could be wrong. I could cite every
20 case incorrectly. But it's certainly not frivolous.
21 "Frivolous" means "off the wall, silly." This return I cite no
22 less than 10 court decision -- 10 statutes. I could cite them
23 wrong, your Honor. I'm not saying they are even right. I'm
24 citing 10 Supreme Court decisions in the last paragraph. They
25 could be all wrong.

1 I'm saying this return could be fraudulent. But it
2 can't be frivolous. "Frivolous" means "off the wall, without
3 any basis." I have a basis in saying I have zero income. Now,
4 maybe my basis is incorrect. I am not arguing here, your Honor,
5 that I'm right.

6 I'm simply saying that when I cite 10 statutes, 10
7 cases -- I cite U.S. v. Long, U.S. vs. Kimball U.S. v. Moore,
8 Cross v. [The] United States. I cite Merchant's Loan & Trust
9 Co. v. Smietanka. I cited U.S. v. Ballard in -- n stating that
10 income is not defined in the Code. I state Doyle v. Mitchell.
11 Stratton. I could cite these wrong. I'm not claiming that I'm
12 right. All I'm claiming is by definition my return isn't
13 frivolous.

14 THE COURT: Well, the courts have rejected your
15 position, Mr. Schiff, and found that your position is frivolous.

16 MR. SCHIFF: No --

17 THE COURT: So --

18 MR. SCHIFF: -- the courts never --

19 THE COURT: -- whether you --

20 MR. SCHIFF: -- did that with respect --

21 THE COURT: -- whether you --

22 MR. SCHIFF: -- to my zero return.

23 THE COURT: -- want to listen to that, whether you want
24 to bury your head in the sand and pretend it didn't happen,
25 that's for the jury to decide --

1 MR. SCHIFF: Your Honor --

2 THE COURT: -- your good faith.

3 MR. SCHIFF: -- let me just say this with respect to
4 the courts. There are all kinds of five to four decisions.
5 There's dissension among the circuits where one court says one
6 thing and the other court says I'm not gonna follow.

7 THE COURT: I don't -- frankly, from looking at your
8 pleadings, I don't think you know how to read a court case.

9 MR. SCHIFF: Well, that may be. But it's a question of
10 what I believe. The whole trial here is about --

11 THE COURT: That's right. It's about what you believe.
12 And -- and the jury is going to be the judge of that.

13 MR. SCHIFF: I -- as you sit there, you don't think I
14 believe -- well, first of all --

15 THE COURT: It's not -- it's not my position to say
16 whether you do or you don't. It's my position to rule on the
17 admissibility of evidence and the relevance of your lines of
18 inquiry.

19 MR. SCHIFF: Well --

20 THE COURT: And you're...

21 MR. SCHIFF: -- I'll take this.

22 But the point is, according to the Supreme Court in the
23 Bishop case, you can't be guilty of tax evasion or any tax crime
24 if you relied in good faith on a prior decision of the Supreme
25 Court. And I relied on good faith.

1 THE COURT: Well, that's for the jury to decide whether
2 you're reliance --

3 MR. SCHIFF: Well, you have to give me --

4 THE COURT: -- is on good faith.

5 MR. SCHIFF: -- an opportunity, therefore, to prove I
6 relied on good faith on these cases.

7 THE COURT: Well, you're not gonna do it with this
8 witness.

9 MR. SCHIFF: Well, I --

10 THE COURT: You may do it when you get on the stand
11 yourself. But --

12 MR. SCHIFF: Your Honor, I did not want to do with this
13 witness. That's why I tried to qualify.

14 THE COURT: Well --

15 MR. SCHIFF: You said she's not -- I said, is she an
16 expert law? You said no. So I'm not gonna question her. But
17 she has something to do, she said, with deciding whether
18 somebody is frivolous.

19 Listen, I am just claiming, your Honor --

20 THE COURT: She decides based on advice of counsel.
21 That's within her authority. She's already testified how she
22 comes to that conclusion over and over again. And so she is a
23 person that does have authority to make that decision with help
24 of legal counsel. That's the process.

25 As far as -- as far as the authority of the

1 Government --

2 MR. SCHIFF: Pardon me?

3 THE COURT: -- as far as the authority of the IRS to
4 prepare a return, I believe they do have authority.

5 MR. SCHIFF: I -- I'll tell you what. If someone can
6 show me that, I'll plead guilty right now.

7 THE COURT: You've said that over and over again. And
8 I --

9 MR. SCHIFF: Well, I will plead guilty.

10 THE COURT: -- and I --

11 MR. SCHIFF: Put me to the test.

12 THE COURT: -- and I don't believe it. I've already
13 showed you -- other things --

14 MR. SCHIFF: Well --

15 THE COURT: -- and you didn't plead guilty. So --

16 MR. SCHIFF: No.

17 THE COURT: -- let's forget --

18 MR. SCHIFF: Show me the law --

19 THE COURT: -- about it.

20 MR. SCHIFF: -- that gives the IRS any authority to
21 change a return. You got it. Do you want it in writing?

22 THE COURT: No, it won't be any good even if it's in
23 writing. So...

24 MR. SCHIFF: All right.

25 THE COURT: We're in recess.

1 MR. SCHIFF: All right.

2 MR. IGNALL: Thank you, your Honor.

3 MR. BOWERS: When we get back, very quickly. Unrelated
4 to this. Thank you, Judge.

5 (Recess from 12:17 p.m. to 1:34.)

6 THE CLERK: All rise.

7 THE COURT: Are we ready?

8 MR. NEIMAN: Your Honor, just one small issue.

9 THE COURT: Be seated, please.

10 MR. NEIMAN: Government's next witness is Virginia
11 Owen. She has some concerns -- she wears a pacemaker and has
12 some heart problems. I've advised her that if at any time while
13 she's on the stand she doesn't feel well at all just to let the
14 Court know or let us know and we'll obviously do what we can.
15 But I just wanted to bring it to the Court's attention that she
16 is worried about the stress and what it may cause --

17 THE COURT: Okay.

18 MR. NEIMAN: -- to the heart issue. That's it.

19 THE COURT: Thank you.

20 Mr. Bowers, did you have a matter you wanted to
21 address?

22 MR. BOWERS: Yes, your Honor. Can I -- I think it
23 should be handled at sidebar just very briefly. It's not long.
24 I'm sorry. We can do it later. We can do it at the end of the
25 day. I don't --

1 THE COURT: Oh. Well, if there's no urgency now,
2 we'll --

3 MR. BOWERS: Well, it needs to be done today. But it
4 doesn't have to be done this second. All right. I'm sorry.
5 Maybe just real quick.

6 THE COURT: We don't have the jury here. I mean, you
7 can do it now if you want. Is there a reason?

8 MR. BOWERS: Well, no, I guess not. I filed a motion
9 in limine prior to trial -- uh, it was actually styled as a
10 Motion to Suppress -- regarding some aspects about Larry's
11 background that the Court denied but indicated it was mainly
12 denied because it was premature.

13 Do you recall what I'm talking about, Judge?

14 THE COURT: Yes.

15 MR. BOWERS: Okay. I -- I understand that it's maybe
16 not any less premature now. But the issues I raised in that
17 motion are becoming rather central to some strategic defense
18 decisions. And I've -- I've entered into an a agreement with
19 the Government that there's not gonna be any more information
20 made available than we already have based on some custodian of
21 record stuff.

22 So what I'm wondering is if I renew that motion and
23 supplement it with the agreement between the Government and
24 myself in writing is there any possibility that I can get a
25 decision on that, you know, sort of sooner rather than later?

1 Because it has a lot to do with what I'm up to.

2 THE COURT: Sure. If you want to renew it, submit
3 whatever you have to the Government; give them an opportunity
4 to -- overnight to address it. And then I'll hear it.

5 MR. BOWERS: Okay. And I'll -- I'll just -- if I get
6 it done tonight, I'll fax it to chambers and we can -- okay.
7 Thank you, your Honor.

8 THE COURT: As long as they have an opportunity
9 overnight. If --

10 MR. BOWERS: Well, we can -- if the Government needs
11 more time, we can. I don't think their argument's changed. But
12 I just wanted to make sure the Court would consider it if I
13 refiled it.

14 MR. IGNALL: Your Honor, in all likelihood, we wouldn't
15 need any additional time. But if --

16 MR. BOWERS: I'll e-mail it up to you.

17 MR. IGNALL: -- if Mr. Bowers faxes it to us, we can
18 look at it. And if we're ready to argue it the next morning,
19 which we probably would be --

20 THE COURT: Okay.

21 MR. IGNALL: -- I think that's fine.

22 MR. BOWERS: I'll e-mail it to you. If you want more
23 time tomorrow, you can have it. And, if not, maybe we can get a
24 decision.

25 THE COURT: Okay.

1 (Jury enters the courtroom at 1:38 p.m.)

2 THE COURT: Please be seated.

3 Will counsel stipulate to the presence of the jury?

4 MR. BOWERS: Yes, your Honor.

5 MR. IGNALL: Yes, your Honor.

6 MR. NEIMAN: Yes.

7 MR. CRISTALLI: Yes, your Honor.

8 THE COURT: Thank you.

9 Mr. Schiff, you may resume your examination of the

10 witness.

11 MR. SCHIFF: Yes, your Honor.

12 No further questions.

13 THE COURT: No further questions. Okay.

14 MR. BOWERS: Uh, your Honor, I have limited cross. I

15 just --

16 THE COURT: Okay.

17 MR. BOWERS: -- restarted my computer thinking we

18 weren't done. So if I could have just a second.

19 THE COURT: Okay.

20 (Pause in the proceedings.)

21

22 CROSS-EXAMINATION

23 BY MR. BOWERS:

24 Q. Good afternoon, Ms. Morgan.

25 A. Good afternoon.

1 Q. I'm Chad Bowers. I'm Mr. Cohen's counsel.

2 I just want to clear something up. I was unsure.

3 You're -- you're a court witness for the Internal Revenue
4 Service; correct?

5 A. Correct.

6 Q. As well as an investigative aide?

7 A. Right.

8 Q. And a custodian of records for these purposes of today in
9 this case?

10 A. Right, representing the Commissioner of the Internal Revenue
11 Service.

12 Q. Okay. With respect to records though; right?

13 A. Right.

14 Q. Okay. And then, finally, um -- I don't know if you're an
15 expert on it and it's really not important -- but you're
16 knowledgeable about IRS business practices; is that right?

17 A. Normal business practices, yes.

18 Q. Okay. Um, do you have any knowledge of if -- if an
19 individual requests, uh, their own tax records, either through a
20 request at the Service Center window or through the Freedom of
21 Information Act, do you have any knowledge of or any involvement
22 with how that information, uh, is produced?

23 A. I -- yes.

24 Q. Could you -- do you have an explanation for why if -- if --
25 if a taxpayer goes to one of those two places -- and assuming

1 they -- you know, they have a right to their own file. Would
2 you agree with me on that? You can't ask for somebody's, but
3 you can ask for your own information?

4 A. If they -- if they follow proper procedures, yes.

5 Q. Okay. Do you know any explanation for why if somebody had
6 followed the proper procedures in requesting their own
7 information that way, uh, it wouldn't be provided?

8 A. I have -- I have no idea --

9 Q. Okay.

10 A. -- why it wouldn't be provided, no.

11 Q. So -- okay. That answers my question.

12 Um, do you have any special training as -- as part of
13 your, uh -- on-the-job training with the IRS in testifying or is
14 it just something you do, you just go and testify and you talk
15 to case agents and attorneys afterwards about your performance
16 or...

17 A. Well, we -- we're trained every year --

18 Q. Okay.

19 A. -- and then we're also reviewed and, uh, we get feedback
20 from the agents and the attorneys regarding our performance.

21 Q. So I guess -- I guess that was a poor question. I guess a
22 better way to say that is, is part of your job function there is
23 a training element that includes continually working on your
24 presentation in court; is that correct?

25 A. Right.

1 Q. Through -- through agents, through whomever the government
2 deems is helpful with that process?

3 A. Right.

4 Q. Okay. Um, now, you -- you testified and provided some
5 records, uh, that are exhibits -- I don't think we can pull them
6 up -- that Mr. Cohen did not have any documents lodged with the
7 IRS for 2001 to 2004. Is that consistent with your
8 recollection?

9 A. I would like to look at the exhibit. But it's --

10 Q. I'd be happy to have you look at 'em.

11 MR. BOWERS: Um, do we --

12 MR. IGNALL: It's either 64 or 65. I'm not --

13 MR. BOWERS: I'm sorry. I thought that was.

14 MR. IGNALL: It's Exhibit 65 --

15 MR. BOWERS: 65? Is that all of them?

16 MR. IGNALL: -- Certification Lack of Record.

17 MR. BOWERS: Oh, 65. I'm sorry.

18 MR. IGNALL: I'm sorry. 65A.

19 MR. BOWERS: 65A.

20 THE WITNESS: Okay. I have that.

21 (Document displayed in open court.)

22 BY MR. BOWERS:

23 Q. Okay. So is it fair for me to then say that your testimony
24 is you have no -- the IRS has no record of a tax return having
25 been filed by a Lawrence N. Cohen with -- with my client's

1 Social Security number for those tax years?

2 A. For the tax years listed on this form, yes.

3 Q. Okay. And you're not here making any conclusion about
4 whether the lack of records is a crime or not a crime or
5 anything else; right? You're just stating a fact.

6 A. Stating the fact of the record.

7 Q. And, if I understood your testimony earlier, there could be
8 any number of reasons why, uh, a person may not file a tax
9 return in a given period of time and that wouldn't be criminal;
10 is that right?

11 A. I'm sorry. Could you repeat the question?

12 Q. Earlier I thought you testified that if somebody didn't file
13 a tax return for a given year that there could be a number of
14 reasons for why that was the case and it wasn't criminal. For
15 example --

16 MR. IGNALL: Objection. I think the question is fine
17 up to why that was the case. I'm not sure -- what's criminal or
18 not criminal, I think, is the province of the Court.

19 MR. BOWERS: Okay. Well, I don't want to put words
20 into her mouth or argue over the law. I just want to understand
21 her prior testimony about that.

22 THE WITNESS: As far as -- you know, each citizen has a
23 duty to file a tax return.

24 BY MR. BOWERS:

25 Q. Okay.

1 A. There is reasons why you may not need to file a tax return.

2 Q. And that wouldn't be a crime?

3 A. No, not necessarily be a crime.

4 Q. Okay. That -- that was all I was after. Thank you.

5 Um, now, you also testified about a deficiency notice,
6 which I believe was Exhibit 65, to -- to Mr. Cohen. Do -- do
7 you recall that?

8 A. Yes. I have it in front of me.

9 Q. Okay. Are you asserting that Mr. Cohen owes any money?
10 That's not your testimony, is it?

11 A. According to this notice, it is telling the taxpayer that
12 there is money owed.

13 Q. Do you know how much?

14 A. Uh, the -- as you are going down the, uh, left-hand --
15 right-hand side column it has "Tax Year Ended December 31[st],
16 1999." It shows \$2,111.

17 Q. When's that -- when's that letter written?

18 A. Uh, the date of the notice is June 8th, 2001.

19 Q. Okay. So do you know is that still correct or accurate? Or
20 do you have any -- any idea?

21 A. As far as -- as my recollection of reviewing the, uh, tax
22 information as of August 15th, that would be a correct amount
23 owed.

24 Q. That's your understanding? You reviewed something to -- to
25 believe --

1 A. Yes.

2 Q. -- that that's correct?

3 A. I pulled the transcripts and looked at the information.

4 And, as far as I know, that is correct.

5 Q. Okay. Just so we're clear, the Government isn't seeking to
6 collect that in this proceeding; is that correct?

7 A. I don't know.

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

9 MR. BOWERS: Well, it goes to this witness's earlier
10 testimony about the procedures of the IRS. She testifies in
11 both civil and criminal cases. She's alleged some amount of
12 money loss. And I wanna be clear that we're not here talking
13 about that amount of money.

14 MR. IGNALL: Objection, your Honor.

15 THE COURT: That -- that is a pretty -- pretty broad
16 question and --

17 MR. BOWERS: Well, let me ask it a different way if I
18 may, your Honor.

19 THE COURT: We're talkin' about it because it's in
20 evidence, but --

21 MR. IGNALL: And Exhibit 65 is in evidence, again, as
22 these other letters are for notice, in this case to Mr. Cohen,
23 of his legal obligations according to the IRS --

24 THE COURT: I think --

25 MR. IGNALL: -- not for -- for --

1 THE COURT: -- we'll all agree --

2 MR. IGNALL: -- whether --

3 THE COURT: -- this is --

4 MR. IGNALL: -- indeed there's a certain amount of
5 deficiency --

6 THE COURT: Yeah.

7 MR. IGNALL: -- owed or not.

8 THE COURT: We'll agree that it was admitted for that
9 purpose.

10 MR. BOWERS: Can I -- can I ask a follow-up question --

11 THE COURT: You may.

12 MR. BOWERS: -- in a different way then?

13 BY MR. BOWERS:

14 Q. Okay. You've testified that in -- I believe it's in your
15 capacity as -- and we can -- we can that exhibit off I think,
16 Agent Steiner -- you've testified in your capacity as -- I
17 believe it's the, uh -- the court witness that you appear in
18 both civil and criminal trials; is that correct?

19 A. I can, yes.

20 Q. Or you have.

21 A. I have.

22 Q. You have. Okay.

23 So is it fair to say, then, you have some familiarity
24 with the difference between a criminal and a civil trial?

25 A. Yes.

1 Q. Okay. And do you have an understanding of -- is it -- is it
2 fair -- would you agree with me with the following
3 characterization: In a civil trial, the objective of the
4 government is to collect money from a taxpayer; in a criminal
5 trial, the objective of the government is to commit [sic]
6 someone of -- convict someone of a crime? Is that a fair
7 characterization?

8 MR. IGNALL: Objection. Relevance.

9 THE COURT: What is the relevance?

10 MR. BOWERS: Well, again, your Honor, I'm just trying
11 to understand the scope of her testimony here today. I think
12 the entrance of that letter, whether or not it's offered for a
13 specific purpose, has confused the issue of what we're doing
14 here.

15 THE COURT: I don't think so. I think we already
16 agreed that it was for notice, that -- in this case, not as a --
17 this is not a collection proceeding.

18 MR. BOWERS: Well, that's all I'm trying to get the
19 witness to say, is to agree with me that based on her experience
20 this is not a collection --

21 THE COURT: Does the Government agree this is not a
22 collection proceeding?

23 MR. IGNALL: Yes. The Government will stipulate to
24 that.

25 MR. BOWERS: Would the Government agree that there are

1 other methods at the Government's disposal for collection
2 proceedings?

3 MR. IGNALL: I'm not -- I'm not sure what the relevance
4 of that is.

5 THE COURT: I think -- I think you've established your
6 point.

7 MR. BOWERS: Okay. Thank you, your Honor. I'll move
8 on.

9 BY MR. BOWERS:

10 Q. Um, now, you -- you had a discussion about how as head of
11 the Frivolous Filer Department you keep track of -- of -- and
12 I'm a little unclear -- either arguments or the forms or
13 something that's been deemed as frivolous by the Service; is
14 that correct?

15 A. In the program, there is a computer database that keeps
16 track of inventory --

17 Q. Which --

18 A. -- that all of the tax examiners in that area use. It's not
19 just myself.

20 Q. I'm sorry.

21 A. It's -- it's an inventory control system.

22 Q. Okay. You said "in the program." Is that -- is that --

23 A. Frivolous Return Program.

24 Q. Thank you. Okay.

25 And, as I understood your testimony, that's all in

1 Ogden now?

2 A. Yes. It was consolidated in 1998.

3 Q. Okay. And so, if I understood your testimony correctly, you
4 get a document and you apply -- and this is what I don't
5 understand -- you apply codes to the document or you apply codes
6 to the arguments contained within the document?

7 A. The -- the number is just the number to the argument. And
8 that's just an internal way so that we can put that into the
9 computer. It's just a normal business practice.

10 Q. Okay. So, um --

11 MR. BOWERS: Could -- could we get Exhibit 44 by any
12 chance? Thank you. And if we go a couple pages into that
13 exhibit.

14 (Document displayed in open court.)

15 BY MR. BOWERS:

16 Q. Do you have that available to you, Ms. Morgan?

17 A. Exhibit 44?

18 Q. Yes?

19 A. Yes.

20 MR. BOWERS: Could we -- could we go a few pages back?
21 Maybe one more, Agent. I think that's perfect.

22 BY MR. BOWERS:

23 Q. Um, do you recognize this page, Ms. Morgan?

24 A. Yes.

25 Q. Okay. And so this page, as I understand your testimony --

1 this page, as I understand your testimony, contains various, um,
2 theories espoused by Mr. Schiff through his teachings on why
3 someone may not -- may not have to pay income tax; is that
4 correct?

5 A. This is the attachment that's usually attached to this type
6 of return.

7 Q. Okay. And -- and so within that attachment, whether they
8 are frivolous or not according to the Service, there are some
9 theories on why you don't have to pay income tax or you don't
10 declare it or whatever the case may be. Is that correct?

11 A. According to the Service?

12 Q. No. According to the document itself.

13 A. According to the document. Yeah, are they are stating
14 reasons why.

15 Q. Okay. And the Service, I understand, says they are
16 frivolous. Right? Okay. This is my question.

17 MR. BOWERS: Um, I think maybe the next page.

18 (Document displayed in open court.)

19 BY MR. BOWERS:

20 Q. Okay. This page references some specific theories, some
21 specific cases, and so forth; right?

22 A. Yes, it does.

23 Q. Okay. Here's my question -- and I'm sorry to make it so
24 complex. I'm just tryin' to be clear -- the specific theories
25 referenced on that page, okay, there's -- there's more than one.

1 Pick any of 'em -- do they have their own code or are they just
2 included with everything on that form?

3 A. No, they don't have their own code.

4 Q. Okay.

5 A. Just this type of document in its entirety --

6 Q. Okay.

7 A. -- is numbered.

8 Q. Okay. So do other people besides Irwin Schiff have some of
9 these arguments? In other words, as part of the Frivolous
10 Filer -- or head of the Frivolous Filer Program in Ogden, do you
11 ever get, um, attachments to, uh, tax returns that say, well,
12 here's my theory of why I'm not liable or why I'm putting zero
13 for my return or why I'm just putting my name down, or whatever
14 the case may be, and that's similar maybe to Irwin Schiff but
15 has nothing to do -- it's not in the attachment; it's not the
16 same language. It's just the same idea. Has that ever
17 happened?

18 A. There's other types of arguments.

19 Q. Right. That -- that may or may not be similar to

20 Mr. Schiff's.

21 A. Right.

22 Q. And are those coded separately?

23 A. Yes. They are identified differently. If they have a
24 different position --

25 Q. Uh-huh.

1 A. -- and counsel has agreed that they are subject to the
2 penalty, they have a different number.

3 Q. Okay. So, in your ten years with the IRS, is it fair to say
4 that you became familiar with many of the -- the arguments that
5 you see over and over again?

6 A. Yes.

7 Q. And is it not true that there are other arguments from other
8 people that are similar to Mr. Schiff's?

9 A. There is some that are similar.

10 Q. Okay. That's all. That was the question.

11 MR. BOWERS: Um, can we put up, uh, Exhibit, uh, 64,
12 please? And, if we could, could we highlight the first two full
13 paragraphs? Thank you.

14 (Document displayed in open court.)

15 BY MR. BOWERS:

16 Q. Okay. Ms. Morgan, you recognize this document from earlier;
17 is that correct?

18 A. Yes, I do.

19 Q. Okay. As I understand your testimony, um, there here is
20 what -- if I file first a tax return or -- or a document with
21 the IRS that contains a theory that you've deemed frivolous --
22 and "you" meaning the "Service." I'm not talking about you --

23 A. The counsel.

24 Q. -- personally not --

25 A. Yes.

1 Q. -- now -- then I would get a letter along these lines in
2 response; is that correct?

3 A. That's the normal procedures.

4 Q. Okay. And, just for benefit of everybody, could you just
5 read to me, uh, the first paragraph just so we know what we're
6 talking about here.

7 A. It says: "We have determined that the information you sent
8 is frivolous and your position has no basis in law. Claims,
9 such as yours, have been considered and rejected repeatedly
10 without merit by the federal courts - including the U S Supreme
11 Court of the United States."

12 Q. Okay. And then you send with this letter, right,
13 Publication 2105?

14 A. We do send the tax forms, a copy of the letter, an envelope,
15 and the Publication 2105.

16 Q. Okay. And Publication 2105 I'm sure has changed over time.
17 But would you agree that Publication 2105, at least
18 traditionally, is a two-page form, kind of a brochure that's
19 trifolded that talks about a little bit of some of these
20 taxation things?

21 A. Yes. It --

22 Q. Okay.

23 A. -- explains.

24 Q. And would you -- would you agree -- is it fair to say that
25 2105 references, um, the U.S. Constitution and, I believe, one

1 other Code, but it doesn't reference any case?

2 A. Honest -- honestly, I have not read Publication 105 [sic]
3 recently to be able to actually say what it contains.

4 Q. Well, have you ever read it?

5 A. Have I -- I've read it.

6 Q. Okay.

7 A. But I have not been in the program for two years.

8 Q. Okay. Well, do you have any recollection of what you read
9 in 2105?

10 A. The -- the Publication 2105 just talked about the
11 obligations that individuals have to file tax returns and why
12 the positions that they are taking on these tax returns,
13 regardless of the argument, is frivolous and is subject to the
14 penalty.

15 Q. Regardless of the argument; Right?

16 A. Right.

17 Q. Okay.

18 A. It's a general publication for different arguments.

19 Q. So you don't send a different publication depending on what
20 code goes with what argument with this letter; right?

21 A. No. The publication goes out with this letter.

22 Q. Any time something's frivolous this goes out --

23 A. Correct.

24 Q. -- with that publication?

25 A. Right.

1 Q. Let me ask you this: Is it fair to say that that
2 publication doesn't address any argument at all in more than two
3 or three lines?

4 A. I don't know. I haven't read it.

5 Q. You refer out -- or you in your capacity as, um, head of the
6 Frivolous Filer Program testified that you -- you refer out
7 potentially frivolous issues to area counsel; is that correct?

8 A. At the time, it was the civil penalty coordinator.

9 Q. I'm sorry. I --

10 A. And it's definitely not what I --

11 Q. I apologize.

12 A. Yes. If there was something that come in that we did not
13 know whether it was subject to the frivolous return penalty, we
14 would involve area counsel and write a letter and ask their
15 opinion.

16 Q. And was there a counsel -- you said area counsel was it Salt
17 Lake; is that -- is that right?

18 A. Yes.

19 Q. And is there area counsel, like, a private law firm like my
20 fellow attorneys from my alumnus or are these government
21 attorneys? Who are those people?

22 A. Area counsel are people that are hired by the Internal
23 Revenue Service --

24 Q. Okay.

25 A. -- that give legal counsel to IRS employees regarding their

1 work.

2 Q. So they're -- they're government attorneys. They are not
3 private lawyers and law firms; is that right?

4 A. No. They work for the IRS.

5 Q. Okay. Now, when the area counsel, um -- when -- when area
6 counsel receives a request from you in your capacity as -- in
7 charge of the Frivolous Filing Program, does this request say,
8 hey, we've come across this argument. We're wondering if it's
9 frivolous or not? Something to that effect?

10 A. Exactly. We ask them is it subject to the penalty and --
11 and -- in writing and in turn they have a certain time frame to
12 answer us back.

13 Q. Okay.

14 MR. BOWERS: Your Honor, I have a document that was
15 offered this morning. It's not marked. I'd like to show it to
16 the Government's counsel, let the Court see it. I'm offering
17 it, I believe, for a different purpose and maybe --

18 THE COURT: Is it marked? If you're gonna offer it,
19 you need to mark it.

20 MR. BOWERS: I'll mark this as 28, uh, I believe, 43.

21 THE CLERK: Thank you.

22 (Defendant Cohen's Exhibit No. 2843, marked
23 for identification.)

24 (Document shown to Government counsel.)

25 MR. BOWERS: Your Honor, would the Court like to look

1 at this?

2 THE COURT: Please.

3 (Document handed to the Court.)

4 MR. BOWERS: Your Honor, if it helps, I'm not offering
5 that document. Let me give you a fairly brief offer of proof.

6 THE COURT: I've read it. So...

7 MR. BOWERS: I'm not offering it for the substance --

8 THE COURT: Okay.

9 MR. BOWERS: -- I'm offering it as an example of I
10 believe Ms. Morgan will be able to verify that this is the sort
11 of response she gets in request to the legal department about
12 frivolous documents. That's all.

13 THE COURT: Go ahead and ask her.

14 MR. BOWERS: Okay.

15 BY MR. BOWERS:

16 Q. Sorry, Ms. Morgan.

17 A. (Reviewing document.)

18 Q. Now, Ms. Morgan, you've already testified that you didn't
19 recognize that document earlier? That -- that purports to be a
20 response to a question about some issue of taxation from the
21 area counsel; is that right?

22 A. That's from counsel but not out of Ogden --

23 Q. Sure.

24 A. -- Service Center, not Salt Lake.

25 Q. Sure. And -- and I'm not particularly concerned with that

1 issue.

2 But here's my question: Is it fair to say that when
3 you request of area counsel an opinion on whether something's
4 frivolous or not that the response you get back is similar to
5 this in that it's rather lengthy, it contains some analysis of
6 the law, some Code sections, and so forth?

7 A. Yes. And it also gives us instructions on what to do with
8 the document.

9 Q. Okay. But it -- it's not one line. It's not, this is
10 frivolous?

11 A. Exactly.

12 Q. Okay. So do you have any knowledge -- well, let me make --
13 let me make this clear.

14 MR. BOWERS: Could we put back that last exhibit? I'm
15 sorry? It was 64, I believe. Just highlight the paragraph 1
16 there and 2. I'm sorry.

17 (Document displayed in open court.)

18 BY MR. BOWERS:

19 Q. Okay. So -- so I -- I send in -- as a taxpayer, I send in
20 a -- a document that you think might be frivolous or you know is
21 frivolous -- or let's say it might be frivolous. You -- you
22 send a letter to area counsel saying, hey, we have concerns this
23 might be frivolous. Based on our training and experience,
24 we're -- we're alerting you. They send with you back something
25 with instructions.

1 Am I -- am I right so far?

2 A. Generally we --

3 Q. Generally --

4 A. -- we say --

5 Q. -- right.

6 A. -- this is what we have. We send them a copy of the return
7 and we say: Is this frivolous? Is it subject to a frivolous
8 return penalty?

9 Q. Right.

10 A. Is it processable?

11 Q. Right, right, right.

12 A. And then they answer those questions. We ask specific
13 questions about the specific document.

14 Q. Right. And you -- and you get those answers back in some
15 level of detail?

16 A. Right.

17 Q. Cases are analyzed, courts are cited to, laws are discussed
18 by -- by lawyers. Right?

19 A. By lawyers.

20 Q. Okay. And then you send to the taxpayer something
21 substantially similar to this; correct?

22 A. Correct.

23 Q. With Publication 2105; right?

24 A. Right.

25 Q. Do you at any point -- well, let me ask you one other thing.

1 As I understand it, if I'm -- if I'm a taxpayer and I'm acting
2 in good faith and I send in this document and I get this letter
3 from you that says it's frivolous, as I understand your
4 testimony, I cannot then write you back a detailed response
5 requesting more information or that will be deemed to be
6 frivolous as well.

7 A. This is not correct.

8 Q. That is not correct. Could you clarify that for me?

9 A. If you write back a letter --

10 Q. Yes.

11 A. -- and you ask specific questions regarding your obligations
12 to file --

13 Q. Uh-huh.

14 A. -- and they don't contain the same type of arguments,
15 different arguments, you don't supply another frivolous return,
16 if it's a question that we can answer by saying, you know, you
17 need to file a claim -- you know, your income shows this much
18 and this is what you need to do; this is what's gonna happen.
19 We will answer.

20 Q. You will answer --

21 A. Yes.

22 Q. -- with -- with this?

23 A. Not with this --

24 Q. Not with this.

25 A. -- with the --

1 Q. Do you share with me the information in -- in whatever
2 report there is about what -- what area counsel thinks of my
3 arguments?

4 A. Okay. I'm sorry. I didn't understand the question.

5 Q. Well, you -- you have this nice long memo from area counsel
6 advising you what to do and what the law is; right?

7 A. Right.

8 Q. Do you share that with me as a taxpayer when you let me know
9 my argument's frivolous?

10 A. Originally when this letter goes out, this is the letter
11 that says it's frivolous --

12 Q. Right.

13 A. -- with the publication.

14 Q. Right.

15 A. And then you're asking me when you respond back with your
16 response?

17 Q. Correct.

18 A. It depends on what your response is. We have to read that
19 and then make a determination on our next step.

20 Q. Okay. Let me -- let me ask you this: Have you ever, uh, or
21 are you aware in any way of -- of anyone in the Service ever
22 providing this analysis with respect to any of Irwin Schiff's
23 teachings?

24 THE COURT: "This analysis" what?

25 MR. BOWERS: Uh, the type of analysis that the area

1 counsel for the IRS engages in with respect to all arguments
2 that she forwards on or have deemed -- have been deemed
3 frivolous.

4 BY MR. BOWERS:

5 Q. Has that ever been supplied?

6 A. You're asking if I -- if we share the counsel's decision
7 actually to the individual?

8 Q. Yeah. I mean, if you -- if you ever say to somebody:
9 Here's a detailed legal analysis by our government agency on why
10 we think you're wrong, not just it's frivolous, you have no
11 basis, there's some Supreme Court cases. This is why you're
12 wrong.

13 A. That's the Publication 2105.

14 Q. Oh, okay. All right.

15 A. There's also been a situation that I'm aware of where we
16 actually have area counsel write a letter for us explaining the
17 situation. They will do that for us but rarely.

18 Q. Did they ever do that with any of these defendants?

19 A. No.

20 Q. Are you aware -- do you have anything to lead you to believe
21 that these defendants -- never mind. Strike that question.

22 Is this your decision to give out more or less
23 information or are you just following the advice of someone else
24 in the department -- in the Service?

25 A. Giving out more or less information. I'm sorry. I --

1 Q. Let me ask it a better way. I apologize.

2 As I understand your testimony, you don't have
3 executive decision as to what to provide the taxpayer with for
4 an answer. You're just guided by legal counsel for the
5 department -- for the Service; is that correct?

6 A. Whether or not it's frivolous. But, in this letter in the
7 second page, it does explain to the taxpayer what will happen.

8 Q. Well, sure it explains what will happen. But it doesn't
9 explain why. Is that correct?

10 A. It says if you send in a corrected return, we will disregard
11 the previous document filed and will not assess frivolous return
12 penalty.

13 Q. I understand.

14 A. If you do not respond in 30 days, then you will get another
15 penalty if you file another frivolous document.

16 Q. Okay. Let me ask this question differently.

17 Can you show me in this document that you send out as a
18 standard response anywhere where you provide a taxpayer with
19 specific information of why something's frivolous other than
20 that first paragraph? Not what's gonna happen to them if they
21 don't change their position but why something is frivolous.

22 A. Again, the Publication 2105 covers that.

23 Q. Well, I'm working on that as we speak. But I'm -- I'm
24 asking about the letter for right now.

25 A. In the letter?

1 Q. Yes.

2 A. This -- this is a general letter that goes out to all
3 individuals that file frivolous returns with the publication
4 because there's many different frivolous arguments. So it is a
5 basic letter --

6 Q. But --

7 A. -- for the issues --

8 Q. I'm sorry. Go ahead.

9 A. -- that's used in -- in any frivolous return that's filed.

10 Q. But you have coded each argument; right?

11 A. Right. For our office internally purposes --

12 Q. Okay. But you don't --

13 A. -- for inventory --

14 Q. -- you don't have them coded for responding to this
15 taxpayer; right?

16 A. Well, there -- there is information for each tax examiner so
17 that they can look at the database and know what's going on. If
18 they get a phone call from the taxpayer knowing that -- another
19 piece of correspondent [sic] is sent in or another claim is
20 coming in so they can update them and say: Yeah -- yes, we
21 received your claim. It's being processed. There is those kind
22 of facts.

23 Q. Okay. I'm -- I'm not doing this very effectively. Let me
24 try a different angle on this. Um...

25 MR. BOWERS: Just a moment. Court's indulgence.

1 (Pause in the proceedings.)

2 BY MR. BOWERS:

3 Q. If I understand your testimony, then, correct, ma'am, the
4 most detailed information you'll give to a taxpayer identifying
5 a frivolous return is what's contained in Publication 2105?

6 A. Yes --

7 Q. Okay.

8 A. -- and the letter.

9 Q. And --

10 A. And anything --

11 Q. -- the letter.

12 A. If they call, I -- the phone number that's on this -- this
13 six -- 801-629-1219 --

14 Q. Okay.

15 A. -- that was my phone number.

16 Q. Okay.

17 A. They could call and talk directly to me.

18 Q. Okay. But, um, as we talked about, within this letter
19 there's nothing more specific about what constitutes frivolous
20 than that paragraph; right?

21 A. This is the form letter that goes out.

22 Q. Okay. Um, have you offered any testimony here about the --
23 the number of returns associated with Irwin Schiff between the
24 period of 2000 and 2002?

25 A. Uh, if I recollect, the number of returns was from January

1 1st, 1998 through December 31st, 2002.

2 Q. Okay. But not that -- not that more limited period of
3 time --

4 A. Right.

5 Q. -- is that correct?

6 A. That was the search -- when we, you know, asked the report
7 from the computer, those were the years that we had to
8 manipulate the data and give us the facts on just those returns.

9 Q. Um, is -- do you -- do you know who Shawna Henline
10 (phonetic) is?

11 A. Yes.

12 Q. Who -- who is Shawna Henline?

13 A. She is an employee in the Frivolous Return Program now.

14 Q. Is she -- did she take your job over? I mean, not in a
15 negative way but just was she at the same level of employment
16 that you were?

17 A. No. She was in management.

18 Q. Was that higher or lower? Does it matter? Do you know?

19 A. It was a management position and I was the penalty
20 coordinator. It's different. You know, she was responsible for
21 managing people and I had the penalty job.

22 Q. Okay. Let me -- all right, all right, all right. Just a
23 couple last questions and I'll get down.

24 Um, we're going back to 2105. Because as I understand
25 your testimony, the only way I know if something's frivolous as

1 a taxpayer is you give me a letter that says it's frivolous.
2 Here's a brochure. We're tellin' ya it's frivolous. Right?
3 And then you -- you describe what procedures take place to avoid
4 the frivolous penalty, but you -- you don't talk anymore about
5 the law or -- or why it's frivolous, is that right, other than
6 what's in 2105 and the letter?

7 A. Correct.

8 Q. Okay. So would -- would it refresh your recollection if I
9 read a portion to you of 2105 as to the types of responses that
10 were contained in that publication?

11 A. It -- it may.

12 Q. Okay. Well, let me -- let me give you an example.

13 Um, one of the responses in 2105 -- and this is the
14 little trifold brochure is, um, "Failing to file required
15 returns and failing to pay taxes may result in criminal
16 prosecution and/or civil penalties."

17 Does that sound like the sort of response you're
18 familiar with from 2105?

19 A. Yes.

20 Q. Um, or for example, uh, there's -- there's a section called
21 "The Truth." And it says, "Claiming a vow of poverty or ...
22 fraudulent charitable contributions to a church for money which
23 is ultimately used for personal expenses is not legal."

24 Sort of -- does that ring a bell as the kind of advice
25 that was offered in 2105 that you're familiar with?

1 A. Yes.

2 Q. Okay. And there's a number of things like this; right?

3 A. Yes.

4 Q. But, generally, is it fair to say that there is no detailed
5 analysis of the law in 2105? They are fairly short statements
6 like this?

7 A. I -- again, I don't know for sure if there's detailed
8 information concerning the law.

9 Q. Well, let me ask you this: We -- we've talked about this --

10 MR. BOWERS: By the way, I -- I would seek to move
11 that, uh, last marked exhibit into evidence for purposes of
12 demonstrating how this process works. That's not substantive on
13 the issues in this case, but...

14 MR. IGNALL: Objection. I'm not sure what the
15 relevance of it is. She doesn't recognize this particular
16 document.

17 MR. BOWERS: I'm not -- I'm not admitting this document
18 for purposes of what it says. I'm admitting this document to
19 show that the witness has agreed that the IRS has detailed legal
20 opinions available to it from area counsel.

21 THE COURT: Well, yes. And -- and the -- in addition
22 to it being irrelevant, uh, what you're asking is you're asking
23 for a -- and I don't -- I assume it's because you -- it's your
24 position that you feel that this should be -- this should be
25 disseminated. You know, the IRS is not in the business of

1 giving private legal advice nor their attorneys.

2 MR. BOWERS: And I'm not saying --

3 THE COURT: And that --

4 MR. BOWERS: -- that should be the case. I'm just
5 pointing out --

6 THE COURT: The only way it can come in is if I ignored
7 that principle. The IRS is not in the business of giving out
8 legal advice to people. What they have said in the -- in the
9 frivolous return notice is "In answering your tax questions, we
10 encourage you to seek advice from competent tax counsel."

11 Counsel for the IRS is not counsel for the individual.
12 To send out a letter from their counsel is to be giving advice
13 with a conflict because now you're seeking to advise the
14 taxpayer when their allegiance is to the IRS.

15 MR. BOWERS: Okay. Well, I -- I --

16 MR. CRISTALLI: Your Honor -- excuse me -- in light of
17 that position by the Court, we did have a letter from, uh,
18 counsel that Mr. Melvin Lewis relied on that was independent of
19 counsel for the IRS. I'd like the Court to recognize that as
20 admissible at this particular time if we can't rely on counsel
21 for the IRS for certain legal opinions.

22 THE COURT: Well, the question is can you rely on other
23 information that is bogus and -- I'm not letting that in because
24 it will confuse the jury as to what the law actually is.

25 MR. BOWERS: May I -- may I --

1 THE COURT: It is contrary -- the advice given is
2 contrary to the Supreme Court and the Circuit Court opinions and
3 it's also contrary to statute. So that's why it didn't come in.

4 MR. BOWERS: Okay.

5 THE COURT: It's prejudicial and confusing --

6 MR. BOWERS: I join in --

7 THE COURT: -- and invades --

8 MR. BOWERS: -- Mr. Cristalli's motion.

9 THE COURT: -- the prerogative of the Court to instruct
10 the jury what the law actually is.

11 MR. CRISTALLI: The concern is a notice concern with
12 regard to whether or not individuals are getting proper notice
13 in terms of what the law is or what the law is not. That's the
14 concern. It's not whether or not the information that's being
15 disseminated is legitimate information or not legitimate
16 information.

17 THE COURT: Well, the witness can certainly testify
18 when -- if he chooses -- or she chooses to do so that they
19 relied on something and I'll reconsider at that time.

20 MR. BOWERS: I only have two questions. Thank you,
21 your Honor.

22 BY MR. BOWERS:

23 Q. That document's not coming into evidence. But I -- I think
24 it's fair to say that you don't share the information in that
25 document with the taxpayer as to the internal legal conclusion;

1 is that correct?

2 A. Right. That information is advice to internal employees.

3 Q. Okay. And you refer them on to competent counsel for -- for
4 advice?

5 A. That's our suggestion --

6 Q. Okay.

7 A. -- to the individuals.

8 Q. Do you have any -- if -- if I'm a taxpayer and I'm in good
9 faith trying to get advice from a lawyer, do you have anyone
10 who's -- who's competent counsel and who is not competent
11 counsel? You don't -- you don't maintain a list like that, do
12 you?

13 A. No. We would not do that. That would be for the individual
14 to make that choice, to seek counsel --

15 Q. Okay.

16 A. -- in their state.

17 Q. Right. Wherever. I -- I've gotta go find a lawyer.

18 But the IRS doesn't provide any information to me about
19 whether the lawyer I'm seeking's qualified or not?

20 A. Not that I'm aware of.

21 Q. Okay. Does the IRS do anything that you're aware of to find
22 attorneys who might be giving bad advice and stop them? That
23 you're aware of. This may be outside the scope of your
24 knowledge and...

25 A. No, I -- I have no idea if they do things like that.

1 Q. You have no knowledge?

2 A. No.

3 Q. Thank you, Ms. Morgan. I appreciate your time.

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

5 MR. CRISTALLI: Nothing, your Honor.

6 MR. SCHIFF: No further.

7 MR. IGNALL: You know, may this witness be excused and
8 excused from the rule as well?

9 THE COURT: Pardon?

10 MR. IGNALL: May she be excused and excused from the
11 rule?

12 THE COURT: Yes.

13 MR. BOWERS: I'm sorry. What? The Exclusionary Rule?

14 MR. IGNALL: That -- that was my question.

15 THE COURT: Well, that's the question is, she excused
16 from the Exclusionary Rule.

17 MR. BOWERS: I -- I don't mind if she's excused from
18 the Exclusionary Rule, but I'd like her available for -- to
19 remain under subpoena for later examination on direct.

20 THE COURT: Well, we're not gonna do that. She's --
21 she's from a long ways away. And it -- you know, if it's a
22 local witness, that's -- that's one thing that's going to be
23 available. But she -- she'll have to come back from several
24 hundred miles away.

25 MR. BOWERS: Okay. I mean, it --

1 THE COURT: So I don't want --

2 MR. BOWERS: -- would certainly be --

3 THE COURT: -- to hold her unless you've got --

4 MR. BOWERS: -- at our expense.

5 THE COURT: Humm?

6 MR. BOWERS: But we'll petition the Court
7 appropriately.

8 THE COURT: All right.

9 MR. BOWERS: Thank you.

10 THE COURT: You are excused.

11 THE WITNESS: Thank you.

12 MR. IGNALL: Thank you, your Honor.

13 THE COURT: Government's next witness.

14 MR. NEIMAN: Your Honor, the Government would call
15 Ms. Virginia Olen to the stand.

16 (Virginia Olen takes the witness stand.)

17 THE CLERK: Please remain standing and raise your right
18 hand.

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

22 THE WITNESS: I do.

23 THE CLERK: Please be seated.

24 Please state for the record your full name and spell
25 your last name.

1 THE WITNESS: Virginia Jean Olen, O-l-e-n.

2 THE COURT: You may proceed.

3 MR. NEIMAN: Thank you, your Honor.

4

5 VIRGINIA OLEN,

6 called as a witness on behalf of the Government, having been

7 first duly sworn, was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. NEIMAN:

11 Q. Good afternoon, Ms. Olen.

12 A. Hi.

13 Q. Ms. Olen, where do you currently reside? What city?

14 A. North Las Vegas.

15 Q. And for how long have you lived in North Las Vegas?

16 A. There for a year.

17 Q. And how long in Las Vegas in general?

18 A. 18 years.

19 Q. Um, and are you currently employed?

20 A. No.

21 Q. Prior -- are you currently retired?

22 A. Yes.

23 Q. All right. And, prior to retiring, at one point did you

24 work for NOS Communications?

25 A. Yes, after I quit cab driving.

1 Q. All right. How long were you a cab driver for?

2 A. 11 years.

3 Q. If I could direct your attention to your employment with NOS
4 Communications, what is NOS?

5 A. It's a -- the only place I could get a job. Anyway, uh,
6 they, I think, are --

7 MR. BOWERS: Move to strike --

8 THE WITNESS: -- out of business now.

9 MR. BOWERS: -- as nonresponsive.

10 THE WITNESS: Pardon?

11 MR. BOWERS: Move to strike the first portion of that
12 answer as nonresponsive. He didn't ask her whether she could or
13 could not get a job.

14 THE COURT: Let's see. Yes, the -- the answer was
15 unresponsive. Strike.

16 Repeat the question.

17 BY MR. NEIMAN:

18 Q. Ms. Olen, what is NOS Communications?

19 A. I think they are out of business now. But they, um -- what
20 we did was sell, uh, long distance and Web sites.

21 Q. And how long did you work for NOS?

22 A. About a year and a half.

23 Q. Do you know Larry Cohen?

24 A. Yes.

25 Q. How do you know Larry Cohen?

1 A. I've known him about 17 years.

2 Q. And how did you first meet Mr. Cohen?

3 A. Well, my husband and I became cab drivers here in this town.
4 And, about a year later, Larry became a cab driver. And at that
5 time it was a small downtown and we were like a family. So we
6 all knew each other.

7 Q. Do you see Mr. Cohen here in the courtroom today?

8 A. Yes.

9 Q. Can you please identify him by what he's wearing?

10 A. Oh. He's got a suit on and a tie and standing up.

11 Q. All right.

12 MR. NEIMAN: Will the record please reflect that the
13 witness has identified --

14 THE COURT: Yes.

15 MR. NEIMAN: Thank you, your Honor.

16 BY MR. NEIMAN:

17 Q. How would you characterize your relationship with Mr. Cohen?

18 A. Well, we were friends.

19 Q. How often would you speak to Mr. Cohen or his wife, I guess?

20 A. Well, just about daily when you drive cab, you know, like
21 down in the pit; the airport you run into each other. Um, so
22 it's just, uh, a friendship.

23 MR. BOWERS: I'm sorry, your Honor. Just a little
24 foundation for time on --

25

1 BY MR. NEIMAN:

2 Q. Approximately what time period was this when you first
3 began -- when you developed this friendship with Mr. Cohen?

4 A. Well, when he first started driving. You know, all the
5 drivers, you know, you get to know them. And, uh, uh, he was a
6 likeable person and so we became friends. And then, uh, his
7 wife was a singer at the time. And so, um, about a year --
8 maybe a year later we kinda all talked her into driving a taxi
9 also because she was havin' a hard time getting gigs.

10 THE COURT: Do you have any idea about what time that
11 was? What year?

12 THE WITNESS: What year? Let's see. '89, '90.

13 BY MR. NEIMAN:

14 Q. What is Mr. Cohen's wife's name?

15 A. Sharon.

16 Q. Okay. You mentioned earlier that you left being a cab
17 driver and you began work for NOS.

18 A. Right.

19 Q. Did you recruit anybody to come along with you to NOS when
20 you stopped being a cab driver?

21 A. Right. Once you're in the industry, it's hard to get out.
22 So, uh, it took me like four years. I had a massive heart
23 attack and it took like four years to get out of cab drivin'.
24 Because in this town, nobody wants to hire you if you're a cab
25 driver, you know. So, anyways, I was at NOS for several months

1 and I knew Larry wanted to get outta cab driving, you know.

2 Q. And -- and did Larry, or Mr. Cohen, at some point come to
3 work with you at NOS?

4 A. Yeah. I suggested he come down, that they hire everyone.
5 And, uh, I knew, um, he could pass the training. And so he came
6 down and he started workin' there too.

7 Q. And how -- how were you paid at NOS? Was it salary?
8 commission?

9 A. It was hourly, 14.42 an hour, plus commission.

10 Q. And was Mr. Cohen paid the same as you?

11 MR. BOWERS: Objection. Foundation.

12 BY MR. NEIMAN:

13 Q. Did you discuss Mr. Cohen's compensation with Mr. Cohen?

14 A. I don't understand the question.

15 Q. Did you ever talk to -- to Mr. Cohen about how much he was
16 making at NOS?

17 A. Sure. We always --

18 MR. BOWERS: I'm sorry. I think she just asked and
19 answered that question with I don't know; I didn't have that
20 conversation.

21 MR. NEIMAN: No. She didn't understand the question, I
22 believe, is --

23 THE COURT: No, she didn't. She said she didn't
24 understand the question.

25 MR. BOWERS: Oh, I apologize.

1 THE COURT: It was reasked.

2 BY MR. NEIMAN:

3 Q. Did you discuss with Mr. Cohen how much he was making at NOS

4 Communications?

5 A. Yeah. We all talked about that.

6 Q. What did Mr. Cohen say with regards to his -- his salary at

7 NOS?

8 A. Well, I think it was \$16 an hour 'cause he was better than

9 me.

10 Q. When you say "better than you," what do you mean?

11 A. Well, in sales, talking to people.

12 Q. After -- how long did you say you worked at NOS?

13 A. About a year and a half.

14 Q. And how long did Mr. Cohen work for NOS?

15 A. Uh, a little less. He -- he left, uh, before I did.

16 Q. And where did he go to work?

17 A. You know, I can't remember the name of the little place. It

18 was like three letters.

19 Q. What type of business was it?

20 A. Uh, selling, um, medical, um, billing to people, you know,

21 where you call them up and talk them into buying the medical

22 billing. But there was no hourly or salary; it was strictly

23 commission.

24 Q. All right. Now, did Mr. Cohen have -- what was -- how long

25 did Mr. Cohen last at this medical -- medical job or medical

1 sales job, if you know?

2 A. I don't know. Three months maybe.

3 Q. Do you know where he went to work next?

4 A. Uh, the, um -- the Flamingo Hilton vacation package thing.

5 Q. And what did he do for Flamingo Hilton vacations packages?

6 A. Selling the vacation packages.

7 Q. Do you know where Mr. Cohen worked after selling packages
8 for the Hilton -- Flamingo Hilton?

9 A. That's when he went with, uh, Irwin Schiff.

10 Q. And what was your understanding of what he did, uh, with
11 Mr. Schiff?

12 A. Well, I really didn't know anything about it. Uh, it was
13 just something that -- to do with the IRS, uh, I don't know,
14 business.

15 Q. Did there come a time, Ms. Olen, when you needed some advice
16 on what to do with your tax returns?

17 A. Well, it wasn't that I needed advice. Um, Sharon and I
18 would talk on the phone like girlfriends, you know.

19 MR. BOWERS: Your Honor, I'm gonna make an objection to
20 hearsay as to conversations she had with Larry's wife on the
21 phone.

22 BY MR. NEIMAN:

23 Q. Ms. Olen --

24 THE COURT: Yes. Sustained without foundation as
25 exception to the hearsay rule. She really has just made a

1 statement that they had conversations. So that's not --

2 THE WITNESS: Yeah, I didn't --

3 MR. BOWERS: Well --

4 THE COURT: -- that's not hearsay yet.

5 MR. BOWERS: You know, for simplicity sake, I have no
6 idea -- or no problem with the witness explaining sort of how
7 this came along. I just want to be sensitive --

8 THE COURT: I understand.

9 MR. BOWERS: -- the basis for her statements.

10 THE COURT: I understand. It's not hearsay yet, but --

11 MR. BOWERS: Okay.

12 BY MR. NEIMAN:

13 Q. Ms. Olen --

14 THE COURT: -- I recognized your concern.

15 BY MR. NEIMAN:

16 Q. Ms. Olen, if I could -- when answering the questions, if you
17 could just answer as to what either you said, um, and generally
18 about the conversation without referring to what Ms. Cohen said,
19 that would be helpful. Understand?

20 A. Yes.

21 Q. Okay. What was the -- what was this conversation generally
22 about?

23 A. We were just chitchatting. And I happened to be in very
24 desperate need of, uh, money because I was starving. And so I
25 said I just did my taxes, my 1040EZ tax, and it's the first time

1 I ever had to pay \$256. And I says I was upset about that
2 because I didn't have the money, you know. And she said, well,
3 just a minute. Let me put Larry on the phone and he can help.

4 Q. And did Mr. Cohen get on the telephone?

5 A. Yes.

6 Q. And what did you talk to Mr. Cohen about?

7 A. What I just said, you know, that -- and he says, well,
8 that's what I do now, you know, for this man, Irwin Schiff.

9 Q. And -- and --

10 A. And he said that, uh -- he -- the way he said it was that,
11 well, I don't really have to pay that and I could even get back
12 the money that they took out of my paycheck for the whole year,
13 which was 3,000-some dollars. And I said terrific.

14 Q. All right. And did you act upon this conversation? Did
15 you --

16 A. Well, of course. I'm not an idiot, you know.

17 Q. How did you -- what did you do? What action did you take?

18 A. Well, he said come on down to the office, to his office.

19 Q. And what office was this?

20 A. Um, on East Sahara, um, around 6th Street, building with a
21 bunch of, uh, uh, writing on it.

22 Q. Now, do you remember what the name of the business was or if
23 not...

24 A. Well, I don't really remember the name of the -- it was just
25 a weird-looking building.

1 Q. Did you -- prior to this, uh -- going to this office where
2 Mr. Cohen had directed you, did -- did you prepare your own tax
3 returns each year?

4 A. Yeah.

5 Q. And tell me what it is that you saw when you went to this
6 building.

7 A. Well, I walked in and there was a old -- older lady, chunky,
8 sitting to my left at a desk and, um, a tall man with a beard
9 and a mustache standing to my right and then Larry was straight
10 ahead, like in his office coming out.

11 Q. When you say "his office," can you describe what it is
12 exactly you saw?

13 A. Well, it's a different room. So, um, I'm assuming it was
14 his office. He had a computer, a Xerox, a bunch of papers and
15 books all over the place.

16 Q. And -- and did Mr. Cohen take you back to his office?

17 A. Yes.

18 Q. And what did you discuss in his office?

19 A. I can't really remember if I took my form with me, my 1040.
20 I don't remember. But, uh, he started explaining how, uh -- how
21 the IRS was, um, like a dif- -- not connected to the government
22 and, um, that in the Constitution it -- it says that we don't
23 have to pay taxes. And he was tellin' me all this stuff that
24 sounded logical and he had a great big fat book that he --

25 Q. Do you remember what the name of this book was?

1 A. No.

2 Q. Do you know who wrote this book?

3 A. Irwin.

4 Q. And what was he saying with regards to the book?

5 A. Well, he was just mentioning things out of the book that,
6 you know, um, um, in regards to where I wouldn't have to pay any
7 more and that we could even go back -- after the first year go
8 back -- further back and get more money back that I paid in. So
9 that sounded good to me, you know.

10 Q. And -- and did he prepare a tax return for you while you
11 were in his office?

12 A. Yeah. Um, what he did is he, um -- oh. He told me a story,
13 too, about somebody that got back --

14 Q. What story did he tell you?

15 A. Some man in New England -- I forget what state,
16 New Hampshire or somethin' -- that did this, what Irwin says to
17 do, and he got back a check for 200-and-some thousand dollars
18 and -- but he got scared and -- and sent it back to the IRS
19 instead of cashin' it. But it just proved that it was all
20 correct.

21 MR. BOWERS: Objection, your Honor, as to what -- I'm
22 not sure what she's gonna says is proved, but...

23 THE WITNESS: Well, proved to me.

24 BY MR. NEIMAN:

25 Q. Who -- who told you that this -- who tried to prove to you

1 that this worked?

2 A. Larry.

3 Q. Okay.

4 A. So -- I mean, 'cause I kept sayin', "Is this on the
5 up-and-up, you know? I don't want to get in trouble."

6 Q. How did he respond?

7 A. He said sure, otherwise he wouldn't have told me the story.

8 Q. Did --

9 A. So, he's...

10 Q. I'm sorry.

11 Did Mr. Cohen ever tell you that people were being
12 fined for --

13 A. No.

14 Q. -- filing these --

15 A. No.

16 Q. -- returns?

17 A. No.

18 Q. Did he tell you whether or not people were being
19 penalized --

20 A. No.

21 Q. -- for filing these returns?

22 Did he ever tell you whether or not people were being
23 prosecuted --

24 A. No.

25 Q. -- for filing these zero returns?

1 A. No, otherwise I would have got up and left, you know.

2 MR. NEIMAN: Your Honor, if I may approach the witness,
3 please?

4 THE COURT: You may.

5 MR. NEIMAN: For the record, I'm handing the witness
6 what's been marked as Government's Exhibits 129 and 130.

7 BY MR. NEIMAN:

8 Q. Ms. Olen, if I can direct your attention to Government
9 Exhibit 129.

10 A. Yeah.

11 Q. Do you recognize that document?

12 A. Yes. This is the one he -- he filled out.

13 Q. "He" being Mr. Cohen?

14 A. Yes.

15 Q. And is that your signature on the bottom of -- or the back
16 of page -- page 1 of the return?

17 A. Yeah, I signed this after he signed it.

18 Q. All right. And is that Mr. Cohen's signature also on the
19 bottom?

20 A. Yes.

21 MR. NEIMAN: Your Honor, at this time the Government
22 would move into evidence Government's Exhibit 129.

23 THE COURT: Any objection?

24 MR. CRISTALLI: No objection.

25 MR. BOWERS: No, your Honor.

1 THE COURT: 129 is received.

2 MR. NEIMAN: Thank you.

3 (Government's Exhibit No. 129, received into
4 evidence.)

5 MR. NEIMAN: If we could display 129.

6 (Document displayed in open court.)

7 BY MR. NEIMAN:

8 Q. Ms. Olen, if -- looking at line -- okay. If we can go back
9 to the first page -- looking at line 7, what was the, uh -- from
10 where it says "Wages, salaries, tips," what is the amount
11 entered on line 7 of the tax return?

12 A. I have to get my glasses.

13 Q. I'm sorry.

14 A. I can't see.

15 THE COURT: Can you see it on the screen there?

16 BY MR. NEIMAN:

17 Q. On the screen, is it easier?

18 A. God no.

19 THE COURT: How's that?

20 MR. NEIMAN: How's that?

21 THE COURT: Look at the screen now.

22 THE WITNESS: Yeah.

23 THE COURT: No. This screen here.

24 THE WITNESS: Oh.

25 THE COURT: Can you see line 7?

1 THE WITNESS: Yeah, yeah.

2 BY MR. NEIMAN:

3 Q. What's the amount listed there?

4 A. Zero.

5 Q. Did you actually have wages in year -- in this year?

6 A. Well, yeah. Yes. But I didn't -- I didn't really look at
7 this. I mean, I just -- he said, "Sign it," so I signed it.

8 Q. Did Mr. Cohen know that you had wages in that year?

9 A. Well, yeah.

10 (Document displayed in open court.)

11 BY MR. NEIMAN:

12 Q. If we can go to the second page of the tax return.

13 A. Oh.

14 Q. If you blow up the signature, bottom portion.

15 THE COURT: Look at your screen.

16 THE WITNESS: Yeah.

17 BY MR. NEIMAN:

18 Q. That's your signature, ma'am?

19 A. Yes.

20 Q. And the date of that?

21 A. February 13th, '01.

22 Q. All right. And, if we could look at the signature
23 underneath "Paid Preparer," do you -- did you see Mr. Cohen sign
24 this return?

25 A. Oh, yeah. He signed it before I signed it.

1 Q. Explain to me what you mean by he signed it before I signed
2 it.

3 A. Well, he signed it and then he handed -- he took Xerox
4 copies of it and then he gave me a couple copies, one to mail in
5 and one to keep. The one I have at home doesn't have my
6 signature on it because he took a Xerox copy of it before I
7 signed it.

8 Q. Did he --

9 A. I signed it at home.

10 Q. Did he give you instructions as to what to do with this tax
11 return?

12 A. He said mail it in to get your money. And I see it's 3,500.
13 That's a lot.

14 Q. All right. If we could blow up, I believe, refund amount on
15 line -- my vision's terrible too. If we could -- yes, please --
16 line 65a, what's the amount of the refund you requested?

17 A. 3,505.

18 Q. Now, if you could direct your attention to the attachment to
19 the zero return.

20 (Document displayed in open court.)

21 BY MR. NEIMAN:

22 Q. Is that your W-2 attached -- I'm sorry. First -- to the tax
23 return? I'm sorry. I realize it's jumpin' around a bit.

24 A. (Reviewing document.) Yeah, that's me.

25 Q. All right. And the next page of the tax return.

1 (Document displayed in open court.)

2 BY MR. NEIMAN:

3 Q. Did you write this letter or this attachment to your zero
4 return?

5 A. No, I didn't -- no, I didn't write it.

6 Q. Who wrote it, if you know?

7 A. Larry wrote it and he put the zero -- all the zeroes in and
8 I just had to put my name at the top, and the amount.

9 Q. All right. And the amount is on the second page of the
10 attachment?

11 A. Right. No, that's not even my handwriting for the amount.

12 Q. Whose handwriting is that for the amount?

13 A. Well, it has to be Larry's because he's the only one that
14 touched it.

15 Q. All right.

16 A. Did I send this in with the thing?

17 Q. Well, did you, Ms. Olen, send this in with the tax return?

18 A. It's so long ago I don't remember.

19 Q. All right.

20 A. I mean, these two went together and --

21 Q. Did --

22 A. -- can you tell me what this says?

23 Q. What are you referring to, ma'am?

24 A. On the --

25 Q. On the W-2?

1 A. Yeah.

2 Q. Is -- is it your W-2?

3 A. Well, I can't see the employer's name.

4 THE COURT: Well, there is "VMPI Nevada Inc." and there
5 is "NOS Communications Inc."

6 THE WITNESS: Okay. That's that -- that one I couldn't
7 remember.

8 BY MR. NEIMAN:

9 Q. The VMPI?

10 A. Yes. That was the one after NOS. That was just, like, for
11 a couple months.

12 Q. Okay. Did you provide all these W-2's to Mr. Cohen when he
13 prepared your return?

14 A. Well, yeah.

15 Q. Did you ever read any of the cases cited in that attachment?

16 A. No. No, I don't read stuff.

17 Q. When you filed this return were you expecting a refund?

18 A. Yeah.

19 Q. Did you get a refund?

20 A. No. I just got a letter.

21 Q. Do you remember what this letter you got -- who -- who this
22 letter you got was from?

23 A. From the IRS saying that I had to pay and I don't remember
24 exactly what it said. But it was like a threatening letter. If
25 you don't pay, you go to jail or something like that.

1 Q. Ms. Olen, did Mr. Cohen charge you for the preparation of
2 this return?

3 A. No, because we were friends.

4 Q. Did he indicate whether or not he charged other people for
5 preparing these returns?

6 A. He didn't tell me. He said that -- well, yeah in -- in a
7 sense he did because he said people pay to have this done. But,
8 since we're friends, I'm not gonna charge you. But you have to
9 promise when you get your \$3500 that you buy Irwin's book for 50
10 bucks. And I said, "Sure. I'll buy it."

11 Q. And did you ever buy the book?

12 A. No. I never got the 3500.

13 Q. And if I could direct your attention to Government
14 Exhibit 130, which should be in the second folder in front of
15 you.

16 (Document displayed in open court.)

17 BY MR. NEIMAN:

18 Q. Do you recognize that document?

19 A. (Reviewing document.) Look likes a letter that I got from
20 them.

21 Q. And is that letter addressed to you?

22 A. Yeah.

23 Q. And does it pertain to the 2000 tax year? If you look --

24 A. Right.

25 Q. -- on the top right.

1 A. It's stamped March 21st, '01. And I would have to reread
2 it.

3 MR. NEIMAN: Your Honor, at this time the Government
4 would move into evidence Government's Exhibit 130.

5 MR. BOWERS: No objection from me.

6 MR. CRISTALLI: No objection, your Honor.

7 MR. SCHIFF: No objection.

8 THE COURT: 130 is received.

9 (Government's Exhibit No. 130, received into
10 evidence.)

11 MR. NEIMAN: If we could just blow up, I guess, the
12 first two paragraphs.

13 (Document displayed in open court.)

14 BY MR. NEIMAN:

15 Q. Is this the letter you're referring to that you said was
16 threatening from the IRS?

17 A. Well, yeah.

18 Q. And what did you do once you received this letter?

19 A. Well, I called Larry and I said I got this letter, you know,
20 from the IRS sayin' that -- I have to read it again. But that I
21 have to pay. And he said, "Well, that was expected. That's
22 what they normally do. So now we have a rebuttal letter."

23 Q. Did -- did he tell you that this letter was going to be
24 coming when you filed the initial -- initially filed the zero
25 return?

1 A. No.

2 Q. Uh, and what did he say with regards to this rebuttal
3 letter?

4 A. Well, come on back to the office and I'll give you the
5 rebuttal letter; send that in. So I did.

6 Q. And...

7 A. I don't remember what it said 'cause I didn't read it. It
8 was several pages long.

9 MR. NEIMAN: Your Honor, I believe we have what's been
10 previously provided to the Court Government's Exhibit 131. If
11 we could please hand that to Ms. Olen.

12 Your Honor, this was the document that was
13 conditionally admitted.

14 THE COURT: Yes.

15 BY MR. NEIMAN:

16 Q. Ms. Olen, do you recognize Government Exhibit 131?

17 A. Yeah. It was long; I just signed it.

18 Q. Is this the rebuttal letter that you were referring to
19 earlier?

20 A. Right.

21 MR. NEIMAN: Your Honor, at this time the Government
22 would move in Exhibit 131.

23 THE WITNESS: Yeah, this is when they said they were
24 gonna --

25 THE COURT: Go ahead.

1 MR. BOWERS: I don't --

2 THE COURT: Any objection --

3 MR. BOWERS: -- I don't have any objection to that.

4 THE COURT: -- to 131?

5 MR. CRISTALLI: No, your Honor.

6 MR. SCHIFF: No objection.

7 THE COURT: 131 is received.

8 MR. NEIMAN: Thank you.

9 (Government's Exhibit No. 131, received into
10 evidence.)

11 (Document displayed in open court.)

12 BY MR. NEIMAN:

13 Q. Ms. Olen, did you prepare this letter?

14 A. No.

15 Q. Who prepared it?

16 A. Oh, why I'm assuming, uh, Larry because it came from him.

17 So I don't know who actually prepared it. But...

18 Q. Did you go back to Freedom Books in order to have this
19 letter prepared?

20 A. Yeah. He said, "Come on in and I'll give you the rebuttal
21 letter." So I went in, he gave me the letter, I signed it and
22 mailed it in.

23 Q. In either of your visits to Freedom Books, did you ever meet
24 Mr. Schiff?

25 A. No.

1 Q. Did you ever meet Ms. Neun?

2 A. No.

3 Q. This second time you went into Freedom Books what were
4 Larry's work -- did Larry work in the same place --

5 A. Yeah.

6 Q. -- that he worked in the previous visit?

7 A. Yeah.

8 Q. And you conducted your meeting in that same office space?

9 A. Yeah. I mean, it was just in and out, you know. No...

10 Q. Did you send this letter to the IRS?

11 A. Oh, yeah, I did.

12 Q. What did you get in response?

13 A. Well, um, I think another letter -- I don't know -- sayin'
14 that they were gonna -- maybe that's -- I don't know. It's
15 confusing -- but that they were gonna charge me penalties and
16 everything else for not paying.

17 Q. Did --

18 A. So it said somewhere in the letter to call Utah.

19 Q. And did you call Utah?

20 A. Oh, yeah.

21 Q. And what did you say when you called Utah?

22 A. You want me to tell you what I really said?

23 Q. Well --

24 MR. BOWERS: Yes, we do. That's --

25

1 BY MR. NEIMAN:

2 Q. You need --

3 MR. BOWERS: -- the question.

4 BY MR. NEIMAN:

5 Q. -- you need to answer the question.

6 A. Okay. Well, I called and I said, Why are you after an old
7 lady like me for 256 bucks when you got, uh, that Marc Rich,
8 millions of dollars he owes you and you just let him go, you
9 know, out of the country. You don't chase him. Just little old
10 ladies, you know.

11 Q. And --

12 A. So the -- I can't remember if it was a man or a woman, but I
13 think it was a woman. And, um, she said or he said, you know,
14 well, if you pay, we'll drop the penalties of the \$500. And so,
15 um, I said, okay, 'cause I didn't want to get in trouble. I'm
16 too old to go to prison. You know, it's not worth it.

17 Q. Did you -- so did you make payment of the \$256?

18 A. Yeah. They set up a payment program for on me for 25 a
19 month. And then I don't know. I got hold of some money. I
20 don't know if my son gave it to me or what. Anyways, I -- I
21 think I only made one payment and then I paid 'em off.

22 Q. And did you tell Mr. Cohen that you were paying off --

23 A. Yeah. I says I don't want to be in this.

24 Q. And what did Mr. Cohen say to you in response?

25 A. Okay. I mean, he didn't force me to do anything, you know.

1 Q. -- he didn't suggest to you to buy his book; he was talking
2 about --

3 A. No --

4 Q. -- Irwin?

5 A. -- Irwin. That -- that book he showed me. I didn't know
6 Larry had a book.

7 Q. You knew -- you knew Larry, like, a long time ago, didn't
8 ya?

9 A. Yeah, a long time. 17 years.

10 Q. Did -- did Larry ever --

11 A. When he had hair.

12 Q. Did Larry talk to you about like, uh, taxation or, uh, the
13 income tax or any of this stuff when you -- you knew him prior
14 to meeting Irwin?

15 A. No. He was just a normal person.

16 Q. So did you perceive a change after that?

17 A. A change?

18 Q. At some point in time, did he change? Did he become not a
19 normal person or have different beliefs?

20 A. Well, our friendship kinda drifted, you know, once we were
21 no longer driving cab. And, um, he went his way. And Sharon
22 and I would talk once in a while, maybe once or twice a year as
23 friends, you know, getting caught up on our friendships, you
24 know.

25 Q. Let me stop you just a second 'cause I want to be careful

1 about what you and Sharon said. And I don't mean to box you in,
2 but I gotta ask you a very specific question. If you don't
3 know, you don't know.

4 Would you say that Larry's thoughts and ideas about
5 taxation changed after his association with Irwin Schiff?

6 A. Yes, in a sense. But, I mean, it wasn't anything I really
7 thought about.

8 Q. That you really thought about?

9 A. I mean, I didn't sit there and think about it.

10 Q. Okay. Well, lookin' back you'd say that's true?

11 A. Yeah.

12 Q. Okay. Um, now, he did say to you "people pay for this
13 service," but he didn't say they pay me or they pay Irwin or how
14 much; he just said, you know, people pay for this?

15 A. Right.

16 Q. Is it fair to say that Larry in his demeanor, at least as
17 you've known him or experienced him, is, you know, kind of, um,
18 you know, might be kind of kidding, you know, at times? Light,
19 kind of jovial I think was the phrase that you used. Is that
20 fair?

21 A. In respect to what?

22 Q. In his -- in his tone and mannerisms with people in
23 conversations. Larry's not a real serious guy.

24 A. No. I -- he's just a -- he's a kidder.

25 Q. He's a kidder?

1 A. Yeah.

2 Q. Kinda easy going?

3 A. Right.

4 Q. Laughs?

5 A. Right.

6 Q. Okay.

7 A. Good with people.

8 Q. What's that?

9 A. Good with people.

10 Q. Good with people.

11 Affable, that kind of thing?

12 A. Sales, yeah.

13 Q. Okay. Um, now, you never saw -- Larry never told you that

14 he didn't believe in this program; is that correct?

15 A. No.

16 Q. And --

17 A. He seemed to believe in it.

18 Q. He never said anything to the contrary; right?

19 A. No.

20 Q. Um, as a matter of fact, in this process didn't it occur at

21 some point where, uh, you're -- you're concerned and you're

22 sayin': Larry, wow, you know, geez, the IRS. This is -- you

23 know, what did you get me into? And his response to you is,

24 well, you can't go to jail because you're not doing anything

25 wrong.

1 A. Right.

2 Q. Do you recall that?

3 A. Right.

4 Q. Okay. Um, now, when he gave you the material, it's clear
5 from your testimony today that you didn't actually read it in
6 any level of detail; right?

7 A. No, I don't...

8 Q. I -- I understand.

9 A. I'm not one -- I know that's wrong, but...

10 Q. And I'm not judging that. I'm just making sure you didn't
11 do it. Is that -- is that right?

12 A. Right.

13 Q. Okay. But isn't it also true that when he gave it to ya he
14 said, you should read this. I'm available. You can talk to me
15 about it, when he gave you the instructions to take it home and
16 sign it?

17 A. He could have. I don't remember him specifically saying
18 that. But...

19 Q. But you don't dispute that he have might have said that?

20 A. No. I just trusted him.

21 Q. Okay. And, um, at some point you -- you elected to sort of,
22 um, stop this process as -- as you understood it?

23 A. Right. I started getting nervous.

24 Q. Sure.

25 Did you -- did you -- you didn't tell Larry that,

1 though, and give him an opportunity to talk to you about it;
2 right? You were just kinda done with it?

3 A. I don't remember all -- no. I think I told him that, you
4 know, I'm not gonna do any more; I'm gonna pay 'em because I'm
5 gettin' nervous. I think he said, fine, you know.

6 Q. Didn't ask you for money or --

7 A. No, no --

8 Q. -- or to buy --

9 A. -- no, no --

10 Q. -- another tape or --

11 A. No, no --

12 Q. -- anything like that --

13 A. -- no, no, no.

14 Q. -- right?

15 One last question. When you called the IRS office --

16 A. Yes.

17 Q. -- in Utah, did you have a discussion with them in -- in
18 detail of your understanding of the law and they said, no,
19 that's not the case. Or did you just say, hey, I need outta
20 this. Whatever it takes I'm -- I'm here. Do you recall? Or
21 something other than those.

22 A. No, I don't really remember. All I remember is that I was
23 upset. And, when I'm upset, I say things. But, uh, that's why
24 I threw in Marc Rich, you know, and all that.

25 But, uh, no. I just said that this is what I

1 understood. If it's wrong, I wanna pay. But I don't wanna pay
2 no penalties, you know. If I don't have 256, how can I get
3 another 500 bucks, you know?

4 Q. Right. And they took the penalty away?

5 A. Yes.

6 Q. Who's Marc Rich?

7 A. You don't know?

8 MR. NEIMAN: Objection. Relevance.

9 MR. BOWERS: She's referenced it a couple times.

10 THE COURT: Sidebar? That's a no.

11 MR. BOWERS: It's all right. I'll let it go. It's
12 fine.

13 BY MR. BOWERS:

14 Q. Um, oh, just one last question. I'm sorry, Ms. Olen.

15 Would it be fair to say that you never -- well, no.

16 You know what? Thank you. Sorry. Have a nice day. I don't
17 have any further questions.

18 THE WITNESS: Okay.

19 THE COURT: Mr. Cristalli?

20 MR. CRISTALLI: No, sir.

21 THE COURT: Mr. Schiff?

22 MR. SCHIFF: No questions.

23 MR. NEIMAN: Nothing further from the Government.

24 THE COURT: Thank you.

25 The witness is excused. Watch your step getting down,

1 Ms. Olen. There are a couple of steps on the way out. One more
2 right there. One more right in front of you.

3 THE CLERK: Be careful. There you go.

4 THE COURT: Government's next witness.

5 MR. NEIMAN: Your Honor, our next witness is either one
6 floor up or down. If we could just have a moment of the Court's
7 indulgence to find out where she is.

8 THE COURT: Oh, okay.

9 MR. BOWERS: We could probably take a break, your
10 Honor.

11 THE COURT: Well, we're -- if it's gonna take a few
12 minutes, we will take a break.

13 MR. NEIMAN: She's on her way down right now, your
14 Honor.

15 MR. CRISTALLI: Who is it?

16 MR. IGNALL: The Government calls Michelle Degrosselier
17 as our next witness.

18 THE COURT: Okay.

19 (Pause in the proceedings.)

20 JUROR NO. 8: While we're waiting, can I take a recess?

21 THE COURT: Oh. We'll take a recess right now, yeah.
22 No problem. We're close enough to mid way. Be in recess
23 approximately 15 minutes.

24 (Jury leaves the courtroom at 2:52 p.m.)

25 THE COURT: Okay.

1 (Recess from 2:52 p.m. to 3:11 p.m.)

2 THE CLERK: All rise.

3 THE COURT: All right. Bring in the jury.

4 THE CLERK: Yes, sir.

5 THE COURT: Bring in the witness, please. Witness

6 ready to go?

7 MR. IGNALL: Your Honor, may I raise one thing briefly?

8 THE COURT: Oh, yes.

9 MR. IGNALL: Uh, Mr. Cristalli and I have talked about

10 this issue. I think it came up as an issue yesterday. Uh, I

11 believe Mr. Schiff and Ms. Neun at one point accused our next

12 witness, Ms. Desgrosellier, of stealing. And Mr. Cristalli and

13 I have agreed he may cross-examine her about that, but he's not

14 gonna attempt to prove anything about that through any extrinsic

15 evidence, which I think is the appropriate procedure under Rule

16 608(b).

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

18 THE COURT: All right. Thank you.

19 MR. CRISTALLI: Your Honor, I know that there was some

20 reference to Exclusionary Rule being imposed. I don't know if

21 we ever formally did that or not.

22 THE COURT: The Exclusionary Rule is in effect.

23 MR. CRISTALLI: Thank you.

24 THE COURT: Witnesses will remain outside the courtroom

25 until called to testify and will not discuss their testimony

1 with other witnesses.

2 MR. IGNALL: Your Honor, do you want the witness on the
3 stand now?

4 THE COURT: Please.

5 MR. IGNALL: All right.

6 (Jury enters the courtroom at 3:13 a.m.)

7 THE COURT: Please be seated.

8 Will counsel stipulate to the presence of the jury?

9 MR. IGNALL: Yes, your Honor.

10 MR. BOWERS: Yes --

11 MR. CRISTALLI: Yes.

12 MR. BOWERS: -- Judge.

13 MR. SCHIFF: Yes.

14 THE COURT: Thank you.

15 You may proceed.

16 (Michelle Desgrosellier takes the witness
17 stand.)

18 THE CLERK: Will the witness please stand and raise
19 your right hand.

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

23 THE WITNESS: I do.

24 THE CLERK: Please be seated.

25 Please state for the record your full name and spell

1 your last name.

2 THE WITNESS: Michelle Desgrosellier,
3 D-e-s-g-r-o-s-e-l-l-i-e-r.

4

5 MICHELLE DESGROSELLIER,
6 called as a witness on behalf of the Government, having been
7 first duly sworn, was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MR. IGNALL:

11 Q. Good afternoon, Ms. Desgrosellier.

12 Could you perhaps move that microphone a little closer
13 to you so that everybody in the courtroom can hear what you're
14 saying?

15 A. Is that better?

16 Q. Ms. Desgrosellier, what area do you live in?

17 A. Henderson.

18 Q. How long have you been in this area?

19 A. Well, in the Las Vegas area approximately 10 years, since
20 1985 [sic].

21 Q. I'm sorry. Can you try and still speak into the microphone
22 there?

23 A. Okay.

24 Q. Thank you.

25 Do you know someone named "Cynthia Neun"?

1 A. Yes, I do.

2 Q. How do you know her?

3 A. She's my mother.

4 Q. All right. Do you know someone named "Irwin Schiff"?

5 A. Yes, I do.

6 Q. How did you first meet Mr. Schiff?

7 A. Through my mother.

8 Q. Can you explain how that happened and can you sort of tell
9 me when that happened?

10 A. Um, it was about 1998, I believe, was the first time that I
11 met Irwin. Um, my, mom was volunteering trying to sell a couple
12 of his, um, books, The Federal Mafia, for him. And, at that
13 time, I actually went to work to help out in the office.

14 Q. I'm sorry. What was your mom doing for Mr. Schiff? I
15 missed that.

16 A. She was selling his book, The Federal Mafia.

17 Q. Did your mother ever tell you if she was getting any money
18 for selling those book?

19 A. I believe she actually got her --

20 MR. CRISTALLI: Objection. It misstates the evidence.
21 She said that she was initially volunteering.

22 THE COURT: Well, that's -- that's not misstating the
23 evidence. The next question is: Did she ever say she was
24 getting any money.

25

1 BY MR. IGNALL:

2 Q. I'm sorry. Did --

3 THE COURT: It's a different next question. Overruled.

4 BY MR. IGNALL:

5 Q. Did your mother ever tell you whether she was getting any
6 money for selling The Federal Mafia?

7 A. I believe she received, um, a rent check for \$750 to pay her
8 rent one month and that's --

9 MR. CRISTALLI: Objection. Calls for speculation.

10 BY MR. IGNALL:

11 Q. Did your -- did your mother tell you this?

12 A. I saw it and I was there when the check was written to her.

13 Q. Who wrote the check?

14 A. Linda. And Irwin signed it for my mom.

15 Q. All right. Thank you.

16 THE COURT: Overruled.

17 BY MR. IGNALL:

18 Q. Uh, at some point I think you mentioned something about
19 working for Mr. Schiff?

20 A. Yes, I did.

21 Q. At -- at what point did you start working for Mr. Schiff?

22 A. Um, I started working for him in 1998 'cuz, um, they needed
23 help, uh, setting up, uh, radio programs and things --

24 Q. All right. Where was it that you started work?

25 A. Um, 6th -- on -- when the office was on 6th Avenue.

1 Q. What was the name of the business?

2 A. Freedom Books.

3 Q. All right. Who hired you?

4 A. Linda Hicks.

5 Q. What was her position at the time?

6 A. She was the office manager.

7 Q. And what were you hired to do at Freedom Books in 1998?

8 A. To help with the shipping and to help, um, code IRS Code
9 books and help with whatever they needed at that time.

10 Q. Did you have anything -- did you have any responsibilities
11 with help -- as far as helping Schiff with publicity?

12 A. Yes. On the radio program, setting him up with radio
13 programs through, um, actually Linda's fiancé, Dennis, um, who
14 was doing that at that time. I helped him. I was kind of his
15 right-hand person at that time.

16 Q. How many people worked there when you started in 1998?

17 A. Um, approximately -- I think there was about six, seven,
18 maybe eight employees total, including Linda.

19 Q. And what was the business that Freedom Books was in?

20 A. Um, selling materials that, um, Irwin had created.

21 Q. How long did you work there in 1998?

22 A. A very short period of time due to the fact that Linda and I
23 did not really get along. She was afraid I was out to take her
24 job. So she fired me.

25 Q. And how long, as best you can recall, were you working there

1 at that time in 1998?

2 A. Um, maybe three months, I would say. Um, I'm not -- maybe
3 three months. I'm not exactly sure. It was a very short period
4 of time.

5 Q. At some point after that, did you end up working at Freedom
6 Books again?

7 A. Yes. Actually, Linda wanted -- um, Linda had stated that
8 she felt the only person who she knew that would be competent
9 enough to do the job that she was doing would be me and because
10 I am so much like her as well as pretty headstrong like Irwin
11 himself and that I would be the person to do the job, if
12 anybody --

13 Q. And --

14 A. -- could.

15 Q. -- what time period was that? How long after your first
16 stint?

17 A. Um, um, Linda got married. And then it was shortly after
18 Linda got married they decided to move. So then I came in to
19 train right underneath Linda, um, in 1999.

20 Q. 1999? I'm sorry. I couldn't --

21 A. Uh-huh. April --

22 Q. -- hear that.

23 A. -- of 1999.

24 Q. All right. What were your job responsibilities when you
25 started at Freedom Books in 1999?

1 A. I was the office manager. I ran the entire office. I did
2 the hiring, the firing. I did, um, paying of employees. I, um,
3 did everything. I set up all of his, um, out-of-town seminars.
4 I helped schedule all of his plane flights. Everything down to
5 his dry cleaning.

6 Q. How much were you paid when you started at Freedom Books?

7 A. Um, when I originally was hired, I was hired at \$450 per
8 week salary.

9 Q. Did your salary go up at any point?

10 A. Yes, it did. And it went up to -- I think it topped out at
11 550 per week was the max that I made.

12 Q. How were you paid?

13 A. Cash --

14 Q. Were any --

15 A. -- but --

16 Q. Pardon me?

17 A. Cash. But, I mean, through me cash. It was my writing a
18 check to myself and then paying everybody in the office,
19 including myself, in cash.

20 Q. Did anyone in the office get a paycheck?

21 A. No. Nobody, um -- no. Nobody wanted paychecks.

22 Q. Did you have any taxes withheld from your weekly salary?

23 A. Um, no, I did not.

24 Q. Do you know whether any other employee had taxes withheld?

25 A. No. I know that no other employee ever had taxes withheld,

1 not only for the purpose -- nobody ever had their Social
2 Security numbers on any documentation in the office. That was
3 part of Linda's training with me.

4 Q. Did you ever receive a W-2 or a Form 1099 at the end of the
5 year?

6 A. No.

7 Q. Did you fill out a Form W-4 when you started working there?

8 A. No, I did not. Nobody's Social Security numbers were
9 anywhere. And on a W-2 you'd have to put your Social Security
10 number.

11 Q. Are you familiar with the records of other employees at
12 Freedom Books?

13 A. All of them, yes. And nobody had Social Security numbers on
14 any documentation in that office.

15 Q. Did you have access to employee records as the office
16 manager?

17 A. I had all the access.

18 Q. Was there any discussion around Freedom Books about why
19 people were getting paid in cash?

20 A. Um, the only discussion that needed to be spoken of was the
21 discussion that me and Irwin had regarding how much each
22 employee were to make and whether the bonus system -- when we
23 set up a bonus system and how it was to be paid.

24 Q. All right.

25 A. If they sold certain items, um, we were setting up a system

1 to where if they sold a certain amount of Freedom Packages they
2 would get an extra cash bonus --

3 MR. SCHIFF: I can't -- did she --

4 THE WITNESS: -- that was tacked onto --

5 BY MR. IGNALL:

6 Q. I'm sorry. I'm sorry. Ms. Desgrosellier --

7 MR. SCHIFF: Objection. I can't hear what she's
8 saying.

9 BY MR. IGNALL:

10 Q. If you could speak maybe a little slower and --

11 MR. SCHIFF: I can't hear anything.

12 BY MR. IGNALL:

13 Q. I'm not sure whether -- it may be a little tricky to get
14 just the right distance from the microphone.

15 A. Is that better?

16 THE COURT: Just slow down a little bit, if you can.

17 THE WITNESS: Okay. Sure.

18 MR. IGNALL: Yeah. I think a little slower --

19 THE WITNESS: Sorry.

20 MR. IGNALL: -- might help.

21 THE WITNESS: Wow, now I'm loud.

22 MR. SCHIFF: Can I hear the entire answer to that
23 question, please?

24 THE COURT: Okay. Here's the question: Were there
25 any -- were any discussions around Freedom Books about why

1 people were getting paid in cash?

2 BY MR. IGNALL:

3 Q. And then I believe you said you had a discussion with
4 Mr. Schiff about this?

5 A. Yes, and everybody as well. When I was first trained by
6 Linda, it was -- excuse me -- it was, um, procedure at that time
7 that everybody be paid in cash. Linda is the first one that
8 told me that: Michelle, you are to write a check to yourself,
9 go to the bank or if you could have some other employee go to
10 the bank --

11 MR. SCHIFF: I still didn't hear -- still didn't hear
12 her answer. I don't know if it's my hearing or what. I didn't
13 hear the answer.

14 BY MR. IGNALL:

15 Q. Yeah. If you could try and slow down maybe a little bit
16 more. I'm sorry.

17 MR. SCHIFF: Excuse me.

18 THE WITNESS: Linda Hicks, um, when she was, um,
19 training me originally, she told me, Michelle, you are to go to
20 the bank, write a check -- and she even when I first started
21 wrote a check to me and had me do it for the first two weeks of
22 my employment when I was training under Linda.

23 Then she said at that time right before she had left
24 for me to go to the bank; cash that check in my name; bring the
25 cash back; and pay the employees, to hand out the cash to them.

1 Originally that was how it was set up.

2 I asked her at that time: Why is it that nobody gets a
3 check? Why can't we write them a check? Well, there were
4 certain employees at that time that were under other -- they had
5 other means of income, such as unemployment, Social Security,
6 um, there were other means for them that they could not be on
7 paper for receiving more money than what they were claiming.

8 BY MR. IGNALL:

9 Q. Thank you.

10 A. So then I spoke with Irwin --

11 Q. I'm sorry. That's good. Let me get to the next question.

12 A. Oh, I'm sorry.

13 Q. Did you speak with Mr. Schiff about how all the employees
14 were being paid?

15 A. Yes, because there was a question as to whether or not I was
16 to receive the signature stamp and all the other keys that Linda
17 had: um, his car keys, those sort of things.

18 So we had all sat down with Irwin. And Irwin said
19 directly to me and Linda both, said, yeah, give her everything.
20 That's for her to keep. And he entrusted me with that knowing
21 that I would do what was right.

22 Q. All right. Um, when you started working at Freedom Books
23 this second time in 1999, was your mother there?

24 A. Um, I hired my mom, um, shortly after I worked there, yes.

25 MR. CRISTALLI: Foundation.

1 BY MR. IGNALL:

2 Q. What -- what did you hire -- well, you -- when you started
3 there, what was your role when you started in 1999?

4 A. My role?

5 Q. At Freedom Books.

6 A. I was the office manager. I hired and fired all
7 employees --

8 Q. All right.

9 A. -- I've -- everything. I did everything. I did all --

10 THE COURT: Are you looking for foundation as to the
11 time?

12 MR. CRISTALLI: As to the hiring time frame and to --

13 THE COURT: She said few months after she started in
14 1999.

15 MR. CRISTALLI: Okay. I'd like to know, um, how the --
16 um, how -- how the hiring occurred as she defines hiring.

17 MR. IGNALL: Your Honor, it's a common term.

18 BY MR. IGNALL:

19 Q. What -- what --

20 A. I can --

21 Q. -- tell me --

22 A. -- explain that.

23 Q. -- when did you hire your mother?

24 A. Um, well, my mom first was coming in to, um, help out. Um,
25 of course, when I first started working there, my mom was

1 already helping out. Um, and she was making breakfast for Irwin
2 in the office; she was helping with, um, setting up the lobby.
3 And then they decided that, you know, she might as well come to
4 work to be Irwin's little lobby girl. That's what he called her
5 and that's what she was hired for. She was hired --

6 Q. Who hired her?

7 A. Irwin and I both hired her, felt like that would be a good
8 position for her, seeing as how at the time we were very slow
9 business. And originally when we first -- when she first
10 started working there, she had back problems. And so we figured
11 that would be the only position that she could have where if she
12 needed to leave she could leave. However, that position because
13 much, much more demanding --

14 Q. Okay.

15 A. -- and she was required --

16 Q. All right.

17 A. -- to stay longer.

18 Q. Okay. We'll get to that in a minute.

19 When -- you said you started in April of 1999?

20 A. That is correct.

21 Q. How long after you started there did you and Irwin hire your
22 mother?

23 A. Well, because she was already working there per se, um, then
24 she became more like an employee, I would say, maybe a month or
25 two after I was there. April, May, June maybe.

1 Q. All right. And do you know --

2 A. I don't remember --

3 Q. -- how much --

4 A. -- exactly.

5 Q. -- your mother was initially getting paid when she was hired
6 on?

7 A. What I knew she was getting paid, because I paid her, was
8 \$600 a week.

9 Q. And did you physically pay her --

10 A. Yes, I did.

11 Q. -- the \$600?

12 And in what format was that \$600?

13 A. Cash.

14 Q. Thank you.

15 Did you ever see your mother receive any compensation
16 beyond the cash that you physically provided to her on a weekly
17 basis?

18 A. Um, with my own eyes, no.

19 Q. All right. When you started working at Freedom Books,
20 did -- did your mother have any kind of relationship with
21 Mr. Schiff?

22 A. Um, yes. They started dating.

23 Q. Around when was that?

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

25 Q. All right.

1 A. I can't be honest -- I mean, to be honest, I don't know --

2 Q. All right.

3 A. -- at what time they started dating.

4 Q. All right. I think you were mentioning before: Did your
5 mother's responsibilities change during the time that you were
6 the office manager?

7 A. Well, not necessarily change, but they became much more
8 demanding because there were so many people walking in off the
9 street curious because he was making a lot of radio appearances
10 and we had just redone the book, um, reprinted The Federal Mafia
11 and that became a huge, huge, um, wave of people trying to get
12 to know what Irwin was all about. So it became a much more
13 demanding job to be the person in the lobby helping those that
14 walked in.

15 Q. What were her additional responsibilities, if any?

16 A. Um, to answer the phones, like it was with every other
17 employee, if anybody were to call in, to take orders over the
18 phone, as well as, um, any customer that were to walk in off the
19 street, whether it be a normal customer or repeat customer,
20 whatever, or a brand new customer, she was to guide them in the
21 direction of the materials that she felt that they needed to get
22 because my mom -- she read up on Irwin's stuff very fast and
23 learned it very quickly and became very fluent in it.

24 Q. All right.

25 A. She knew a lot of it.

1 Q. All right. Do you know was Freedom Books -- did anyone at
2 Freedom Books prepare tax returns while you were working there?

3 A. Yes, they did.

4 Q. Was there a particular type of tax return that people
5 prepared at --

6 A. The 1040 --

7 Q. -- Freedom Books?

8 A. -- zero return.

9 Q. What's a zero return?

10 A. Uh, the return that -- the return that Irwin has, um, taught
11 the followers to file regarding, um, if they were ever exempt or
12 if they weren't exempt and, um, to have anything that they may
13 have had put in throughout the year, um, paid into taxes
14 returned to them at the end of the year.

15 Q. Did you -- did you ever hear of anyone who filed this zero
16 return having a problem with the IRS while you worked there?

17 A. Most generally, um, people would receive a letter or two or
18 three or four or five. Um, just depended on the person --

19 Q. A letter saying --

20 A. -- or the case.

21 Q. -- what?

22 A. Um, they would either receive a fraudulent, um, letter. Uh,
23 they would receive frivolous penalties. They would receive lien
24 or levy letters. Um, they would receive, um, several --
25 CP 504's. They would receive a lot of letters that Irwin had

1 already prepared documents for them to respond to those letters
2 with.

3 Q. Did -- did you ever have a discussion with Mr. Schiff about
4 people having these problems with the IRS?

5 A. Yes, several discussions regarding the fact that they would
6 come to me, as the office manager, thinking I would be the first
7 one to turn to as to why they felt as though he was not giving
8 them help. And then he started setting up other -- you know,
9 other means to try and help them if they had further questions,
10 for a fee.

11 Q. I'm sorry. What was the last part?

12 A. For a fee. Like setting up more consultations and backyard
13 seminars and that sort of thing.

14 Q. What's a backyard seminar?

15 A. That's where he was doing audits for if anyone was to go in,
16 um, for a meeting in front of the IRS for any sort of audit or
17 anything, teaching them what to properly say and a how to say
18 it.

19 Q. Was there a fee to attend this backyard session?

20 A. Of course there was.

21 Q. You said something about a consultation. What was a
22 consultation?

23 A. Um, a consultation is where, um, a customer could call in
24 and set up a consultation appointment through me usually --
25 well, when it originally began, it was through me -- and it

1 would be prepaid, um, before they would come for their meeting
2 with Irwin. And that was a one-hour consultation fee, which was
3 \$200.

4 Q. All right. Did you ever hear your mother discuss
5 consultations?

6 A. Not while I worked there. Or if she was having them?

7 Q. No. To discuss with customers whether they wanted a --

8 A. Oh. That --

9 Q. That's a terrible question.

10 A. -- that I don't know. I don't really -- that was none of my
11 business really if she was asking them that.

12 Q. Let's go back to the zero returns.

13 Did you ever hear Mr. Schiff talk to customers about
14 filing a zero return?

15 A. Uh, yeah, everybody talked to all customers about filing
16 zero returns, including Mr. Schiff.

17 Q. Did Mr. Schiff ever give customers examples of other people
18 who had gotten refunds from following --

19 A. He would --

20 Q. -- from filing a zero return?

21 A. -- um, he would show, um, examples or copies of refund
22 checks that he had as, um, examples, yes.

23 Q. Uh, do you know how recent those examples were from the time
24 you were working there?

25 A. Um, they were there several years before I was there. So

1 they've been around for a while.

2 Q. Did you ever hear anyone come in to complain about not
3 getting a refund check?

4 A. Yes, several -- several customers did.

5 Q. Did you ever hear anyone complain to Mr. Schiff?

6 A. Yes, and get angry with him.

7 Q. How did he respond?

8 A. Uh, well, you need to buy this. You need to have this. You
9 need this. You need this piece of material. You need to get
10 Series 6. You don't have Series 6? Why don't you have
11 Series 6? You need to get Series 6, you need to get -- 'cuz at
12 that time that was the last series of his tapes was Series 6.

13 Q. Did you ever hear anyone come in to complain to your mother
14 that they hadn't gotten a refund check?

15 A. Yes. They complained to every -- all employees because they
16 would get very frustrated because they felt like Irwin would not
17 give them the time of day. And that was frustrating to people
18 who followed his materials.

19 Q. All right. Did you have, uh, any responsibility for
20 processing orders for materials?

21 A. Yes, I did.

22 Q. What were your responsibilities for processing orders?

23 A. Um, usually Bill Thomas would take care of most of them
24 because we would fax them off to him.

25 Q. Who is Mr. -- who is Mr. Thomas?

1 A. He was our shipping department; um, he was the one that took
2 care of all the shipping of most of the materials, um,
3 respectively. He --

4 Q. Where is he located?

5 A. He was in Indiana.

6 Q. All right. Thank you. I'm sorry.

7 A. Um-hum.

8 And we would fax the orders to him and then he would
9 ship them to the people. Unless if they were a walk in or a
10 Nevada order then, um, they walked in and, of course, walked out
11 with the materials as long as they paid for them.

12 Q. Uh, were you present in the office when Mr. Schiff had
13 consultations with customers?

14 A. Yes, I was in my office. And, um -- and I was also in my
15 office when he would have phone consultations as well.

16 Q. All right. When people came into the office for a
17 consultation, do you know whether they ever ordered any
18 materials?

19 A. Um, usually not. Um, usually if they were, like, a
20 first-time consultation, they never walked out of the office
21 unless they walked out with materials.

22 Q. And how do you know that?

23 A. Because Irwin would always hand me the order after they
24 left. And usually none of the information would be completed
25 and I would have to ask them for the rest of their information.

1 Q. All right. When it came to -- to getting orders for
2 materials, do you know how those orders came in? You said
3 something about people sometimes walked in. Could people order
4 products any other way?

5 A. Yeah. They could order them over the phone, over the
6 Internet. But if they were a Nevada order and they -- even over
7 a phone or over the Internet -- their order would be placed.
8 And some Nevada orders were actually mailed out. Um, however,
9 those orders were set up a little bit differently because of the
10 sales tax issue, and Nevada requires that you charge sales tax
11 on all orders. So...

12 Q. Did you charge sales tax on all Nevada orders?

13 A. Of course I did personally, of course.

14 Q. Did you observe whether other people in the office always
15 did?

16 A. Um, as long as the order was written up, yes, there was
17 sales tax, yes, tacked on. As long as the order was actually
18 written up, yes.

19 Q. Did you see any orders that were not written up?

20 A. Many orders that were not written up.

21 Q. And how -- how did customers pay for those orders that
22 weren't written up?

23 A. Cash.

24 Q. All right. Who did you see making sales that weren't
25 written up?

1 A. Irwin, my mom, Cheryl Godfrey. Um, several employees.

2 Q. Did you ever hear Mr. Schiff talk to anyone about whether to
3 fill out order forms?

4 A. Um, Irwin actually is the one who stopped many of the order
5 forms actually even being created when they were walk-in orders
6 because he would get upset with the fact that I would, um, send
7 a fax off to Bill Thomas, um, to let Bill know because Bill had
8 a database --

9 MR. SCHIFF: Objection. This is hearsay.

10 THE WITNESS: Bill had a database, um, that would
11 tell -- tell Irwin, if he ever wanted to know, what each
12 customer had ever ordered for purposes of repeat orders. And so
13 Bill would get angry with me if I didn't fax him the orders --

14 BY MR. IGNALL:

15 Q. All right.

16 A. -- such as a consultation or somebody walking into the
17 office and purchasing a piece of material. And then later
18 coming back saying, no, they -- they've never purchased that.
19 So Bill would -- so that was my job, as the office manager, to
20 straighten all those orders out.

21 Q. Okay. But the question I want to focus on is: Did
22 Mr. Schiff ever have a discussion that you heard about whether
23 to fill out order forms for every order?

24 A. Yes. He told all of us personally. I mean, I was right
25 there when he said, "Don't fill out an order on consultations."

1 And I said, "Bill requires us" -- "Bill wants us to."

2 Q. Okay.

3 A. That's what I was referring to. Irwin said specifically,
4 "You don't need to fill out an order on that" --

5 Q. Did --

6 A. -- and I said, "Yes, we do." We argued about it.

7 Q. What about order forms for materials?

8 A. Everything. That's all -- I'm speaking of all
9 Nevada-related things, including consultations. So if they
10 walked in and if it wasn't a piece of material that was yet to
11 be completed, such as Series 5, when I first started working
12 there, or Series 6, before I left, if those were not any of the
13 items that the customer walked out with, then the order was not
14 to be written up. The only reason why those orders needed to be
15 written up is because more materials needed to be sent to them
16 further along once they were completed.

17 Q. All right.

18 A. Those orders all had to be written up and sales tax, of
19 course --

20 Q. All right.

21 A. -- tacked on.

22 Q. Thank you.

23 Did you ever have a discussion with your mother about
24 whether to fill out order forms for every order?

25 A. She was there during the discussion -- the argument Irwin

1 and I had, yes. And there was several other employees there
2 because he wanted all of us to know that that was the new --
3 like he was setting the law down, do not write up orders for
4 anything unless it required further mailings.

5 Q. Did you tell him that you agreed or disagreed with that?

6 A. I didn't say anything. I -- 'cuz he knew I didn't agree,
7 but --

8 Q. Well --

9 A. -- I didn't say anything. But I didn't -- I also didn't do
10 what he said.

11 Q. Uh, I believe you testified that some customers paid for
12 materials or consultations in cash?

13 A. Yes.

14 Q. As the office manager, do you know what happened to the cash
15 at the end of each day?

16 A. Um, originally we had it set up -- and, um, I actually
17 caught another employee stealing some of the cash out of the
18 drawer that was at the front desk. Um, and so I went to Irwin
19 with that information. I guess later it was turned around, but
20 that's neither here nor there.

21 Um, it is, um, that a customer -- I mean another
22 employee was stealing the money. So we set it up to where we
23 would log all cash orders; all, um, e-mail orders or orders off
24 the Internet; and then also all the phone orders for the day in
25 a logbook. And I set that up -- um, with Irwin's request I set

1 that up --

2 Q. All right.

3 A. -- so that we would know.

4 Q. We'll get -- we'll get to a logbook in a minute. But my
5 question is: As the office manager, do you know what Freedom
6 Books did physically with the cash at the end of each day while
7 you work there?

8 A. Right. If it didn't go to me or to whatever employee
9 decided to put their hands in it, then it went to Irwin.

10 Q. All right. I'm gonna --

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

12 THE COURT: You may.

13 BY MR. IGNALL:

14 Q. I'm gonna hand you what we've marked as Government
15 Exhibit 76 and ask you if you could take a look at that
16 document.

17 Do you recognize Exhibit 76?

18 A. Yes, it is. It's the book I set up, um, upon Irwin's
19 request for how much money was actually coming in.

20 Q. Do you recognize any entries in there that you made?

21 A. Um, several. Almost -- almost all of them actually, in the
22 beginning anyway.

23 Q. And what -- what does that book record?

24 A. Um, all sales: all walk-in sales, all call-in, or
25 over-the-phone sales, the Internet sales, and then the daily

1 totals/monthly totals --

2 Q. All right.

3 A. -- for the business.

4 Q. Did you log sales as -- in ordinary course of business while

5 you were working there?

6 A. Yes. Every day at the end of the day I would, um, collect

7 all the orders that were written-up orders and I would go

8 through them and total them. And, if I was unable to do so, as

9 I can see here, um, there are other employees writing in here as

10 well, so they may have done that as well.

11 MR. SCHIFF: Was that --

12 BY MR. IGNALL:

13 Q. Did you log -- I'm sorry -- did you log any orders that

14 weren't written up?

15 A. In this book?

16 Q. In Exhibit --

17 A. No.

18 Q. -- 76?

19 A. No, because I went directly off of the order forms

20 themselves.

21 Q. All right.

22 MR. IGNALL: Government moves Exhibit 76 into evidence

23 at this time.

24 MR. CRISTALLI: Your Honor, I have not seen it yet.

25 MR. IGNALL: I'm sorry.

1 May I approach the witness, your Honor?

2 THE COURT: You may.

3 (Exhibit shown to defense counsel.)

4 (Pause in the proceedings.)

5 THE COURT: Uh, have we --

6 MR. IGNALL: I think --

7 THE COURT: Oh.

8 MR. IGNALL: -- defense counsel are looking at --

9 THE COURT: Okay.

10 MR. IGNALL: -- the book right now to determine if they
11 want to object.

12 MR. CRISTALLI: Your Honor, on behalf of Ms. Neun, we
13 don't have an objection other than previous pretrial motions
14 that have been filed that the Government's agreed upon.

15 MR. IGNALL: We agree with that, your Honor.

16 MR. SCHIFF: Well, I have an objection on the grounds
17 that it was --

18 MR. IGNALL: I think that's the same objection.

19 MR. SCHIFF: -- it was required -- I don't know if I
20 made the objection before to what I believe was an illegal
21 search and seizure in violation of the Fourth and Fifth
22 Amendment. But with that objection...

23 THE COURT: Mr. Bowers? Mr. Bowers, did you say --

24 MR. BOWERS: No, I have no objection --

25 THE COURT: You have no objection.

1 MR. BOWERS: -- your Honor.

2 THE COURT: 76 is received.

3 (Government's Exhibit No. 76, received into
4 evidence.)

5 MR. IGNALL: If we could...

6 THE CLERK: Touch it and the top lights will come on.

7 MR. IGNALL: There we go. Technology.

8 (Document displayed in open court.)

9 BY MR. IGNALL:

10 Q. All right. Ms. Degrosselier, can you identify your
11 handwriting on this document?

12 A. Yes, I can. The 5/20, 5 dash 20 [sic], on the date is my
13 mom's and then you can tell mine is different because the --

14 MR. CRISTALLI: Objection. Foundation.

15 MR. IGNALL: All right.

16 BY MR. IGNALL:

17 Q. Have you ever seen your mom's handwriting before?

18 A. I used to trace my mom's handwriting so that mine would be
19 very nice handwriting because she's an artist and she has great
20 handwriting.

21 Q. All right. So you recognize your handwriting on this --

22 A. Yes, I do.

23 Q. -- exhibit?

24 A. Yes, I do.

25 Q. What day do you recognize this entry for your --

1 A. Um, the date --

2 Q. -- handwriting?

3 A. -- the date that's mine. The date that you asked.

4 Q. Yes. The date, please.

5 A. The date. 5/23 is mine.

6 Q. All right. Now, I'm gonna look at the first column here.

7 It says, "WALK-IN TOTAL." What is that?

8 A. That's all the orders that were written up off of people who

9 walked into the store to purchase materials.

10 Q. And what is column 2? It says -- where it says "PHONE

11 TOTAL"?

12 A. PHONE TOTAL, yes.

13 Q. What is that?

14 A. All the orders that were placed that day over the phone.

15 Q. Where did -- where did you get the information to put in --

16 to put into the walk-in total?

17 A. Um, off of the orders that were placed for that day.

18 Q. But did you get that from any other employee at Freedom

19 Books?

20 A. Um, all orders went through me. Every order was handed to

21 me all the time because I was the one who had the fax machine in

22 my office and I faxed them to Bill Thomas so that he could put

23 them in, um, the database with each -- with each customer,

24 matched the information up with each customer.

25 Q. Did you ever get any numbers for these walk-in totals from

1 your mother?

2 A. Not, um -- not from her mouth, no. I would look at the
3 orders and double check, yes.

4 She may have written some of these numbers in the
5 walk-in total, but that does not necessarily mean that I did not
6 double check the totals because I...

7 Q. But did you --

8 THE COURT: I'm sorry. What did you say?

9 THE WITNESS: I said -- I was gonna say because I filed
10 the sales tax every month. So I would go through every walk-in
11 total order to make sure that they all matched this number, the
12 walk-in total number, at the end of the month.

13 BY MR. IGNALL:

14 Q. I think we talked a couple minutes ago about the
15 consultations that Mr. Schiff had with customers.

16 A. Yes.

17 Q. Do you know how people paid for those consultations?

18 A. Um, credit card, check, money order -- uh, check, money
19 order, credit card, or cash.

20 Q. Did you have any responsibility for keeping track of those
21 consultations --

22 A. I did originally.

23 Q. -- the amount?

24 A. I did originally. But then Irwin started to say that they
25 did not have to prepay for consultations at one point because he

1 got so mad at me because I would not stop writing the orders up.

2 Q. Did you ever -- did Mr. Schiff ever ask you for cash for any
3 reason?

4 A. No.

5 Q. Okay. Uh, you said -- explain to me again what your
6 responsibility was, and explain to the jury obviously, for
7 making the payroll every week?

8 MR. CRISTALLI: Objection. Asked and answered.

9 THE COURT: Excuse me.

10 She didn't talk about payroll; she talked about how she
11 paid the employees. But she didn't talk about making up
12 payroll. Overruled.

13 THE WITNESS: I'm sorry. Can you repeat the question?

14 BY MR. IGNALL:

15 Q. How often did employees at Freedom Books get paid?

16 A. Every week. Every Friday.

17 Q. Who determined how much the employees got paid?

18 A. Um, Irwin usually determined their pay scale, yes -- or
19 their salary, I should say. Everybody was salary --

20 Q. Did he --

21 A. -- nobody was hourly. So salary.

22 Q. Did he tell you how much each person was to get paid?

23 A. Yes, including myself and my mother.

24 Q. All right. And you said everyone got paid in cash.

25 A. Yes.

1 Q. And how did he get the cash?

2 A. I would write a check to myself off of either the Freedom
3 Books or Irwin Schiff account, depending on whichever one had
4 enough money in it for the payroll; go to the bank; cash it;
5 make the deposits on all the checks received in the mail and,
6 um -- all the checks or money orders received in the mail
7 throughout the week; and I would cash that check and, um,
8 disburse payments to the employees.

9 Q. Who did you write that check to --

10 A. Myself.

11 Q. -- to begin with?

12 And did you do that for the whole time you were working
13 at Freedom Books?

14 A. Yes. However, there was, um, one time I was able to finally
15 write a check to my mother. I believe there was one time.

16 Q. All right. Well, we can --

17 A. Yes.

18 Q. -- get to that.

19 A. But, other than that, yes, generally it was always me.

20 Q. Was there ever a time when there wasn't enough money in the
21 bank account to make payroll?

22 A. Yes. During the winter months, it gets very slow because
23 people really don't wanna think about taxes. So business isn't
24 really as booming. At least when I worked there it wasn't. So
25 there wasn't enough petty cash or orders coming in.

1 And, when we had a slow period -- because Irwin wasn't
2 able to get new materials out. We were trying to get a lot of
3 things done with the reprint and stuff. So, um, there wasn't
4 quite as much coming in as there was going out at that time.
5 So, yes, it was very slow and we didn't have enough money.

6 Q. What did you do then?

7 A. Asked Irwin to bring it.

8 Q. Did he?

9 A. Yes.

10 Q. Was there ever a time that Mr. Schiff didn't come up with
11 the cash for the payroll when you asked?

12 A. No.

13 Q. Do you know where the proceeds from Freedom Books were
14 deposited, if anywhere?

15 A. All the money, you mean, received?

16 Q. Yes.

17 A. Yes. In either the Freedom Books account, the Irwin Schiff
18 account, um, or in Freedom Foundation if he wanted. I mean,
19 that was up to him. I really didn't handle that account so
20 much. I -- I handed that off to another employee because I had
21 my hands full with the two.

22 Q. Did you have signature authority on any of those bank
23 accounts?

24 A. I had the signature stamp. So in -- yeah.

25 Q. For which bank accounts?

1 A. For the Bank of America Irwin Schiff -- well, I had his
2 signature stamp which gave me rights to all the accounts. But
3 just the Irwin A. Schiff account and the Freedom Books account
4 are the two that I primarily worked with.

5 Q. And what bank were those accounts at?

6 A. Bank of America.

7 Q. You said something about a Freedom Foundation bank account.
8 Where was that --

9 A. Yes.

10 Q. -- located?

11 A. Nevada State Bank.

12 Q. All right. What responsibility did you have for the Freedom
13 Foundation bank account?

14 A. Um, well, I had his signature stamp. So, whenever we did
15 the radio show payments out of the Freedom Foundation, I
16 would -- um, if he was out of town or anything, I would use the
17 signature stamp to approve those checks. But Charity -- I had
18 handed that check -- or that account over to Charity to handle
19 because the others were plenty for me and it was a lot.

20 Q. What do you know about, uh, deposits going into the -- the
21 Freedom Foundation bank account?

22 A. Um, all of the money that came in, either through the
23 mail -- because I was the only one who opened the mail as well.
24 Whenever the mail came in and, um -- I would open the mail.
25 And, if there was any donations, I would hand those to Charity.

1 She would set it up. Sometimes she would run and do the
2 deposits. However, there's been several times where I myself
3 have gone and done the deposits for the Foundation.

4 As, um -- like if Bill Thomas were to send me \$5,000,
5 I'd go put it in Freedom Foundation upon Irwin's request because
6 there was too much in the other accounts or, you know, he wanted
7 it disbursed amongst all the accounts.

8 Q. Did you ever see any documentation regarding what type of
9 organization Freedom Foundation was?

10 A. A nonprofit organization is all that I know. And that he
11 has --

12 Q. How do you know that?

13 A. -- a big book.

14 Because Irwin told me that.

15 Q. Did you ever see any IRS documentation or anything else?

16 A. No. I just know that he has a big, huge book, binder book,
17 that, um, he was supposed to keep up to date. I assumed
18 government, but I'm not sure.

19 Q. All right. Did you ever make any deposits into either of
20 the Bank of America accounts?

21 A. Yes, both of 'em.

22 Q. Did you -- and what did you deposit into those accounts?

23 A. Um, very -- very rarely did I ever deposit cash but, um,
24 money orders, checks. Anything of that sort. Or checks from
25 Bill, which would have been from our credit cards.

1 Q. Um, you said very rarely do you deposit cash?

2 A. Right, because I would keep petty cash, anything, in a
3 lockbox in my office or, um, it would just go towards payroll or
4 sometimes I would go to OfficeMax to pick up supplies with cash
5 instead of using the OfficeMax card or a check. Because Linda
6 told me if you have excess cash, you can go pick up supplies.
7 That's how I was trained.

8 Q. All right. Who -- who told you how much money -- or how
9 much to deposit in the bank, if anyone?

10 A. Linda -- Linda, when I first took over she had showed me a
11 big stack of money orders and she's like, "I'm saving these. So
12 I don't want to deposit these."

13 Well, that kinda made me nervous. So I deposited
14 everything all the time. Whatever we had received, I deposited
15 immediately 'cuz I didn't know what would clear, what wouldn't
16 clear. So nobody ever told me how much necessarily each week to
17 deposit. I just used my discretion, tried to keep Irwin's
18 personal account not as high as the Freedom Books's account.
19 But, if the Freedom Books's account got too -- too high of a
20 balance, then we would, you know, transfer it to Freedom
21 Foundation or wherever else it had to go.

22 Q. Now, how often did you make deposits?

23 A. Um, primarily weekly. I mean, usually whenever I went to go
24 pull payroll I was making some sort of a deposit because we
25 would have received mail. And usually with every, um, check I

1 wrote to myself, I was making a deposit as well.

2 Q. How much, uh, on average were you depositing a week as best
3 you recall?

4 A. 4,000, 5,000. It varied. Sometimes 8,000, I think. I
5 mean, it's...

6 Q. I'm gonna --

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

8 THE COURT: You may.

9 BY MR. IGNALL:

10 Q. I'm gonna show you what I've marked as Government
11 Exhibit 73.

12 Do you recognize the documents in Exhibit 73?

13 A. Yes, I do.

14 Q. What are these documents?

15 A. Checks that I wrote --

16 Q. On --

17 A. -- to myself.

18 Q. -- what account?

19 A. Um, these look like all of 'em from the Freedom Books's
20 account.

21 Q. Do you recognize your handwriting on these checks?

22 A. Yes, I do.

23 Q. And did you write these as part of your employment at
24 Freedom Books?

25 A. Yes, I did.

1 Q. All right.

2 MR. IGNALL: At this point, the Government moves into
3 evidence Exhibit 73. We're moving into evidence Exhibit 73.

4 MR. CRISTALLI: No objection.

5 THE COURT: Mr. Bowers? Mr. Bowers, any objection?

6 MR. BOWERS: I have no objection, your Honor.

7 THE COURT: Mr. Schiff, any objection?

8 MR. SCHIFF: No objection.

9 THE COURT: 73 is received.

10 (Government's Exhibit No. 73, received into
11 evidence.)

12 BY MR. IGNALL:

13 Q. All right. If we could start with the first page of
14 Exhibit 73. And see if that'll come up on the screen for us as
15 well. There we go.

16 (Document displayed in open court.)

17 MR. IGNALL: Maybe we could try and blow up just the
18 front of the check there and see if that works.

19 BY MR. IGNALL:

20 Q. Now, I'm looking at this check. What's -- what's the date
21 of this check?

22 A. 11/22/99.

23 Q. And, uh, what's the amount?

24 A. \$4,500.

25 Q. And this is payable to you?

1 A. Yes.

2 Q. Do you know what this check is for?

3 A. Yes, I do.

4 Q. How do you know that?

5 A. Because there's a "P" with a circle on it.

6 Q. Who wrote that "P" with a circle on it?

7 A. I did.

8 Q. And why did you right that --

9 A. For --

10 Q. -- "P" with --

11 A. -- payroll, to distinguish the difference between, uh,

12 different checks for my own use. Nobody else's other than my

13 own. Irwin didn't even know this system. It was for my own

14 protection.

15 Q. Did you write any --

16 MR. SCHIFF: Can I hear the answer to -- the question

17 and answer?

18 (Discussion between Mr. Cristalli and

19 Mr. Schiff.)

20 THE COURT: Go ahead.

21 BY MR. IGNALL:

22 Q. And if I can turn your attention to the next page.

23 (Document displayed in open court.)

24 MR. IGNALL: If we can try and blow up that check.

25

1 BY MR. IGNALL:

2 Q. Is that a check payable to you?

3 A. Yes, it is, signed by Irwin for 2500 --

4 Q. Signed by whom?

5 A. Irwin.

6 Q. All right.

7 MR. SCHIFF: Um...

8 BY MR. IGNALL:

9 Q. Can you tell us the difference between checks that were
10 signed with a stamp versus signed by Mr. Schiff?

11 A. Yes, of course I can.

12 Q. And who signed this one?

13 A. Irwin.

14 Q. All right.

15 MR. SCHIFF: Um, what is the... Object -- well,
16 objection. Foun- -- well, I don't know if I signed that or that
17 was my signature stamp. I don't know.

18 THE COURT: You can ask her that.

19 MR. SCHIFF: Pardon me?

20 THE COURT: You can ask her that.

21 MR. SCHIFF: Was that -- was that --

22 THE COURT: No. When it's your turn --

23 MR. SCHIFF: All right.

24 THE COURT: -- to cross-examine, you can ask it.

25 MR. SCHIFF: What was -- November 17th. Was that

1 Friday?

2 BY MR. IGNALL:

3 Q. And --

4 MR. SCHIFF: \$2500; right?

5 BY MR. IGNALL:

6 Q. -- do you know what this check was for?

7 A. Yes, I do.

8 Q. All right. If you could look through and tell me: Do you

9 see any checks in there that were signed with the signature

10 stamp as opposed to Mr. Schiff's --

11 A. Yes. The --

12 Q. -- personal signature?

13 A. -- very next check was a signature stamp check for \$3,000 on

14 12/1/99 and it was also payroll.

15 Q. All right. We'll blow that one up for the jury to see.

16 (Document displayed in open court.)

17 THE WITNESS: The reason you can tell is look at how

18 thick the ink is on the signature as well as the uniform in his

19 signature. Because when you get a signature stamp, because we

20 tried to get a second signature stamp upon Irwin's request, and

21 they said due to the fact that his was so clear that we would be

22 able --

23 MR. CRISTALLI: Objection --

24 THE WITNESS: -- to use that one.

25 MR. CRISTALLI: -- nonresponsive. I don't even think

1 she was presented with a question.

2 THE WITNESS: He asked me if --

3 MR. IGNALL: The question is if --

4 THE WITNESS: -- I knew the difference.

5 MR. IGNALL: -- she could identify any checks that had

6 a signature stamp rather than --

7 THE COURT: Yeah.

8 MR. IGNALL: -- a signature.

9 THE COURT: And she's explaining why.

10 MR. CRISTALLI: Okay.

11 THE COURT: Overruled.

12 MR. CRISTALLI: Okay.

13 MR. SCHIFF: Could I...

14 BY MR. IGNALL:

15 Q. Let's go -- skip over to the next check, if we could.

16 (Document displayed in open court.)

17 BY MR. IGNALL:

18 Q. Do you recognize the handwriting on this check?

19 A. Yes. It's my writing.

20 Q. And what's the date of this check?

21 A. 12-7-99.

22 Q. And what's this check for?

23 A. Payroll.

24 Q. All right. And do you recognize the signature on this

25 check?

1 A. Yes, I do. And it's his actual signature, not the stamp
2 as --

3 Q. And --

4 A. -- you can tell.

5 Q. -- did you fill out this check before Mr. Schiff signed it?

6 A. Always. He would never sign a check that wasn't filled out
7 and he would always ask questions about every check --

8 Q. Thank you.

9 A. -- when he signed them.

10 Q. And did you discuss with Mr. Schiff what the purpose of this
11 check was?

12 A. He knew.

13 Q. How did he know?

14 A. Because I only went to Irwin with payroll checks.

15 Q. All right.

16 A. I mean, that's -- that's the only way that it worked. I
17 mean, he wouldn't sign a check for \$3,000 if it wasn't for
18 payroll. Are you kidding? Written to me.

19 Q. Thank you.

20 A. Wouldn't happen.

21 (Discussion between Mr. Ignall and
22 Mr. Neiman.)

23 MR. BOWERS: Your Honor, just for the record, my client
24 was having a bit of maybe a medical problem. I don't know. I
25 asked that he step outside. It doesn't have any reflection on

1 these proceedings.

2 THE COURT: Oh. Well...

3 MR. IGNALL: He kind of needs to be here I think.

4 THE COURT: He needs to be here. We need to --

5 MR. BOWERS: All right. Well, let me go get him then.

6 The guy was choking.

7 THE COURT: Okay. Well, we'll wait for him to come

8 back.

9 (Pause in the proceedings.)

10 MR. BOWERS: Sorry, your Honor. I didn't want to

11 interrupt.

12 THE COURT: Well, thank you for letting us know.

13 Where were we when we left? Which question were we on

14 when he left? Were you on this check?

15 MR. BOWERS: Yeah, I think it was about this check. It

16 was very brief, your Honor.

17 THE COURT: Okay.

18 MR. BOWERS: We'll just pick up where we left off.

19 THE COURT: All right. We're discussing a check for

20 \$3,000 dated December 7th, '99.

21 Go ahead with your next question.

22 MR. IGNALL: Thank you.

23 BY MR. IGNALL:

24 Q. You mentioned a little earlier a bonus system. Who set up

25 the bonus system?

1 A. Irwin and I did to try and, um, get the -- the employees to
2 want to sell bigger packages and more materials for him.

3 Q. And what was that bonus system?

4 A. It -- I'm not exactly positive. But it was something
5 around, um, if they were to sell a large Freedom Package they'd
6 get an extra bonus. If they sold like up to four, they'd get a
7 hundred dollars cash or the small packages, a certain amount of
8 those. And that did not last very long. That was a very brief
9 thing that we tried to get, um, the employees more into selling
10 more materials.

11 Q. All right. What's the Freedom Package?

12 A. Um, it's, um -- well, it's, I guess, advertisement was to --
13 it's the complete package, everything you need to legally stop
14 paying income taxes.

15 Q. What's included in that Freedom Package as best you recall?

16 A. Almost everything up to, um, the Series 3 and 4, um...

17 Q. I mean, are these books, tapes --

18 A. Yeah --

19 Q. -- other materials?

20 A. -- everything --

21 Q. What --

22 A. -- everything. And then we ended up having -- adding the
23 disk into it, the floppy disk. And then we, um, I think that
24 was the last thing we added to it. We didn't add Series, um, 5
25 or 6 to it.

1 So Series 3, 4, 1, and 2, um, those were tapes with
2 packets of material that went along with 'em and...

3 Q. Do you recall how much the Freedom Package cost while you
4 worked there?

5 A. Yeah. While I worked there, it was \$595.

6 Q. Did you ever have a discussion with Mr. Schiff about whether
7 employees wanted to get paid by check or by cash?

8 A. Yes, I did.

9 Q. And what did Mr. Schiff tell you about that?

10 A. That they are all to be paid in cash.

11 Q. Did he -- did he tell you why?

12 A. He said they are all to be paid in cash. If they were on
13 Social Security, unemployed, whatever each individual case was,
14 they were to be paid in cash.

15 Q. Mr. Schiff told you that?

16 A. Yes --

17 Q. Okay.

18 A. -- he told me that.

19 Q. Thank you.

20 A. And not -- oh, sorry.

21 Q. Did you have a discussion -- if we go back to the example,
22 like the example we have on the board -- on the screen here,
23 Exhibit 73, I think you have the -- you said a little "P" on the
24 bottom --

25 A. Yes.

1 Q. -- you talked about -- did you have a discussion with
2 Mr. Schiff about whether to write anything on the check that you
3 were writing for payroll?

4 A. No, be- -- no. There was nothing to discuss, except for the
5 fact that I was worried some day people were gonna come to me
6 and think that I was taking a lot of money from this man. And I
7 wanted something for my own sake to know what every check was
8 for.

9 Q. All right. I believe -- change the subject a little bit
10 here -- you testified earlier about your mother's employment.
11 Do you know how much your mother was making while you were
12 working there?

13 A. Yes. 600 is what of knew per week.

14 Q. Okay. Did she get any other benefits or compensation that
15 you're aware of?

16 A. Well, her Social Security benefits that she received
17 monthly.

18 Q. I meant from Freedom Books.

19 A. Oh, no, not that I know of.

20 Q. Did you ever pay any bills for her? Did you...

21 A. Well, if she -- for instance, her, um, utility bills
22 sometimes and then it came down to where I paid, uh, by Irwin's
23 request her rent. Um, I wrote -- actually got to write her a
24 check for \$750 for her rent and -- on top of his rent and stuff
25 as well. So...

1 Q. I'm sorry.

2 Did you -- did you have a discussion with Mr. Schiff
3 about paying your mother's bills?

4 A. Well, yeah. And, also, um, the bills or any receipts she
5 were to bring in with me. And we kinda got in a fight over
6 that. And he said, "Just go to the bank, write a check, give
7 her cash for whatever she brings to you."

8 I said, "Whatever she brings?"

9 And he said, "Yes, whatever she brings."

10 Whether it was --

11 Q. And did you --

12 A. -- an Albertsons grocery receipt or whatever, that's what I
13 did.

14 Q. Did you provide cash for --

15 A. Yes.

16 Q. -- these receipts?

17 A. Yes.

18 Q. Uh, I believe you said something about writing a check.

19 MR. IGNALL: If I could approach the witness, your
20 Honor?

21 THE COURT: You may.

22 MR. BOWERS: I'm sorry, Judge. No objection. She's
23 talked about a number of checks. Is that what we're gonna
24 clarify here?

25 MR. IGNALL: I'm sorry. I'm --

1 MR. BOWERS: Thanks.

2 MR. IGNALL: -- I'm gonna hand --

3 MR. BOWERS: Sorry.

4 MR. IGNALL: -- a new exhibit up.

5 BY MR. IGNALL:

6 Q. I've handed you what we've marked as Government Exhibit 75.

7 I'm gonna ask you to take a look at that. Tell me, do you

8 recognize Exhibit 75?

9 A. Yes, I do.

10 Q. What is Exhibit 75?

11 A. It's a check to my mother for \$750 for her rent.

12 Q. Written on what bank account?

13 A. Um, the -- Irwin's personal account, Irwin A. Schiff account

14 through Bank of America, signed by him not --

15 Q. Who wrote out the check?

16 A. I did. It's my writing.

17 Q. All right.

18 MR. IGNALL: At this point, the Government moves into

19 evidence Exhibit 75.

20 THE COURT: Any objection to 75?

21 MR. BOWERS: No.

22 THE COURT: Hearing none, 75 is received.

23 MR. IGNALL: All right. Can we publish Exhibit 75 on

24 the...

25 MR. CRISTALLI: Wait a second. I didn't agree to it

1 yet.

2 THE COURT: Well, I'm waiting for you to --

3 MR. CRISTALLI: I know. I'm just --

4 THE COURT: Okay.

5 MR. CRISTALLI: -- looking at it, your Honor.

6 (Pause in the proceedings.)

7 MR. CRISTALLI: Yeah, I would -- I have an objection on
8 relevancy. It appears that it comes from Mr. Schiff's personal
9 account, not from any accounts associated with Freedom Books.
10 It's not relevant.

11 THE WITNESS: I'm the only one --

12 MR. CRISTALLI: It's not -- it's not -- it shouldn't --
13 shouldn't come in. It's a gift.

14 MR. IGNALL: Well, that's an inference to be drawn.

15 MR. CRISTALLI: It's not -- it's not from the
16 corporation; it's not from any of the businesses.

17 MR. IGNALL: Ms. Degrosselier testified that she had
18 responsibility for writing checks on both the Irwin Schiff
19 account --

20 THE COURT: She did already and --

21 MR. IGNALL: -- and the Freedom Books account --

22 THE COURT: -- it's --

23 MR. IGNALL: -- as part of employment.

24 THE COURT: -- it's -- apparently it's -- these
25 proceeds are commingled. The objection's overruled.

1 MR. IGNALL: All right. Is Exhibit 75 admitted?

2 THE COURT: 75 is admitted.

3 (Government's Exhibit No. 75, received into
4 evidence.)

5 MR. IGNALL: May we publish that to the jury?

6 THE COURT: You may.

7 MR. IGNALL: Thank you.

8 (Document displayed in open court.)

9 BY MR. IGNALL:

10 Q. All right. Is that your handwriting on Exhibit 75 --

11 A. Yes.

12 Q. -- Ms. Degrosselier?

13 And what's the date on that check?

14 A. November 5th, 1999.

15 Q. Do you know what this check is for?

16 A. Yes. It's for my mom's rent.

17 Q. How do you know that?

18 A. Because I've paid my mom's rent before.

19 Q. How did you pay it before?

20 A. When I worked.

21 Q. You -- you paid it --

22 A. And I went to my mom's -- yes.

23 Q. Unrelated to your employment at Freedom Books you're saying?

24 A. Yes.

25 Q. All right. But did you write this check while you were

1 working at Freedom Books?

2 A. Yes, I did. Um-hum.

3 Q. On whose instruction did you write this check?

4 A. Irwin's.

5 Q. And was this part of your employment at Freedom Books?

6 A. It was while I was employed.

7 Q. Yes.

8 A. Yes.

9 Q. But how -- how do you know this was for your mother's rent?

10 A. Because I know how much my mom's rent was and her rent was

11 due. And that's the only way I was able to write a check 'cuz I

12 didn't have time to go to the bank that day and she needed the

13 check that day --

14 Q. All right.

15 A. -- because as you can see, 11-5 is when it was due.

16 Q. How do you know that your mother's rent was due on 11-5?

17 A. Because I paid her rent before --

18 Q. All right.

19 A. -- myself personally when I worked previously.

20 Q. Did she ever tell you how much her rent was?

21 A. Yes, because -- yes.

22 Q. All right. And did she ever tell you when her rent was due?

23 A. Yes.

24 MR. CRISTALLI: Objection. Asked and answered. Said

25 it was her rent check three times --

1 THE COURT: Well --

2 MR. CRISTALLI: -- four times.

3 THE COURT: -- the question was: Did she tell you when
4 her rent was due? That was the question. That's a different
5 question --

6 MR. IGNALL: Thank you.

7 THE COURT: -- than asked previously. Overruled.

8 MR. IGNALL: All right. We can take this off the
9 screen. Thank you, Agent Steiner.

10 And you can probably go back to the lights for a
11 moment. Thank you.

12 BY MR. IGNALL:

13 Q. Uh, I believe you mentioned earlier a bank account that
14 you're aware of -- a Freedom Foundation account and two bank
15 accounts at the Bank of America.

16 Are you aware of any other bank accounts -- or other
17 accounts that Mr. Schiff had during the time that you were
18 working there?

19 A. Just this P.I.L.L. account is the only other account.

20 Q. What is a P.I.L.L. account?

21 A. It's a international account that he had.

22 Q. Did he ever talk you to you about that account?

23 A. Um, no, not really. He was very brief, and I never really
24 wanted to know.

25 Q. What -- what did he tell you about the P.I.L.L. account?

1 A. Just generally that it's, um, his account; that, um, you
2 know, he calls; they put the money on a credit card -- um, a
3 general credit card that he can pull the money off of, um, in
4 the states. But --

5 Q. What --

6 A. -- the money is out of the -- the United States so that
7 nobody else could touch it.

8 Q. Did Mr. Schiff tell you that?

9 A. Yes, he did.

10 Q. All right. If I could -- do you know how Mr. -- did
11 Mr. Schiff ever tell you how he sent money to P.I.L.L.?

12 A. No, I have no idea.

13 Q. Did he ever tell you how he got money back if this money was
14 out of the U.S.?

15 A. Yes. There's several times that I have faxed off the
16 request for him.

17 Q. And explain the fax request.

18 A. You request the money and it -- with a PIN number and then
19 it's put on the card.

20 Q. On a -- on a -- some sort of a credit card or a debit card?

21 A. Yeah. I don't know.

22 Q. Did you know what Mr. Schiff's PIN number was?

23 A. Yes, 1040.

24 Q. If I could show you what we've previously had admitted as
25 Exhibit 78.

1 A. (Reviewing document.)

2 Q. Do you recognize Exhibit 78?

3 A. Yes, I do.

4 Q. What is Exhibit 78?

5 A. It's, um, a -- a pamphlet that they -- that we had in the
6 office for people who wanted to protect their money and they
7 could set it up.

8 MR. SCHIFF: Could I have the question and answer...

9 BY MR. IGNALL:

10 Q. Did you ever talk to Mr. Schiff about Exhibit 78?

11 A. Um, not really. I just assumed what -- I mean, you can read
12 it and you know what it means.

13 Q. Do you know if Mr. Schiff ever gave this brochure to any
14 customers?

15 A. Yes, especially if he knew they had money.

16 Q. How do you know that? Did he tell you that?

17 A. Because through consultations and you see them walk out with
18 the pamphlet or they talk to you about the pamphlet, yes, as
19 they walk out.

20 Q. How do you know these are people with a lot of money?

21 A. 'Cuz you could tell. I'm not stupid.

22 Q. Okay.

23 A. I mean, you can tell.

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

25 A. No, not -- no.

1 Q. But you saw customers walking out with the brochure?

2 A. Oh, yes, and asking questions about it. And I always
3 directed them directly to Irwin because I really didn't wanna
4 know much about that.

5 (Document displayed in open court.)

6 MR. IGNALL: If we could turn to the second page of
7 this brochure. If you look in the middle of the application for
8 Prosper League membership. If you blow that whole thing up.

9 BY MR. IGNALL:

10 Q. Do you see a "Sponsor ID#" section?

11 A. Yes. That's the 1040 I was speaking about.

12 Q. That...

13 A. I haven't seen this in a long time.

14 Q. Was that number written in on the brochures that customers
15 took with them?

16 A. Yes, in order to put reference to Irwin himself.

17 Q. Do you know what -- what significance putting that number in
18 there had?

19 A. Um, for -- all I knew is that it was set up, um, like a
20 pyramid affect. Um, all those that you got to sign up
21 underneath you something occurred. I don't know if you got more
22 money or more -- I'm really --

23 MR. CRISTALLI: Your Honor, I'm --

24 THE WITNESS: -- not really familiar with that.

25 MR. CRISTALLI: -- I'm gonna object. This is

1 cumulative. This has already been explored by a special agent
2 who has come in and testified to the P.I.L.L. account. This
3 particular witness knows really nothing of any substance as it
4 relates to this account. So I'm not quite sure why we're going
5 into this line of questioning. It has already been covered.

6 THE COURT: What is the relevance and why is it not
7 duplicative?

8 MR. IGNALL: It's not cumulative in the sense that
9 Ms. Degrosselier has separate evidence about people being given
10 the P.I.L.L. brochure and a separate understanding from
11 Mr. Schiff. I suppose at some point this would --

12 THE COURT: Well, she's --

13 MR. IGNALL: -- become cumulative.

14 THE COURT: -- she testified to some information that
15 it wasn't provided earlier and that is that Mr. Schiff would
16 give this to people with money when he held consultations with
17 them. So I --

18 MR. CRISTALLI: And I don't have an objection to that.
19 I'm just not sure why we're going through the content of the
20 exhibit again.

21 THE COURT: Well, uh, first because she identified his
22 ID number as 1040, and that's what's on this. So that is
23 something that is new testimony. I don't think it's cumulative.

24 Go ahead.

25 MR. IGNALL: All right. Thank you. We can move on

1 now.

2 BY MR. IGNALL:

3 Q. You mentioned that Mr. Schiff -- did you ever ask Mr. Schiff
4 for cash? You said you did for payroll. Did you ever ask him
5 for cash for other reasons?

6 A. No, I didn't need cash for any other reasons.

7 Q. How often did Mr. Schiff come up with cash himself for
8 payroll?

9 A. Um, during the winter months, um, maybe once a month. And
10 usually it was only if Bill had not sent the checks from Indiana
11 yet to me.

12 THE COURT: Only if what?

13 THE WITNESS: Bill --

14 THE COURT: Bill --

15 THE WITNESS: -- from Indiana, yeah.

16 THE COURT: Bill Thomas?

17 THE WITNESS: Yes.

18 THE COURT: Okay.

19 THE WITNESS: Like if the checks were late, per se, he
20 would --

21 BY MR. IGNALL:

22 Q. How long did you work at Freedom Books?

23 A. A year.

24 Q. Do you know how much Freedom Books sold in gross sales that
25 you were aware of?

1 A. A lot. A lot.

2 Q. What -- what's --

3 A. I -- I -- you know, to give you a wide range, in the tens of
4 thousands, possibly hundreds of thousands.

5 Q. All right.

6 MR. CRISTALLI: Objection --

7 THE WITNESS: I am not --

8 MR. CRISTALLI: -- foundation --

9 THE WITNESS: -- direct.

10 MR. CRISTALLI: -- calls for rank speculation.

11 THE WITNESS: Well, I could look at the numbers and
12 tell you if you want me to.

13 THE COURT: Well --

14 MR. IGNALL: Pardon me?

15 THE WITNESS: I said I could look at the numbers and
16 tell you if you wanted me to. I could -- if you'd give me have
17 a calculator, I could tell you --

18 THE COURT: Sustained.

19 THE WITNESS: -- exactly how much he made the year I
20 worked.

21 MR. IGNALL: That's okay.

22 THE COURT: The objection is sustained.

23 BY MR. IGNALL:

24 Q. Did you ever hear, uh, Mr. Schiff talk about protecting his
25 money?

1 A. Um, not protecting per se, no.

2 Q. Protecting it from the IRS perhaps?

3 A. Just that there was certain ways that he, um, put his money
4 so nobody could touch it.

5 Q. Did he say who --

6 MR. SCHIFF: Again, this is -- this is rank hearsay.
7 Can I cross-examine her on it?

8 THE COURT: Well, you're present, so it's not hearsay.

9 MR. SCHIFF: Well --

10 THE COURT: It's admissions.
11 Go ahead.

12 THE WITNESS: Yes, Irwin only spoke about hiding stuff
13 from the IRS.

14 BY MR. IGNALL:

15 Q. Do you know what car Mr. Schiff drove while you were working
16 at Freedom Books?

17 A. Yes. The Intrepid.

18 Q. Do you know whose name that car was titled in?

19 A. Um, Tim Deaton (phonetic).

20 Q. Did Mr. Schiff ever tell you that?

21 A. Yes. And so did Tim Deaton.

22 Q. Well --

23 A. Oh, I'm sorry.

24 Q. Sorry.

25 A. I'm sorry.

1 Q. Uh, did Mr. Schiff ever tell you why he didn't have a car
2 titled in his own name?

3 A. So he could keep one.

4 Q. Keep one from whom?

5 A. The IRS.

6 MR. IGNALL: I'd like to -- may I approach the witness
7 again, your Honor?

8 THE COURT: You may.

9 BY MR. IGNALL:

10 Q. I'm gonna hand you what we've marked for identification as
11 Government Exhibit 74. Do you recognize Exhibit 74?

12 A. Yes, I do.

13 Q. What is Exhibit 74?

14 A. It's the checks that I wrote out of the Freedom Books
15 account. I believe they were all Freedom Books. Let me check.
16 One second.

17 Q. Uh...

18 A. Yes, they are all out of the Freedom Books accounts for his
19 Hamden, Connecticut, um, rent every month, um, the mortgage on
20 his Hamden, Connecticut, um, property; as well as his apartment
21 on West Sahara.

22 Q. And are these checks written in your own handwriting?

23 A. (Reviewing documents.)

24 Yes, I believe they all are. Let me just go through
25 them real quick.

1 Q. And did you write these checks as part of your employment at
2 Freedom Books?

3 A. Yes, I did.

4 MR. IGNALL: Government moves Exhibit 74 into evidence
5 at this time.

6 THE COURT: Any objection to 74?

7 MR. CRISTALLI: No objection.

8 MR. BOWERS: No, your Honor.

9 MR. SCHIFF: No objection.

10 THE COURT: 74 is received.

11 (Government's Exhibit No. 74, received into
12 evidence.)

13 MR. IGNALL: All right. If we can pull up the first
14 check on the big screen.

15 (Document displayed in open court.)

16 BY MR. IGNALL:

17 Q. All right. I'm gonna show you the first page of -- of the
18 exhibit. What's the date of this check?

19 A. November 1st, 1999.

20 Q. And -- and who is this paid to?

21 A. First Union Mortgage, which is a company where [sic] his
22 Hamden, Connecticut, property was through.

23 Q. How do you know that?

24 A. Because Irwin told me that. And I had all the books and all
25 the -- the little pay book that --

1 Q. And who did you get the payment book from?

2 A. From Irwin and Linda -- well, from Linda but by Irwin's
3 request.

4 Q. But did you speak with Mr. Schiff personally about what this
5 check was for?

6 A. Yes, I -- yes. He told me exactly what it was for. It was
7 for his Hamden, Connecticut, property because I received a check
8 every month from the, uh, renter of his Hamden, Connecticut,
9 office -- uh, property.

10 Q. If I could turn your attention to -- I think it's the fourth
11 page of Exhibit 74. It has the Bates No. GJ-65-02-00165.

12 Do you recognize this check?

13 A. Yes, I do.

14 Q. Is this in your handwriting?

15 A. Yes, it is.

16 Q. Who signed this check?

17 A. Irwin himself.

18 Q. All right. What's the date of this check?

19 A. November 1st, 1999.

20 MR. SCHIFF: Objection, your Honor. Relevance. That
21 I'll admit is payment of rent on my apartment. Now, is it
22 illegal to pay rent on your apartment?

23 THE COURT: What's the relevance?

24 MR. SCHIFF: Well, what --

25 MR. IGNALL: Mr. Schiff is charged with evasion of

1 payment of outstanding tax liabilities. This shows an ability
2 to pay and an attempt to pay his rent out of Freedom Books
3 account rather than his own account for something that --

4 MR. SCHIFF: Your Honor --

5 MR. IGNALL: -- the IRS may have access to levy. We're
6 gonna have some more testimony about this. I'm not sure the
7 Court wants --

8 MR. SCHIFF: Your Honor --

9 MR. IGNALL: -- for Mr. Schiff's benefit, wants me to
10 go into any more than that.

11 MR. SCHIFF: I'm doing business -- I'm d/b/a. That's
12 my account. Whether it's Freedom Books or Irwin Schiff, they
13 are both my accounts.

14 THE COURT: Well, the Government --

15 MR. SCHIFF: It's d/b/a. It's not a corporate account.

16 THE COURT: The Government will have to connect it up
17 to the charges. It appears to me that it is relevant and --

18 MR. SCHIFF: So you're telling me --

19 THE COURT: You've reported no income, sir, and here
20 you're showing money going out, so that's connection enough.

21 MR. SCHIFF: I had no income that's taxable.

22 THE COURT: Well, that's to be decided.

23 Overruled.

24 MR. IGNALL: All right.

25

1 BY MR. IGNALL:

2 Q. Do you recognize what this check is written out for?

3 A. Yes. It's for his, um, apartment on West Sahara.

4 Q. How do you know that?

5 A. Because I wrote the check and I've been to the apartment.

6 And the apartment number's right there on the check and I wrote

7 "November Rent."

8 Q. And do you know -- do you recognize the name "Indian Hills

9 Apartments"?

10 A. Yes, I do.

11 Q. Is that the apartment that you visited?

12 A. That's the apartment complex he lived in, yes.

13 Q. Thank you.

14 When did you leave the employ of Freedom Books?

15 A. April of 2000.

16 Q. Why did you leave?

17 A. My body couldn't take it anymore --

18 Q. Uh --

19 A. -- physically.

20 Q. Did you quit? Were you fired?

21 A. I -- I don't really know. I left --

22 MR. CRISTALLI: Objection. Asked and --

23 THE WITNESS: -- is all I know.

24 MR. CRISTALLI: -- answered. She said --

25 THE WITNESS: I had to sleep.

1 MR. CRISTALLI: -- why she left. Asked and answered.

2 THE COURT: Well, he asked --

3 MR. CRISTALLI: And leading.

4 THE COURT: -- he asked why she quit, and she said her
5 body couldn't take it anymore. And then he asked if she was
6 fired or so forth. And so that's a different question.
7 Overruled.

8 You can answer the question.

9 MR. CRISTALLI: Objection. Leading. Different
10 objection.

11 THE COURT: It doesn't suggest the answer. Overruled.

12 THE WITNESS: What's the question --

13 BY MR. IGNALL:

14 Q. The question --

15 A. -- if I was fired --

16 Q. -- was did you quit --

17 A. -- or if I was --

18 Q. -- were you fired?

19 A. Um, no. Actually, I left. And Irwin still at that time
20 owed me \$750 for my last week of employment there.

21 MR. CRISTALLI: Objection. Nonresponsive.

22 MR. IGNALL: Uh --

23 THE COURT: Sustained as --

24 MR. CRISTALLI: Move to strike.

25 THE COURT: -- to the nonresponsive part.

1 MR. CRISTALLI: Move to --

2 BY MR. IGNALL:

3 Q. When you left --

4 MR. CRISTALLI: -- strike.

5 THE COURT: Strike the owing of 750.

6 BY MR. IGNALL:

7 Q. When you left Freedom Books in April of 2000, was your

8 mother still working there?

9 A. Yes.

10 Q. When's the last time you spoke to your mother?

11 A. Five --

12 MR. CRISTALLI: Objection. Relevancy.

13 THE WITNESS: -- years ago. Oh, I'm sorry.

14 MR. CRISTALLI: Objection. Relevancy.

15 THE COURT: What is the relevance?

16 MR. IGNALL: Uh, this goes to possible bias or lack

17 thereof. I mean, if the defendant's not gonna get into that,

18 then we don't need to get into that.

19 THE COURT: Well, if you're not going to get into it,

20 I'm going to sustain it. But that means you've closed the door

21 on yourself --

22 MR. CRISTALLI: I disagree --

23 THE COURT: -- if you want --

24 MR. CRISTALLI: -- with that.

25 THE COURT: -- to get into bias. Well, then -- then

1 it's relevant --

2 MR. CRISTALLI: Okay.

3 THE COURT: -- because you intend --

4 MR. CRISTALLI: Well, I certainly respect the Court's
5 ruling.

6 THE COURT: All right.

7 MR. CRISTALLI: But I'm lodging the objection.

8 THE COURT: All right. Overruled.

9 BY MR. IGNALL:

10 Q. Uh, you said you couldn't take it when you left. What was
11 it that you -- just briefly, you couldn't take?

12 MR. CRISTALLI: Objection. Asked and answered.

13 THE COURT: Overruled.

14 THE WITNESS: My body physically could not take working
15 so many hours and not -- and not being -- getting the proper
16 sleep I needed and I couldn't do it anymore. I was wearing
17 myself into the ground.

18 BY MR. IGNALL:

19 Q. Was there anything else you were doing at the time that was
20 wearing you out?

21 A. Of course. I was doing whatever I could to stay awake to
22 work the hours I needed to work and that included drugs, that
23 included NoDoze, that included many things. I was taking naps
24 alongside Irwin at night in the office, power naps, in order for
25 both of us to make it through.

1 Q. What drugs did you use while you were working there?

2 A. Speed and marijuana.

3 Q. Have those drugs affected your memory of the events that
4 took place there?

5 A. No, they have not.

6 Q. Have you used any drugs since you worked there?

7 A. Yes, I have.

8 Q. What drugs have you used since then?

9 A. Um, speed and marijuana.

10 Q. When's the last time you used any drug?

11 A. Um, over three weeks ago.

12 THE COURT: I'm sorry. Three weeks ago?

13 BY MR. IGNALL:

14 Q. Have you had any memory problems as a result of those drugs?

15 A. No, I have not.

16 Q. All right. When you started working at Freedom Books, you
17 said that you hired your mother. Did you hire any other family
18 members?

19 A. My younger brother.

20 Q. What did you hire him to do?

21 A. Um, take care of the computer stuff because I really --
22 again, it was a big project and I didn't have the capability of
23 doing that. So he did -- took care of all the Internet. And
24 then he started to build Irwin's Web site for him and he -- so
25 he became a constant employee as well.

1 Q. How much, uh, was he getting paid?

2 A. Uh, when he first started was 350 -- same as me -- and then
3 he got promoted.

4 Q. Who determined how much your brother was getting paid?

5 A. Um, originally it was Irwin. And then I promoted him
6 himself myself.

7 THE COURT: 350 a week?

8 THE WITNESS: Was his original, yes, starting pay.

9 BY MR. IGNALL:

10 Q. Did you ever have a discussion with your mother about
11 whether she had a bank account?

12 A. My mother, I knew, never had a bank account. She didn't
13 like bank accounts.

14 Q. Did she tell you that?

15 A. Yes.

16 Q. Did she ever tell you why she didn't like a bank account?

17 A. So people wouldn't know.

18 MR. CRISTALLI: Objection. Foundation as to time.

19 THE COURT: Sustained.

20 BY MR. IGNALL:

21 Q. How far back was it that -- that you first -- had this first
22 conversation about your mother having a bank account?

23 A. In 1991 when I first moved to live with my mom after a big
24 child-custody case.

25 Q. Did your mother tell you why she didn't wanna have a bank

1 account?

2 A. Yes. So people wouldn't know.

3 Q. And when did she tell you that the first time?

4 A. In 1991.

5 Q. And did she say who these people were?

6 A. Yes. With regard to her Social Security and whether or not
7 my dad could try and get, um, her money that she was receiving
8 every month and she didn't want the government to know exactly
9 what she had or...

10 Q. And what -- explain the Social Security to me.

11 A. My mom was receiving Social Security disability because she,
12 um, had gotten in a car accident while she worked, um, I believe
13 for Mission Linen at the time, I believe.

14 Q. Was she getting Social Security disability when you had this
15 first conversation of a bank account --

16 A. Yes.

17 Q. -- back in 1991?

18 A. Yes.

19 Q. All right. Did you ever have discussion with your mother
20 about getting a check for, uh, anything she did at Freedom Books
21 in connection with her Social Security benefits?

22 A. Not that I recall. Not directly, no. I just knew she
23 couldn't receive a check.

24 Q. Did your mom ever have cash?

25 A. Always had cash.

1 Q. How -- did your mother have any assets in her name at the
2 time you started working at Freedom Books that you knew of?

3 A. Her car and, well, her townhouse was in her name. But
4 that's not really hers. She was renting. So other than that --

5 Q. What kind of --

6 A. -- not that I know.

7 Q. -- car did she have?

8 A. Um, a white van -- minivan.

9 Q. What year was that?

10 A. Boy, it's been a long time. '95 I think. It's a white
11 minivan, Chevy.

12 Q. Did -- did, uh, you mother have any brokerage accounts or
13 any other financial accounts when you started working at Freedom
14 Books?

15 A. Not that I know of.

16 Q. Did you ever have a discussion with your mother about
17 whether she wanted to have a brokerage account or any other kind
18 of account?

19 A. No.

20 Q. You never had a discussion?

21 A. No.

22 Q. You said something about paying your mother's rent before
23 you worked at Freedom Books. When was that?

24 A. Um, when I first moved out in 1991, my mom was unable to
25 drive. She was disabled.

1 MR. CRISTALLI: Objection. Relevancy.

2 THE COURT: What is the relevance?

3 MR. IGNALL: The relevance of this is gonna be for the
4 expenditures method of proof showing an opening net worth. And
5 this is some evidence to support that.

6 THE COURT: Overruled.

7 THE WITNESS: So I would drive, um, the car to go pay
8 her rent at Sunshine Realty in Park 2000 at that time.

9 BY MR. IGNALL:

10 Q. I'm sorry. And what?

11 A. To make the payment for her rent.

12 Q. And how about around the time you and she started working at
13 Freedom Books? Had you paid her rent any time shortly before
14 then?

15 A. No. Not that I recall, no.

16 Q. All right. Did you ever have a discussion with your mother
17 about, uh, any concerns she may or may not have had about the
18 Social Security Administration determining how much money she
19 was making?

20 A. No.

21 MR. CRISTALLI: Objection. Asked and answered.

22 THE WITNESS: Oh.

23 MR. CRISTALLI: She said "no" before.

24 MR. IGNALL: May I have one moment, your Honor?

25 THE COURT: I don't think she did. She said -- her

1 prior testimony was she didn't have a bank account because then
2 people wouldn't know and she mentioned the discussion about
3 Social Security and government. So the answer wasn't she didn't
4 know; it was --

5 MR. IGNALL: May I have a moment, your Honor?

6 THE COURT: -- why she didn't have a bank account.

7 Overruled.

8 You may.

9 (Discussion between Government counsel.)

10 MR. IGNALL: Your Honor, one more moment.

11 THE COURT: All right. It's time to recess. We're at

12 4:30. So I'm going to recess --

13 MR. IGNALL: All right.

14 THE COURT: -- unless you intend to finish right now.

15 4:30.

16 What do we have tomorrow morning, Ms. Clerk?

17 THE CLERK: Nothing.

18 THE COURT: All right. We will be --

19 MR. CRISTALLI: Your Honor, I did have a request. We
20 could do it outside the presence of the jury but prior to this
21 witness being let off the stand.

22 THE COURT: Okay. Well, we'll be in recess until 9:00
23 a.m. Please remember my admonition not to discuss the case
24 among yourselves or with others or allow yourselves to be
25 influenced in any way, and do not form any conclusions until

1 the -- all of the evidence has been received and the case has
2 been submitted to you for deliberation.

3 (Jury leaves the courtroom at 4:27 p.m.)

4 THE COURT: Please be seated.

5 MR. CRISTALLI: Your Honor, with regard to this
6 particular witness before she returns tomorrow, she has
7 indicated under oath today that she has not used any narcotics
8 in at least three weeks prior to, um -- or three weeks ago she
9 used the methamphetamine, marijuana. We know for a fact she has
10 a long-standing, uh, history of using methamphetamine well --
11 dating back prior to her involvement with Freedom Books for
12 which she tried to attribute some, um -- some of the reasons why
13 she has this addiction.

14 I'd like --

15 MR. IGNALL: Objection. I'm not sure --

16 MR. CRISTALLI: -- to request --

17 MR. IGNALL: -- the witness needs to be here. We
18 could --

19 MR. CRISTALLI: Because I wanna --

20 MR. IGNALL: -- address this outside the presence of
21 the witness. And then if she needs to be here --

22 MR. CRISTALLI: Because I want her to be drug tested.
23 I want the Court to --

24 THE COURT: No.

25 MR. CRISTALLI: -- instruct her to be drug tested

1 tonight.

2 THE COURT: No. There -- there is no evidence that she
3 is under the influence of anything and I have no basis for
4 ordering her --

5 MR. CRISTALLI: Her -- her --

6 THE COURT: -- to do so. She is not on probation to my
7 knowledge.

8 MR. CRISTALLI: The speed of her tone -- the speed of
9 her voice, the speed of her words suggests to me that she may be
10 under the influence of methamphetamine. And that's the basis
11 of --

12 THE COURT: She is --

13 MR. CRISTALLI: -- the reason why --

14 THE COURT: -- her testimony is very cogent and I do
15 not see any signs --

16 MR. CRISTALLI: One final issue, though.

17 She says, uh, in a statement that she gave, uh, to, uh,
18 Special Agent Steiner that if she's -- uh, if they can't fix her
19 problems, that she will not testify clean and sober. I wanna
20 know whether or not she's testifying clean and sober. And I
21 think everybody in this court, including this Court, wants to
22 make sure --

23 THE COURT: You can cross-examine her. And the
24 Government has already asked that question, when was the last
25 time.

1 MR. BOWERS: Which -- her --

2 THE COURT: If you are asking me to employ the
3 authority of the Court to do discovery for you on this, I'm not
4 going to do it because there is nothing in front of me that
5 suggests that she is under the influence of anything.

6 MR. BOWERS: Your Honor, I -- I don't mean to join in
7 this fight. But I -- I need to point out she's stated to the
8 Court that she's not used methamphetamine in three weeks and the
9 reports turned over by the Government indicate that information
10 isn't true and that it's been a shorter --

11 THE COURT: Then you can cross-examine her on it.

12 MR. BOWERS: Well, I -- I just wanted the Court --

13 MR. IGNALL: And, your Honor --

14 MR. BOWERS: -- to understand that.

15 MR. IGNALL: -- I still don't understand why the
16 witness needs to be here for this discussion.

17 THE COURT: Well, I don't know why either.

18 MR. CRISTALLI: Because I wanted her to be instructed
19 to go take a drug test. That's why.

20 THE COURT: Well, it's not gonna happen. So --

21 MR. CRISTALLI: Okay.

22 THE COURT: -- you can --

23 MR. SCHIFF: I join in what Mr. Cristalli says.

24 THE COURT: That doesn't make any difference.

25 MR. SCHIFF: All right.

1 THE COURT: It's not gonna happen.
2 THE WITNESS: I can leave?
3 THE COURT: You can leave.
4 THE WITNESS: Okay.
5 THE COURT: Yeah. Go with --
6 MR. IGNALL: I'm sorry.
7 And, your Honor, what time are we reconvening for the
8 witness's -- 9:00 --
9 THE COURT: 9:00 a.m.
10 MR. IGNALL: -- o'clock?
11 THE COURT: 9:00 a.m.
12 MR. IGNALL: Thank you, your Honor.
13 MR. BOWERS: Do we -- do you have a proposed witness
14 list by the Government?
15 MR. NEIMAN: We'll handle that once we're --
16 MR. BOWERS: Okay.
17 MR. NEIMAN: -- in recess.
18 THE COURT: Okay. We're in recess.
19 MR. IGNALL: Thank you, your Honor.

20 (Proceedings adjourned at 4:31 p.m.)

21 --oOo--

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

DATED:

FELICIA RENE ZABIN, RPR, CCR NO. 478