IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 03-20111-Ml
	)	
	)	
VERNICE KUGLIN,	)	
	)	
Defendant.	)	

TRIAL PROCEEDINGS
VOIR DIRE OF THE JURY
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
AUGUST 4, 2003
VOLUME I

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A P P E A R A N C E S

Appearing on behalf of the Plaintiff:

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By: JOSEPH MURPHY, ESQ.

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MONDAY MORNING & AFTERNOON

AUGUST 4, 2003

The voir dire in this case began on this date, Monday, August 4, 2003, at 10:35 o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

THE COURT: Are we about to ready to bring our panel around so we can proceed with jury selection?

MR. BECRAFT: Your Honor, can I take up one real quick matter?

THE COURT: Sure.

MR. BECRAFT: Friend of mine is a lawyer from Milwaukee, Wisconsin, his name is Bob Bernhoft. He called me and he wanted to help me with this case, and I have invited him to come down and he's going to sit here, and I wanted to introduce him to the court. He filed a motion for pro hac vice admission, but what he's going to do is just assist me during the course of the trial if the court doesn't mind.

THE COURT: Sure, that's fine.

MR. BERNHOFT: Thank you, Judge.

THE COURT: Let me get your last name again.

MR. BERNHOFT: Yes, Bernhoft, B-E-R-N-H-O-F-T, first name is Robert, and I filed a courtesy copy with chambers of that pro hac vice motion that has got my bar numbers, et cetera in there.

THE COURT: All right. That's fine. We can bring the --

THE CLERK: They're on their way.

MR. MURPHY: Judge, just one thing, I -- I would like to discuss how we're going to handle voir dire today. I would like to suggest that it might be a good idea for the court to do it. This is -- this is a case where they're alleging a good faith defense, I take it.

THE COURT: They are.

MR. MURPHY: Based on what has been provided to me.

THE COURT: Right.

MR. MURPHY: And we need to just be real careful that the jury doesn't get confused on what the law is in these tax issues. It's a sensitive subject.

THE COURT: Well, I have been letting the lawyers do a good portion of the voir dire. It certainly seems to make most lawyers happy.

MR. BECRAFT: I wouldn't mind asking some questions, Your Honor.

MR. MURPHY: I would rather you ask most of them.

MR. BECRAFT: Oh, okay.

THE COURT: And I would -- Mr. Murphy -- I feel like, Mr. Murphy -- of course, you always go first in this -- that you can maybe deal with that issue also --

MR. MURPHY: Yes, sir.

THE COURT: -- to some degree. I'll ask enough questions so that you'll have plenty of time to organize your voir dire.

MR. MURPHY: Yes, sir. Judge, I've got voir dire organized, it's just -- you know, taxes are things people have strong feelings about.

THE COURT: They don't like them.

MR. MURPHY: They don't like them.

THE COURT: Right, but I think y'all have to deal with that and talk about people not being swayed by that sort of point of view.

MR. MURPHY: Yes, sir, Your Honor.

THE COURT: Sure.

MR. MURPHY: Judge, there's just one other thing. Mr. Becraft has submitted some materials to me that the defense is going to use in its presentation of the case, and just so he's not waylaid, at some point I think it would be a good idea to sit down and talk about

how we're going to handle that, because if you read the cases that deal with the question of how the defendant proves their good faith defense, there's some things that -- in that that bear -- what we take the position are incorrect statements of the law, and generally people are allowed to read those into the record -- portions of those into the record, but the -- that document is not admitted. There's some things that I have no doubt they're admissible and I'm not going to oppose their introduction, and there's other things that I may or may not oppose, but it would be a good idea, I think, if we talked about it beforehand.

MR. BECRAFT: If the floor is open, I'll tell the court what I plan on doing, just so the court will know in advance. Your Honor, in a tax evasion case or willful failure to file case, intent to commit a crime is real important. The government must prove that, and the defense is, you know, basically good faith and lack of criminal intent. Now, that requires, quite often, that the defendants testify about their beliefs about the law, and I want to tell the court that this is exactly what I'm going to do, and it will probably eliminate certain objections that Mr. Murphy is going to have. I'm going to get up -- when we get up and give our opening statements, I'm going to tell the jury that all she is going to

testify about is her beliefs about the law and that the court is going to give the instructions on the law that is relative to this case. When we start getting into the meat of the defendant's motion, that's exactly what I'm going to ask the defendant, you know, are you going to testify about your beliefs about the law, and you understand that the court is to instruct the jury on what the law is itself. I think that giving that at least two or three times, especially coming from the defense, telling the jury in advance that she is just going to be testifying about her beliefs probably eliminates a lot of objections that come from the prosecution. And that's what I intend on doing. I'm going to do that in opening. I'm going to tell the jury that we're going to be testifying about beliefs about the law, and I'm going to tell the jury that you are going to instruct the jury on the law, and the defendant will, in front of the jury when she testifies, in essence, say the same thing. But I think that addresses a lot of the government's objections.

THE COURT: Okay. Well, as soon as we get our panel here, we'll start. I will go back and wait until they get here. Be back as soon as they get here.

THE CLERK: All rise.

(Recess taken at 10:45 until 10:50 a.m.)

(Jury panel in at 10:50 a.m.)

THE COURT: Ladies and gentlemen, I want to thank you for serving today as a juror. I know you're all just anxious to be here, right? How many people don't have power yet? Anybody? One person. Who is back there? I'm going to let you go home if you want to. How are you doing today?

PROSPECTIVE JUROR: I'm fine.

THE COURT: You would probably rather be here because it's cooler. We got power about 8:30 last night so maybe you will get it today. I thought we were going to be last in the city, but -- where are you located?

PROSPECTIVE JUROR: Kirby and Mt. Moriah.

THE COURT: I don't know, it has been really slow, but maybe you will get your power today.

Let me tell you, folks, how many people had power for -- never lost power? Okay. All of you get to be on the jury. How many of you were out of power for more than a week? A lot of you. Yeah, how many more than ten days? Yeah, I get to be in that group. More than twelve days? Yeah, just two of us. Where are you -- where do you live?

PROSPECTIVE JUROR: Me?

THE COURT: Yes, ma'am.

PROSPECTIVE JUROR: Over off of Lamar.
THE COURT: Yeah, I know, we were really slow getting our power back. You got it yesterday?
PROSPECTIVE JUROR: Yes.
THE COURT: What time?
PROSPECTIVE JUROR: This morning.
THE COURT: You got it this morning?
PROSPECTIVE JUROR: Yes.
THE COURT: I got mine late last night, so they told me they were going to throw one more switch and see if it came on, and actually it did.

Well, what we're going to do today is select a jury in a criminal case and in order to do that, we're going to have to -- I was waiting on Mrs. Saba to get here. We have to first swear you all in, and so if you will all stand and raise your right hand. Thank you.

THE CLERK: Do you and each of you solemnly swear that the answers to the questions to be propounded to you by the court in this case for which you may be drawn as a juror to be the truth, the whole truth and nothing but the truth, so help you God?
THE JURY PANEL: I do.
THE CLERK: You may be seated.
THE COURT: All right. What we're going to do is we're going to call 14 names and have them sit up here

in the jury box. And, Mr. Tuggle, you may need to move that TV back just a little bit for folks so that the ones back there can see. The first person whose name is called will be asked to sit in seat number one. That's the seat closest to me on the first row, and the second person in seat number two and so forth, all the way down to seat seven, and then we're going to go to seat eight through 14. If your name is not called, that does not mean that you will not be called as a juror; it just means that we're going to ask these 14 individuals some questions. Pay attention to the questions, though, as they're asked, because you'll need to answer the same questions if your name is called.

THE CLERK: Lashaunda Vasser. Walter White. Larry Spurlin. Muhammad Salaam. William Vedder. Lee Scott. Regina Starnes. Kay Gupta. Linda Saul. Andrew Viverette. Jeffrey Stovall. Alphonso Smith. Frank Vickers. Keith Smith.
THE COURT: Who is our first juror?
THE CLERK: Lashaunda Vasser.
THE COURT: I need to ask you a few questions about being a juror in a criminal case, and the first thing I usually start out is -- I start with Ms. Vasser, and I ask what do you think is the most important characteristic for a juror. Think about it if you were

somebody sitting over there on the other side, what would be most important for you about a jury, what would you want? Ms. Vasser, what's the most important characteristic for a juror to have?

PROSPECTIVE JUROR: Honesty.

THE COURT: That's good. Okay. I'm going to make a list here.

Let's go to Mr. White. Mr. White, what is another characteristic?

PROSPECTIVE JUROR: The ability to assess fact.

THE COURT: Ability to assess fact. All right. I didn't get your name down right, so tell me your last name again.

PROSPECTIVE JUROR: Spurlin.

THE COURT: Spurlin, I knew I didn't have it right. Mr. Spurlin, what is another characteristic that you would want in a juror?

PROSPECTIVE JUROR: To be open-minded.

THE COURT: Open minded.

Is it Mr. Salaam?

PROSPECTIVE JUROR: Yes.

THE COURT: What is another characteristic of a juror?

PROSPECTIVE JUROR: Attentiveness.

THE COURT: Attentiveness, okay. So we have

got an honest person who is able to assess the facts who is open-minded and attentive.

Is it Mr. Vedder?

PROSPECTIVE JUROR: Right.

THE COURT: Another characteristic for a juror?

PROSPECTIVE JUROR: Common sense.

THE COURT: Common sense. Actually, I will give an instruction on that. You should have common sense. Apply your common sense.

Okay. Mr. Scott, another thing?

PROSPECTIVE JUROR: I guess you could say be able to weigh the evidence.

THE COURT: Be able to make a decision, to weigh the evidence. You know, it always gets a little harder as we go along.

Ms. Starnes -- but we have left out a couple of big things, a couple of big things -- what would you want as a juror?

PROSPECTIVE JUROR: To be impartial.

THE COURT: To be impartial. We have still got some to go. We have got an honest person who is able to assess the facts who is open-minded, attentive, uses their common sense, is able to weigh the evidence and is impartial.

All right. And, Mr. Smith, another thing you

would want from a juror?

PROSPECTIVE JUROR: I would want someone to be a very good listener.

THE COURT: A good listener, absolutely. Good listener.

All right. And, Ms. Vickers, something else?

PROSPECTIVE JUROR: To be able to be emotionally present here with what we're doing.

THE COURT: Emotionally -- what do you mean by that?

PROSPECTIVE JUROR: Well, to not have our thoughts and feelings about what's at home to be emotionally present.

THE COURT: To be -- to be focused on the case. I'm going to say focused on the case because the other was a little -- I have got you there. Focused on the case.

Mr. Smith?

PROSPECTIVE JUROR: I would say someone that's not prejudiced against anything.

THE COURT: Somebody who is not prejudiced, exactly. Mr. Stovall, what is a kind of -- what types of prejudice are we concerned about, because that's true -- Mr. Stovall, I'm going back to Mr. Stovall. Because, Mr. Smith, we have got a long list now, and we're down to an honest person who is able to assess the facts, who is

open-minded, attentive, uses their common sense, who is able to weigh the evidence, who is impartial, a good listener, focuses on the case and who is not prejudice. That's really a good list. I mean that's ten words which are really good descriptors, and usually when I get to the point on somebody who is not prejudiced or -- and somebody said impartial, which is another way of saying that, we start talking about what ways can people be prejudice. What ways are people sometimes prejudice?

PROSPECTIVE JUROR: Race and religion.

THE COURT: Race and religion are common ways in which people have prejudice. And, of course, it's inappropriate to consider them, but it is important to know that they're out there. And both of them have been in the news a lot, so that's certainly -- certainly two important ones.

Well, are there other things that -- is it Mr. Viverette?

PROSPECTIVE JUROR: Yes.

THE COURT: Mr. Viverette, other things that people can be prejudiced -- how old are you, Mr. Viverette --

PROSPECTIVE JUROR: Sixty-four.

THE COURT: You're 64. Anybody ever prejudiced because of age as far as you know? Maybe not, you have

never run into that. Ever heard about that, though?

PROSPECTIVE JUROR: Yes, I've heard of it.

THE COURT: Heard that people -- anybody older than 64? I think I have gotten my senior most panelist.

We will have to wait -- I will remember that. I will remember that.

Sometimes people will say you can't do the job because you're 64, because you're 60, because you're over 55 --

PROSPECTIVE JUROR: That's right.

THE COURT: -- whatever it is. And they don't look at you and see that you get around, you do -- you're perfectly capable and healthier than a lot of people who are 40. Some people might not look at that. So that would be a prejudice, a preconceived notion about somebody's ability simply based on age, and that's never happened to you? Nobody has ever --

PROSPECTIVE JUROR: No.

THE COURT: That's good. That's because you don't look 64.

PROSPECTIVE JUROR: Thank you.

THE COURT: I understand what you're saying there.

Ms. Saul, another thing people can be prejudice about?

PROSPECTIVE JUROR: Well, other than religion and color?

THE COURT: Race, religion, age?

PROSPECTIVE JUROR: Gender could be another one.

THE COURT: Gender?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Do you think sometimes women are treated differently than men?

PROSPECTIVE JUROR: I personally have not been, but I have seen other people.

THE COURT: You think every football coach in high school is automatically eligible to be the high school principal?

PROSPECTIVE JUROR: No.

THE COURT: I'm not saying that's an area of prejudice, but some people might say there does seem to be sort of a disproportionate number of football coaches that who gets to be principals of high schools. That's not always true, and I don't want anybody to get that impression.

THE WITNESS: Right, right. Depends on the person.

THE COURT: But some people might say, well, they didn't consider that female librarian, but they did

consider somebody else. So they looked at it and they said that person can do a better job because of their gender, maybe.

PROSPECTIVE JUROR: Right. Depends upon the person, whether it is male or female, just depends upon their capabilities.

THE COURT: It does exist.

PROSPECTIVE JUROR: Uh-huh.

THE COURT: That's possible. Now, I'm going to -- is it Mr. Gupta?

PROSPECTIVE JUROR: Yes.

THE COURT: Other types of prejudice? Where are you from?

PROSPECTIVE JUROR: I'm from India.

THE COURT: You're from India?

PROSPECTIVE JUROR: Yes.

THE COURT: Nobody is ever prejudiced against people who are not born in the United States, are they? Sometimes they are.

PROSPECTIVE JUROR: I hope not.

THE COURT: You hope not. Hopefully, not you. But it can be national origin too, is that a fair one to put in the group?

PROSPECTIVE JUROR: I would certainly like to put that.

THE COURT: Okay. National origin. All right. We have got a good set of things people can be prejudice about.

Now, I'm going to have you pass that back to Ms. Vasser. She is right in front of you.

Ms. Vasser, we have got a good list of things that you have to watch out what you want in jurors and some things you don't want. You don't want people prejudice, and we went through some things there. I want you to do something. We have got five people over there. We have got three people over there and two people over there. One person out there is a defendant in this case. Can you look out there and tell me which one it is? You got the gentleman with the beard and the glasses on there and the lady with -- got her hand on her -- all right -- chin on her hand. Gentleman with the red tie over there, the lady that's blonde, lady right there, and the fellow with the dark hair and glasses and another kind of darker red tie right there. Which one do you think is the defendant? They all look eligible, don't they? I'm kidding you.

MR. MURPHY: Judge, I was starting to get worried because they're eyeballing me.

THE COURT: Okay. He kind of stood up and threw you off there. He's still in the pool, we don't

want to leave him out. Who do you think the defendant is?

PROSPECTIVE JUROR: I'm going to say the lady in the black suit.

THE COURT: Which one now?

PROSPECTIVE JUROR: Dark hair.

THE COURT: The blonde?

PROSPECTIVE JUROR: No, not the blonde.

THE COURT: The brunette?

PROSPECTIVE JUROR: Brunette.

THE COURT: Brunette is the one.

Why do you pick her out? Usually what happens is they pick out somebody who looks a little different.

PROSPECTIVE JUROR: Yeah.

THE COURT: That's the most common thing for people to do. We always have that -- now, I probably threw you off, because usually people pick out if there's a guy with a beard, and Mr. Murphy stood up, they often pick out --

PROSPECTIVE JUROR: He stood up, so I eliminated him.

THE COURT: But if he had sat there -- often we pick out somebody who looks a little different, and I'm not saying you look that different, but somebody who looks somewhat different, so we had, you know, two red ties -- we had three red ties, put the ties together, maybe they

all look alike, I don't know. But you have a fellow with a beard. All the men wore glasses, so that made it harder, you know. You had a mustache and a beard, that makes that kind of hard to pick out. You had somebody who was a blonde lady, somebody who is -- so you went with the brunette lady.

Okay. She is the IRS agent. She is the IRS agent. We do this for a very specific purpose, and that is we all also judge people often on how they look.

I'm going to hand that to Mr. White right next to you. Mr. White, you and I don't have much hair, right?

PROSPECTIVE JUROR: That's correct.

THE COURT: People make assumptions about people who don't -- mostly good assumptions about people who don't have much hair, I suppose. At least you and Mr. Salaam and I all think the same on that. But they will make assumptions about that, won't they?

PROSPECTIVE JUROR: Correct.

THE COURT: And that's just not fair. Is it? It's not a fair way to proceed. And so what we have to do is in order to get rid of prejudice, we have to stop seeing that person as a person who has on, you know, a black jacket, white -- kind of beige, that might be white, I just can't see very well. You know, we have to not make a judgment. Now, I asked Ms. Vasser to do that because

that's part of the illustration. She did exactly what I wanted her to do, which is pick out somebody. In this case, is it appropriate -- would it be unfair, though, to judge anybody on how they appear?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. How do we avoid that, doing that? Because the first thing we all do, we all know is we look around and we see somebody and we start making judgments about that person, often very unfairly. Usually completely unfairly, but we do that. How do we avoid doing that in this case? How do we avoid judging people based on appearance?

PROSPECTIVE JUROR: By listening to the facts of the case.

THE COURT: That's exactly right, and you said ability to assess facts earlier, which is exactly that. We listen to the evidence. We listen to the facts, and we put aside preconceived notions about people based on appearance, based on, you know, hair style, based on anything else, we put those all out of our mind.

Do you think, Mr. Spurlin, that that is possible for people to do?

PROSPECTIVE JUROR: I don't think always.

THE COURT: It's not always?

PROSPECTIVE JUROR: No.

THE COURT: It's difficult?

PROSPECTIVE JUROR: Yes.

THE COURT: Have you found yourself on occasion sort of having prejudged somebody and found out you were just wrong?

PROSPECTIVE JUROR: On occasion.

THE COURT: I mean --

PROSPECTIVE JUROR: I mean it's not often. I have done it in the past.

THE COURT: Right. Sometimes you will think somebody is a good guy, and they turn out not to be a good guy. You think somebody is a bad guy, and it turns out they're not a bad guy.

PROSPECTIVE JUROR: Right.

THE COURT: It's a natural thing for people to assess things based on appearance, but in a case, in a trial, if we always did that, who would always get off and who would always get convicted? I'm going to ask Mr. Salaam, who would always get off if we just went on appearance and who would usually get convicted?

PROSPECTIVE JUROR: Well, the wrong person would get convicted, and the right person would walk.

THE COURT: Right, exactly, because we would be looking at people and just making a superficial determination instead of looking hard at the evidence, and

we can all think about that that is just inherently unfair in our society. So that's what we're going to have to avoid today.

Now, I did mention -- and, Mr. Murphy, I'm now going to let you -- I'm going to now let you introduce yourself and who is with you, and I'm going to let counsel for the defense introduce himself and those who are with him, and you're going to know who the parties are. But you're not supposed to judge them based on their appearance.

MR. MURPHY: Thank you, Your Honor. My name is Joe Murphy, ladies and gentlemen. I'm an assistant United States attorney here in Memphis, Tennessee, and sitting with me today will be Ms. Debbie White. She is an IRS agent with the Criminal Investigation Division of the IRS. Thank you.

THE COURT: All right. Thank you, Mr. Murphy.

And, of course, they represent the United States.

Yes, sir.

MR. BECRAFT: May it please the court, my name is Larry Becraft. I'm an attorney that is here to represent the defendant in this case. I also have a friend of mine that is going to be helping me. He's a lawyer. His name is Bob Bernhoft. This is the man right

here, and for those who didn't guess who is remaining, the lady right here is the defendant. Her name is -- we call her Vernie Kuglin.

THE COURT: And it is K-U-G-L-I-N?

MR. BECRAFT: That is correct, Your Honor.

THE COURT: So it is Ms. Kuglin. Well, hopefully, that exercise was useful to all of you to go through this process and say, you know, maybe we ought not to judge a book by its cover, we ought to wait and see what the content is in the case, and that's -- we usually try to go through that.

Ladies and gentlemen, I'm going to need to tell you a little bit about the case, because the government is always -- in these criminal cases is always the party that goes first, and it is the government, and before we do that, though, I'm going to go to Mr. Vedder, do you think you should automatically believe the government because they are the government?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. Now, do you have times in your life where you have not agreed with the government on things?

PROSPECTIVE JUROR: I spent 24 years in the military, sir.

THE COURT: You always agreed with the

government, is that right? But now -- you're retired now, right?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: So now you can disagree with them if you want to.

PROSPECTIVE JUROR: Yes.

THE COURT: All right. Would you hesitate to disagree with the government if you thought that the evidence, which is what we have been talking about all the time, the way we have to decide this case, said that you didn't believe the government theory? Now, it's not a matter of personally -- the lawyers don't know anything personally in the case, so it's not a matter of believing or disbelieving one of the attorneys, but will you decide this case solely on the evidence and not decide it for the government just because it is the government?

PROSPECTIVE JUROR: Strictly on the evidence, sir.

THE COURT: Right. And you see the importance, everybody has got to be able to do that.

Now, hand that to Mr. Scott. Mr. Scott, have you ever had a disagreement with anybody in government? Maybe not.

PROSPECTIVE JUROR: I worked 31 years for the VA Hospital.

THE COURT: For the VA Hospital?

PROSPECTIVE JUROR: Yes.

THE COURT: Are you retired now?

PROSPECTIVE JUROR: Well, on occasion, I kind of had a small problem.

THE COURT: Okay. Are you retired -- you're retired?

PROSPECTIVE JUROR: Because of that.

THE COURT: We can talk about it if we need to. Does that mean that you're -- since you worked for the VA for a long time, actually longer than Mr. Vedder was in -- which branch of the service were you in, Navy, Mr. Vedder? Which branch of the service were you in?

PROSPECTIVE JUROR: Army.

THE COURT: Army. Okay, Army.

And we have got the VA. Mr. Scott, are you going to, again, just like Mr. Vedder, be able to decide the case based on the evidence and not be inclined to just agree with the government, which, of course, you worked for the government also all these years?

PROSPECTIVE JUROR: Yes, I will be able to.

THE COURT: If the government does not prove the case beyond a reasonable doubt, you understand that you have to decide for the defendant?

PROSPECTIVE JUROR: (Nods head up and down).

THE COURT: Okay. That's right.

All right. And then we go to Ms. Starnes. Ms. Starnes, who do you work for?

PROSPECTIVE JUROR: Medical doctors.

THE COURT: Okay. Physicians. Which group?

PROSPECTIVE JUROR: Raleigh Cordova Medical Group.

THE COURT: Okay. Well, do you have any problem with the fact that you might have to disagree -- well, you have no obligation to agree with the position of the government, just because it is the government; does that make sense to you?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. And if Mr. Murphy presents proof beyond a reasonable doubt on the issues in this case, then, of course, you have to find the defendant guilty, but if they fail to do that, you have to find the defendant not guilty. Is that -- is that something you can live with?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. You now understand we're going to decide this case solely on the case, not on those other things we shouldn't consider, and we're going to be that kind of juror that we have all outlined here today.

I'm going to hand it back to Mr. Smith. I'm

going to ask -- you said you need to be a good listener in the case. Do you agree -- one thing we didn't talk about is a person has to be very patient in deciding the case because you have to wait until the end of all the evidence. You can't decide the case as you go along. Can you do that in this case? You have to wait until you hear it all, and then you hear Mr. Murphy's final argument and you hear Mr. Bernhoft's final argument, and then you get my instructions on the law, and then you decide the case, can you wait that long? You have got to wait a long time in these cases.

PROSPECTIVE JUROR: Yes, Your Honor, you have to.

THE COURT: Absolutely, because you don't know all the evidence until you've weighed it and heard everything. If you decide it based on the first witness, well, that would just be fundamentally unfair.

All right. Well, I'm going to tell you a little bit about the charges in the case, and then I'm going to let the lawyers ask some questions in the matter. I am going to -- anybody ever had a dispute with the IRS? Or y'all just happily pay your taxes? All right. You know, I do want you to tell me later on if you have had a dispute with the Internal Revenue Service or something like that, it's relevant. It doesn't mean that you can't

be a good juror, in fact, you might be a better juror for it, but it's something we would want to know about. I'm going to tell you a couple of things. There are -- there is more than one count in this indictment and there's going to be some critical language. I'm going to read the indictment one time right now. I may refer back to it later on and refer back to portions of the indictment; and at the end of the case, you will get a copy of the indictment, you'll get a verdict form, and you'll get a written set of instructions as well as oral instructions which I'm required to give you.

Now, the fact that somebody has been indicted does not mean anything about their guilt or innocence. It's simply a way of telling you what the charges are. If we didn't have this mechanism, the defendant would have no way to know how to prepare to confront the charges at trial, so it's a matter of fairness to a defendant. It is not -- and it's a matter of notice to you and me as to the nature of the charges, but it is not evidence at all.

Now, is the fact that somebody has been indicted, Mr. Smith, something that would cause you to start to make up your mind -- and I think it's -- well, Ms. Vickers, I'll ask you, is it something that would cause you making up your mind, somebody has been indicted, they must have done something wrong?

PROSPECTIVE JUROR: I think that's a natural thing to -- if they're there, that possibly they have.

THE COURT: But you remember when -- it's totally inappropriate. Does it seem also possible to go back to neutral and say that's totally inappropriate to give that any weight at all?

PROSPECTIVE JUROR: Yes, sir. And your last question, let me say, even though I haven't had any personal whatever with the IRS, but I have worked in an accounting office 18 years for a CPA firm that had interaction, and because of this, I know a lot of times people get put in those situations and they're not guilty.

THE COURT: Right. And I assume -- I have never worked in a CPA office, but I will accept your word on that.

PROSPECTIVE JUROR: Yeah.

THE COURT: The point being, though, that everybody starts out with a clean slate. Nobody has any black marks on it, you don't get a black mark on it or a negative mark on it for having been charged with an indictment. You're entitled to a jury that will not start out with preconceived notions about your guilt, or for that matter, your innocence. Well, they have to have a preconceived notion about your innocence, you're innocent until proven guilty. They start out, this person is

innocent, and the government has to prove beyond a reasonable doubt that they're guilty.

All right. Let me tell you -- I'm also going to tell you that there are six charges in this case -- counts, and the number of counts is also not important. You can't say, well, had it been one, I wouldn't have been bothered, but there's six. Otherwise, how would the government always assure a conviction, Mr. Smith, if the number of counts made any difference? They would just charge with you a bunch of counts, wouldn't they?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Right. And that would not be a fair way for our system to proceed. So that -- we know that on each count, a person is presumed innocent, and the government has to prove that count, and the facts that support that count beyond a reasonable doubt even. If they prove another count beyond a reasonable doubt, that still doesn't prove that particular point. So each one is considered separately and independently.

Okay. Well, this is what the indictment says. Count 1. That during the calendar year 1996, the defendant, Vernice B. Kuglin.

MR. BECRAFT: Kuglin, Your Honor.

THE COURT: Kuglin. I'm going to try to get that right. Ms. Kuglin had and received taxable income in

the sum of approximately $162,883.75, that well knowing and believing the foregoing facts, the defendant on or about April 15th of 1997, in the Western District of Tennessee, did un-- did willfully attempt to evade and defeat said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 15, 1997, as required by law, to any proper officer of the Internal Revenue Service and by failing to pay the Internal Revenue Service said income tax, in violation of Title 26, United States Code, Section 7201.

Count 2. That during the calendar year 1997, the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $147,999.60, that well knowing and believing the foregoing facts, the defendant on or about April 15, 1998, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 15, 1998, as required by law, to any proper officer of the Internal Revenue Service by failing to pay the Internal Revenue Service an income tax, and by filing a false recall Form W-4 in 1997, in violation of Title 26, United States Code, Section 7201.

Count 3. That during the calendar year, 1998, the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $137,197.93, that well knowing and believing the foregoing facts, the defendant on or about April 15th of 1999, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 15, 1999, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay the Internal Revenue Service said income tax, and by filing a false W-4 -- Form W-4 in 1998, in violation of Title 26, United States Code, Section 7201.

Count 4. That during the calendar year 1999, the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $146,571.66, that well knowing and believing the foregoing facts, the defendant on or about April 15, 2000, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 17, 2000, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay the Internal Revenue Service

said income tax, and by filing a false Form W-4 in 1999, in violation of Title 26, United States Code, Section 7201.

Count 5. That during the calendar 2000, the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $164,224.28, that well knowing and believing the foregoing facts, the defendant on or about April 15, of 2000, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 16, 2001, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay the Internal Revenue Service said income tax and by filing a false Form W-4 in 2000, in violation of Title 26, United States Code, section 7201.

Count 6. That during the calendar year 2001, the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $161,189.07, that well knowing and believing the foregoing facts, the defendant on or about April 15th of 2002, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 15, 2002, as required

by law, to any proper officer of the Internal Revenue Service by failing to pay the Internal Revenue Service said income tax and by filing a false Form W-4 in 2001, in violation of Title 26, United States Code, Section 7201.

Well, six counts, basically, saying pretty much the same thing, not exactly the same thing each time. Sometimes something involving a Form W-4, sometimes not, for the years '96, '97, '98, '99, 2000, 2001.

Well, now, you all agreed that you wouldn't decide the case without hearing the evidence, and I just read you the indictment and now you're sitting there thinking some things, right? And the important thing to remember about an indictment is that it is just a charge. It's awfully hard to do, because the inclination of every human being is to do what? Let's see, I'm going to mispronounce it, Mr. Stovall -- it's Jeffrey?

PROSPECTIVE JUROR: Stovall.

THE COURT: I'm sorry, Mr. Stovall. What's the natural inclination after hearing six somewhat repetitive charges for different years on a failure to file income tax return case -- I'm generally characterizing it that way, what is the natural inclination for most people to do?

PROSPECTIVE JUROR: Prejudge.

THE COURT: Say, my goodness, you know -- and

so, I'm going to go to your colleague right next to you, our senior member of the panel, Mr. Viverette, and how do you not prejudge these charges? How do you avoid -- is it hard to do, hard not to prejudge?

PROSPECTIVE JUROR: Yes, sir. Yes, it is.

THE COURT: It's hard.

PROSPECTIVE JUROR: With the amount of charges, of course.

THE COURT: It's a hard thing to do. You know, if it is one charge, you sort of feel one way. I warned you about that, you know, one easier to deal with, six a little harder, and yet that is why it is so important. So how are we going to overcome this sort of hole that, you know, I dug? I got you out of the hole and we all started out nice and even, and then I read you the indictment, how do we get out of that hole and get back to where we're supposed to be, which is requiring the government to prove its case beyond a reasonable doubt and giving the defendant the presumption of innocence that the law requires, how do we do that?

PROSPECTIVE JUROR: Listen to the evidence and try to judge, you know, from the evidence.

THE COURT: I mean that's a great answer. That's the answer. I mean you just say, hey, I heard something, and it's not evidence. I heard something, and

it's not evidence, and you get your antenna tuned up because you know what you're going to have to listen for, but you haven't heard any evidence yet. Exactly. Exactly. Do you think people can really do that, Ms. Saul?

PROSPECTIVE JUROR: I think that they can. In some cases, it might be a little difficult, but I think that they could if they just let -- left their emotions out and just weighed the evidence and the facts of the case to seek the truth and come to a good conclusion.

THE COURT: I think you're right, I think it is a little -- I think it's fairly difficult, but we got to do it, we got to do it in this case.

Mr. Gupta, can you do that in this case, can you start out on an even -- you know, this person is presumed innocent, they're innocent, there's nothing on that slate? I don't have any bad marks written on there, can you do that in this case?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. How did you go through that process of eliminating hearing that indictment, sort of the effect of hearing charges, how do you deal with that?

PROSPECTIVE JUROR: Well, basically, I believe that the defendant is going to try to present a case from his opinion exactly all the details, whatever it is, and

the facts and whatnot, and hopefully --

THE COURT: I'm sorry, go ahead.

PROSPECTIVE JUROR: And, hopefully -- we have to hear all those facts and keep on hearing those and no judgment until the case -- all the facts are heard.

THE COURT: Exactly. Now, you have raised a really important point, and I'm glad you did, because the interesting thing about our system, and it's different from many systems, it is different from the Belgium system and the French system and parts of the German system, it depends on what system you're in, is that the defendant actually never has to present anything at all. The government always has the burden of proof, and while there may be things that they present, there may not be things that they present, the government always has the burden of proving each count beyond a reasonable doubt. So we have got to be a little careful there. I'm going to fine tune your response just a little and say that every person is entitled to be represented. The defendant is certainly represented in the case, but she is not required to put any proof on, is that -- is that going to make it difficult for you, Ms. Vasser, in terms of how you listen to the case? She is right in front of you. She is right there in front of you. The fact that you know that she is not obligated to present any proof. Now, they may -- they

may tell you they will, but they are never obligated to, is it still possible for you to keep that frame of mind, innocent until proven guilty --

PROSPECTIVE JUROR: Yes.

THE COURT: -- knowing that? Does it make sense that we don't require defendants to -- we don't require them to testify or give any evidence at all, does that make sense?

PROSPECTIVE JUROR: Yes, it does.

THE COURT: Because it would be a very coercive system. The system would be very coercive if we could make people get up there and testify, it would take the burden partly away from the government, and that would be wrong. I mean the government has the burden no matter how we look at it, they have the burden of proof.

I have done a couple of things. We've gone through what a juror needs to be. I'm going to run down the rest of the list, and make sure everybody -- and then I'm going to tell the schedule. I'm going to see if anybody has got a problem with the schedule. This case is going to take a few days to try. Whether it is three days or four days or five days, it's going to be at least in that range. Never can tell for sure. These are like medical procedures, you know, if they start, they just go until they're over, you can't do anything about shortening

them up.

But let's go to Mr. White, Mr. White, having heard everything that you have heard, now do you think you can be a fair and impartial juror in this case and try this case solely on the evidence, or is there something you need to tell me about now either now or in person at the side bar about why you might not be able to do that?

PROSPECTIVE JUROR: I believe I can be fair and impartial in this case.

THE COURT: All right. And let's ask Mr. Spurlin, can you be fair and impartial in this case, try the case as we've talked about how to try it?

PROSPECTIVE JUROR: No, sir.

THE COURT: And Mr. Salaam, can you do that?

PROSPECTIVE JUROR: Yes, I can.

THE COURT: Mr. Vedder, can do you that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Mr. Scott, can you do that? You want to talk to me at side bar?

PROSPECTIVE JUROR: Kind of.

THE COURT: I can tell that. We'll talk up here in just a second.

Let me ask Ms. Starnes, Ms. Starnes, can do you that in this case?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And, Mr. Smith, can you do that?
PROSPECTIVE JUROR: Yes, I could.
THE COURT: Ms. Vickers, can you do that?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: And, Mr. Smith, can you do that?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: And, Mr. Stovall, anything you need to talk to me about or can you do that?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Mr. Viverrette, can you do that?
PROSPECTIVE JUROR: Yes.
THE COURT: And I think we have asked Ms. Saul, I will ask you again, can you do that?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: And I'm going to ask Mr. Gupta again just to make sure we have got everybody.
PROSPECTIVE JUROR: Yes, I can do that.
THE COURT: All right. Let me tell you a couple of things, and then I'm going to talk briefly with Mr. Scott at the side bar. The case will be tried on a schedule, we will usually start in here about 9:00 o'clock. It may be 9:30, it depends on the schedule for each morning. We usually have some things earlier, but as the case starts, we try to condense them. On Monday, Wednesday, Friday, we take a longer lunch break, it is

usually from 12:30 until 2:00. That won't seem -- once you have taken that long lunch break, you will appreciate that that is a good break for us, but then on Tuesday, Thursday, we take a short lunch break, it is an hour lunch break. It is actually a pretty good schedule, it's pretty tight. We will stay in this case until a little after 5:00 each day. We won't stay real late. This is not -- just like, frankly, all your comments were really good, and attentiveness and being able to focus on the case are the type of things that require we not keep you just for hours and hours. You have to be able to have a reasonable day, and we recognize that, so that's what we'll do. I expect the case to be a three to five-day case, I could be wrong. It could be a two-day case, which isn't likely, but it could also be a six-day case, which probably isn't likely either, but I can't tell you in advance. So you have to be available for that period of time. This is Monday, we will go through Friday, and we can be back next Monday, if we need to. That's not a problem. I expect the proof will probably be over in four days, though, that would be my absolute guess. I mean by Thursday. Mr. Murphy, the government will probably end a little before that?
MR. MURPHY: Judge, I anticipate that.
THE COURT: We never ask the defense how long

the proof is going to be, you know, because they're not required to put any proof on, because it's not fair to them. If you want to tell us, it's okay, but we don't really ask.

MR. BECRAFT: Your Honor, I am going to try to finish, if Mr. Murphy finishes Tuesday afternoon or Wednesday morning, I hope to have the case concluded, at latest, by noon on Thursday, the proof.

THE COURT: So that's going to be our objective. That's good. We all kind of know where we are on the case. The reason I'm telling you those things is that if you have got a nonrefundable trip and you're supposed to be on vacation next Monday, it's not the case for you. You need to be available that long, probably won't be that long, but if you have got a commitment that you have to meet, then this is not the case for you. I think they have given you the best estimate. That's the best they can do. Anybody who has a problem on the schedule?

Okay. Well, I'm going to have -- I'm going to -- Mr. Scott will be our illustration about coming to the side bar. I'm going to have you come around to side bar. If you can just walk in front, it's fine. And we hit some white noise then, so that -- let you have a private conversation at the side.

(The following proceedings had at side-bar bench.)

PROSPECTIVE JUROR: See, right now, I'm in dispute with Internal Revenue, plus my wife is an employee, and she used to work as Internal Revenue employee.

THE COURT: You're in dispute with the IRS?

PROSPECTIVE JUROR: Yes, kind of. I'm paying them back. But, see, my wife, she works for IRS.

THE COURT: Do you think you should not a juror in this case because of that?

PROSPECTIVE JUROR: Well, it would kind of -- you know.

THE COURT: Make you feel --

PROSPECTIVE JUROR: Feel a little uncomfortable.

THE COURT: Any objection to allowing Mr. Scott to be excused?

MR. MURPHY: Judge, I don't have any.

MR. BECRAFT: No.

THE COURT: We're going to let you be excused. Thanks for coming and telling me about it. Thank you.

(The following proceedings were had in open court.)

THE COURT: We're going to let Mr. Scott be

excused, and we will draw another name. Yes, sir.

PROSPECTIVE JUROR: Can I have -- because I have a medical condition, can I have some question that we ask?

THE COURT: Sure. Why don't you -- you want to talk to me at side bar or you want to tell me -- you can come around to side bar.

PROSPECTIVE JUROR: Can I come around to side bar?

THE COURT: Yes. We're going to call that other name right now so we can fill that seat so the lawyers will know who will be seat six.

THE CLERK: Marlow Smith.

THE COURT: Yes, sir, if you will come around over here.

(The following proceedings had at side-bar bench.)

THE COURT: Mr. Gupta, yes, sir.

PROSPECTIVE JUROR: I'm a diabetic patient, insulin dependent. Sometimes things can happen without my control. I am not sure when the things will be happening. I take shots.

THE COURT: Let me ask this.

PROSPECTIVE JUROR: Okay.

THE COURT: How often do you take a shot?

PROSPECTIVE JUROR: In the a.m., in the afternoon, and in the p.m., three times.

THE COURT: Okay. And did you bring insulin with you today?

PROSPECTIVE JUROR: I have not brought insulin with me today, I did not think that I was going to need it for the lunch time today because sometimes I can manage without that.

THE COURT: Okay. Will you bring insulin just in case you need it? We will always take a --

PROSPECTIVE JUROR: Yeah.

THE COURT: You administer your own shot?

PROSPECTIVE JUROR: Yes, I do.

THE COURT: Okay. How are you feeling today?

PROSPECTIVE JUROR: Fine.

THE COURT: Okay. We have a general policy that if somebody has a condition that can be managed, we do not want to exclude them from the panel.

PROSPECTIVE JUROR: I see.

THE COURT: If you think it's -- that you can't -- cannot serve, if you think it's going to be a problem, then I would want you to tell me, but we are going to try to help you out if there is any --

PROSPECTIVE JUROR: I will prefer because it's just developed that condition the last few months, six

months, but I've been a diabetic for the last 25 years. I can handle it, don't get me wrong, but I may not be sure, and I would just feel much comfortable if I don't have to do that.

THE COURT: If you don't have to serve on the jury at this time?

PROSPECTIVE JUROR: I'm going to be honest with you.

THE COURT: Okay. You do not use the insulin pump, but you use the shots?

PROSPECTIVE JUROR: I use the shots.

THE COURT: Mr. Murphy, I'm inclined if somebody thinks it's a problem --

MR. MURPHY: Judge, I have no objection.

MR. BECRAFT: None, Your Honor.

THE COURT: We ought to let you be excused. I understand it has gotten a little more difficult lately?

PROSPECTIVE JUROR: Yes.

THE COURT: Is that right?

PROSPECTIVE JUROR: Yes.

THE COURT: We're going to let you be excused.

PROSPECTIVE JUROR: Thank you very much.

(The following proceedings were had in open court.)

THE COURT: We're going to allow Mr. Gupta to

be excused. We will seat somebody else in seat number eight.

THE CLERK: Barbara Snodgrass.

THE COURT: Mr. Smith, how are you?

PROSPECTIVE JUROR: Doing fine.

THE COURT: Been in any big fights with the IRS?

PROSPECTIVE JUROR: No, sir.

THE COURT: All right.

PROSPECTIVE JUROR: Don't make enough money.

THE COURT: Well, I think a lot of -- we all feel that way sometimes. Let me ask this -- you raise a great point, though, you really do. We talked about ways people can discriminate against folks. We talked about people of different gender, we talked about appearance because that was really important and a really obvious thing to talk about. We talked about -- let's see, Mr. Stovall mentioned race and religion, Mr. Viverette mentioned age, Ms. Saul, gender, Mr. Gupta had mentioned national origin, different things. Do you think people can treat people differently because of their economic status?

PROSPECTIVE JUROR: I'm sure it does happen.

THE COURT: Would that be right in a court of law for somebody to be treated differently because of

their economic status?

PROSPECTIVE JUROR: It's not right anywhere.

THE COURT: It's not. And that can be both -- that can be -- you think it can apply to both people who make more money and people who make less money?

PROSPECTIVE JUROR: I'm sure it can.

THE COURT: It could be?

PROSPECTIVE JUROR: And I do in my life.

THE COURT: Maybe I didn't say that very well. Would it be right to treat -- to hold the government to a lower standard in this case for Ms. Kuglin because she has got some fairly large -- pretty large numbers associated with those income years, would that be wrong just to say, well, she made a bunch of money, you know, she must have done wrong, would that be fair?

PROSPECTIVE JUROR: No, Huh-uh.

THE COURT: Okay. And that's the same kind of preconceived notion, the idea that we're always concerned about is -- if Bill Gates was here and his income, I don't know what he makes, you know, Bill Gates was here and -- I don't know what he makes, I have no idea, and he made a billion dollars, he makes a lot of money, I don't know what he makes, he makes enough money to last us for awhile, would it be fair to convict him just because he made a billion dollars?

PROSPECTIVE JUROR: No, it wouldn't.

THE COURT: Right. And that is an important concept here, just -- it's the same kind of preconceived notion or anything else. The government's burden doesn't change because of your income level. In other words, if you make $50,000, if you make -- you know, $24,000, you have to pay income tax just like everybody else, you know. In fact, I can't remember the scale, but it varies, it varies a good bit. If you make $50,000, you have to pay income tax, if you make a hundred thousand dollars, you have to pay income tax. And the obligation to file that tax return doesn't change because of your income. I'm saying this in general, I know that there may be some exceptions there, but as a general proposition, you got to file. Anybody -- you know, I'm not going to ask everybody now, I'm going to tell you, don't raise your hand, but in the last five years, have each of you filed an income tax return each year? I'm not going to ask too many questions because somebody may not be old enough to have paid income taxes in a couple of those years, and there's some income limits on that too, but most everybody up there has filed an income tax return, at least one in the last couple of years. Now, everybody on the -- I can't remember if you're a student if you have to file one or not. Do you have to file one if you're a student, Mr. Murphy?

MR. MURPHY: Judge, it would depend on your income.

THE COURT: It would depend on your income. But by and large, most everybody up there has probably filed an income tax return. So anybody got to rule against the defendant because she looks like she made over a hundred thousand dollars each year?

Okay. What about that, Ms. Vasser, you going to rule against her -- you say, well, she must be guilty, they say she made over a hundred thousand dollars each year. We will pass it down to Ms. Vasser.

PROSPECTIVE JUROR: No.

THE COURT: Okay. And that's important. And, Mr. White, are you going to rule against her just because she seems to have a pretty good size number beside her name?

PROSPECTIVE JUROR: No, sir, it should not make a difference.

THE COURT: It really shouldn't, that's not what the government is trying to prove there. They're going to have to prove some numbers here, but that's not the key thing.

What about that, Mr. Spurlin, are you going to say, well, you know, it would be one thing if she made -- I don't know, if she had -- if she was supposed to file an

income tax return, but her income had been $18,000, but I'm going to treat her differently because I believe her income was in excess of a hundred thousand dollars, would that be wrong?

PROSPECTIVE JUROR: To treat her different, yes, it would be wrong.

THE COURT: It would be wrong, because this otherwise -- Mr. Murphy, this is basically a failure to file case, I don't want to misstate it.

MR. MURPHY: Well, it is an evasion case, Your Honor.

THE COURT: It's an evasion.

MR. MURPHY: And as part of that scheme, we're alleging failure to file and false W-4.

THE COURT: They're saying she knew she was supposed to file and she didn't file, and she did some things on some occasions to not file, to avoid it. But we can't just look at the number and reach a conclusion. Any problem with that, Mr. Salaam?

PROSPECTIVE JUROR: No. This is an evasion case under 7201, so it doesn't have anything to do with the amount, it's a legitimacy of an evasion.

THE COURT: Boy, you have got it down, thank you. We just got to hear the proof on that.

Mr. Vedder, can you -- are you going to be

influenced by that number?

PROSPECTIVE JUROR: No. Numbers don't make any difference, sir.

THE COURT: Okay. We're going to look at the actual proof on the issues that are going to be before the court.

We have already asked Mr. Smith. Mr. Smith, what do you do?

PROSPECTIVE JUROR: Right now, I'm a golf pro?

THE COURT: You're a golf pro?

PROSPECTIVE JUROR: Yes, ma'am -- yes, sir.

THE COURT: What happened to the golf course you usually work with the storm?

PROSPECTIVE JUROR: Well, only one limb fell off of one tree.

THE COURT: Where you are a golf pro?

PROSPECTIVE JUROR: Southaven Golf Center.

THE COURT: Okay. You were lucky, you were lucky.

Ms. Starnes, is that number going to be something that's going to overwhelm your ability to decide the issues that are really going to be before us, the evasion question?

PROSPECTIVE JUROR: No.

THE COURT: Mr. Smith, are you going to be able

to treat -- you know, we take an oath, a lot of us do, to treat the wealthy -- the rich and poor alike is what it says on a lot of these things, and I don't know if the plaintiff will be offended if we said rich, because it's a very relative thing, but can we treat everybody the same in this case and decide the issues in this case irrespective of the numbers involved, pretty much?

PROSPECTIVE JUROR: Yes, I could, Your Honor. It will be based on the evidence.

THE COURT: All right. Ms. Vickers, is that okay with you?

PROSPECTIVE JUROR: That's fine. It's not about the money, but the evasion.

THE COURT: And, Mr. Smith, is that okay with you?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And Mr. Stovall?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And Mr. Viverette?

PROSPECTIVE JUROR: I agree it's the evasion for not filing taxes.

THE COURT: Exactly. And Ms. Saul?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. You final -- we have got down to our new juror, now, it's Ms. Snodgrass, is that

right?

PROSPECTIVE JUROR: Yes.

THE COURT: How are you today?

PROSPECTIVE JUROR: I'm fine, thank you.

THE COURT: What do you do?

PROSPECTIVE JUROR: Flight attendant, and I also run an animal rescue organization.

THE COURT: What kind of animals?

PROSPECTIVE JUROR: Dogs and case.

THE COURT: Dogs and cats. There's one that just does dogs. Is it Mews? What does Mews do?

PROSPECTIVE JUROR: House of Mews does cats.

THE COURT: They do cats?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: But you do dogs and cats?

PROSPECTIVE JUROR: We do dogs and cats.

THE COURT: Which -- where?

PROSPECTIVE JUROR: Here in Memphis.

THE COURT: On Central?

PROSPECTIVE JUROR: No, we do it out of our homes. We have foster homes. People who will take them into their homes and keep them.

THE COURT: Okay. All right. Well, you've heard what everybody said about qualities of a good juror?

PROSPECTIVE JUROR: Yes, I have.

THE COURT: Long list there. Did you agree with those?

PROSPECTIVE JUROR: I did.

THE COURT: Okay. And what about the prejudice questions and prejudging questions, any problem with the fact that we cannot prejudge the case, any problem with those?

PROSPECTIVE JUROR: I don't have a problem with that, no.

THE COURT: Can you give the defendant the presumption of innocence that the law requires? And you heard me read the charges, so that was one of the things we went through this process about. Can you give the defendant the presumption of innocence that the law requires?

PROSPECTIVE JUROR: I feel the government is going to have to show the reason, so, yes.

THE COURT: But it's a question of being able to give somebody that blank slate.

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Can she really start out with a blank slate with nothing written on it, even though we have got those charges there, nothing written, no black marks, anything like that?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. Mr. Murphy -- and I do have a bunch of other things, but I'm going to let you go ahead.

MR. MURPHY: Yes, sir, Your Honor.

How are you, ladies and gentlemen, doing today? My name is Joe Murphy, and I'm a prosecutor in the U. S. Attorney's office here in Memphis, and I have got some questions that I would -- or some things that I would like to talk with you about before we begin.

Now, this is an income tax evasion case, and if I didn't stand up here and say a lot of people have strong feelings about the IRS and the income tax laws, I would be lying to you.

Now, has anybody on the panel had any problems with the IRS? Have you had any audits or anything like that?

PROSPECTIVE JUROR: I was audited a number of years ago.

MR. MURPHY: All right. As a result of that, do you have any negative feelings about the IRS?

PROSPECTIVE JUROR: No.

MR. MURPHY: Okay. But you think you were treated fairly throughout the audit process?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Okay. Anybody else? Yes, sir.

PROSPECTIVE JUROR: We were audited a few years ago also.

MR. MURPHY: Okay. And how do you feel about the audit? Do you think you were treated fairly or unfairly?

PROSPECTIVE JUROR: Well, after they, you know, checked it over and so forth, they proved that, you know, we had to pay, in other words.

MR. MURPHY: So you had to pay some extra tax?

PROSPECTIVE JUROR: That's right.

MR. MURPHY: Do you think the IRS treated you fairly?

PROSPECTIVE JUROR: I suppose so. You know, the change each year, you know, there are certain changes, so forth, but certain things, you know, were deductible, you couldn't deduct it, so it's kind of hard to say, you know, because of the changes, you know, they steady changing what you could deduct.

MR. MURPHY: Okay. Can you -- if -- if you end up on the jury in this case, can you put that as -- any feelings you might have as a result of that audit to the side and decide the case based on the facts and the law that the judge gives you?

PROSPECTIVE JUROR: I'll do my best.

MR. MURPHY: Okay. But do you think you could?

Can you take an oath and swear that you can do it?

PROSPECTIVE JUROR: I believe so.

MR. MURPHY: Okay. Now, that brings us to an important point. Judge McCalla in this case will instruct you, ladies and gentlemen, if you end up on the jury what the law is and what law you have to apply, and he'll define what the crime of income tax evasion is, that sort of thing. Now, does -- and he'll instruct you that you have to apply his law whether you like it or not. Now, does anybody have a problem with that? Do you think you can apply the law whether you agree with it or not? Does anybody have a problem with that? I know it is Monday morning, nobody is talking. Not getting much of a response, but I'm going to take it to mean that nobody has a problem with that if you aren't raising your hands.

Okay. Let me say a word about what we're doing. In voir dire, I only know this because the judge told me this, it is old French for speak the truth, and what we're trying to do here -- we're not trying to get a government jury or a defense jury, we're trying to get a fair jury. We're trying to get a jury that has no preconceived notions that are going to affect the way they control the case, and that's why we're asking the questions we do. Do any of you ladies and gentlemen know any of the parties that are seated here before you here

today?

THE JURY: No.

PROSPECTIVE JUROR: She looks familiar. Are you perhaps a real estate agent?

THE COURT: I'm sorry, I couldn't hear you.

PROSPECTIVE JUROR: She looks familiar. I just asked if she was a real estate agent.

THE COURT: Not a real estate agent.

MR. BECRAFT: No, Your Honor, probably Mr. Murphy is probably going to ask, but I think it is an important question to ask, she does work. She is a FedEx pilot, Your Honor.

THE COURT: Okay. I think that takes real estate agent part out, doesn't it?

PROSPECTIVE JUROR: I'm the director of operations at the airport, so perhaps --

THE COURT: Do you recognize --

PROSPECTIVE JUROR: I may have recognized the face, but I don't know the lady individually.

THE COURT: I will let Mr. Murphy ask a couple of more questions about that.

MR. MURPHY: Now, the fact that you are operations director at the airport, and the proof may establish that the defendant, Ms. Kuglin, is a FedEx employee, is that going to cause you any problems, are you

going to be worried about FedEx being mad at you no matter how you decide the case?

PROSPECTIVE JUROR: No.

MR. MURPHY: Now, Ms. Vasser, do you also work for FedEx?

PROSPECTIVE JUROR: I do.

MR. MURPHY: Okay. Is it going to cause you a problem if there's another FedEx employee here?

PROSPECTIVE JUROR: No.

MR. MURPHY: It's not -- it's not going to influence the way you decide the case?

PROSPECTIVE JUROR: No.

MR. MURPHY: Okay. Because you understand you're going to have to decide the case on the facts --

PROSPECTIVE JUROR: Right.

MR. MURPHY: -- that you hear from the witness stand and the law that the judge gives you?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Okay. Thank you. Now, do any of you ladies and gentlemen know anything about this case? Has anybody talked the case over with you? Have you heard anything about it from any friends at church, anything like that?

Now, does everybody understand that the indictment is just a way to bring this proceeding about,

that it's not proof of guilt? Does everybody understand that?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Does everybody understand that Ms. Kuglin, as she sits before you today, is presumed to be innocent, do you understand that?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Okay. And do you also understand that the government has the obligation of coming forward and proving Ms. Kuglin guilty as charged in the indictment beyond a reasonable doubt, does everybody understand that?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Does anybody think that the government should be held to a lesser standard of proof?

THE JURY: No.

MR. MURPHY: By the same token, does anybody think that the government ought to be held to a higher standard of proof? Do you think we ought to have to prove it beyond any doubt? You think we should have to prove it beyond any doubt?

PROSPECTIVE JUROR: Beyond a shadow of a doubt.

MR. MURPHY: Now, the judge is going to instruct you that the burden of proof in the case is beyond a reasonable doubt, which is not beyond a shadow of a doubt; is that going to be a problem?

THE COURT: One reason for that is there can always be an unreasonable doubt. I mean is Elvis dead? I mean who thinks Elvis is not dead? Elvis is alive. But there are people who will believe that Elvis is -- and I will tell you, my wife was a resident, Elvis is dead, folks, I hate to tell you, you know, he's dead. There are things that people have unreasonable doubts about. We might wish that it wasn't the way it is in the case of somebody like Mr. Presley, but it's not a reasonable doubt. It's not based on reason and common sense. It's really based upon emotion, usually. So beyond a shadow of a doubt is not the standard. You know, that's -- you know, can I prove to you -- I can probably prove to you beyond a shadow of a doubt that Elvis is dead because there's some physical evidence of his not being alive, but for some things we can never prove it beyond all doubt, it's just not possible.

I'm sorry, go ahead, Mr. Murphy.

MR. MURPHY: Thank you, Judge.

But do you understand what the judge is saying --

PROSPECTIVE JUROR: Yes.

MR. MURPHY: -- beyond a reasonable doubt is the standard that you're going to have to decide the case on, okay?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Can everybody give a fair trial to both sides? Can everybody be fair to the defendant? Can everybody be fair to the government?

THE JURY: Yes.

MR. MURPHY: As usual, ladies and gentlemen, I'm having trouble reading my own writing.

Do any of you, ladies and gentlemen, have any family or friends that are involved in law enforcement, work for the Sheriff's Department or federal agents, work for the police department? Yes, sir.

PROSPECTIVE JUROR: As part of my job, I'm a police officer.

MR. MURPHY: You're a police officer at the airport?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Are you a member of the Airport Authority?

PROSPECTIVE JUROR: Yes, I am.

MR. MURPHY: Police department?

PROSPECTIVE JUROR: Yes. I'm the director of operations in public safety, which I have responsibility for the police department.

MR. MURPHY: So you operate like the police chief out there?

PROSPECTIVE JUROR: The police chief reports to me, yes.

MR. MURPHY: Anybody else? Any family members, friends? Does anybody have any family members or friends that work for the IRS?

Okay. Nobody will fess up to it, okay.

Yes, sir.

PROSPECTIVE JUROR: I have a son that works for the IRS.

MR. MURPHY: You have a son that works --

THE COURT: We're going to pass the mic back. One reason we pass the mic is that it goes through our system here, and actually you folks back there can hear it when we're speaking in the mic, can't you? And when we don't speak into the mic, you can't hear. And they need to be able to hear our answers, so just be sure that you speak into that mic.

Have you got --

MR. MURPHY: Well, it wasn't working.

THE COURT: Well, you just keep your voice up, and you usually can be heard. If you can't hear Mr. Murphy, let me know too.

MR. MURPHY: That's what my kids say anyway.

PROSPECTIVE JUROR: Well, I have a son that works for the IRS.

MR. MURPHY: And what does he do at the IRS?

PROSPECTIVE JUROR: He work, you know, with tax -- with the tax, you know, examiner, I believe that's the title.

MR. MURPHY: So he examines people's income taxes?

PROSPECTIVE JUROR: If I'm not mistaken, yes.

MR. MURPHY: Now, the fact that your son works for the IRS, is that going to cause you any problems? Is it going to make it harder for you to be fair to the defendant?

PROSPECTIVE JUROR: No.

MR. MURPHY: Is it going to make it harder for you to be fair to the government?

PROSPECTIVE JUROR: Loaded question.

MR. MURPHY: I believe this gentleman down here, yes, sir.

PROSPECTIVE JUROR: I had friends some years ago that were criminal investigators with the IRS.

MR. MURPHY: Is that going to cause you a problem?

PROSPECTIVE JUROR: No, it's not.

MR. MURPHY: If you were to vote not guilty in this case, would that embarrass you with those friends?

PROSPECTIVE JUROR: I haven't even seen them in

the last 15 years, they have moved away.

MR. MURPHY: Okay. Thank you.

Is any -- are any of you, ladies and gentlemen, employed by the federal government?

Yes, ma'am.

COURT SECURITY OFFICER: Pass the mic down.

PROSPECTIVE JUROR: I work for USDA, the U. S. Department of Agriculture.

MR. MURPHY: How long?

PROSPECTIVE JUROR: For 26 years.

MR. MURPHY: What part of USDA?

PROSPECTIVE JUROR: Cotton, cotton program.

MR. MURPHY: Okay. Do you work at the classing office?

PROSPECTIVE JUROR: Yes, uh-huh.

MR. MURPHY: The fact that the federal government is bringing this case, is that going to cause you any problems?

PROSPECTIVE JUROR: No.

MR. MURPHY: Are you going to feel like you have to vote guilty?

PROSPECTIVE JUROR: No.

MR. MURPHY: And you can be fair to the defendant?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Okay. Thank you, ma'am.

Have any of you, ladies and gentlemen, ever served on a jury in a civil case? If you have, raise your hands.

Okay. Ladies and gentlemen, do you understand that there's six separate counts in this indictment? This indictment charges six distinct crimes and that you're going to be required to render a verdict as to each count of the indictment. Does anybody have a problem with that? Okay. And as the judge said, the number of charges doesn't make a person guilty, everybody understands that?

Okay. Does anybody on the jury -- on the jury panel, do you have a belief that you shouldn't be required to pay taxes? That's different than you don't like paying them, don't enjoy it. Do you think that tax laws are unconstitutional or improper, or does anybody have feelings like that? Okay. Does anybody have a problem with the fact that some violations of the tax laws may be criminal violations? You know, it's kind of like in drug cases, you have some jurors sometimes that think marijuana ought to be legalized and don't approve of prosecutions of marijuana distributors, anybody feel like that, that the tax laws -- that criminal charges shouldn't be brought for tax violations? Nobody is saying anything.

Yes, sir.

PROSPECTIVE JUROR: I have a feeling that our tax laws are set up more for the rich folks instead of the poor folks, being one of the poorer ones.

MR. MURPHY: Okay. Now, you understand that the judge is going to instruct you what the law is in the case, and you will have to follow that law without consideration of that feeling; do you understand that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Now, does that cause you a problem?

PROSPECTIVE JUROR: Because that has nothing to do with a defendant, because that is our law per se.

MR. MURPHY: There you go. Would you speak into the microphone, sir?

PROSPECTIVE JUROR: I said that has nothing to do with a defendant, that's just the way our system works.

MR. MURPHY: Okay.

PROSPECTIVE JUROR: We don't have a perfect system, I think anybody would agree with that.

MR. MURPHY: Okay. But you're not going to have any problem applying the law that the judge gives you?

PROSPECTIVE JUROR: No, sir.

THE COURT: If there's proof in the case that this defendant made a high salary, you're not going to

hold that against her?

PROSPECTIVE JUROR: No.

MR. MURPHY: Okay. Thank you, sir.

Have any of you, ladies and gentlemen, ever worked as income tax preparers or have accounting degrees, anything like that? I know, ma'am, you said you worked at a CPA office?

PROSPECTIVE JUROR: My ex-husband was a CPA and I worked for 18 years of just preparing tax returns. I didn't do the actual -- the CPAs in the firm did the interaction with the IRS, but I did prepare tax returns. I don't do that now, but I did.

MR. MURPHY: Okay. Do you have any bad feelings about the IRS based on your experience working with the CPA firm?

PROSPECTIVE JUROR: No, if anything, it helped me feel better. I learned that you didn't have to fear it, the people -- that the IRS does their information on the information that they have, and the tax accountants' role is to help them, if they have information the IRS does not have, and so it didn't leave negative feelings about the IRS.

MR. MURPHY: You understand that if you're selected on the jury, you're going to have to decide the case based on the facts that are admitted into evidence

and the law as the judge gives it to you?

PROSPECTIVE JUROR: Uh-huh.

MR. MURPHY: Do you understand that?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And do you understand you can't go back, and if you're selected as a juror, you say, well, now, wait a second, when I was with the CPA firm, they did it this way?

PROSPECTIVE JUROR: Well, yes, sir, I understand that. And this is so much back in the past -- in fact, I had just about even forgot this, that I should bring this up. I am a pastor of a church now, so my world doesn't evolve around the -- this world now.

MR. MURPHY: Okay. Mr. Salaam, have you ever done any taxes or anything like that? They're going to pass you the mic.

PROSPECTIVE JUROR: No, I haven't.

MR. MURPHY: Because you talked about it being a 7201 charge.

PROSPECTIVE JUROR: I've studied prelaw at St. Louis University some, and I've attended a lot of trials, but never did anything with taxes but pay them.

MR. MURPHY: What kind of trials did you attend?

PROSPECTIVE JUROR: All type. I participated

in the King trial, all 30 days with Dr. William Peppers.

MR. MURPHY: Okay. Were you helping Dr. Peppers in the presentation of that case or were you just there?

PROSPECTIVE JUROR: No, I served as security for the King family.

MR. MURPHY: Okay. I believe on the jury sheet it says you work for one of the local funeral homes?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Okay. Are you a security officer?

PROSPECTIVE JUROR: No, I'm a family counselor, family service counselor, and sometimes a funeral director.

MR. MURPHY: Okay. How long have you worked at Memphis Funeral Home?

PROSPECTIVE JUROR: Forest Hill.

MR. MURPHY: Forest Hill, I'm sorry.

PROSPECTIVE JUROR: That's the other guy.

MR. MURPHY: That's the competition. Forest Hill.

PROSPECTIVE JUROR: About a year and a half.

MR. MURPHY: Okay.

PROSPECTIVE JUROR: I have a family business too.

MR. MURPHY: Okay. Now, what you learned in

school and the prelaw courses and what you learned by sitting in this these trials, you understand that's not something that you can use in this case because the judge will instruct you on the law, and the facts may be different, all that sort of thing?

PROSPECTIVE JUROR: Yes, I understand it. I'm glad you understand it too.

MR. MURPHY: Okay. I don't know. Sometimes I don't understand it. It's just engrained in us, in lawyers, things have got to be just so-so.

PROSPECTIVE JUROR: All right.

MR. MURPHY: Okay. I'm down to my last question, ladies and gentlemen. And lawyers are kind of like Baptist ministers, finally does not necessarily mean immediately. Is there anything about this case or anything that y'all think the lawyers and the judge ought to know that hasn't come up? Anything we haven't asked that you think that we should have?

Okay. Well, with that, I will sit down, ladies and gentlemen. Thank you.

THE COURT: We're going to go until -- no, we're ready, we're fine, we will go until about 25, 27 after, and then we will take our lunch break, and I will have to give you -- I will have to have a couple of minutes to tell them the rules about those sorts of

things, so you have got about 10 minutes.

MR. BECRAFT: I will just tell you that you can wave your hand and cut me off any place.

PROSPECTIVE JUROR: I will just speak up.

MR. BECRAFT: Ladies and gentlemen, my name is Larry Becraft, and I'm here to represent Vernie Kuglin, who is the defendant in this case. And, of course, the other fellow over here is Bob Bernhoft, and my question to you is, first and foremost, has anybody ever met Vernie Kuglin, heard about her or heard about her lawyers? How about -- you know, some people -- the U. S. Attorney's office is one floor below, a lot of people work down there, do any of you know or are you socially acquainted with anybody that works in the U. S. Attorney's office? Whether it is an attorney -- yes, Mr. White.

PROSPECTIVE JUROR: Yes, sir.

MR. BECRAFT: You know someone? And who would that be?

PROSPECTIVE JUROR: Terry Harris.

MR. BECRAFT: Okay. The U. S. Attorney?

PROSPECTIVE JUROR: Yes.

MR. BECRAFT: Are you socially acquainted with him?

PROSPECTIVE JUROR: Not socially, professionally.

MR. BECRAFT: So out at the airport, the U. S. Attorney's office has some dealings with the security out there, and that's the way you've met him and worked with him, correct?

PROSPECTIVE JUROR: Yes, sir.

MR. BECRAFT: Okay. Is there anything about that relationship that would maybe cause you to be favorable to the government and simply because you know the man that runs the office?

PROSPECTIVE JUROR: No, sir.

MR. BECRAFT: So you can cast that aside if you're picked as a juror?

PROSPECTIVE JUROR: Yes, sir.

MR. BECRAFT: Is there anyone else that knows, you know, either the lawyers or the investigators or anybody else that might work in that office?

Now, we're going to have in this case -- you know, we're going to bring in some people from the IRS, some people from the Service Center, it is going to be IRS people that are going to take the witness stand, and my question to you at this time is this: You know, are you going to be giving to anybody that is a government employee greater credence to their testimony just because they work for the government? Anybody that is going to be leaning in the direction of giving greater credence to

somebody that works for the government rather than giving the same type of credence you would for any other witness?

I take it most of you are -- or, in fact, all of you, is there anybody here who does not live in Shelby County? And you, Mr. White?

PROSPECTIVE JUROR: Vedder.

MR. BECRAFT: Vedder, I'm sorry. How far away do you live from the courthouse?

PROSPECTIVE JUROR: Tipton County.

MR. BECRAFT: And you live where?

PROSPECTIVE JUROR: Lauderdale County.

MR. BECRAFT: And how long does it take y'all to get to court?

PROSPECTIVE JUROR: It takes me an hour and a half.

MR. BECRAFT: An hour and a half?

THE COURT: Where do you live in Lauderdale County?

PROSPECTIVE JUROR: Halls, Tennessee.

THE COURT: Halls, okay. And I'm sorry, where do you live in Tipton County?

PROSPECTIVE JUROR: It took me about 45 minutes.

THE COURT: And you live in which part of Tipton County?

PROSPECTIVE JUROR: Drummonds.

THE COURT: I live in Rosemark, which is one mile south of the line --

PROSPECTIVE JUROR: Yeah.

THE COURT: I used to work in Covington.

PROSPECTIVE JUROR: Drummonds.

THE COURT: Drummonds, okay, yeah, yeah. Just to get an idea. It may not be quite as familiar. I think those are distances -- I know anybody from Tipton County, we always end up asking them to drive back and forth. People from further away, if it takes a long time, we'll actually enter an order and let you stay in a hotel, if we can get a hotel room in the downtown area if it becomes a problem. A lot of people prefer to commute. Anybody from as far north as Dyersburg, I usually suggest that they stay overnight, just so far -- that's just such a long drive. I need to let you know that, and you wouldn't necessarily know that was the policy on trips. Go right ahead.

MR. BECRAFT: Thank you, Your Honor. Anybody else? If you're picked as a juror, are you going to have a problem getting here to court? Somebody might park over there at Mud Island or some other place. Does anybody think if you're picked as a juror you're going to have a difficult time at least getting to court here whether we

start at 9:00 or 9:30 in the morning?

Mr. Murphy asked some questions along these lines, but I want to kind of repeat it because I may not have been hearing what his question was closely. My question relates to either you, yourself, or members of your immediate family or some of your close friends that you meet on a regular basis, you know, you hold -- they're part of your family almost. Out of that group, are there any of you or members of your families or those close friends that have ever at any time worked for either state or federal law enforcement? All right. How about anybody that has either themselves or members of their family or close friends that have ever worked for either state or federal government, and I'm including everything, you know, like if it was any agency of the federal government, any agency of the state government, does anybody themselves or members of their family or close friends work for government in any way, shape, manner or form other than the ones that -- yes, ma'am.

PROSPECTIVE JUROR: My brother is a lieutenant.

COURT SECURITY OFFICER: Pass the mic.

PROSPECTIVE JUROR: He works for the Sheriff's Department.

MR. BECRAFT: Sheriff's Department?

PROSPECTIVE JUROR: Yes.

MR. BECRAFT: Your brother?
PROSPECTIVE JUROR: Yes.
MR. BECRAFT: Okay. Shelby County?
PROSPECTIVE JUROR: Yes.
MR. BECRAFT: All right. And how long has he been employed?
PROSPECTIVE JUROR: About 13 years.
MR. BECRAFT: Okay. Do you see him on a regular basis?
PROSPECTIVE JUROR: Yes.
MR. BECRAFT: All right. So chances are if you were picked as a juror in this case there might be a possibility that you would see him sometime during the course of the trial?
PROSPECTIVE JUROR: Possible.
MR. BECRAFT: Okay. Well, you wouldn't let your -- if you were picked as a juror, would you let your brother, this Shelby County deputy influence you or your decision in this case in any way, shape, manner or form?
PROSPECTIVE JUROR: No, because he wouldn't know about the case I was on.
MR. BECRAFT: Okay. Thank you. Mr. White?
PROSPECTIVE JUROR: Sir?
MR. BECRAFT: What? Did you raise your hand? I thought you did.

PROSPECTIVE JUROR: I didn't. Although --
MR. BECRAFT: We know you work for the Airport Authority.
PROSPECTIVE JUROR: Right. I actually have several close friends that are FBI agents.
MR. BECRAFT: Okay. Thank you.
Mr. Spurlin?
PROSPECTIVE JUROR: Used to work for the FAA.
MR. BECRAFT: And how long ago was that?
PROSPECTIVE JUROR: '81.
MR. BECRAFT: And how long did you work for the FAA?
PROSPECTIVE JUROR: Eleven years.
MR. BECRAFT: And you're working now, you left probably about '92 '93, the FAA?
PROSPECTIVE JUROR: No, I left in '81.
MR. BECRAFT: And for the last 20 years, you have been working -- we had a little note that you work in auto sales, is that correct?
PROSPECTIVE JUROR: Right, auto parts.
MR. BECRAFT: And have you been doing that since you left the FAA?
PROSPECTIVE JUROR: Basically, except for one year.
MR. BECRAFT: Do you have any friends or

relatives that still work for the FAA that you still talk to?

PROSPECTIVE JUROR: No.

MR. BECRAFT: Okay. All right. Thank you. Anybody else that raised their hand to that question about either being employed by or having friends that are employed by some government agency? Have any of you ever -- Mr. Murphy asked the question about whether or not you had served in a civil jury. I don't know -- if y'all came in maybe last week for jury service, but let me ask this specific question: Have any of you ever sat on a grand jury, either state or federal? You know, a grand jury is a group of people that assembles in a building much like this, either in the -- some courthouse, state or federal, and they have government agencies and other witnesses come before them to tell them about the commission of crimes, and a grand jury returns an indictment. Now, has anybody ever sat on a grand jury before, state or federal? Okay. How about -- I think your answers to Mr. Murphy's questions about civil juries, I don't think there was anybody here who sat on a civil jury. How about a criminal jury? Okay.

PROSPECTIVE JUROR: Shelby County.

MR. BECRAFT: Shelby County. How long ago was that?

PROSPECTIVE JUROR: I would say roughly 10, 11 years ago, 12 years ago maybe.

MR. BECRAFT: And that was a criminal case?

PROSPECTIVE JUROR: Well, it involved DUI.

MR. BECRAFT: Okay. And would there be anything about your service in that prior criminal case that would have any effect upon what you do or think or decide if you're picked as a juror in this case?

PROSPECTIVE JUROR: No.

MR. BECRAFT: Okay. All right. And, Mr. Smith, did you raise your hand?

PROSPECTIVE JUROR: Yes, sir.

MR. BECRAFT: And you have been a juror in a criminal case before?

PROSPECTIVE JUROR: Yes, sir, that's correct.

MR. BECRAFT: And how long would that be?

PROSPECTIVE JUROR: I would say roughly about five years ago.

MR. BECRAFT: And was that state or federal?

PROSPECTIVE JUROR: I think it was state.

MR. BECRAFT: Okay. Here in Shelby County?

PROSPECTIVE JUROR: Yes, sir.

MR. BECRAFT: Would there be anything about your service as a juror in a criminal case that -- you know, you sat through one criminal trial in the past and

you may be picked to sit in another criminal jury this time here, is there anything about your prior experience that might have some influence or effect upon how you listen to the evidence or react in this case if you're picked as a juror?

PROSPECTIVE JUROR: No, sir.

MR. BECRAFT: All right. So you can leave that totally behind you, whatever you did then, and consider this case based solely on the facts and the testimony and the documents that are offered in evidence?

PROSPECTIVE JUROR: Absolutely.

MR. BECRAFT: Was there anybody else who raised their hand to the question about criminal jury service?

How about -- we're going to be bringing in some people to testify in this case. Is there anybody who has ever been a witness either in a civil or a criminal case meaning, you know, you had to come up here and sit down in a chair? Ms. Vickers.

PROSPECTIVE JUROR: In a custody case, child custody case for my daughter.

MR. BECRAFT: Okay. All right. So you had to go to -- was that here in Shelby County?

PROSPECTIVE JUROR: No, it was in north Alabama.

MR. BECRAFT: How long ago was that?

PROSPECTIVE JUROR: It will be a year in September.

MR. BECRAFT: Okay. Was there anything about that experience that might have an effect upon -- now, you're not sitting up there in what we call the hot seat, you will be sitting as a juror in this case, is there anything that would maybe affect what you do in this case having been a prior witness?

PROSPECTIVE JUROR: Maybe be able to hear that person a little better after having sat there.

MR. BECRAFT: All right. Anybody else that responded to being a witness? Let me take Mr. Spurlin.

PROSPECTIVE JUROR: It's probably been 30 years.

MR. BECRAFT: As a witness in a case?

PROSPECTIVE JUROR: Right.

MR. BECRAFT: Well, there's no -- that's not going to affect what you do here, right?

PROSPECTIVE JUROR: No.

MR. BECRAFT: Mr. Salaam, I think you raised your hand?

PROSPECTIVE JUROR: Yes, in 1979, I was a character witness for one of my co-workers.

MR. BECRAFT: All right. Was that in a civil case, criminal case?

PROSPECTIVE JUROR: Civil case.

THE COURT: And sometime ago, what you did then wouldn't have any effect upon your role as a juror in this case if you're picked, right?

PROSPECTIVE JUROR: No.

MR. BECRAFT: Was there anybody else? And you are Mr. Stovall?

PROSPECTIVE JUROR: Yes. Probably about 20 years ago, I was a witness for an employee of mine, he was up on drug charges.

MR. BECRAFT: All right.

THE COURT: We're going to need to take our lunch break.

MR. BECRAFT: Sure, Your Honor.

THE COURT: I need to tell everybody seven things before we take that break. We will get the jury today, I'm sure. In fact, it may not be that far into the afternoon. But any time we take a break, there's seven things to keep in mind. The first thing is you cannot discuss the case among yourselves. It's very tempting, because that's the one thing you all have in common is that you're juror on a -- or potentially a juror on a case. You cannot discuss the case. Don't talk about the lawyers, the parties, anything about the proceedings at all. When you start talking about any aspect of the case,

you start the mental process of making up your mind, and we cannot do it once you start it. So I'm going to ask you not to verbalize anything about the case. The second thing is not only are you not to talk among yourselves about the case, but obviously you're not to talk with anybody else. If you need to call an employer or family member or somebody and tell them what you're doing, you can call and tell them that you're a prospective juror in a criminal case in federal court and you cannot tell them anything, because naturally people ask. So tell them that you're -- that's all you can tell them is that you're a potential juror in a criminal case in federal court. You can tell them more about it when the case is over or when you're released. The third thing is that if anybody should try to talk you about the case, it's improper, and so do not -- if they do, tell them they shouldn't, but, secondly, report that to one of our court security officers. They're the ladies and gentlemen who have on the blue jackets and the badges, and they will let me know, or a member of my staff or me. The fourth thing is don't speak to the lawyers or the parties, you can't -- you should give them space. If you see them get on an elevator, let them take an elevator, you take the next one, because if they were seen speaking to you or appearing to be close to you engaged in conversation, it

might appear that they were attempting to influence you. They will avoid that, but they need your help in that regard. So don't speak to them at all. The fifth thing is do not do any research or make any investigation. I know that some people may know something about the law in the area. Don't go to the library and look anything up or make any type of inquiry. It's our job to -- the lawyers' job to present the evidence through the witnesses and the facts, and then it's my job to give you the law. So don't try to make any investigation in that regard. The sixth thing is, of course, avoid anything in the newspaper or on television or radio that might be about this case or cases like this. You simply -- that would be outside the -- that would be material presented outside the presence of the court and the parties, so you cannot consider that. If inadvertently you see something in the newspaper or hear something, then tell me about it, and it probably won't be a problem, but you need to tell me so we can check and see if it is. And the seventh thing is keep an open mind. Obviously, one of the first things that you told me about until you have heard all the evidence in the case, the final arguments of counsel and the final instructions on the law and have gone to the jury room and then discussed the evidence among yourselves, which will be probably four days from now, and then after you have

discussed the evidence with each other, four days from now after you have heard all the proof and the final arguments and final instructions, then make up your mind. So wait, continue to be patient and wait.

Ladies and gentlemen, we're going to ask you to come back at 2:00 o'clock, and we'll see you at 2:00 o'clock, we'll resume jury selection at that time. All of you, we will ask you to be back at that time. Thank you.

(Recess taken at 12:30 until 2:00 p.m.)

(Jury in.)

THE COURT: All right. I think we have got everybody. Yes, sir. You may proceed.

MR. BECRAFT: May it please the court, ladies and gentlemen, right before our lunch break, I wrote the last question that I had asked of y'all about being a witness, and I think my recollection is that everybody that had replied to the question had given me some information about that. Did I miss anybody?

As you know by now, this is a tax case. Ms. Kuglin is charged with six counts of tax evasion, bad word, but I expect that what she is going to do in this case is she is going to take the stand, tell you the reasons why, and her testimony will involve something about tax law. And Judge McCalla was asking some questions earlier today about how many people have some

information or knowledge or have ever studied the tax laws in any way, shape, manner or form. For example, have you taken a course involving tax or have you ever picked up a tax code or other information and actually studied that? What I would like to know from any of you right now is if you have ever engaged in any type of the study of the tax laws like I have just described? Yes, ma'am. And that would arise because you worked in the past for the CPAs. And did that involve getting down to the details of the Internal Revenue Code?

PROSPECTIVE JUROR: It involved sometimes looking up what the code was in preparing a tax return.

MR. BECRAFT: Okay. Now, with that in mind, I want to tell you something that's going to happen during this case. Ms. Kuglin is going to give her beliefs about the law, but all the law that is applicable in this case will come from the court, you understand that, right?

PROSPECTIVE JUROR: Uh-huh.

MR. BECRAFT: And so if you have some preconception or some view of tax or some recollection, can you lay all of that aside if you're picked as a juror and just listen to what Judge McCalla tells you is the law that will be applicable in the case, can you do that?

PROSPECTIVE JUROR: It has been done many years ago, so it has been done.

MR. BECRAFT: Anybody else fall in that category that has done some type of personal study of the tax law?

This is a criminal case and, you know, a lot of people have seen on TV -- you know, we have Perry Mason, and we have all of these other shows about civil and criminal cases, and I think probably all of you're aware of the burden of proof that's involved in a criminal case. In a civil case, all you have to do is kind of tip the scales of justice over to one side. The party that proves by a preponderance of the evidence their case is entitled to win. However, in a criminal case, the burden of proof is, you know, what we do here in America is we have a burden that is imposed upon the government, here it's represented by Mr. Murphy. They have got to submit proof in this case to prove beyond a reasonable doubt that Ms. Kuglin committed the crimes. Is there anybody here that kind of disputes or has some difference of opinion about the burden of proof that the government might have to carry in this case? Now, in this case, you know, I'm not going to tell you what the whole facts are, but, you know, I can assure you that after the government ends their proof, one of the first witnesses, we may have two, maybe one, maybe three defense witnesses, but one of the defense witnesses is going to be Vernie Kuglin. She is going to

get up and explain to you why she did what she did. Is there anybody here that at this stage, without knowing the substance of what she is going to testify about, is there anybody right here that says, well, gee, you know, I have heard enough about this case that, you know, there is nothing that she can say that would persuade me that she is anything other than guilty? Is there anybody here that is in that posture right now? Is everybody that on this panel, in this jury box right here, are you going to tell me that you will fairly listen to the testimony of Vernie Kuglin, fairly weigh it and make a determination as to whether she is not guilty or guilty, will each of you do that?

You know, you have already heard a little bit about the facts of this case. She is an airline pilot. She flies for FedEx, has been doing so for a number of years. She lives down at the end of the street. She lives in downtown Memphis. She has a condo down there. The proof is also going to show that their son, go down far enough south on Main Street during lunch you will pass by where her son lives, 1 Main Street. You know, just knowing the fact that she is a FedEx pilot, just knowing the facts that she makes -- you know, you heard Judge McCalla read out those large figures that were in that indictment, 140, 150, $160,000 is what FedEx was paying

her each year, she lives in a condo at Waterford Place. They're in the process of building or buying an office or a building down at 1 Main Street South. So it's quite obvious that what is going to come out in this case, what you're going to be able to see about Vernie Kuglin is someone that is, you know, makes good money and lives nice, and there's going to be testimony in this case regarding her, you know, disputes with the IRS. Now, is there anyone that knowing that much about the facts of this case that you're thinking in your mind, well, I've got some type of preconceived notion or I'm -- you know, I'm somewhat uncertain about this blonde headed lady over here that is a FedEx pilot making a lot of money and living in a nice place in downtown Memphis, is there anyone that right now has something inside of them that says, you know, there's something I don't like about Vernie Kuglin, is there any such feeling inside any of you?

Okay. Now, can each of you, with those facts in mind, treat her just like any other defendant? Could you treat her just like -- what if the facts in this case were some 20 or 25 years ago when she was working for the welfare department, if she were a defendant and her job was what she had 25 years ago working for the welfare department, will you judge her equally under both sets of

facts? You won't have any problems or take into consideration her station in life and hold that against her when you decide this case? Will each of you -- you know, this case is going to last, as you've heard, we're probably going to try to wrap up, hopefully, Thursday morning. After that's over with, what we're going to do is the lawyers will get up and give closing arguments after you have listened to all of these witnesses that will testify. The lawyers are going to kind of summarize the case, but at the end of that, Judge McCalla is going to read to you a set of jury instructions. He's going to tell you about what's important in this case, and what's important in this case will be what I call this criminal state of mind that you must find in order to find her guilty. If she doesn't have a criminal state of mind, she's not guilty. Now, will each of you follow, listen tentatively to what Judge McCalla has to say about what the government must prove, listen to the law that she gives to you and will each of you follow it? Any reservations?

Has anybody had problems hearing me? Anybody have anything against me? Anybody have anything against Vernie Kuglin? Anything against Bob Bernhoft, the way he looks? Is there anybody here that for whatever reason, maybe Judge McCalla might not like this, but I want to

know, have you got any reason, just show me your hand, I don't want to sit in this case? So each of you are willing --

THE COURT: I just raised my hand, I got plenty to do.

MR. BECRAFT: So nobody -- everybody is willing right now to sit maybe through Friday afternoon and discharge your American civic duty?

THE COURT: I'm going to let my technical guy come up and just talk to me a second. Go right ahead.

MR. BECRAFT: Can I go ahead, sir?

THE COURT: Absolutely. We have to fix a couple of pieces.

MR. BECRAFT: Does anybody here have any problem with the way that we settle criminal cases, criminal disputes here in America? We bring in twelve tried and true members of our community and submit to them for ultimate resolution the ultimate question of whether or not someone is guilty or innocent of a crime?

Nothing further, Your Honor.

THE COURT: We were just checking, we need to fix that lapel mic, it wasn't working, and Ike is going to -- Mr. Mussleman is going to get that taken care of, and that was it.

Well, anything else from anybody else for the

panel at this time?

MR. MURPHY: Judge, I don't have anything else, but --

THE COURT: Let's talk about it at side bar, because I wanted to ask a couple of questions. There are a couple of things that sometimes are covered and haven't been covered yet, so I want to check.

(The following proceedings had at side-bar bench.)

THE COURT: Usually y'all or I ask a few questions, do you want to ask those?

MR. MURPHY: If you want me to do personal stuff, that's fine.

THE COURT: I can run through them real quickly, I'm going to go through them real fast, just their employer, I'm going to get whether they're married or not, what does their spouse do. I'm going to ask them what part of the district they live in.

(The following proceedings were had in open court.)

THE COURT: I raised my hand because I used to tell people that anybody who really wanted to serve on a jury probably shouldn't. That's sort -- that's an important frame of mind to probably approach it. It is real serious business. Usually we ask a couple of

questions, sometimes I ask them, sometimes the lawyers ask them. Really in this case, really nobody asked them. We do have a small information sheet on each of you, but very small, so what we're going to do, just to make sure that we know a little bit about each of you, is I'm going to start with Ms. Vasser, I'm going to ask each of you set a questions. I'm going to ask what you part of the district or city do you live in. As you can see, some people live outside Shelby County, and also it is helpful for people to know, for example, if you live downtown, if you live on Harbor Town, if you live in Waterford Plaza, but just generally what part of the district or city you live in. Then I'll ask you what's your occupation, who's your employer, are you married, and if you're married, I'm going to ask who your spouse is, so they will know and so -- they will hear the name, and what does your spouse do, just to make sure we have covered that with each person, and then I'm going to ask you that final question, is there any reason that you cannot serve on this jury and be fair and impartial. Somebody usually asks those, and since they haven't been asked, I'm going to make sure we have covered them. We also have you stand up when you do that just so everybody can hear you okay. So if you will stand please, what part of the city or district are you from?

PROSPECTIVE JUROR: I'm Wolfchase area.
THE COURT: Okay. I left out one thing, I'm going to add one thing in there. And what is your -- I'm going to ask your educational background. And I don't want to know very much, just how far you went in school.
PROSPECTIVE JUROR: College.
THE COURT: What is your occupation and who is your employer? For some people, we know some of this, but tell us that.
PROSPECTIVE JUROR: I'm a carrier for FedEx.
THE COURT: I think it's probably been obvious, but everybody wants to be sure, a person who works at the airport or works at FedEx, do you know Ms. Kuglin?
PROSPECTIVE JUROR: No.
THE COURT: Okay. Are you married?
PROSPECTIVE JUROR: Yes.
THE COURT: Your husband's name and his occupation?
PROSPECTIVE JUROR: William Vasser.
THE COURT: And what does he do?
PROSPECTIVE JUROR: He's a team leader for FedEx.
THE COURT: Okay. Any children?
PROSPECTIVE JUROR: Yes.
THE COURT: How many children?

PROSPECTIVE JUROR: One.
THE COURT: How old?
PROSPECTIVE JUROR: Twelve.
THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: No.
THE COURT: Thanks very much.
And Mr. White?
PROSPECTIVE JUROR: Yes.
THE COURT: What is your title out there?
PROSPECTIVE JUROR: Director of operations and public safety.
THE COURT: So people call you Director White sometimes?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Director White, what part of the district or city are you from?
PROSPECTIVE JUROR: Collierville.
THE COURT: And what is your educational background?
PROSPECTIVE JUROR: Master's degree.
THE COURT: Go ahead and tell us your occupation and who you work for.
PROSPECTIVE JUROR: The director of operations, public safety. I work for the Memphis-Shelby County

Airport Authority.

THE COURT: And are you married?

PROSPECTIVE JUROR: Yes, I am.

THE COURT: Your wife's name and her occupation?

PROSPECTIVE JUROR: Deborah White. Not that one, and she is an accountant.

THE COURT: And she is an accountant. Okay. It would be bad to miss that one.

Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, I do not.

THE COURT: Thanks very much.

Mr. Spurlin?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: What part of the district or city are you from?

PROSPECTIVE JUROR: Southeast Shelby County.

THE COURT: Okay. And how much education do you have?

PROSPECTIVE JUROR: High school.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: Sales rep for Prime Automotive.

THE COURT: Tell us what they do again, I think I heard earlier, but --

PROSPECTIVE JUROR: Well, parts store, we sell to parts stores and warehouses.

THE COURT: Okay. Are you married?

PROSPECTIVE JUROR: Yes.

THE COURT: And what is your wife's name and her occupation?

PROSPECTIVE JUROR: Betty, and she works for Methodist Hospital.

THE COURT: Okay. Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: I should have asked you, do you have children?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: How many children?

PROSPECTIVE JUROR: Well, two of my own and one stepson.

THE COURT: And I should ask, Mr. White, do you have children?

PROSPECTIVE JUROR: Yes, sir, two.

THE COURT: Two children, okay.

Hand that over to Mr. Salaam. How are you

doing this morning?

PROSPECTIVE JUROR: Perfect.

THE COURT: What part of the district or city are you from?

PROSPECTIVE JUROR: Midtown.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: Doctorate.

THE COURT: Is that in -- what's that in?

PROSPECTIVE JUROR: Theology.

THE COURT: Theology. You know, nobody asked this question directly, and we nearly always ask this question also, and it really goes to everybody, is there any theological reason that you could not sit in judgment in a case? And some people do feel that they cannot sit in judgment. May as well ask the first one.

PROSPECTIVE JUROR: No, not at all.

THE COURT: Generally speaking, most people who have your background say that. There are a couple of denominations who do not want their members to sit on juries.

PROSPECTIVE JUROR: No.

THE COURT: Have you ever run into that?

PROSPECTIVE JUROR: No.

THE COURT: Okay. Let's see, what is your

occupation and who is your employer?

PROSPECTIVE JUROR: Forest Hill Funeral Home and Cemeteries. I'm a family service counselor and also funeral director.

THE COURT: Are you married?

PROSPECTIVE JUROR: No.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: Not at all.

THE COURT: Thank you. Mr. Vedder, what part of the district or city are you from?

PROSPECTIVE JUROR: Tipton County.

THE COURT: Okay. And actually you're from sort of northwest of Tipton County?

PROSPECTIVE JUROR: Northwest.

THE COURT: Toward the river?

PROSPECTIVE JUROR: Yes.

THE COURT: And what is your educational background?

PROSPECTIVE JUROR: One year of college.

THE COURT: And what is your occupation and who is your employer?

PROSPECTIVE JUROR: I'm general manager of a warehouse for Cirtain Plywood, Incorporated.

THE COURT: Okay. Are you married?

PROSPECTIVE JUROR: Yes, sir.
THE COURT: Your wife's name and her occupation?
PROSPECTIVE JUROR: Wife's name is Karen, and she's retired.
THE COURT: Okay. Do you have children?
PROSPECTIVE JUROR: Got three daughters of my own and one stepson.
THE COURT: All right. Do you know of any reason that you could not serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: None whatsoever, sir.
THE COURT: Thank you.
And, Mr. Smith, is it Mr. Marlow Smith?
PROSPECTIVE JUROR: Marlow Smith.
THE COURT: How are you doing today?
PROSPECTIVE JUROR: Doing pretty good.
THE COURT: What is your -- what part of the district are you from?
PROSPECTIVE JUROR: I live in Whitehaven.
THE COURT: Okay. And what is your educational background?
PROSPECTIVE JUROR: High school.
THE COURT: What's your occupation and who is your employer?

PROSPECTIVE JUROR: Well, I'm a golf pro, but I'm a retired golf pro.
THE COURT: Okay. Okay.
PROSPECTIVE JUROR: I got down in my back and can't do much playing anymore.
THE COURT: What was the best you ever shot, I'm curious?
PROSPECTIVE JUROR: Four under.
THE COURT: Four under?
PROSPECTIVE JUROR: Yeah.
THE COURT: That's a lot better than most people.
Are you married?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: What is he your wife's name and her occupation?
PROSPECTIVE JUROR: Nell. She works for Walgreens.
THE COURT: Children?
PROSPECTIVE JUROR: Got 14 kids, nine boys and five girls.
THE COURT: That's true?
PROSPECTIVE JUROR: Yeah, 47 grandkids.
THE COURT: That's -- that may be a record. Congratulations.

PROSPECTIVE JUROR: I've run across some that had more.

THE COURT: That's wonderful. Well, do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you. Ms. Starnes, what part of the district or city are you from?

PROSPECTIVE JUROR: Raleigh area.

THE COURT: What's your educational background?

PROSPECTIVE JUROR: High school.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: I'm a billing manager for Raleigh Cordova Medical Group.

THE COURT: Are you married?

PROSPECTIVE JUROR: Separated.

THE COURT: What does he do and what is his name?

PROSPECTIVE JUROR: His name is Robert, and he's a mechanic for Gossett Mitsubishi.

THE COURT: Does that mean you get a good car most of the time?

PROSPECTIVE JUROR: That means I don't drive a Mitsubishi.

THE COURT: All right. Do you have any children?

PROSPECTIVE JUROR: I have three.

THE COURT: Okay. Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: I can be fair and impartial, and I did send in a reason with my questionnaire, but they denied it.

THE COURT: Okay. You know, we don't necessarily see that many of those, so is it a real problem --

PROSPECTIVE JUROR: It's relevant, yes, sir.

THE COURT: I'm going on -- in a minute, I'm going to let you come up and tell me, just so we know it's okay. We have a lot of people who asked to be excused, and then most people after they see the process think, well, it's okay, they can do it. I will talk to you in just a couple of minutes.

PROSPECTIVE JUROR: Okay.

THE COURT: Hand that back to Mr. Smith. Mr. Smith, what part of the district or city are you from?

PROSPECTIVE JUROR: Southeast, Orange Mound area.

THE COURT: Okay. And what is your educational

background?

PROSPECTIVE JUROR: I have a master's.

THE COURT: Okay. And what is your occupation and who is your employer?

PROSPECTIVE JUROR: I'm a teacher at the Porter Leath Home for Children.

THE COURT: That's a very famous institution.

PROSPECTIVE JUROR: Yes, it is.

THE COURT: Are you married?

PROSPECTIVE JUROR: No, divorced.

THE COURT: Children?

PROSPECTIVE JUROR: Ten.

THE COURT: These are all your kids?

PROSPECTIVE JUROR: All these are my kids.

THE COURT: Well, this is -- we're having a contest this time. Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: Your Honor, no, I don't.

THE COURT: Okay. Thanks very much.

Ms. Vickers -- or Reverend Vickers, actually.

PROSPECTIVE JUROR: Yes.

THE COURT: What part of the district or city are you from?

PROSPECTIVE JUROR: From Halls, Tennessee, which is Lauderdale County.

THE COURT: You know, you have -- near Halls, one of the most famous map stores in the country.

PROSPECTIVE JUROR: Haven't been there, but I have heard of it.

THE COURT: It is amazing, they take orders from all over the world. What is your educational background?

PROSPECTIVE JUROR: Master of divinity.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: I pastor the Poplar Grove Cumberland Presbyterian Church, and they are my employer.

THE COURT: Are you married?

PROSPECTIVE JUROR: Divorced.

THE COURT: Children?

PROSPECTIVE JUROR: Three.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No.

THE COURT: Okay. Thank you.

Mr. Smith, Mr. Alphonso Smith, what part of the city or district are you from?

PROSPECTIVE JUROR: I stay out in Raleigh.

THE COURT: Okay. And what is your educational background?

PROSPECTIVE JUROR: Associate's degree.
THE COURT: What is your occupation and who is your employer?
PROSPECTIVE JUROR: Presently, right now I'm a dispatcher for Memphis Truck and Trailer Services on Lamar.
THE COURT: Are you married?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Your wife's name and her occupation?
PROSPECTIVE JUROR: My wife's name is Patricia. She's a substitute teacher for the Memphis City School system.
THE COURT: Any children?
PROSPECTIVE JUROR: Two girls.
THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: No, sir.
THE COURT: Thank you. Mr. Stovall, what part of the district or city are you from?
PROSPECTIVE JUROR: Collierville.
THE COURT: What is your educational background?
PROSPECTIVE JUROR: Bachelor's degree.
THE COURT: What is your occupation and who is

your employer?
PROSPECTIVE JUROR: I'm a salesman for Yarbrough Cable Service.
THE COURT: Are you married?
PROSPECTIVE JUROR: Yes.
THE COURT: Your wife's name and her occupation?
PROSPECTIVE JUROR: Susan Stovall. She is a registered nurse office manager for a psychiatrist.
THE COURT: Okay. Do you know of -- do you have any children?
PROSPECTIVE JUROR: Four.
THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: No.
THE COURT: Thank you.
PROSPECTIVE JUROR: Thank you.
THE COURT: Mr. Viverette, what part of the district or city are you from?
PROSPECTIVE JUROR: South Memphis.
THE COURT: What is your educational background?
PROSPECTIVE JUROR: BS.
THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: Substitute teacher, Memphis City Schools.

THE COURT: Are you married?

PROSPECTIVE JUROR: Yes.

THE COURT: Your wife's name and her occupation?

PROSPECTIVE JUROR: Elize Viverette, teacher, Memphis City School system.

THE COURT: Children?

PROSPECTIVE JUROR: Three boys.

THE COURT: All right. Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you.

And, Ms. Saul, what part of the district or city are you from?

PROSPECTIVE JUROR: Wolfchase area.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: High school.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: Secretary, U. S. Department of Agriculture.

THE COURT: Are you married?

PROSPECTIVE JUROR: Divorced.

THE COURT: Children?

PROSPECTIVE JUROR: One.

THE COURT: And do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Thank you.

And, Ms. Snodgrass, what part of the district or city are you from?

PROSPECTIVE JUROR: Raleigh.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: High school and a few college courses.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: Flight attendant, Delta Airlines.

THE COURT: Are you married?

PROSPECTIVE JUROR: Divorced.

THE COURT: Children?

PROSPECTIVE JUROR: Three girls.

THE COURT: Do you know of any reason that you

could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No reason at all.

THE COURT: Okay. Thank you. Mr. Murphy, I think that may have covered everything. Anything else from the United States?

MR. MURPHY: No, sir, Your Honor.

THE COURT: Anything else from the defense?

MR. BECRAFT: None, Your Honor.

THE COURT: All right. If you will each fill out your strike sheets and, of course, they're exercised simultaneously, and I will explain to you what is going on. When we first go through the -- and sometimes we have a lot of conflicts, in this case not very many. Oh, wait a minute, we have got somebody who wants to talk to us. Ms. Starnes, come around to side bar. Sorry, Ms. Starnes.

(The following proceedings had at side-bar bench.)

THE COURT: I didn't mean to leave you out.

PROSPECTIVE JUROR: That's okay. The only thing I had to send in is my husband, his father, his health is not good, and I am his caregiver, I'm his primary caregiver, I'm who he calls. If something were to go wrong and I was here and he couldn't get me, he won't call anybody else. I mean I take care of his finances and I coordinate his medical care, and he lives by himself,

and I -- you know, I'm not trying to get out of everything, I'm just who he calls.

THE COURT: I understand. Let me ask you a couple of questions.

PROSPECTIVE JUROR: Okay.

THE COURT: Just to make sure. One, let me tell you one thing, we will probably select at least one alternate in the case, so assuming that there's no emergency, of course, you could serve, and if it turned out that he had to go to the hospital or something, we could let you be excused, that wouldn't be --

PROSPECTIVE JUROR: Okay. I just want to make sure I can take care of him, that's all.

THE COURT: Right. And so we recognize these things can happen.

PROSPECTIVE JUROR: Okay.

THE COURT: Now, let me ask a couple of things. Now, does he -- he's -- is he ambulatory, he gets around on his own?

PROSPECTIVE JUROR: Yes. Not well.

THE COURT: About how old is he?

PROSPECTIVE JUROR: He's 82.

THE COURT: Okay.

PROSPECTIVE JUROR: He has got Parkinson's disease along with some other medical conditions, but the

Parkinson's keeps him from moving around well.

THE COURT: How often do you see him?

PROSPECTIVE JUROR: Usually about twice a week, and then I talk to him every day.

THE COURT: Okay. He's become your buddy and that sort of thing, I mean?

PROSPECTIVE JUROR: There's not any other family.

THE COURT: You're it?

PROSPECTIVE JUROR: Like I said, Robert would do for him, but he's going to call me. I just take care of everything and have since -- well, for a long time.

THE COURT: For a long time?

PROSPECTIVE JUROR: He can't drive or anything.

THE COURT: Okay. Does he take care of his own meals or does somebody come in and help him?

PROSPECTIVE JUROR: He does do his own meals.

THE COURT: Does he take any medications that you have to be concerned about?

PROSPECTIVE JUROR: No, no, he takes care of all of that.

THE COURT: Okay. Let -- what we normally do, if somebody is the sole caregiver of somebody who requires, you know, constant care, and that doesn't mean every minute, but that means somebody there in the

morning, afternoon, somebody is there quite a bit of the time during every day, we excuse them, we always do. That's just pretty routine. If it is somebody who has a primary responsibility, but is only there a couple of times a week, what we usually do is ask them to serve on the jury, but tell them that, you know, they can check in with the individual, and -- we ask them not to keep their cell phone on during court, but, you know, if it is an emergency that comes up that at that time we will address it and excuse them. We need to. But the main question I'm going to let these lawyers ask -- there's another question they usually ask. Anything else, Mr. Murphy.?

MR. MURPHY: Ma'am, is the -- thinking about your father-in-law situation, is it going to weigh on your mind so much you're going to have trouble listening to the proof?

PROSPECTIVE JUROR: No.

MR. MURPHY: Okay.

PROSPECTIVE JUROR: I can't let anybody worry me that much, I would go crazy.

THE COURT: But I mean that's the main thing we want to know.

PROSPECTIVE JUROR: Like I said, as long as I know that if something happened, that I can drop and run.

THE COURT: As long as you tell us.

PROSPECTIVE JUROR: You would know. You would know.

THE COURT: Just let us know right away and we will take care of it.

PROSPECTIVE JUROR: Okay. That's the main thing. Thank you.

(The following proceedings were had in open court.)

THE COURT: All right. Each side can fill out their peremptory challenge sheets. There are two kinds of challenges. One is for cause, that's what I indicated earlier, and that's when somebody knows somebody to such degree, for example, that they couldn't be fair or maybe they have had a very similar experience, then, typically, they're allowed to be excused for cause. Once we have got 14 people who are not excused for cause, then each side gets a certain number of peremptory challenges, and technically -- well, theoretically, they can excuse you for any reason, but there are a couple of unconstitutional reasons that they cannot excuse you, so -- I would like to correct that. They cannot excuse you because of your gender, they couldn't try to knock all the women off or all of the men off. They couldn't excuse you because of your race, they couldn't excuse you because of your national origin, religion, things that are protected under

the Constitution, they cannot excuse you for those reasons, but -- and so they have pretty broad discretion in peremptory challenges, but not unlimited discretion. In a minute, they're going to hand up their peremptory challenge sheets, and we will see who gets to go ahead and go home and who gets to stay with us. And when we excuse that group of people, then we call folks from the panel and ask you some additional questions.

We got a lawyer back there? Somebody who looks like a lawyer? He's not one, I suppose. He's not a lawyer. Okay. He's all right. No problem.

(Strike sheets were handed to the Judge.)

THE COURT: Okay. Let me see counsel at side bar.

(The following proceedings had at side-bar bench.)

THE COURT: There were five strikes by the defense, but one of them was previously struck by the government, so there are four charged against the defendant.

On the first row, defense -- excuse me, the defense struck Mr. White and then the government struck Mr. Spurlin and Mr. Salaam, and the defense struck Mr. Smith, Mr. Marlow Smith, and the defense struck Ms. Starnes in seat seven, so two, three, four, six, seven.

On the second row, the defense struck Ms. Saul in seat nine. The government struck Mr. Viverette in seat 10 and Ms. Vickers in seat 13. So the rest are accepted as jurors in the case. Any objections by the government?

MR. MURPHY: No, sir, Your Honor.

MR. BECRAFT: No, Your Honor.

THE COURT: Okay. Thank you.

MR. BECRAFT: I'm operating under the presumption there's no back strikes?

THE COURT: There are no back strikes.

(The following proceedings were had in open court.)

THE COURT: We're going to excuse part of you, eight of you, and keep the rest, and for those who are being excused, thanks for being here, and we do appreciate the fact that you were available for service.

On the first row, we're going to excuse Mr. White, Mr. Spurlin, Mr. Salaam and Mr. Smith, Mr. Marlow Smith. So first row, seats two, three, four and six and, Ms. Starnes, seven.

PROSPECTIVE JUROR: Do we need to call back tomorrow?

THE COURT: You will not need to. In fact, this counts as your jury service. So thanks very much.

PROSPECTIVE JUROR: Thank you.

THE COURT: Appreciate it.

On the second row, we're going to excuse Ms. Saul, Mr. Viverette and Reverend Vickers, so thank you. Yes, ma'am, Ms. Starnes, we're going to let you be excused. It worked out well for you.

We're going to reseat the ones who have been selected because you have been selected as jurors in the case, and we're going to ask Mr. Vedder, move over to seat two. Ms. Snodgrass will actually move to seat three, Mr. Stovall to seat four, Mr. Smith to seat five -- Mr. Alphonso Smith seat five, Mr. Keith Smith to seat six. So you become the first six jurors that have been accepted in the case. We're going to seat another eight individuals and ask them a few more questions. We will start with filling seat number seven and then seat eight and so forth.

THE CLERK: Billy Shaneyfelt. Phillip Smith. Rose Saulsbury. Freida Straughter. Melanie Stewart. Patsy Smith. Arun Gandhi. Russell Ingram.

THE COURT: Is your last name pronounced Shaneyfelt?

PROSPECTIVE JUROR: Shaneyfelt.

THE COURT: Mr. Shaneyfelt, how are you today?

PROSPECTIVE JUROR: Fine.

THE COURT: We asked quite a few questions.

I'm going to sort of reverse my process a little bit and just go ahead and ask those people those last questions to make sure we have covered that with everybody, and then I will ask a couple of follow-up questions. Would you stand and tell us what part of the district or city you're from?

PROSPECTIVE JUROR: I'm from Bartlett.

THE COURT: And what is your educational background?

PROSPECTIVE JUROR: I have a bachelor's degree.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: I'm an interface programmer with Baptist Hospital.

THE COURT: Tell us what that does so we will understand.

PROSPECTIVE JUROR: Computers talk to computers, I control that.

THE COURT: Are you married?

PROSPECTIVE JUROR: Yes, married.

THE COURT: And your wife's name and her occupation?

PROSPECTIVE JUROR: Wife's name is Pam. She is a school teacher with Shelby County schools, and we have two children.

THE COURT: Two children. Do you know of any

reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: We had asked a lot of questions about the type of case and prejudgment and all those questions, did they seem to make sense to you?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Do you have any problem in giving the defendant the presumption of innocence that the law requires on each and every count in this case?

PROSPECTIVE JUROR: No problem.

THE COURT: If the government fails to prove its case against the defendant on any count or all counts, do you understand you have to return a verdict of not guilty?

PROSPECTIVE JUROR: Right.

THE COURT: All right. Well, we talked about all of those characteristics, I'm going to ask other folks a few other things.

Hand that back to Mr. Ingram, if you would. Mr. Ingram, how are you today?

PROSPECTIVE JUROR: I'm fine, thanks.

THE COURT: Are you married to a lawyer?

PROSPECTIVE JUROR: No, not a lawyer.

THE COURT: A judge? I know.

PROSPECTIVE JUROR: That's right.
THE COURT: Well, she is also a lawyer.
PROSPECTIVE JUROR: I suppose so. She is my lawyer.
THE COURT: That's right. You're in trouble, but that's good. Well, first of all, what part of the district or city are you from?
PROSPECTIVE JUROR: Highland Park.
THE COURT: And what is your educational background?
PROSPECTIVE JUROR: I have a couple of bachelor's degrees.
THE COURT: What's your occupation and who is your employer?
PROSPECTIVE JUROR: I'm a general manager. I work for Physiotherapy Associates, one of their divisions.
THE COURT: Okay. You are married, is that correct?
PROSPECTIVE JUROR: I am married.
THE COURT: Your wife's name is and her occupation?
PROSPECTIVE JUROR: Holly Kirby. She is a Tennessee appellate court judge.
THE COURT: Do you -- y'all don't have any kids?

PROSPECTIVE JUROR: I have two stepchildren.
THE COURT: Two stepchildren, right. Do you know of any reason that you could not serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: There's no reason I could not be fair and impartial, however, there is a reason that I can't serve, if it please you.
THE COURT: I'm going to make a note and we will talk about that in a minute.
PROSPECTIVE JUROR: Okay. Thanks.
THE COURT: It's Mr. Arun Gandhi?
PROSPECTIVE JUROR: Gandhi.
THE COURT: You're from India?
PROSPECTIVE JUROR: Yes.
THE COURT: And your very famous relative -- you have a very famous relative?
PROSPECTIVE JUROR: Uh-huh.
THE COURT: And before -- I'm going to ask a couple of questions, though. Tell us what part of the district or city you're from.
PROSPECTIVE JUROR: Midtown.
THE COURT: Okay. And what is your educational background?
PROSPECTIVE JUROR: Home schooler.
THE COURT: Okay. And what is your occupation

and who is your employer?

PROSPECTIVE JUROR: I'm self-employed, and my occupation is teaching nonviolence.

THE COURT: Exactly. And I was trying to think of the correct name for the center that --

PROSPECTIVE JUROR: The M. K. Gandhi Institute for Nonviolence.

THE COURT: Are you married?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Your wife's name and her occupation?

PROSPECTIVE JUROR: Sanunda. She is a researcher.

THE COURT: Where is she a researcher?

PROSPECTIVE JUROR: At the institute.

THE COURT: Do you have children?

PROSPECTIVE JUROR: Two.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No. Like him, I have a personal reason.

THE COURT: Okay. I'm going to put that down, and we'll -- I'll just ask those questions at side bar.

PROSPECTIVE JUROR: Okay.

THE COURT: Thank you. Ms. Smith, what part of

the district or city are you from?

PROSPECTIVE JUROR: East Memphis.

THE COURT: And what is your educational background?

PROSPECTIVE JUROR: High school.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: Housewife.

THE COURT: Are you married?

PROSPECTIVE JUROR: Yes, 45 years.

THE COURT: All right. Do you have children?

PROSPECTIVE JUROR: I have one daughter and one stepdaughter.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Okay. We did ask everybody, I have got two people I'm going to talk to at side bar, but it was a long discussion really about not forming opinions before you've heard all the evidence and had the final arguments, final instructions on the law. Any problem with following those instructions and proceeding in that manner?

PROSPECTIVE JUROR: I don't think so.

THE COURT: When you -- when I read the

indictment and we had all that discussion and I read the indictment, did you think -- does that put -- cause some stress for people in terms of being able to remain fair and impartial?

PROSPECTIVE JUROR: Kind of.

THE COURT: Okay. No, that's really what I'm talking about.

PROSPECTIVE JUROR: Yeah.

THE COURT: Why do you say that? I think you're right, but why do you say that?

PROSPECTIVE JUROR: Well, I don't really know, it's just -- I mean we all know we have to fill out taxes, so I don't know, it just kind of seems strange.

THE COURT: Okay. All right. And in the law -- in the tax law, there's law about the requirements to file taxes and there's also a thing called a good faith defense, and that's what we're probably going to be talking about in this case. I don't know that for sure, because they never tell me exactly what they're going to do, because they don't have to. And it's a theory under which a person can proceed without -- perhaps without taxes, and the jury just has to decide that question. Now, you can't start out on one side or the other, you have to listen to the law as I give it to you at the end of the case and apply that. I'm going to tell you

something about the law before the case really gets going too. Can you keep an open mind, because I think you hit it right on the head, it sort of moves you off center a little bit and you have to work to get back to center.

PROSPECTIVE JUROR: I'll try.

THE COURT: Okay. And you understand why we're trying to do that?

PROSPECTIVE JUROR: Yes.

THE COURT: Because it's not fair for anybody to start out with some mark on that slate.

PROSPECTIVE JUROR: That's right.

THE COURT: Okay. I just wanted to make sure I covered that with somebody, and everybody agrees.

Let's hand that to Ms. Stewart. Ms. Stewart, how are you from?

PROSPECTIVE JUROR: Just fine, Your Honor.

THE COURT: What part of the city or district are you?

PROSPECTIVE JUROR: Germantown.

THE COURT: And what is your educational background?

PROSPECTIVE JUROR: Law school.

THE COURT: And that's not a very profitable advocation at this point, going to school. How long have you been going to school?

PROSPECTIVE JUROR: No, my educational background is law school. I have been an attorney for 22 years.

THE COURT: I thought so. I thought there was an attorney out there, and you didn't raise your hand.

PROSPECTIVE JUROR: I'm the senior partner in Stewart and Wilkinson.

THE COURT: That's what I though.

PROSPECTIVE JUROR: I raised my hand.

THE COURT: I didn't see you, and I thought I had it mixed up.

PROSPECTIVE JUROR: We do insurance defense work.

THE COURT: I feel much better now. I wasn't wrong about that.

PROSPECTIVE JUROR: But I don't disagree.

THE COURT: Do you do tax work?

PROSPECTIVE JUROR: No, Your Honor, not on a regular -- occasionally we have tax questions, but not very often.

THE COURT: You know, the --

PROSPECTIVE JUROR: But I am in the Falls Building, and the IRS is on the fourth and sixth floor.

THE COURT: What floor are you on?

PROSPECTIVE JUROR: The eighth.

THE COURT: You know something, we had jurors who were lawyers before, that's really not a problem if they can do certain things. For example, they have to not tell everybody else what the law is, they have to take the law from the judge. Now, usually the law I give them -- because these lawyers will all tell you, it is very clear that that is really the law, but is that something that you would be able to do if you were the -- a juror, that is take the law as I give it to you and not substitute your own opinion about what the law is?

PROSPECTIVE JUROR: Yes, Your Honor.

THE COURT: Okay. You don't -- now, you do mainly insurance defense now?

PROSPECTIVE JUROR: Yes.

THE COURT: Okay. I want to make sure, I'm going to go back and ask that question again, have you ever done a tax case?

PROSPECTIVE JUROR: Have I ever handled a tax case? No. Have I given opinions after research on tax law? Yes.

THE COURT: Have you ever given an opinion in connection with 26 United States Code, Section 7201?

PROSPECTIVE JUROR: No, sir.

THE COURT: I want to make sure that we haven't done that. Now, the other thing is, ladies and gentlemen,

for all the rest of you, I'm not going to go back on my other jurors, particularly, but do you realize that if Ms. Stewart is an attorney in the case, we just always make sure that the jury understands that she can't answer any legal questions, and you can't ask her any legal questions because she is just there as a fact-finder and then a person to apply the law. She is not there to give legal advice to the jury, and it would be improper to do that. Any problem with that, Mr. Shaneyfelt, that you wouldn't be able to say, now you're a lawyer, you ought to know the answer to this? You would not be able to do that?

PROSPECTIVE JUROR: Right.

THE COURT: Okay. And I'm going to go back to a couple of my jurors that are already selected, I usually don't necessarily do this, but, Ms. Vasser, do you understand that you wouldn't be able to defer to Ms. Stewart just because she is a lawyer? You couldn't just agree with her because she is a lawyer, because you're there to decide the facts and to apply the law to them, you're not there to just agree. It's a trial by twelve -- trial by twelve jurors, not a trial by one juror who is going to tell all the jurors what to do. That's real important everybody agree on that. Any problem with that?

PROSPECTIVE JUROR: No.

THE COURT: If Ms. Stewart says, look, this is

what I think ought to be done, you realize you don't have to agree with her?

PROSPECTIVE JUROR: Right.

THE COURT: Do you have any problem with disagreeing with somebody if you think that they're wrong and you're right?

PROSPECTIVE JUROR: No, I do not.

THE COURT: Mr. Vedder, any problem with the fact that you would not be able to turn to somebody and say, now, this is what Ms. Stewart says, she is a lawyer, therefore, you should agree; you could not do that?

PROSPECTIVE JUROR: No problem, Judge.

THE COURT: I hope this makes sense to everybody. It is real important.

Ms. Snodgrass, any problem with that?

PROSPECTIVE JUROR: No problem.

THE COURT: In other words, you're going to decide the facts and those fact issues are not ones on which a lawyer could express an opinion other than just like everybody else? They would just say, well, I think these are the facts, no problem with that.

Let me make sure, then, it's Mr. Stovall, Mr. Stovall, any problem with the fact that you're going to have to make up your own mind about the facts, you could not refer to an attorney who happened --

PROSPECTIVE JUROR: No, Your Honor.

THE COURT: That also means that you don't have to elect an attorney foreperson. I'm not saying -- you do what you want to on that --

PROSPECTIVE JUROR: Right.

THE COURT: But they don't get special status. Nobody gets a special spot on the panel with special deference. Any problem with that?

PROSPECTIVE JUROR: No.

THE COURT: And Mr. Alphonso Smith, any problem with the fact that if you do happen to end up with a lawyer on the panel, you cannot give their opinion or their observations as to the facts any more -- you have got to rely on yourself to determine the facts and consult with all your other members of the jury, you can't just rely on one person who happens to have a law degree.

PROSPECTIVE JUROR: No problem.

THE COURT: And the same thing for Mr. Keith Smith.

PROSPECTIVE JUROR: No, no, Your Honor, no problem.

THE COURT: We have actually -- and I think we have already covered it with Mr. Shaneyfelt, so I will hand it back to Mr. Ingram.

PROSPECTIVE JUROR: I don't have a problem.

THE COURT: And the same thing, Mr. Gandhi, you understand if you're on the panel, you couldn't do that.

I'm going to go to Ms. Patsy Smith, any problem with that, Ms. Smith?

PROSPECTIVE JUROR: Huh-uh.

THE COURT: Even if it turns out that you like Ms. Stewart, you wouldn't be able to agree with her just because she is a lawyer, is that okay?

PROSPECTIVE JUROR: Yes.

THE COURT: Ms. Stewart, I hope that doesn't offend you, but we always check this out, and sometimes we end up with physicians, we do the same thing with anybody who -- you know, if it is a malpractice case, we still ask the same question. Now, is that going to be difficult for you to sit as a juror and be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: Because -- are you usually aligned with one side or the other, the government or the defense?

PROSPECTIVE JUROR: We do civil litigation, Your Honor.

THE COURT: Okay.

PROSPECTIVE JUROR: We -- some of the lawyers in my office may handle some criminal work, but I don't.

THE COURT: All right. Let's go back and make sure I covered a couple of other things. Are you married?

PROSPECTIVE JUROR: Yes.
THE COURT: And your husband's name?
PROSPECTIVE JUROR: Sam.
THE COURT: And what does he do?
PROSPECTIVE JUROR: He's an insurance adjuster for GEICO.
THE COURT: Has he been busy?
PROSPECTIVE JUROR: Yes, sir.
THE COURT: Do you have children?
PROSPECTIVE JUROR: We have two girls, three and a half and 19 months.
THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: No, sir.
THE COURT: Okay. Thank you. You threw me off, I didn't see you raise your hand, so I completely -- I thought I was wrong. Nice to have you.
Now, let's see, help me with pronouncing your last name.
PROSPECTIVE JUROR: Straughter.
THE COURT: I'm going to spell it phonetically because you have got lots of letters in there. I shortened it, so I will remember it. Ms. Straughter, how are you today?
PROSPECTIVE JUROR: Good. How are you?

THE COURT: I'm fine. What part of the district or city are you from?
PROSPECTIVE JUROR: In Mitchell Heights.
THE COURT: What is your educational background?
PROSPECTIVE JUROR: High school.
THE COURT: What is your occupation and who is your employer?
PROSPECTIVE JUROR: Okay, I work for Memphis City Schools, cafeteria helper, Idlewild Elementary.
THE COURT: They have had some famous alumni at that school, it's a very interesting school.
PROSPECTIVE JUROR: Okay.
THE COURT: Of course, there was -- one of the district judges went to that school. He's retired now. And then I'm going to tell something I shouldn't probably say, I think Machine Gun Kelly went to Idlewild, didn't he? It was before he became known in his later career, very interesting history.
Are you married?
PROSPECTIVE JUROR: Divorced.
THE COURT: Children?
PROSPECTIVE JUROR: Four.
THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No.
THE COURT: Okay. Thank you. Ms. Saulsberry?
PROSPECTIVE JUROR: Yes.
THE COURT: What part of the city or district are you from?
PROSPECTIVE JUROR: Southeast.
THE COURT: What is your educational background?
PROSPECTIVE JUROR: Twelfth.
THE COURT: What is your occupation and who is your employer?
PROSPECTIVE JUROR: Retired.
THE COURT: From what? We just want to make sure you're not a retired IRS agent?
PROSPECTIVE JUROR: From General Electric.
THE COURT: Okay. And are you married?
PROSPECTIVE JUROR: Yes.
THE COURT: Your husband's name and his occupation?
PROSPECTIVE JUROR: Johnny, retired.
THE COURT: What did he retire from?
PROSPECTIVE JUROR: Cleowrap.
THE COURT: Children?
PROSPECTIVE JUROR: One daughter.
THE COURT: Do you know of any reason that you

could not serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: No, sir.
THE COURT: And I did ask Ms. Patsy Smith some -- a little longer question, I want to ask one of you those questions, but do you think that it is difficult to get back to being a completely neutral person when you know the nature of the charges? Does it cause you some concern about being able to do that?
PROSPECTIVE JUROR: Yes, I do.
THE COURT: And it does seem very important that we all be able to do that. Do you think with effort people can go back to that point and really put the government to its burden of proof in this case?
PROSPECTIVE JUROR: I think we can.
THE COURT: All right. I'm going to ask you to hand that over to Mr. Phillip Smith. We have got lots of Smiths on the panel. Mr. Smith, how are you doing today?
PROSPECTIVE JUROR: I'm doing fine.
THE COURT: What part of the district or city are you from?
PROSPECTIVE JUROR: I'm from Raleigh.
THE COURT: What's your educational background?
PROSPECTIVE JUROR: High school plus trade schools.
THE COURT: What is your occupation and who is

your employer?

PROSPECTIVE JUROR: I'm semi-retired. I have a landscape business now.

THE COURT: Okay. I would assume that has been busy lately, though, with all this --

PROSPECTIVE JUROR: Well, not too bad.

THE COURT: What did you do before you retired?

PROSPECTIVE JUROR: I worked for E. I. DuPont for 32 years.

THE COURT: In what section?

PROSPECTIVE JUROR: Well, I worked in operations, hydrogen peroxide, sodium cyanide, acrylonitrile and in maintenance the last ten years.

THE COURT: The last ten years, okay. It is an interesting -- it has been an interesting place to work. Are you married?

PROSPECTIVE JUROR: I'm married. My wife's name is Wilma. I have two sons.

THE COURT: Does she still work?

PROSPECTIVE JUROR: She is a domestic employee.

THE COURT: Okay. She works -- you're saying she works at home?

PROSPECTIVE JUROR: That's right.

THE COURT: That's the best deal anybody can ever get is for you to have a spouse that will do that.

PROSPECTIVE JUROR: That's right.

THE COURT: Because it takes a lot of energy. Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: I have had a little bit of experience with persons not paying tax. I had some employees that stopped paying tax, and they tried to convince me not to pay tax.

THE COURT: I'm going to do this, I'm going to let us talk about that just a little bit at side bar. Are you familiar at all with the law in this area?

PROSPECTIVE JUROR: I haven't studied the law on the taxes.

THE COURT: We will talk about that in just a minute. We have got three people to talk with at side bar, and I'm going to have Mr. Ingram come around first.

(The following proceedings had at side-bar bench.)

PROSPECTIVE JUROR: Good afternoon.

THE COURT: How are you doing today?

PROSPECTIVE JUROR: I'm fine.

THE COURT: What is your situation?

PROSPECTIVE JUROR: I'm in school.

THE COURT: Oh.

PROSPECTIVE JUROR: I'm a master candidate at

Vanderbilt, and I will miss school, which is -- I really can't afford to do that.

THE COURT: You're actually during session right now?

PROSPECTIVE JUROR: Actually, the pre-session starts tomorrow and then the full session starts on Thursday morning. So, you know, it's --

THE COURT: Does anybody have any problem with letting him be excused?

MR. BECRAFT: No.

THE COURT: Mr. Murphy?

MR. MURPHY: No, Your Honor. I'm falling apart here.

PROSPECTIVE JUROR: I would like to serve at some point. Is there any way I can defer and --

THE COURT: Sure. Mrs. Saba, let Ms. Dote know. When will you be out of school?

PROSPECTIVE JUROR: May of 2004.

THE COURT: Just put him down for May of 2004.

(The following proceedings were had in open court.)

THE COURT: Mr. Gandhi, if you would come around, please.

(The following proceedings had at side-bar bench.)

THE COURT: How are you doing?

PROSPECTIVE JUROR: Very well, thank you.

THE COURT: What is your situation?

PROSPECTIVE JUROR: I have to be in Wisconsin over the weekend, conduct some workshops there, and I don't know if I will be able to get back then by Monday in case the -- in case the case goes on Monday.

THE COURT: That's really what -- do you have any questions or what do you think?

MR. MURPHY: When are you leaving to go up to Wisconsin?

THE WITNESS: Friday night.

THE COURT: And where are you going up there?

PROSPECTIVE JUROR: Appleton. That's a long drive, Judge.

THE COURT: Any objection to allowing Mr. Gandhi to be excused?

MR. MURPHY: No, sir.

MR. BECRAFT: No, Your Honor.

THE COURT: I think that really might be an impediment. I take it you have to get ready for the workshop?

PROSPECTIVE JUROR: Yes.

THE COURT: You would like to be excused?

PROSPECTIVE JUROR: Please.

THE COURT: Without objection, we will let you be excused.

MR. BECRAFT: No objection, Your Honor.

MR. MURPHY: Thank you.

(The following proceedings were had in open court.)

THE COURT: Mr. Smith, yes, sir.

(The following proceedings had at side-bar bench.)

THE COURT: We're going to let you stand right here. What is your situation, you had some employees who --

PROSPECTIVE JUROR: Well, I worked with some guys that didn't pay income tax for several years. They tried to convince me not to pay income tax, and I think they were convicted and sentenced. It was Eddie Perry and a John Pollard, and I was one of their supervisors, and the other one was before I was supervisor, and I don't know how many years they didn't pay tax, but they didn't convince me, I paid tax and everything, but --

THE COURT: Were they at DuPont?

PROSPECTIVE JUROR: Right.

THE COURT: At DuPont?

PROSPECTIVE JUROR: Both of them worked at DuPont. And it was several people that wasn't paying

taxes, and I understand that they were -- did get some time out of it. I'm not sure about Pollard, but I think Eddie Perry did.

THE COURT: Well, do you --

PROSPECTIVE JUROR: It doesn't have any effect on me. I mean --

THE COURT: At some point in time, you determined something about their argument about not paying taxes. Did you consider --

PROSPECTIVE JUROR: At the time I thought they were wrong, but I didn't believe them enough that I -- I paid my taxes.

THE COURT: Okay. Any questions from anybody else?

MR. MURPHY: No.

MR. BECRAFT: None.

THE COURT: Okay. We're -- we'll keep you. Thanks very much.

(The following proceedings were had in open court.)

PROSPECTIVE JUROR: Can I ask to speak to you up there?

THE COURT: Yes, sir. Okay, we will let you come around.

(The following proceedings had at side-bar

bench.)

PROSPECTIVE JUROR: I'm not trying to be exempt from the case, I have one problem that I have come up with is we're having in-service training where I work at at Porter Leath, and I'm doing a CDA class in the evening around 5:00 o'clock at the library. I don't want to be exempted from the class, I want to be a part of it, but would that be a problem?

THE COURT: We will normally leave between 5:00 and 5:15, so that is going to be an impediment for that class, I think.

PROSPECTIVE JUROR: Uh-huh.

THE COURT: And when does Porter Leath start in-service?

PROSPECTIVE JUROR: We started today, but I had to be here today.

THE COURT: Right, exactly.

PROSPECTIVE JUROR: Right.

THE COURT: Exactly. Now, what's this class you're taking at the library?

PROSPECTIVE JUROR: It's called CDA, certification for day treatment.

THE COURT: What do you do the skills for?

PROSPECTIVE JUROR: Well, basically what we do is, I'm working early childhood development program, and

what we do is we get certified under that type of facility whereas we take care of babies, more or less, six months to three years old. Once they become three years old, then they graduate from my program, and they move to another program, and I just started, you know, this program, so I didn't have any -- I didn't have enough hours even with my master's in child care, so they are sending me to CDA class, okay, so I can get my credentials.

THE COURT: Is this required for you to continue to work at Porter Leath?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: How often is the course offered?

PROSPECTIVE JUROR: It's three days a week. It's weekly right now, because we graduate the 27th of September. It is like three days a week.

THE COURT: How long -- and it's now starting?

PROSPECTIVE JUROR: It just started this past week, yes, sir.

THE COURT: How many classes have you attended already?

PROSPECTIVE JUROR: Eight.

THE COURT: And how long does it go in the evening?

PROSPECTIVE JUROR: It goes from like 5:00

o'clock until like 7:30.

THE COURT: Where do they teach the course, is it at the main library?

PROSPECTIVE JUROR: Yes, sir, on Poplar.

THE COURT: And does it start on time at 5:00?

PROSPECTIVE JUROR: Sometimes it does. Sometimes it doesn't, you know. Annette Knox is giving the class, so it really -- it varies.

THE COURT: Questions?

MR. MURPHY: No, sir.

THE COURT: Do you think you ought to be excused in this?

PROSPECTIVE JUROR: Well, it depends on you all.

THE COURT: I think they would like you to stay regardless.

PROSPECTIVE JUROR: Right, right. I enjoy it, I have no problem as long as it doesn't interfere with my job.

THE COURT: It's going to make you a little late to those classes, but we'll -- I'll -- we usually leave by 5:15 so that will make -- if you get there by 5:30 --

PROSPECTIVE JUROR: As long as the court can notify Porter Leath and let them know.

THE COURT: We can, and we will actually do that. People ask us to do that.

PROSPECTIVE JUROR: Okay.

(The following proceedings were had in open court.)

PROSPECTIVE JUROR: Your Honor, may I address you also?

THE COURT: Sure, come around.

(The following proceedings had at side-bar bench.)

PROSPECTIVE JUROR: I'm sorry, I just wondered, I have in the past and currently owe back taxes, but the IRS has always been very fair with me on setting up payment plans, so I just wanted to let that come out.

THE COURT: Well, I don't think I have ever, but that's the nature of what I do.

PROSPECTIVE JUROR: It's part of being self-employed.

THE COURT: I was going to say I think that is part of being self-employed. Is that going to cause you to feel uncomfortable?

PROSPECTIVE JUROR: Oh, no, sir. The IRS has always been very fair to me.

THE COURT: They usually work out payment plans, but this is not about that.

PROSPECTIVE JUROR: I understand that.
THE COURT: This is about a good faith defense. I don't even -- I don't even know that they're going to argue about that -- they're just going to argue --
MR. BECRAFT: Her beliefs.
THE COURT: I will get more into that, Your Honor.
PROSPECTIVE JUROR: Right.
THE COURT: And I will give you the law on that. It's not going to be a real lengthy instruction. Do you have any problem ruling against the IRS if they have been nice to you, that's the question?
PROSPECTIVE JUROR: No, sir.
THE COURT: Well, I mean --
PROSPECTIVE JUROR: I do feel like I could be fair.
THE COURT: Okay.
PROSPECTIVE JUROR: Thank you.
(The following proceedings were had in open court.)
THE COURT: I'm going to call two more names to take seat 13 and 14.
THE CLERK: Donald Stage. Larry Inderbitzen.
THE COURT: Mr. Stage, how are you?
PROSPECTIVE JUROR: Good. How about you?

THE COURT: I'm fine. What part of the district or city are you from?
PROSPECTIVE JUROR: Collierville.
THE COURT: What is your educational background?
PROSPECTIVE JUROR: Technical college.
THE COURT: What is your occupation and who is your employer?
PROSPECTIVE JUROR: Vice-president, Commercial Filter, Incorporated.
THE COURT: Where are they located?
PROSPECTIVE JUROR: Holmes Road and Lamar.
THE COURT: Okay. Are you married?
PROSPECTIVE JUROR: Yes.
THE COURT: Your wife's name and her occupation?
PROSPECTIVE JUROR: Alicia, and she is a student, starts teaching at U of M next year.
THE COURT: Do you have children?
PROSPECTIVE JUROR: No.
THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: No.
THE COURT: Okay. Thank you. Mr. Inderbitzen?
PROSPECTIVE JUROR: Yes.

THE COURT: Tell us what part of the city or district you're from.

PROSPECTIVE JUROR: I'm from Midtown.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: I have a BA degree.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: I'm in sales with Memphis Glove Company.

THE COURT: You know, I have this recollection that Memphis Glove is a really big glove company, is that right?

PROSPECTIVE JUROR: Yes, it is considerable.

THE COURT: I've heard that it is one of the larger ones around.

PROSPECTIVE JUROR: That's correct.

THE COURT: Are you married?

PROSPECTIVE JUROR: Yes. I have a wife named Rebecca, and three children.

THE COURT: What -- does your wife work outside the home?

PROSPECTIVE JUROR: Yes, she does. She works for Broom Corn Fabric.

THE COURT: Is she at the Midtown store?

PROSPECTIVE JUROR: No, she isn't. She is at the Perkins location.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, sir.

THE COURT: You know, we're trying to ask somebody in every new group if they have frankly such skepticism about the case that they are going to find it difficult to decide the case solely on the evidence that comes from the witness stand and the law as I give it to them? You're at Memphis Glove and, of course, you have been there how long?

PROSPECTIVE JUROR: Five years.

THE COURT: Five years. And you see why someone might be concerned?

PROSPECTIVE JUROR: Sure, absolutely.

THE COURT: That this might be confusing. There is such a thing as a good faith defense. I don't know whether -- I don't know what the facts are, and if I did, I couldn't tell them anyway, because that's not my job. My job is to make sure that we get twelve people who haven't already made up their mind one way or the other and who are going to listen to the evidence and then apply the law to the facts as they determine the facts to be, and you're going to make some crucial factual decisions in

this case, it sounds like to me. Does it sound like that to you?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And some things are not going to be in dispute. I don't want to get too far ahead, but I don't know that the defense is going to say -- they're not going to say, well, I really did file my income tax return, they're not going to say that. That is not what they're saying. They're saying that, I think -- if I get this wrong, they will quickly tell me -- that Ms. Kuglin had a good faith belief that she did not have to file these returns. I have said it as simply as I could.

MR. BECRAFT: Yes, Your Honor.

THE COURT: You don't have to agree with me just because I'm sitting up here, believe me, that's not the point, but that's -- and there's some law about that. And if a juror is already on the jury and said, heck, I don't believe that, then you can't be fair and impartial. Now, if a juror says, oh, I'm already going to believe that, that is not right either. Does that seem reasonable? You have got to wait and listen to the proof.

PROSPECTIVE JUROR: That's correct.

THE COURT: Now, can you be neutral and listen to the proof and only decide after you have heard all of the evidence, the final arguments of counsel, the final

instructions on the law about what this defense is about and about how you have to -- what has to be shown in order for it to be the prevailing theory? And then -- and then decide the case applying the law to the facts as you determine -- that all twelve of you determine those facts to be; can you do that?

PROSPECTIVE JUROR: Yes, sir. Yes, sir.

THE COURT: This is not a chance for anybody to tell the government that they don't like paying taxes, because it -- who likes to pay taxes? You know, I don't. I will take my hand down. Nobody likes to pay taxes, so it is not about liking to pay taxes. Well, I wasn't trying to pick on you, but you looked -- you're the last one.

All right. Now, Mr. Murphy, I'm going to -- you have got some questions for the panel, I know you do of the new panelists.

MR. MURPHY: Yes, sir.

THE COURT: So I will let you ask those questions, and then we're going to take a break, though, in about 15 minutes.

MR. MURPHY: Yes, sir. Good afternoon, ladies and gentlemen, the new members of the panel. I have a few questions to ask you. Do any of you, ladies and gentlemen, that were just seated, do you know any of the

parties, anybody know me, the agents, Ms. Kuglin, the defendant, the defense lawyers? No, okay. Do y'all know anything about the case? Have you ever heard of people talking about the case, speaking about the case? Nobody is speaking up, so I'm going to take that to be a no.

Income taxes are always a sensitive subject. You know, the judge said raise your hand if you like paying taxes. Nobody likes paying taxes, that's a given. The question in this case is does the fact -- does the -- is there something about the tax law or the tax code that just upsets you so much or makes you mad or concerns you so much that you can't be a fair juror in this case? And either way, you know, you may think that the government shouldn't prosecute people that don't pay taxes or you may think the government ought to prosecute everybody that doesn't pay taxes; anybody have strong feelings one way or the other? Nobody is speaking up, so I'm going to take it to mean one of two of things, either you ate a big lunch and you're dozing off or you don't have a problem with that proposition.

Do you, ladies and gentlemen, understand that as the defendant sits before you now, she is innocent, she is presumed to be innocent? Does everybody understand that? Does anybody have a problem with the presumption of innocence? Does everybody understand that the government

has to prove its case beyond a reasonable doubt? Does everybody understand that? Does anybody have a problem with that? Does anybody think our burden should be higher? Does anybody think our burden should be lower? Nobody is speaking up, so, again, I'm going to take it that that is not a problem for anybody.

Now, the law -- the way a jury trial works is the jurors decide the facts, they decide whether the government proved their case, but the judge will charge you with what the law is. He'll say, you know, here is what -- how -- the manner in which tax evasion is defined. This is what the statute says. This is the law that you're to apply. Does everybody understand that even if you think that the law is stupid, ludicrous, that you still have to apply it? Does everybody understand that? Okay. Everybody's head is nodding. You can't substitute what you think the law ought to be for what the judge tells you it is.

Now, in this case, you'll hear from witnesses who will come in and testify, and jurors in these cases that we have in federal court decide the case that is based on the proof that the judge -- the witness testimony and the exhibits, does everybody understand that you can't get back in the jury room and start talking, say, now, wait a second, my brother-in-law who is on the police

force or my brother-in-law who is an accountant says that's not the way things work? Does everybody understand you can't decide the case that way? You have got to decide it on the facts. Anybody have a problem with that? If you haven't already told us about it, has anybody had any problems with the IRS?

Okay. Yes, ma'am, what kind of problems?

PROSPECTIVE JUROR: We were audited about seven years ago. Oh, I'm sorry. We were audited about seven years ago.

MR. MURPHY: Okay. Is it -- as a result, was it a good experience, bad experience?

PROSPECTIVE JUROR: No, it was a bad experience.

MR. MURPHY: Bad experience?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: Based on that experience, is that going to change the way you approach the case or look at the case?

PROSPECTIVE JUROR: No, I'll try to be fair.

MR. MURPHY: Okay. Well, the question is, can you be fair? Can you put that out of your mind?

PROSPECTIVE JUROR: I'll do my best.

MR. MURPHY: Okay. You think you will be able to, though?

PROSPECTIVE JUROR: Maybe. We had a bad experience.

MR. MURPHY: Okay. Judge, can we approach at side bar?

THE COURT: You can.

Ms. Smith, I'm going to let you come around, too.

PROSPECTIVE JUROR: Oh, okay.

(The following proceedings had at side-bar bench.)

THE COURT: How are you doing?

PROSPECTIVE JUROR: Freezing.

THE COURT: What did they do to you?

PROSPECTIVE JUROR: They treated my husband like dirt. He said they acted like he was nobody, and it really wasn't his fault. He had one figure and his boss had another. It mounted out that we had to pay like $250 more, and he said they really -- he said they acted like I was nobody.

THE COURT: That's a bad experience.

PROSPECTIVE JUROR: Yeah, it was really bad for him. And so -- but we just had problems.

THE COURT: Mr. Murphy may have a couple of more questions. You know, the idea that people who work in positions of authority like that, which seem to be

without any regulation, sometimes are going to step on some toes pretty badly.

PROSPECTIVE JUROR: Right.

THE COURT: The question would be, you know, is that going to be something that is going to be on your mind when you're making a decision?

PROSPECTIVE JUROR: I don't know. I hope it won't. I will try not to.

THE COURT: Did you go down there with him when he went?

PROSPECTIVE JUROR: No, he wouldn't let me go. He went by hisself, but he just -- you know, they just -- he told me how they treated him and --

THE COURT: Right.

PROSPECTIVE JUROR: He thought they over -- you know, they kind of showed their authority or something.

THE COURT: Unreasonably unpleasant?

PROSPECTIVE JUROR: Right, right.

THE COURT: Well, Mr. Murphy, questions?

MR. MURPHY: Well, it sounds to me like it was -- it was truly a bad experience?

PROSPECTIVE JUROR: It was.

MR. MURPHY: Okay. It sounds to me too like you're -- you're going to try to put it aside, but you're not really sure you can?

PROSPECTIVE JUROR: Right.

MR. MURPHY: Judge, I don't have any further questions.

THE COURT: How long ago was this?

PROSPECTIVE JUROR: About six or seven years ago.

THE COURT: Are you saying that you -- if you were picked as a juror in this case, could you lay that experience aside?

PROSPECTIVE JUROR: I don't know. It just depends on what comes up, I guess. I don't know. I know I'm not helping you.

THE COURT: Well, that's -- you're supposed to tell us the truth. I'm going to ask you to have a seat over in that little swivel chair and let me talk to these folks.

(The prospective juror stepped away from the bench.)

MR. MURPHY: Judge, I'm going to move to excuse her for cause.

THE COURT: I think we're going to have to.

MR. BECRAFT: No problem, Judge.

(The following proceedings were had in open court.)

THE COURT: Ms. Smith, thanks, we're going to

let you be excused. We appreciate it.

PROSPECTIVE JUROR: Thank you.

THE COURT: Thank you. Now, everybody wants to come see me. Do you need to see me? Come on around.

(The following proceedings had at side-bar bench.)

PROSPECTIVE JUROR: No sense in putting out dirty laundry in the public.

THE COURT: No.

PROSPECTIVE JUROR: When I was a business owner, I ran into some troubles, and my assets, personal and business, were frozen by the IRS, and I don't know if I could be fair and impartial.

THE COURT: Okay. How long did that happen?

PROSPECTIVE JUROR: It was about 15 years ago.

THE COURT: What kind of business was it?

PROSPECTIVE JUROR: My wife and I owned a gift shop, and we did manufacturing and we owned it for ten years.

THE COURT: Okay. Did -- did -- did you disagree with --

PROSPECTIVE JUROR: No, I didn't disagree, it was just the process was not very pleasant.

THE COURT: Okay. Well, if we exclude everybody who has had a bad experience, we would

exclude --

PROSPECTIVE JUROR: I'm just being upfront. He asked the question, and I answered.

THE COURT: No, that is fine, and the question is, because yours is fundamentally sort of a different situation, I think, this is -- the assertion is here is tax evasion.

PROSPECTIVE JUROR: I understand.

THE COURT: You didn't have any allegation of tax evasion?

PROSPECTIVE JUROR: No.

THE COURT: Yours was inability to pay some taxes when they came due?

PROSPECTIVE JUROR: Yes.

THE COURT: They apparently came and seized assets in your business?

PROSPECTIVE JUROR: Froze it.

THE COURT: And put you out of business essentially, I guess?

PROSPECTIVE JUROR: Eventually.

THE COURT: And they asserted tax liability, did you agree with their calculation of taxes?

PROSPECTIVE JUROR: Maybe, yes. Maybe not. To some degree.

THE COURT: To some degree?

PROSPECTIVE JUROR: Yes.

THE COURT: Did you find them to be unwilling to listen to your point of view during that process or did they listen, they just -- what did you find?

PROSPECTIVE JUROR: They listened. I felt it was a challenge, okay, to get to the finality of it.

THE COURT: Okay. Well, I mean this is --

PROSPECTIVE JUROR: I don't have a problem with being a juror, I don't.

THE COURT: Right. You know, I think the main thing is to make disclosure and say this happened to me, it was a really bad experience, but can you follow the law and can you decide the facts fairly and impartially, can you do those two things?

PROSPECTIVE JUROR: I think I can, but, again, I wanted to be upfront.

THE COURT: Absolutely. Let me let them ask you some questions.

MR. MURPHY: Sir, the only question I have, in deciding this case, can you put the experience you had with the IRS out of your mind? In other words, when you go back there, that goes in a closet, so to speak, and you decide this case based on the facts and the law?

PROSPECTIVE JUROR: I think I can.

THE COURT: Anything else?

MR. BECRAFT: This experience, if you're picked as a juror, this experience that you had would not cause you to be against the position of the government?

PROSPECTIVE JUROR: This is two-edged, okay. The problem I had in the repayment that I had, okay, I have a feeling on this side and then, again, I look at the young lady over here on this side who has gone through some tax evasion, where I went through some bad years of my life doing repayment on income tax, okay. Being fair to you too.

MR. BECRAFT: Yeah.

THE COURT: Okay.

PROSPECTIVE JUROR: Did I answer your question?

MR. BECRAFT: Sure did.

THE COURT: Anything else?

MR. BECRAFT: No, Your Honor.

THE COURT: Thank you.

(The following proceedings were had in open court.)

THE COURT: We're going to call somebody to take seat 12, and we're going to ask some questions and we're going to take a break right after that.

THE CLERK: Stephen Sciara.

THE COURT: I'm sorry, spell your last name for me.

PROSPECTIVE JUROR: S-C-I-A-R-A.

THE COURT: Okay. Mr. Sciara, what part of the district or city are you from?

PROSPECTIVE JUROR: Cooper Young.

THE COURT: What's your educational background?

PROSPECTIVE JUROR: I have a high school and a culinary degree.

THE COURT: What's your occupation and who is your employer?

PROSPECTIVE JUROR: I'm an executive chef with Mantia's.

THE COURT: You want to tell everybody where Mantia's is? This is your chance for an ad?

PROSPECTIVE JUROR: Poplar and Mendenhall.

THE COURT: Okay. That's right, exactly, exactly. Did you all have a lot of business during the storm, or were you out of business?

PROSPECTIVE JUROR: Actually, we had power and did a lot of business.

THE COURT: What is your specialty?

PROSPECTIVE JUROR: Really all European.

THE COURT: Executive chef is in charge of everything and then sometimes you will have people who do pastries, sometimes people do -- I have a relative who does just meat, I don't know how he managed to do that,

but that's what he does.

PROSPECTIVE JUROR: I don't know, I do really everything. I have a total certified executive chef.

THE COURT: All right. Well, are you married?

PROSPECTIVE JUROR: Yes, I have a wife, Sheila.

THE COURT: And what is her occupation and what is her employer?

PROSPECTIVE JUROR: She is a student at the moment.

THE COURT: All right. Children?

PROSPECTIVE JUROR: One daughter, 22.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, I could. I'm not really into it, but I could do it.

THE COURT: You sound like the perfect juror.

Okay. Mr. Murphy has got some questions for you, other folks has got some questions for you.

MR. MURPHY: Judge, I thought --

THE COURT: Oh, we're going to take our break. Sorry, thanks. We're going to take our afternoon break. Seven things. Don't talk about the case among yourselves. Don't let anybody talk with you about the case. If anybody tries to talk to you about the case, report that immediately to one of our security officers, a member of

my staff or to me. Of course, don't speak to the lawyers or the parties at all. They are not allowed to talk to you. You're not allowed to them. Don't do any research, make any inquiry on your own, and, of course, don't read anything in the newspaper, watch anything on television or listen to anything on the radio about the case and, of course, keep an open mind until you have heard all the proof in the case, final arguments of counsel and final instructions on the law. We're going to take -- we have got a lot of folks, we're going to take a fifteen-minute break, come back, and I think we will get our jury fairly quickly.

(Recess taken at 3:33 until 3:50 p.m.)

THE COURT: Kind of wait for word that we have got everybody, and then when I don't -- I think we do, though. We're in good shape. Yes, sir, you may proceed.

MR. MURPHY: Yes, sir, Your Honor. Have any of you, ladies and gentlemen, that have just been called for jury service ever served on a jury before?

Yes, sir. Can you tell me us about what kind of jury you served on?

PROSPECTIVE JUROR: It was a criminal case.

MR. MURPHY: Okay. I know I have probably been over this too many times already, but do you understand that you will get the law in this case, if you're

selected, from Judge McCalla, and that's the law that you're to use in this case?

PROSPECTIVE JUROR: Correct.

MR. MURPHY: I believe this lady right here.

PROSPECTIVE JUROR: DUI and murder case.

MR. MURPHY: Over in -- you said DUI?

PROSPECTIVE JUROR: DUI and murder case.

MR. MURPHY: And was that over in state court?

PROSPECTIVE JUROR: Yes.

MR. MURPHY: And same question, you understand that the law that you apply in this case will come from Judge McCalla?

PROSPECTIVE JUROR: Yes, sir.

MR. MURPHY: Okay. Thank you, ma'am. Do any of you, ladies and gentlemen, have any relatives that work for the federal government, any federal agencies, IRS, Department of Agriculture?

Yes, sir.

PROSPECTIVE JUROR: I have two uncles -- two uncles in the TBI and cousin in the Olive Branch Police Department and a cousin in the Knoxville Sheriff's Department.

MR. MURPHY: Now, the fact that you have got those family members in law enforcement, is that going to influence your ability to decide this case? In other

words, you're not going to vote one way or another way because of how they would react to your vote?

PROSPECTIVE JUROR: No.

MR. MURPHY: Okay. Thank you. Okay.

Two last things. Now, you, ladies and gentlemen, understand that you have got to follow the law that the judge gives you no matter what you think about it? If you think it is stupid, crazy, whatever, you have still got to follow it, is that going to be a problem for anybody?

Is there anything that anybody hasn't told us yet that you think it's something that the lawyers and the judge ought to know? Anything that might affect your decision in the case? Okay. Well, thank you, ladies and gentlemen, I'm going to sit down.

MR. BECRAFT: May it please the court.

THE COURT: Certainly.

MR. BECRAFT: Ladies and gentlemen, for the new panel members up here, I want to direct my questions at you. For the eight of you, have any of you or any member of your family or close friend been involved either as a plaintiff or a defendant in a civil or a criminal case?

Yes, ma'am.

PROSPECTIVE JUROR: Well --

MR. BECRAFT: Ms. Stewart.

PROSPECTIVE JUROR: I try cases all the time.

MR. BECRAFT: Okay. What kind of litigation do you do?

PROSPECTIVE JUROR: Civil, insurance defense.

MR. BECRAFT: Have you ever -- how long have you been practicing law?

PROSPECTIVE JUROR: Twenty-two years. Mostly in state court.

MR. BECRAFT: Okay. And that includes trying cases?

PROSPECTIVE JUROR: Yes.

MR. BECRAFT: And you know most lawyers never get a chance to sit on a jury.

PROSPECTIVE JUROR: I know. I'm well aware of that.

MR. BECRAFT: I take it with that in mind that you would probably like to be a juror in this case? You get to go where nobody has gone before.

PROSPECTIVE JUROR: I think it would be very interesting.

MR. BECRAFT: Okay. Now, being a lawyer, I want to ask this question: If you get back there in that jury room, can you make a promise to me and Judge McCalla and Mr. Murphy, that you won't use your law experience or try to dictate to others about what the law might be that

would be applicable in this case?

PROSPECTIVE JUROR: I would not.

MR. BECRAFT: Would you be fair and impartial to both sides?

PROSPECTIVE JUROR: Absolutely.

MR. BECRAFT: Would you base your verdict on what you hear in the way of testimony in this case, documents that you see, all the other evidence?

PROSPECTIVE JUROR: And the law.

MR. BECRAFT: Okay. Anybody else got a response to being a party?

PROSPECTIVE JUROR: You say a lawsuit that we were in?

MR. BECRAFT: Yes.

PROSPECTIVE JUROR: I have got a lawsuit going now.

MR. BECRAFT: Oh, you do?

PROSPECTIVE JUROR: Right.

MR. BECRAFT: And you are Mr. Smith. What is the nature of that case?

PROSPECTIVE JUROR: Well, this was a wreck my son had in my car, and I'm being sued for the wreck.

MR. BECRAFT: All right.

PROSPECTIVE JUROR: He wasn't at fault, it was a drunk driver who caused the wreck.

MR. BECRAFT: Is -- we understand that that is a civil case in which you were a defendant. This is a criminal case. Can you -- can you completely lay aside -- I know you're probably not happy with what is going on in reference to your civil litigation, but can you lay that aside and if you're picked as a juror in this case not let, you know, your participation in the judicial system affect your verdict in this case?

PROSPECTIVE JUROR: I think so.

MR. BECRAFT: Anybody else got -- Mr. Stage?

PROSPECTIVE JUROR: My father was on a ladder attached to a building about six feet off the ground, came unbolted and he fell off and ruptured two disks.

MR. BECRAFT: He has got a claim, I guess, for workmen's comp?

PROSPECTIVE JUROR: I don't know what it is.

MR. BECRAFT: He has got a personal injury type claim that he's asserting against somebody else?

PROSPECTIVE JUROR: Uh-huh.

MR. BECRAFT: Can you lay aside your father's civil litigation, and if you're picked as a juror in this case, you know, kind of ignore that and just limit your testimony, limit any decision that you would make as a juror in this case based on the evidence that you hear and the instructions that the court would give regarding the

law of the case?

PROSPECTIVE JUROR: Uh-huh, totally different thing.

MR. BECRAFT: Anybody else got a response to that? I think Mr. Murphy asked this question, but I want to make abundantly clear, I didn't know if it included all former jurors, but has anybody here been in any kind of case, be it federal court or state court as a juror in either a civil or criminal case or have sat on either a state or federal grand jury? How about have any of you ever been a witness in a case?

Ms. Stewart, and you were called as a party to testify?

PROSPECTIVE JUROR: I was called as a witness to testify.

MR. BECRAFT: All right. And did you give testimony in court?

PROSPECTIVE JUROR: I did.

MR. BECRAFT: Civil case?

PROSPECTIVE JUROR: Yes.

MR. BECRAFT: Okay.

PROSPECTIVE JUROR: Yes. Well, one was a criminal contempt.

MR. BECRAFT: Okay.

PROSPECTIVE JUROR: Following a jury verdict,

and the other one was a former client, I got called by her attorney to testify.

MR. BECRAFT: Okay. Now, would your experience -- we're going to have witnesses come up here. Can you lay aside any experience that you might have, good or bad, about being a witness in this case and not have it affect your verdict if you're chosen as a juror in this case?

PROSPECTIVE JUROR: Yes.

MR. BECRAFT: Anybody else that I missed? A moment ago, you know, Judge McCalla, I guess it was a question asked of us, how much are we going to tell you about our defense. Well, I'm going to tell you this: We're probably going to go through this case and maybe there's going to be a lot of stipulations regarding the government's evidence. Hopefully, maybe tomorrow afternoon or maybe sometime Wednesday morning, we will be through with the government's case. After that, Ms. Kuglin is going to get up, and she is going to testify from the stand. I have got a series of questions I would like to ask each of you. Is there anybody here that would, you know, hold something against you based on what you already heard in this courtroom about Ms. Kuglin, if she gets up there and testifies in this case, is there anybody that is going to be prejudiced against her? Is

there anybody that is not going to give her due consideration for her testimony? Well, you have all heard -- you know something about the facts in this case, Judge McCalla read you the indictment. She is a FedEx pilot. She makes good money. You heard what the figures were, and they're not going to be disputed. You know, there is somebody -- somebody from the government is going to come in here and add up the figures, we're going to have somebody from FedEx that is going to come in here and say this is what she made every year, I have no doubt that what the indictment says was her gross for all these years is accurate, you know, anywhere from a hundred and forty grand to maybe a hundred sixty or a hundred and seventy grand a year. Now, those are very large figures, is there anybody here in this case that is going to be, well, gee, you know, I'm not going -- she makes a lot more than I do. Is there anybody here going to be kind of anti or opposed to Ms. Kuglin because she happens to be a FedEx pilot that makes good money that lives down at the end of south Main Street in Waterford condos? Nobody is going to be holding it against her because her station in life is above normal? Okay. Is that -- will all of you promise that you will not hold that against her?

Now, the evidence in this case, what she -- I'm going to generally summarize, I'm not going to get down

into the detail, but she is going to give you the reasons why she did what she did. You can kind of look over here, you know, if we get around to opening statements today, you know, I have got a bunch of books stacked up right there, but, you know, she has got her reasons. Now, will all of you promise me that you will listen to her testimony diligently and weigh it like you would any other witness? You will listen to her reasons and give due consideration? Is there anybody that is not going to do any of that?

How many of you have ever studied anything regarding tax and specifically income tax? Ms. Stewart. And I guess your answer would be, well, at law school, I had a course, and I think earlier you made some statement that you have given opinions regarding the tax law. So you would know generally something about the issue of income taxation from what any common lawyer would understand, correct?

PROSPECTIVE JUROR: That's right.

MR. BECRAFT: All right. Now, with your legal background, can you lay aside -- can you just kind of divorce yourself from everything that you know and come into this case and just listen to the facts and then listen to the instructions that are given by the court?

PROSPECTIVE JUROR: I can.

MR. BECRAFT: Okay. Now, one of the things I will tell you is that, you know, in defense, Ms. Kuglin is going to give you her beliefs about the law. She has certain beliefs, and what the court is going to do is, you know, when she starts testifying about that, I want to -- I want to make it plain and clear right now that that is not going to be an effort on Ms. Kuglin's part to try to tell you what the law is. We acknowledge that at the end of the trial, Judge McCalla is going to tell you what the law is.

Now, there is obviously going to be a difference of opinion. There's going to be a difference in the testimony and the instructions that the court gives. Now, can each of you look at this -- the facts in this case, these beliefs about the law and make a conclusion, well, I don't think that she had a criminal intent; can each of you do that? Mr. Sciara?

PROSPECTIVE JUROR: I'm not so sure that I can do that, because if I was making that kind of money and didn't understand what I was supposed to be doing with my taxes, I would hire somebody to tell me how to do that.

MR. BECRAFT: Okay. So both of you think that because she was a FedEx pilot making big bucks --

PROSPECTIVE JUROR: I don't care what her job is.

MR. BECRAFT: You think that she should have gone out and sought legal counsel?

PROSPECTIVE JUROR: I think you either break the law or you don't. I know how to do my taxes. I mean I'm 23, and I know you pay income taxes, and everybody knows that.

MR. BECRAFT: Okay. Can you -- what I'm specifically asking for is to at least be --

THE COURT: Let me say one thing here.

MR. BECRAFT: Sure, Your Honor.

THE COURT: You know, and that's a wonderful example of extracting from our own experiences to say what somebody else would do, and often in our lives that's a useful way in which we do things, but in the criminal law, in the criminal law, it really does matter what the person thinks or at least it's supposed to, and you're supposed to give that meaning. So that if -- if we didn't have a tax case, let's say we didn't have a tax case, let's say we had a particular -- different type cases, possession with intent to distribute marijuana, and let's say somebody had a quantity of marijuana, you know, it's illegal to have marijuana, it's illegal, but the charge is possession with the intent to distribute marijuana. Now, you might possess marijuana for more than one reason than distribution. Distribution means to transfer to another

person either with or without financial gain. You might have marijuana for personal use, that's a different section of the code, and that's a different law. So a jury, every time they decide that question, the jury has to decide did that person possess that quantity of drugs with the intent to distribute it.

It's -- and so you can have it, right, but not possess it with the intent to distribute it. I'm just trying to make the point that you're going to be asked to decide what was in the defendant's mind, and the government is going to make some arguments about the evidence to try to show what was in the defendant's mind, and the defendant, probably through counsel, is going to make some arguments to show what is in the defendant's mind about the good faith defense on not filing. I'm a little concerned --

PROSPECTIVE JUROR: I understand what you're saying, Your Honor, I just -- I did not want to sit here and pretend that I'm not having feelings like that.

THE COURT: And there's nothing wrong with that.

PROSPECTIVE JUROR: I was trying to be honest with you, without wasting this court's time or anybody's time that I'm having a little bit of trouble, if we're going to plead, I'm sorry, I didn't understand, because I

don't go for that.

THE COURT: I think it's going to be a little different than that. It is probably -- I'm just saying probably because I have some experience. It's probably going to be I believe for these reasons that I didn't have to file an income tax return. Let's say that you were not for profit, they're not arguing that here, and that you really didn't owe any taxes, and you believe you didn't have to file a return, but you didn't file a return, it turned out you were supposed to file a return, you might come in and say I didn't know -- you know, I didn't think I owed any taxes, I didn't think I needed to file a return. So I mean -- and that would be a legitimate argument to make, and you would have to examine the state of mind of that taxpayer to determine whether or not they actually violated the law. Why don't we do this, why don't we -- I was a little concerned about this discussion going too far there. Why don't we -- is it Sciara?

PROSPECTIVE JUROR: Sciara.

THE COURT: Say it again, I'm going to write it down phonetically.

PROSPECTIVE JUROR: Phonetically, it would be S-H-I-R-A, Sciara.

THE COURT: By the way, I have eaten there. My kids love the food at the restaurant.

PROSPECTIVE JUROR: I'm not trying to cause trouble, I'm just trying to be honest.

THE COURT: Let's talk about it at side bar. And the reason I interrupted you is we have to be careful about what we say in front of everybody. If you will come around to side bar, I'm going to ask you a few questions.

(The following proceedings had at side-bar bench.)

THE COURT: I'm going to let you stand behind the screen, that's sort of the protected place.

PROSPECTIVE JUROR: I'm not trying to cause you any trouble, I just have a hard time believing that anybody that is old enough to have somebody -- I understand she has got an older son, I mean we all know we have to pay taxes. I find this hard to believe.

THE COURT: Right.

PROSPECTIVE JUROR: Regardless of how much she makes or where she works, I'm not being prejudiced that way.

THE COURT: I understand you completely, and this is not going to be about somebody -- it's going to be about -- the question is going to be did she have a good faith belief based on her understanding of the law that she didn't have to file a return.

PROSPECTIVE JUROR: I can't help it, I'm sorry.

THE COURT: I think I have got it there.

PROSPECTIVE JUROR: I apologize. I'm just telling you --

THE COURT: That's okay.

PROSPECTIVE JUROR: I work real hard and I pay all my taxes.

THE COURT: I understand.

PROSPECTIVE JUROR: This is probably not the one for me.

THE COURT: Do you -- do you own part of the business out there?

PROSPECTIVE JUROR: I get paid by some of the business that we make, yes, sir.

THE COURT: Because I think I have seen you. You can see you -- you go up to the counter, you're right behind there?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Of course, you can see everybody pretty much?

PROSPECTIVE JUROR: Yeah. And I will be the fourth person in a month that has been called out of that little bitty business for jury duty too.

THE COURT: That's --

PROSPECTIVE JUROR: It's really breaking her for me to be gone as well.

THE COURT: I understand. Who owns the business?

PROSPECTIVE JUROR: Alice Mantia, who was on jury duty all last week.

THE COURT: I didn't know that.

PROSPECTIVE JUROR: We had two other people out the week before and the week before.

THE COURT: That may be in and of itself an unfair -- any questions from anybody?

PROSPECTIVE JUROR: I apologize.

THE COURT: That's okay. I'll just -- I will kid you about it when I come in and eat next time. I will let have you a seat over there, I will check with these guys.

(The juror stepped away from the bench.)

MR. BECRAFT: I think for cause.

THE COURT: I was afraid we were going to get --

MR. MURPHY: Judge, I think this was a good idea. I have no objection to a cause strike.

THE COURT: Okay. He's a nice guy, and I understand what has happened.

(The following proceedings were had in open court.)

THE COURT: All right. We're going to let you

be excused. Thank you very much.

PROSPECTIVE JUROR: Sorry for your troubles.

THE COURT: Thank you.

Mr. Stage, I'm going to let you come around for just a moment.

(The following proceedings had at side-bar bench.)

THE COURT: Hi, Mr. Stage, how are you doing?

PROSPECTIVE JUROR: Good.

THE COURT: It is important that people be concerned about what the defendant was thinking and what she really believed. Now, it has to be -- the belief has to be one that has some basis in -- it can't -- it can't be a fantasy, but it merely has to be a good faith belief. It doesn't have to be right.

PROSPECTIVE JUROR: The analogy you put together, it would be like me getting pulled over by an officer, saying you know you were speeding and me saying I didn't know what the speed limit is, you're still going to get the speeding ticket.

THE COURT: That's true.

PROSPECTIVE JUROR: I feel like there's a line of the law, you either break it or you don't and -- beliefs --

THE COURT: Well, in criminal -- remember, this

is a criminal prosecution in a tax case. That doesn't mean -- I'm not going to go on the civil side, that doesn't mean they can't assess you, that doesn't mean that they can't get their money, that doesn't mean that, because that is different. I think that's all correct.

MR. BECRAFT: Absolutely.

THE COURT: They can seize your house, they can put a tax lien on it, they can do all that stuff. And so it doesn't mean that a person is going to not have to pay, that's not the point. The point is, is it criminal conduct because criminal conduct is different than, you know, than, for example, city taxes, we all know we got to pay them.

PROSPECTIVE JUROR: Right.

THE COURT: But when people don't pay them, they don't put you in jail for it, they just take your property. And that's -- see, that's fundamentally different than putting you -- than having a potential criminal penalty.

PROSPECTIVE JUROR: Another thing too, when y'all said what she was being charged with --

THE COURT: Sure.

PROSPECTIVE JUROR: -- y'all said she provided false W-4s, I mean --

THE COURT: The government is going to try to

prove that. These are not W-2s, they're W-4s.

PROSPECTIVE JUROR: Whatever you have got to turn in by April 15th.

THE COURT: Do you see what I'm trying to say --

PROSPECTIVE JUROR: The analogy you're trying to put together, I just don't -- I guess because my state of mind isn't -- I see the law as the law. I mean you either break it or you don't.

THE COURT: And one of the elements of the law is that you have the necessary -- for a criminal conviction, not for the civil liability on your taxes, but for a criminal conviction, you have a right to make a bad decision, you have a right to make a decision that is just plain ultimately wrong, but if it is in good faith, if you really believe that, you know, based on regulation or a statute or a code section or something else that you really don't have to pay it, then our government doesn't want you to go -- to be criminally penalized for that.

PROSPECTIVE JUROR: Right.

THE COURT: Now, they're still going to get your money because they're going to assess -- they're going to put a lien on your property or something like that.

PROSPECTIVE JUROR: Well, I mean --

THE COURT: That's a different thing.

PROSPECTIVE JUROR: The story would have been a lot more believable to me if it wasn't for the false documentation.

THE COURT: We haven't heard any proof yet.

PROSPECTIVE JUROR: Right. When I heard that, that all of a sudden made me feel kind of fishy.

THE COURT: I am going to let y'all ask any questions that you want to ask.

MR. MURPHY: I don't have any questions.

MR. BECRAFT: Are you of the view that right now, you would not listen or give credence to anything she had to say about justifications for why she did what she did?

PROSPECTIVE JUROR: If I felt like you could -- it would be a mistake that could have been made, yes, but if it sounded stupid to me, then there is no way you could make that mistake, no.

MR. BECRAFT: You think there is no way she could make this mistake here?

PROSPECTIVE JUROR: I haven't heard the story yet, I got to hear -- I mean why she did it. If she says I forgot --

MR. BECRAFT: My question is, are you so prejudiced right now that you can't be neutral?

PROSPECTIVE JUROR: I think I can be neutral.

MR. BECRAFT: Okay.

PROSPECTIVE JUROR: But when I -- like I said, the story, if it makes sense to me that I see that, yeah, it could happen, if I put myself in a situation, yeah, I might have been able to make a mistake like that, but then, again, if I look at it and I say, well, there's no way somebody could be that stupid, you know, then I look at it differently and I say no.

MR. BECRAFT: Is that the -- what you just said, is that the way you feel right now?

PROSPECTIVE JUROR: Right now, honestly, I'm leaning toward that I think there was no way it could have happened because of the false papers.

MR. BECRAFT: Okay.

PROSPECTIVE JUROR: That's the only reason why, honestly.

MR. BECRAFT: Okay. Nothing further, Your Honor.

MR. MURPHY: Nothing further, Your Honor.

THE COURT: We're going to let you have a seat right over there at that green chair.

(The juror stepped away from the bench.)

MR. BECRAFT: For cause.

THE COURT: I don't think we have any choice

here.

MR. MURPHY: I don't have any objection, Your Honor.

THE COURT: I hope we don't start a trend here.

MR. BECRAFT: Side bar fever.

(The following proceedings were had in open court.)

THE COURT: Mr. Stage, we're going to let you be excused. Thank you.

THE CLERK: Pam Stidham. Mozell Smith.

THE COURT: Let me get our first juror's last name. Spell your last name for me.

PROSPECTIVE JUROR: Stidham, S-T-I-D-H-A-M.

THE COURT: Okay. Ms. Stidham, how are you today?

PROSPECTIVE JUROR: Fine.

THE COURT: This whole process seems sort of strange?

PROSPECTIVE JUROR: Not really.

THE COURT: Not really?

PROSPECTIVE JUROR: No.

THE COURT: What do you understand our main objective in this process is?

PROSPECTIVE JUROR: Just to listen to the facts and weigh the evidence.

THE COURT: And in this voir dire process, we're just trying to find people who haven't already made up their mind. You think some people have already made up their mind in this case?

PROSPECTIVE JUROR: The ones who have left probably.

THE COURT: Does it seem reasonable to want people that are going to really wait and be patient?

PROSPECTIVE JUROR: Sure.

THE COURT: Are you that kind of person?

PROSPECTIVE JUROR: I would like to think so.

THE COURT: Okay. What do you understand maybe one of the big issues in the case is going to be?

PROSPECTIVE JUROR: I guess just for us, keeping an open mind and just really listening and hearing out what's being said and maybe learning, you know -- I don't know.

THE COURT: Right. And one of the main questions we're going to have to decide is the defendant's state of mind, because I don't think they're going to sit there and tell us that these returns were filed. They're not going to say that. That is not going to be said, is it?

MR. BECRAFT: No, Your Honor.

THE COURT: In fact, they agree that didn't

happen. They're not going to say, oh, no, I sent it in, they just didn't get it. They're not saying that. They're not saying that I meant to send it in, they're not saying that. They're saying that the defendant had a good faith belief that this was something she did not have to do. And we are going to have to understand whether she really believed that, and there's no mechanism that's better use for this process than a jury because you folks will be able to observe all the evidence that the government puts on because the government is going to try to address this question in its own proof, I'm sure, right, Mr. Murphy? I think some of that is addressed by the government.

MR. MURPHY: Judge, I think if -- I can't say for sure, but we have always got rebuttal, so --

THE COURT: Right, the government --

MR. MURPHY: In the total package, we will.

THE COURT: No, I'm not saying the case in chief, maybe I said that. The government will present proof on that. The defense may -- the defense may present proof on that, you're going to have to make up your mind. Are you going to be able to be -- wait until you have heard everything and then make up your mind on this question?

PROSPECTIVE JUROR: Yes, I believe so.

THE COURT: Okay. Now, tell us what part of the district or city you're from.

PROSPECTIVE JUROR: I'm from Midtown.

THE COURT: And what is your educational level?

PROSPECTIVE JUROR: Almost completed college.

THE COURT: Okay. And what is your occupation and who is your employer?

PROSPECTIVE JUROR: I am mostly a homemaker, but I do some home renovation.

THE COURT: Are you married?

PROSPECTIVE JUROR: Yes.

THE COURT: Your husband's name and his occupation?

PROSPECTIVE JUROR: His name is Greg Stidham, and he is director of ICU at Le Bonheur.

THE COURT: Do you know -- do you have children?

PROSPECTIVE JUROR: He has two sons that are grown.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, I don't.

THE COURT: Thank you.

Ms. Smith, how are you?

PROSPECTIVE JUROR: Okay. And you?

THE COURT: I'm fine.
PROSPECTIVE JUROR: Good.
THE COURT: You made up your mind about this case or are you still able to be open-minded about it?
PROSPECTIVE JUROR: Well, I can be open-minded about it, but I have personal reasons why I cannot serve.
THE COURT: Well, let's talk about that at side bar.
PROSPECTIVE JUROR: Okay.
THE COURT: Come on up and we will talk about it.
(The following proceedings had at side-bar bench.)
THE COURT: Yes, sir.
PROSPECTIVE JUROR: My mother just got out of the hospital, and she had both of her legs amputated. I'm the caregiver. So I need to be home with her. And she has doctor's appointments this week.
THE COURT: Any objection?
MR. MURPHY: No, sir.
MR. BECRAFT: No.
THE COURT: Thanks for letting us know.
PROSPECTIVE JUROR: Thank you.
(The following proceedings were had in open court.)

THE COURT: I'm going to let Ms. Smith be excused.
THE CLERK: Lauren Smith.
THE COURT: Mr. Smith, how are you?
PROSPECTIVE JUROR: Fine. I'm fine.
THE COURT: All right. Do you know of any reason you cannot serve on this jury and be fair and impartial?
PROSPECTIVE JUROR: Not at this time, no, I don't.
THE COURT: What part of the district or city are you from?
PROSPECTIVE JUROR: I'm in southeast Memphis.
THE COURT: What is your educational background?
PROSPECTIVE JUROR: Some college.
THE COURT: What is your occupation and who is your employer?
PROSPECTIVE JUROR: FedEx is my employer and in internet technology.
THE COURT: Do you have any problem with the fact that in this case, the defendant is a FedEx pilot?
PROSPECTIVE JUROR: No, I don't.
THE COURT: You have never met her, I assume?
PROSPECTIVE JUROR: No, I haven't.

THE COURT: Okay. Do you -- are you married?
PROSPECTIVE JUROR: No, I'm single.
THE COURT: How old are you?
PROSPECTIVE JUROR: Forty-nine.
THE COURT: Forty-nine, okay. Do you know of any reason again that you could not sit on this jury and be fair and impartial?
PROSPECTIVE JUROR: No, I don't. I don't have any reason.
THE COURT: Mr. Murphy?
MR. MURPHY: Yes, sir, Your Honor. I know these people down in front are sitting here, well, is he going to ask all these questions again. To the two recent jurors seated, have you ever had any problems with the IRS, any tax problems?
PROSPECTIVE JUROR: No.
PROSPECTIVE JUROR: No.
MR. MURPHY: The judge is going to instruct you what the law you're to apply in this case is, you got any problem following that?
PROSPECTIVE JUROR: No.
MR. MURPHY: Even if you don't like the law, you think it is crazy, are you going to go back there and say I'm not going to do this, this is foolish? No matter what you think, are you going to be able to apply the law?

PROSPECTIVE JUROR: Yes.
MR. MURPHY: Do you know any of the parties in the courtroom, any of the people in the courtroom?
PROSPECTIVE JUROR: (Shakes head from side to side).
MR. MURPHY: Any family members work for the federal government?
PROSPECTIVE JUROR: No.
PROSPECTIVE JUROR: No.
MR. MURPHY: Do you have any strong opinions about the income tax laws, for example, do you think that income tax is unconstitutional and the government ought not to be able to impose taxes on people? I'm getting a look.
PROSPECTIVE JUROR: Well, I think that government has the right to levy taxes on you, sure enough; however, from a recent experience, I know that the government taxed me at a different rate and I didn't think it was fair. My job gave me a bonus, and if they had just taxed me at the same rate as my normal salary, that would have been fine, but they want to tax me at a higher rate. For what? I mean why? You still have to pay the taxes, but why do it on a bonus.
MR. MURPHY: Okay. But, now, that experience, is that -- has that made -- is it going to be difficult

for you to be a fair juror in this case?

PROSPECTIVE JUROR: No, it won't make me.

MR. MURPHY: In other words, are you going to be able to set all of that said and not say I'm going to equal things up with the IRS?

PROSPECTIVE JUROR: No.

MR. MURPHY: Okay. Last question and I'm going to sit down. Is there anything that I haven't talked about that y'all need to tell us about, anything you think we might want to know? Okay. Thank you.

MR. BECRAFT: We're to our new jurors here, let's bring you up to speed. Do either one of you have any friends, family members that work for the federal or state government in any capacity?

PROSPECTIVE JUROR: No.

MR. BECRAFT: Have either of you worked for any type of government before?

PROSPECTIVE JUROR: No.

PROSPECTIVE JUROR: I was in the Navy for eight years.

MR. BECRAFT: That's good enough. That's your only experience?

PROSPECTIVE JUROR: Yes. Well, I worked for the Defense Depot for awhile.

MR. BECRAFT: Have either of you ever been a

witness in a case?

PROSPECTIVE JUROR: No.

PROSPECTIVE JUROR: No.

MR. BECRAFT: Gone into court and testified? Been a juror, civil, criminal, grand jury?

PROSPECTIVE JUROR: (Shakes head from side to side).

MR. BECRAFT: Been a party to a case?

PROSPECTIVE JUROR: (Shakes head from side to side).

PROSPECTIVE JUROR: (Shakes head from side to side).

MR. BECRAFT: I think that brings them all up to speed, let's get back to the other questions. Y'all seen some fireworks in this courtroom. Do you see some people that have got emotional opinions about taxes? Will each of you listen to what Vernie Kuglin has to say as the reasons why she did what she did? The court told you a minute ago that that is called a good faith defense, and I will go a little bit further without getting into the details, but, you know, Vernie Kuglin studied this big, big book known as the Internal Revenue Code. She read it. Now, she reaches a conclusion about that. She is going to get up there and tell you what she read and studied. Now, my question to you is, if you listen to her testimony and

reach the conclusion that she really believed this, right or wrong, will you give her testimony credence? Will you consider her testimony in making the decision that you do in this particular case? Anybody that can't do that? That's all I'm asking for.

Nothing further, Your Honor.

THE COURT: All right. If you'll fill out your strike sheets and pass them up, or at least fold one over and pass it up.

(Strike sheets were handed to the judge.)

THE COURT: You may come to side bar.

(The following proceedings had at side-bar bench.)

THE COURT: All right. The government struck one person, Lauren Smith, in seat 13. The defense struck four. Defense struck Jurors Phillip Smith, Rose Saulsbury, Freida Straughter and Ms. Stewart, the attorney. So any objections?

MR. MURPHY: No, sir.

MR. BECRAFT: No, sir, Your Honor.

(The following proceedings were had in open court.)

THE COURT: All right. I hope you're not disappointed if you're excused. We're going to let Mr. Smith go, Lauren Smith, thanks very much. We're going to

let Ms. Stewart go. Thank you for being here, Ms. Stewart. And, Ms. Saulsberry, we're going to let you be excused and, Ms. Straughter, we're going to let you be excused and Mr. Phillip Smith. So we have part of the rest of the panel. I'm going to ask Mr. Shaneyfelt to go to seat number eight because actually that's the first -- that's the next regular juror seat, and then Ms. Stidham will go to seat number nine and Mr. Inderbitzen to seat number ten. Those are actually permanent seats. We're going to call five more jurors to take seats -- the last seat, seat seven and then the remaining 11, 12, 13, 14.

THE CLERK: Kim Stout. Sharon Smith. Joseph Schingle. Cynthia Street. George Stewart.

THE COURT: Ms. Stout, how are you doing?

PROSPECTIVE JUROR: I'm doing fine. Thank you.

THE COURT: All right. What part of the city or the district do you live in?

PROSPECTIVE JUROR: I live in Cordova.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: College graduate.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: I'm at home right now.

THE COURT: Okay. Are you married?

PROSPECTIVE JUROR: Yes, I am.

THE COURT: Your husband's name and his occupation?

PROSPECTIVE JUROR: His name is Eric Stout, and he's an electrician.

THE COURT: Do you have children?

PROSPECTIVE JUROR: I do.

THE COURT: And tell me --

PROSPECTIVE JUROR: Two. I'm sorry, three of my own and two step.

THE COURT: Okay. All right. It must be a new one?

PROSPECTIVE JUROR: It is. He's five.

THE COURT: Fairly new?

PROSPECTIVE JUROR: Fairly new.

THE COURT: All right. Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: I do not.

THE COURT: You've heard the discussion about people's ability to wait and decide about a person's state of mind, that is what they believed and didn't believe.

PROSPECTIVE JUROR: Uh-huh.

THE COURT: And some people have found that difficult to do. Can you do that?

PROSPECTIVE JUROR: I can.

THE COURT: If you would hand that back to Mr. George Stewart who is right behind you. Mr. Stewart, how are you today?

PROSPECTIVE JUROR: I'm doing pretty good. And you, sir?

THE COURT: I'm fine.

PROSPECTIVE JUROR: Great.

THE COURT: What part of the district or city are you from?

PROSPECTIVE JUROR: I live in north Memphis.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: I have a bachelor of science degree from the University of Memphis and a medical technology degree from the University of Tennessee.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: I'm a medical technologist with Baptist Memorial Health Care.

THE COURT: And are you married?

PROSPECTIVE JUROR: No, I'm not.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No. I can be fair and impartial.

THE COURT: All right. I've asked everybody -- lately, we're asking everybody that question to make sure they haven't already made up their mind, it kind of sounded like some folks had. Are you able to -- the key question here is going to be -- probably, I never can be sure, I will tell you at the end of the case what some of those questions are, but it may be what Ms. Kuglin thought, I mean what was in her mind, whether she had a good faith belief about certain things, and that's just going to obviously wait until the end of the case and then you'll have to make a decision on that. But can you wait on that and not jump to a conclusion in this case?

PROSPECTIVE JUROR: Yes, I can.

THE COURT: Okay. I'm going to ask you to hand that to Ms. Street. Ms. Street, how are you?

PROSPECTIVE JUROR: I'm tired, sleepy and stressed.

THE COURT: What do you think about me? At least, you were out there resting, right? Not so bad. I'm going to let you stand up so we can hear you okay. You feeling all right, just tired?

PROSPECTIVE JUROR: Just tired and sleepy, I been working 12 to 16 hours a day to keep your lights on.

THE COURT: You work for MLG&W?

PROSPECTIVE JUROR: Right.

THE COURT: We will let you be excused if you want to be.

PROSPECTIVE JUROR: Please.

THE COURT: Come on around and talk to us. If you have been working that much, we may need to let you go.

(The following proceedings had at side-bar bench.)

THE COURT: I know you're tired, so I thought we better just come around here. What is your job at MLG&W?

PROSPECTIVE JUROR: I'm a material handler. I have to make sure all the crews get what they need when they need it.

THE COURT: Okay. And I know they have been working very long hours.

PROSPECTIVE JUROR: Yeah, 20. Twelve straight days, I think this is the 13th day.

THE COURT: It's the 13th day because my lights were out until last night. My lights were out until last night.

PROSPECTIVE JUROR: Mine didn't come on until Saturday.

THE COURT: They have been working really long hours, I would be hesitant to -- it might be hard for you to concentrate and stay awake to do this. We appreciate it, we're going to let you be excused.

PROSPECTIVE JUROR: Thank you.

(The following proceedings were had in open court.)

THE COURT: We're going to let Ms. Street be excused. They have been working long, long hours.

All right. We're going to call a name to take seat 13.

THE CLERK: Cynthia Sanders.

THE COURT: Hi, Ms. Sanders. How are you doing?

PROSPECTIVE JUROR: I'm fine.

THE COURT: I'm going to ask you a couple of questions. If you will stand, I'm going to ask you what you part of the district or city are you from.

PROSPECTIVE JUROR: Kirby and Mt. Moriah.

THE COURT: And what is your educational background?

PROSPECTIVE JUROR: College.

THE COURT: What's your occupation and who is your employer?

PROSPECTIVE JUROR: Car sales, Homer Skelton

Ford, Olive Branch.

THE COURT: Are you a sales person?

PROSPECTIVE JUROR: Yes, I am.

THE COURT: Okay. Is it cheaper in Mississippi to buy a car?

PROSPECTIVE JUROR: Taxes are.

THE COURT: Taxes are less, okay. All right. Well, are you married?

PROSPECTIVE JUROR: Separated.

THE COURT: What's his name and what didn't he do -- what does he do?

PROSPECTIVE JUROR: Well, there are many names, but his name is Booker Sanders, Jr., and he's a manager at Firestone.

THE COURT: Do you have children?

PROSPECTIVE JUROR: Two.

THE COURT: Do you know of any reason that you could not serve on this jury and be fair and impartial?

PROSPECTIVE JUROR: No, none whatsoever.

THE COURT: Okay. Thank you.

And is it Mr. Schingle?

PROSPECTIVE JUROR: Yes.

THE COURT: How are you today?

PROSPECTIVE JUROR: Fine, thank you.

THE COURT: It has been awfully long, and I

apologize.

PROSPECTIVE JUROR: It has.

THE COURT: It sort of depends on the answers we get, you know. What part --

PROSPECTIVE JUROR: Cordova.

THE COURT: What?

PROSPECTIVE JUROR: Cordova.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: Two years of college.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: Retired.

THE COURT: What did you retire from?

PROSPECTIVE JUROR: New York Life Insurance Company.

THE COURT: How long have you been retired?

PROSPECTIVE JUROR: Eleven years.

THE COURT: How old are you?

PROSPECTIVE JUROR: Seventy-three.

THE COURT: You know you're eligible to be excused?

PROSPECTIVE JUROR: Yes, yes.

THE COURT: Do you mind serving?

PROSPECTIVE JUROR: I love it.

THE COURT: We would love to have you, I just wanted to make sure you knew. Are you married?

PROSPECTIVE JUROR: Yes.

THE COURT: Your wife's name?

PROSPECTIVE JUROR: Verne Joan.

THE COURT: And her occupation?

PROSPECTIVE JUROR: Me.

THE COURT: Trying to keep you around. All right. A lot of discussion here about people being able to listen to the law, the theories in the case and not just make up their mind based on the charges. And in our system -- in a criminal law system, not civil side, we're not talking about civil side, civil liability is not the question here, there has to be the requisite state of mind in order for someone to be subjected to criminal liability, you know, totally different from the civil side as you're aware of from your business in the past, I'm sure. Can you do that in this case or are you starting out with a couple of black marks already on the slate for the defendant?

PROSPECTIVE JUROR: Clean slate.

THE COURT: All right. Well, then you don't know of anything that would preclude you from being fair and impartial in this case?

PROSPECTIVE JUROR: No.

THE COURT: If you will hand that to Ms. Sharon Smith. Ms. Sharon Smith?

PROSPECTIVE JUROR: Yes.

THE COURT: I have got so many Smiths, I have to check and make sure I have got the right one.

PROSPECTIVE JUROR: That's right.

THE COURT: Okay. What part of the district or city are you from?

PROSPECTIVE JUROR: Munford.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: I have two years of college.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: I work for Lucite International in customer service.

THE COURT: Are you married?

PROSPECTIVE JUROR: Yes. My husband's name is Tim. He is a mechanic at Lehman Roberts. And I have three children.

THE COURT: Three children. Okay. Do you know of any reason that you could not sit on this jury and be fair and impartial?

PROSPECTIVE JUROR: Yes, I would like to

approach the bench.

THE COURT: Sure, come on around.

(The following proceedings had at side-bar bench.)

THE COURT: Yes, sir.

PROSPECTIVE JUROR: I have family medical issues. My dad is 76 years old, lives in Crump, Tennessee. He has diabetes, and three months ago, he had surgery and in the hospital to help the diabetes, it was not successful, and they are taking off his foot today or tomorrow. I'm not at the doctor's office today to find out which day it is, but I don't think my focus can be up here.

THE COURT: Sure.

MR. MURPHY: Judge, no objection.

THE COURT: Thanks for letting us know, and I'm sorry we didn't get you let you go earlier.

(The following proceedings were had in open court.)

THE COURT: We're going to let Ms. Smith be excused, and call another name to take her place. I don't usually do this, but I know how to do it. Neil Simpson.

Mr. Simpson, how are you doing today?

PROSPECTIVE JUROR: Very good, thank you.

THE COURT: Okay. This has taken a lot longer

than it sometimes takes. I suppose it's because of the nature of the inquiry.

What part of the district or city do you live in?

PROSPECTIVE JUROR: East Memphis.

THE COURT: What is your educational background?

PROSPECTIVE JUROR: One year of college.

THE COURT: What is your occupation and who is your employer?

PROSPECTIVE JUROR: Retired, but -- retired twice. MLGW, Methodist Hospital, back at MLGW.

THE COURT: You're not back there now?

PROSPECTIVE JUROR: As a contract, under contract. I have been working 14, 15 hours also.

THE COURT: You doing all right or do you --

PROSPECTIVE JUROR: I'm doing fine.

THE COURT: You're doing fine?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Okay. Are you married?

PROSPECTIVE JUROR: Yes.

THE COURT: Your wife's name and her occupation?

PROSPECTIVE JUROR: Marcie, home keeper, three children.

THE COURT: Three children?

PROSPECTIVE JUROR: Thirteen grandchildren.

THE COURT: Thirteen grandchildren, all right. That's great. That's wonderful.

Do you know of any reason that you could not sit on this jury and be fair and impartial?

PROSPECTIVE JUROR: No reason.

THE COURT: Okay. We had that fundamental question about some folks saying they already basically made up their mind, are you able to put yourself in that category of people who are able to listen?

PROSPECTIVE JUROR: Yes, sir, have to hear all the facts.

THE COURT: All right. Mr. Murphy. Thanks very much.

PROSPECTIVE JUROR: Yes, sir.

MR. MURPHY: Yes, sir, Your Honor. This is directed to the new jurors. Have any of y'all had any problems with the IRS? Audits or anything like that?

THE COURT: We're going to have to give you the mic, I'm sorry. Mrs. Parker has to write it all down.

PROSPECTIVE JUROR: I had an audit years ago, but it doesn't affect my ability.

MR. MURPHY: How was your experience with the audit, good, bad?

PROSPECTIVE JUROR: Well, it was -- I owed the money, so I had to pay it.

MR. MURPHY: Okay. Do you think they treated you fairly?

PROSPECTIVE JUROR: Yeah, it was fair.

MR. MURPHY: Thank you, sir.

Now, do y'all understand that you have got to follow the law as the judge gives to it you? He's going to tell you what the law is, that you have got to apply it. Does anybody have any problem with that? Do y'all have any problem with the fact that people are required to pay income taxes, file tax returns, is that a problem?

PROSPECTIVE JUROR: No.

MR. MURPHY: See anything wrong with that?

PROSPECTIVE JUROR: No.

MR. MURPHY: All right. Is there anything you haven't told us that you think we ought to know about? You know -- I know a lot of times, we'll ask people questions, and then later on somebody will raise their hand, you know, and I just remembered, I had, you know, an uncle in law enforcement that was, you know, years ago, anything like that? Any family, friends work for IRS, government, law enforcement?

PROSPECTIVE JUROR: I have a sister-in-law that works --

THE COURT: The mic.

PROSPECTIVE JUROR: My sister-in-law works for the IRS.

MR. MURPHY: Okay. Where does -- does she work at the service center?

PROSPECTIVE JUROR: On -- I believe it's over of Holmes Road, I'm not sure.

MR. MURPHY: Okay. On Getwell?

PROSPECTIVE JUROR: Maybe that's it.

MR. MURPHY: Okay. The fact that you're a juror in this case, have you -- if you have to vote one way or the other, is it going to influence you because you have a relative that works for IRS?

PROSPECTIVE JUROR: No, definitely not.

MR. MURPHY: Okay. That's going to do it for me, ladies and gentlemen.

PROSPECTIVE JUROR: I have one.

MR. MURPHY: Oh, yes, sir.

PROSPECTIVE JUROR: I have a cousin that is retired from the IRS, but it wouldn't have any effect on any of this.

MR. MURPHY: Presumably a cousin you like?

PROSPECTIVE JUROR: Oh, yes.

MR. MURPHY: Okay. But you're not going to be embarrassed if you vote one way or another?

PROSPECTIVE JUROR: Not at all.
MR. MURPHY: Okay. Thank you, sir.
MR. BECRAFT: Let me pose these questions to our new people up here. Do any of you have any friends, close family members, yourselves ever worked for the state or federal government in any way, shape, manner or form?
PROSPECTIVE JUROR: Just this state.
MR. BECRAFT: No, any state?
PROSPECTIVE JUROR: My son is a judge in Colorado.
MR. BECRAFT: Okay.
PROSPECTIVE JUROR: County judge.
MR. BECRAFT: All right. Anybody else?
PROSPECTIVE JUROR: I have two brothers that are police officers.
MR. BECRAFT: Where would they be police officers?
PROSPECTIVE JUROR: One of my brothers is a police officer for the City of Memphis, and I have a brother that is a security officer for the airport.
MR. BECRAFT: All right. Do you see them on a frequent occasion?
PROSPECTIVE JUROR: Just ever so often.
MR. BECRAFT: All right. If we had this trial last through this weekend, as you finally walked out of

this courthouse, if you were picked as a juror, if you didn't see them at any time in between, would your relationship with them, would it be such that if you sat in this case and made a certain decision and saw them this weekend that you might have some problems with them?
PROSPECTIVE JUROR: No, no.
MR. BECRAFT: Okay. So you can lay aside your family connections with law enforcement and fairly and impartially decide this case?
PROSPECTIVE JUROR: Yes, I can.
MR. BECRAFT: Ms. Stout, did you say --
PROSPECTIVE JUROR: I used to work for the city.
MR. BECRAFT: Okay.
PROSPECTIVE JUROR: I am no longer employed with the city. I used to work as a firefighter paramedic.
MR. BECRAFT: All right.
PROSPECTIVE JUROR: Okay.
MR. BECRAFT: How about, have any of you ever been a witness in a case, sat on a jury, state or federal? Okay. Let's quickly go through them here, the three of you.
PROSPECTIVE JUROR: I was on a jury, civil case with one of the local TV stations.
MR. BECRAFT: Civil case, some years ago?

PROSPECTIVE JUROR: It has been about four years ago.

MR. BECRAFT: Can you lay aside anything you saw or learned then and come into this case and just listen to the facts and the evidence here and take the judge's instructions on the law and decide it without being influenced by your past jury service?

PROSPECTIVE JUROR: Sure.

MR. BECRAFT: I'm going to ask the same question of you, sir.

PROSPECTIVE JUROR: Yeah, civil case, automobile accident couple of three years ago.

MR. BECRAFT: Okay. And that wouldn't have any influence on what you do here?

PROSPECTIVE JUROR: Not at all. Mine was in federal court in '68. It was tax evasion --

MR. BECRAFT: It wouldn't have --

PROSPECTIVE JUROR: Tax evasion case, it wouldn't have anything to do with this.

THE COURT: I'm not certain I heard that answer. Are you saying that you sat --

PROSPECTIVE JUROR: I sat on a case, it was a tax evasion case in '68.

MR. BECRAFT: '68, okay. Well, was that here?

PROSPECTIVE JUROR: Yes, sir.

MR. BECRAFT: And y'all reached a verdict?

PROSPECTIVE JUROR: Yes.

MR. BECRAFT: Now, here you are a second time around sitting in a -- possibly sitting in another tax evasion case. Will you promise if you're selected as a juror that anything you remember about that case will not have an effect upon your decision if you're sitting as a juror here?

PROSPECTIVE JUROR: Yes, sir.

MR. BECRAFT: Okay. Is there anything -- you know, here it is 5:00 o'clock, and I know y'all want to get out of here, is there anything that anybody wants to bring to our attention right now? We have asked a whole bunch of questions, and I don't want to have to repeat them. Just volunteer something, is there something you need to tell us that we ought to know regarding your ability to sit as jurors?

Yes, sir.

PROSPECTIVE JUROR: My son is an employee at FedEx.

MR. BECRAFT: Okay.

PROSPECTIVE JUROR: No problem.

MR. BECRAFT: You have never met her?

PROSPECTIVE JUROR: No.

MR. BECRAFT: Okay.

PROSPECTIVE JUROR: You asked about income tax, I was a volunteer for our doing personal income taxes.

MR. BECRAFT: Did you ever study the income tax laws?

PROSPECTIVE JUROR: Just what they give -- it's very basic for low and moderate income families.

MR. BECRAFT: Your knowledge about filling out tax returns, you can lay that aside, and just for this case, you can listen to Judge McCalla, you know, listen to the facts and give -- take into consideration the law that he instructs you on and then make a decision in the jury room without being influenced by your prior experience?

PROSPECTIVE JUROR: Yes, ours was very simple, yes.

MR. BECRAFT: Anything else? One final area I want to cover. You've heard me describe Vernie Kuglin. You know her station in life. She has got these beliefs about taxes. She studied the law. Now, can I get a promise out of y'all that y'all are going to listen to the evidence fairly and not be prejudiced against her and not hold anything against her and treat her like you would anybody else, any other witness and treat her like you would like to be treated as well?

PROSPECTIVE JUROR: Yes.

MR. BECRAFT: Nothing further, Your Honor.

THE COURT: You can fill out or at least turn in a strike sheet and pass that up.

(Strike sheets were handed to the Judge.)

THE COURT: All right. Let me see counsel at side bar.

(The following proceedings had at side-bar bench.)

THE COURT: Okay. There were no strikes, so what I'm going to do, though, is reseat them in the order in which they're called. So our two alternates will be Ms. Sanders and Mr. Stewart, and Ms. Stout will actually move around to seat 11. That's the way we seat them because they're always in the sequence in which they're called, and then I think we will just stop and come back tomorrow. But we will come back at 9:00. I want -- and y'all can come on in about five till because we have cancelled everything else, and we have got an 8:30, but that will be over. It will be back there anyway.

(The following proceedings were had in open court.)

THE COURT: Well, you're all accepted as jurors, but I have to reseat you a little bit because we always seat you in the order in which you were called or seated for jury selection. It's not actually -- it's -- in other words, we always put -- the person in seat seven

is the next juror. She is actually going to go to seat 11, and Mr. Stewart is going to actually stay where he is and Ms. Sanders is going to move down. So it's a little confusing. Ms. Sanders, we're going to evict you from your seat, and we're going to move you down to seat number seven, which is where Ms. Stout is sitting, and we're going to have our two gentlemen in the middle, Mr. Simpson and Mr. Schingle move over one seat, that is that way, and Ms. Stout is our juror in seat number 11. Sounds sort of mysterious, it is real important that we always do it the same way, because it depends on who is going to be the actual members of the jury and who may be the alternates. This case is long enough -- I don't want anybody to get confused, there's no way to know if the alternates will end up serving, but our alternates in this case are Ms. Sanders, she is our first alternate, and our second alternate is Mr. Stewart, so you're the two alternates. And then everybody else is expected to be the jury in the case. You're the actual twelve jurors. It's not unusual for us to have something -- hopefully, nothing happens, but if somebody gets sick, this gives us the ability to replace -- that juror has a personal emergency, then that gives us an ability to keep going.

Now, that means that those of you who came and didn't get to serve, this does qualify as your jury

service, and we do appreciate you being here, so I'm going to let all of you go at this time, and thanks again very much. Thank you.

Now, what we will have you do is come back tomorrow at 8:30. You will come back to the jury room, which is this room immediately to my left and to your right. Mr. Tuggle is going to show you to the jury room in just a moment. Just take a look before you leave -- so you will know what is in there. There are two restrooms, coffee pot and that sort of thing. There will be a snack tomorrow, I hope. They're supposed to be here about 8:30, and then we will start in here very close to 9:00 o'clock. We will start with a set of brief instructions, fairly brief instructions so you will get some idea again of what the law is, and then we will go to opening statements, and we will proceed with the first witness. So that's going to be our sequence. Remember the places you're sitting in now because when you come back tomorrow, you will probably line up and come in in that order. Look at who is in front of you. Of course, if you're -- the person who will be in front will probably be Ms. Sanders tomorrow on the first row. And then just remember the sequence that everybody is in.

Now, seven things. Do not discuss the case with anybody at all. That includes among yourselves.

That means when you go home this evening, don't talk about the case. You know, oh, I'm on this interesting IRS case, whatever you would say. Do not say that. Tell them, you know, I'm on a criminal case in federal district court, I can't talk about it now, but I'll be able to tell you about it when the case is over. And the case will be over, you know, Thursday or Friday and I'll tell you about it when it is over. As to anybody who might approach you to talk about the case, of course, report that promptly to one of our court security officers, a member of my staff or directly to me. It is inappropriate for anybody to talk with you about it, and we'll take the appropriate steps. The fourth thing is that you'll want to avoid the lawyers and the parties in the case and, of course, don't speak to them at all. Now, in that regard always be sure and wear your juror tag where it's visible. They're probably going to remember you, but that's a real easy thing for them to see. And that helps us all, all the people in the building know that you're a juror. The fifth thing is that you do know it is a 26 U. S. Code Section 7201 case, do not go home and get on your computer and look up information about that. It is frankly pretty easy nowadays, and we just remind you not to do any investigation. Don't make any inquiry. Don't try to research it in any way. The next thing is, of course, if

there is anything in the newspaper about it, probably won't be, I mean, after all, but if there happened to be, do not read it to check it out. And, of course, if there's anything on television or radio, but, of course, probably more central, if there's something about tax evasion cases or something about things like that, while you wouldn't be researching that, it would be an inappropriate thing to do too. Don't do anything that would provide you with information that might influence you. And the seventh thing is keep an open mind until you have heard all the evidence in the case, the final arguments of counsel, the final instructions on the law, gone to the jury room, deliberated among yourselves and then make up your mind, and that's going to be about four days from now.

Ladies and gentlemen, we're going to ask you to be excused. Mr. Tuggle is going to show you out that way, and we will see you in -- be back there at 8:30 tomorrow morning, we will start in here at 9:00 o'clock.

(Jury out at 5:00 p.m.)

THE COURT: Gentlemen, I think that's -- anything else we need to take up at this time?

MR. MURPHY: Not from the government, Your Honor.

THE COURT: From the defense? I want to make

sure that I have got down the -- the defense position exactly, because you want a statement of your theory. And Mr. Murphy, have you got a point on that, at all?

MR. MURPHY: Judge, I think they're entitled to state their theory.

THE COURT: Oh, they are, I agree, I mean I didn't know if you had --

MR. MURPHY: No, I don't have an objection to it.

THE COURT: Let me make sure I have got the exact theory statement --

MR. BECRAFT: Your Honor, I haven't articulated a, quote, theory of defense. The only thing I really need is, you know, legal points regarding my jury instructions, and that has already been submitted. You know, there might be one or two legal points that I want to bring up, you know, as things develop, but I don't necessarily need -- and I think it is something I can easily take up in opening and closing stating our position.

THE COURT: Well, I know you asked to be able to state your theory, and some people have me also insert the theory in the instructions, and if you want me to do that, you just have -- and you don't have to --

MR. BECRAFT: Yeah.

THE COURT: -- but if you actually want it

typed up and written and put in there, then somebody get me a typed version and make sure it is reasonably short.

MR. BECRAFT: Okay.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(Court adjourned at 5:02 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 03-20111-Ml
	)	
	)	
VERNICE KUGLIN,	)	
	)	
Defendant.	)	

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
AUGUST 5, 2003
VOLUME II

BRENDA PARKER
OFFICIAL REPORTER
SUITE 942 FEDERAL BUILDING
167 NORTH MAIN STREET
MEMPHIS, TENNESSEE 38103

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TUESDAY MORNING & AFTERNOON

AUGUST 5, 2003

The trial of this case resumed on this date, Tuesday, August 5, 2003, at 9:05 o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

THE COURT: All right. We're ready, we'll bring the jury in.

COURT SECURITY OFFICER: Yes, Your Honor.

(Jury in at 9:05 a.m.)

THE COURT: You can be seated. And, of course, thank you very much. I'm sorry we're running a little late. They came just as I was leaving to do some storm work, so I had to stay a little bit, but we'll try to stay on schedule.

Ladies and gentlemen, I told you that we would swear you in this morning, so I'm going to have you stand, all raise your right hand, Mrs. Saba is going to administer the juror oath at this time.

THE CLERK: Do you and each of you solemnly swear that you will well and truly try the issues herein joined and render a true verdict according to the law, so help you God?

THE JURY: I do.

THE CLERK: You may be seated.

COURT SECURITY OFFICER: You are now the jury in the case, and I'm going to take a few minutes to tell you about your duties as jurors and give you some instructions to give you some guidance as to how to listen to the case. Now, at the end of the case, I will give you more detailed instructions, and it is those instructions that you must rely upon in reaching your decision in the case.

This is a criminal case brought by the United States government. The charges against the defendant are contained in the indictment. And we went over the indictment at the very beginning of the case. I'm going to read you Count 1 of the indictment because it is somewhat typical -- actually, I'm going to read you -- let me make sure. I'll read you Count 2. They're all pretty much alike, there's a little bit of difference, and they do relate to different time periods. Count 2 says that during the calendar year 1997, the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $147,999.60, that well knowing and believing the foregoing facts, the defendant on or about April 15, 1998, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and

owing to her by the United States of America for said calendar year by failing to make an income tax return on or before April 15, 1998, as required by law, to any proper officer of the Internal Revenue Service by failing to pay the Internal Revenue Service said income tax, and by filing a false Form W-4 in 1997, in violation of Title 26, United States Code, Section 7201. And you'll remember that Count 1 is similar to a number of the counts. There are six counts all together. Count 2 is similar to most of the counts. Count 1 is just a little different, and a couple of the counts are different too in they make no reference to the Form W-4.

Now, the indictment -- an indictment is just for the purpose of presenting information, it's not for the purpose of evidence at all.

In this case, the indictment is, as usual, just a description of the charge made by the government against the defendant and, again, it's not evidence of anything. The defendant has pled not guilty to the charge contained -- each charge contained in the indictment and is presumed innocent unless and until the government proves beyond a reasonable doubt that the defendant is guilty. It will be your duty to decide from the evidence to be presented whether the defendant is guilty or not guilty of the crime charged. You will decide from the

evidence what the facts are, and your verdict will be based on those facts. You are the sole judges of the facts. You must then apply those facts to the law which I shall give you, and in that way reach your verdict.

You must follow the law whether you agree with it or not, and you should not take anything that I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. The law in this case is contained in 26 United States Code, Section 7201, and that code section reads in relevant part as follows:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall be guilty of a crime.

The indictment in this case charges that the defendant in six separate counts violated from the period 1996 to 2001, Section 7201 of Title 26 of the United States Code.

The tax system or the system of tax collection in the United States relies upon the honesty of taxpayers. The government needs taxpayers to report timely, completely and honestly all taxes they owe so that it can collect the taxes due. Congress, therefore, has made it a criminal offense for a taxpayer to evade taxes, to file a false return or to file no return under certain

circumstances.

In order for the crime of income tax evasion to be proved, the government must establish beyond a reasonable doubt each of the following elements:

First, that the defendant owed substantially more federal income tax for the calendar year of which they're charged in that count in the indictment than was declared due on the income tax return, or if there was no return filed, that it should have been contained in a return filed.

Second, that the defendant committed an affirmative act constituting tax evasion described in the indictment and that the defendant acted willfully.

Of course, the first thing the government always has to prove in a tax evasion case is that the defendant owed substantial federal income tax for the year that's charged. The government doesn't have to prove the exact amount the defendant owed, nor does the government have to prove all of the tax charged in the indictment or if a particular sum charged in the indictment is the precise sum. It's not an accounting question, it's a question of whether or not there was a substantial act. So, of course, one of the things the government generally must prove beyond a reasonable doubt is that the defendant received substantial income in the year in which the taxes

were not paid and that tax was due on that income in the year or the following year which the income was received.

In order to prove that the defendant received substantial income which was not included in the return, the government has to introduce evidence of income and the receipt of that income by the defendant.

If you find based on all the evidence that the government established beyond a reasonable doubt the defendant did receive substantial income during the tax year in question that was not reported in which nothing was paid, then the first element of the offense can be established. But, of course, if the government fails to do that, then on that particular year, the element would not be established.

The second element that the government must prove as a general proposition is that the defendant -- and they must prove it beyond a reasonable doubt -- committed an affirmative act constituting tax evasion. The Internal Revenue Code makes it a crime to attempt in any manner to evade or defeat any income tax imposed by the law. There are different ways in which taxes may be evaded, and in this case, the defendant -- the government simply charges the defendant received a substantial income, and then, according to the government, willfully chose not to pay those taxes, knowing that those taxes

were due. The government must, of course, establish this type of affirmative element for each of the six counts in the case.

Now, the third thing the government has to show is that the defendant acted knowingly and willfully, and it's in this context that we usually end up with a discussion about whether someone had a good faith belief that they didn't have to pay the taxes. Now, first, they have to show that it was knowing and willfully. The government has to prove beyond a reasonable doubt that the defendant knew that she owed substantial federal income tax for the particular year that is charged that was declared on any return or returns filed should have been declared on a return. Whether or not the defendant had this knowledge is a question of fact that will have to be determined by you on the basis of all the evidence.

Of course, an act can be done knowingly only if it is done purposely and deliberately and not because of mistake, accident, negligence or other innocent reason.

Now, I'll give you more detailed instructions on all of this at the end of the case, but I anticipate that the defendant will take the position that she has a good faith belief that she did not have to pay or file the income tax return. She didn't have to pay the taxes in the respective year.

A defendant does not act willfully, we just talked about the willful element, if she believed in good faith that her acts complied with the law. Therefore, if the defendant actually believed that she was doing what was in accordance with the tax statutes, she cannot be said to have the criminal intent to willfully evade taxes. Thus, if you find, after you have heard all the evidence in the case, that the defendant honestly believed that she owed no taxes, even if that belief was unreasonable or irrational, then you should find her not guilty. However, of course, you will be allowed to consider whether the defendant's belief was actually reasonable as a factor in deciding whether she held that belief in good faith.

It should also be pointed out that neither the defendant's disagreement with the law nor her own belief -- nor her own belief that the law is unconstitutional, if she had that belief, no matter how earnestly that belief is held, constitutes a defense of good faith. It is, of course, the duty of all citizens to obey the law regardless of whether or not they agree with it. So -- and you'll get a copy of the -- of all of the instructions on the elements, the concept of willfulness, the concept of a good faith belief before you're required or asked to deliberate, and it will be a little more detailed than the one I have given you at this time.

Well, that's a summary of the basic principles of law that you're going to have to be dealing with in this case.

Let me tell you a couple of other things. You are going to decide, obviously, and have to decide the fundamental question of who you believe in this case and who you do not believe, or perhaps more clearly, you're going to have to decide the fundamental question of whether you believe the defendant, whether you believe other proof that would suggest that you do not believe the defendant had a good faith belief as to her not having to pay taxes under the statutes that govern the payment of taxes. So you're going to have to decide who you believe or who you don't believe in this case. How do you do that? There are a couple of things you try to do, basically, usually. First of all, you observe the demeanor of each witness as that witness testifies, determine whether or not you believe what the witness has to say in this case, determine whether or not the witness has previously said something different than what the witness is saying who is before you in this case, determine whether or not the testimony of the witness is different from the testimony of other witnesses that you do believe and, of course, use your common sense in evaluating whether or not the statement, the information

provided by each witness does appear to you to be a truthful statement on their part. Use the normal observation skills that you have in your everyday walks of life. Obviously, you're going to make a determination on credibility in this case, and I will give you more detailed instructions again on that at the end of the case, but it is a common sense type of approach in which you carefully observe the witnesses as they testify.

Let's talk about a couple of other things. Note taking. Well, you have all got note pads, I think. You're allowed to take notes in the case, and I suggest that you may want to keep a list of witnesses just so you can remember everybody who testified. You may want to make a couple of notes about what they say or do not say. But let me say this about notes: Don't let note taking interfere with your observing witnesses. Don't get so busy taking notes that you're not paying attention to the witness as each witness gives his or her testimony, because, of course, it's your observations about their testimony that is going to be far more important. Your notes are not evidence in the case. They're just there to remind you individually of the testimony that you have heard and the observations you made as the witness was testifying. The notes aren't to be shared with others or used to say, well, it's in my notes, it must be true. We

all know that that's not necessarily accurate, people can make erroneous notations or you might not observe something the same way that someone else does. Those notes are for your personal use, your personal use alone, they're not in the evidence. And if you choose not to take notes or you don't have notes on a particular point, you're to rely on your own recollection and the collective recollection of everybody else on the jury in determining what occurred here in the courtroom and not on a set of notes. So don't be overly influenced by somebody's note or the fact that somebody has some notes, they shouldn't really talk about what are in their notes, but the fact that they have some notes in making a decision. It's your own observation, the observation of all of you, that is what counts in this case.

At the end of the case, again, I'll give you detailed instructions. You will have a written set of instructions. After I give you those instructions, which will be there to guide you, and it's those instructions that you should rely on in deciding the case.

Mr. Murphy, are you ready to proceed with opening statement on behalf of the United States?

MR. MURPHY: Yes, sir, Your Honor.

THE COURT: You may proceed.

MR. MURPHY: Thank you, Your Honor.

Good morning, ladies and gentlemen.

THE JURY: Good morning.

MR. MURPHY: This is the part of the trial we call opening statements. Before I even say anything, I want to congratulate you, ladies and gentlemen. I know you're going to say why is Mr. Murphy congratulating us for sitting as a juror on a tax case. It's not the most exciting thing in the world.

Well, you, ladies and gentlemen, are now judges, you're judges of the facts in the case. Now, you don't sit up on the bench, you're in the jury box, and you don't wear a robe, but you, ladies and gentlemen, listen to the proof and make a decision based on the law that the judge gives you. And I always start out by mentioning that to people because it's very important that you listen. Even a case that it's a little more exciting in terms of what we're talking about can be difficult to listen to. So it is important that you listen, because the proof is what you're going to have to make your decision about. And I know a lot of times when you get back after lunch late in the day, it's difficult to listen, and I know everybody will, but it's important that you do.

As the judge told you, this is an income tax

evasion case. The indictment charges six counts of income tax evasion. One for 1996, one for 1997, 1998, 1999, 2000 and 2001. In Counts 2 through 6, what's charged is the evasion was aided or -- not aided, but was involved by filing of false W-4 forms and failure to file a return, failure to pay taxes. In Count 1, it's failure to pay taxes and failure to file a return.

Now, what's the proof in this case going to show? I anticipate, ladies and gentlemen, that the proof in this case is going to show that the defendant was employed by Federal Express as a pilot, and that she filed income tax returns with the exception, I believe the proof is going to be, one year from 1965 until 1992. She didn't file any returns from '93 through 2001. The conduct that -- the years involved in this case, however, are '96 through 2001.

The proof is going to be that she received substantial income in each of those years and that she had taxable income. Now, taxable income, the proof is going to be, is that income that remains after you deduct deductions, personal exemptions, that sort of thing and that that is what you're actually taxed on.

I submit, ladies and gentlemen, and expect the proof is going to be that in 1996, the defendant had wages of $183,408, that she had taxable income that year after

making deductions for mortgage interest and those sort of things of $162,883, and that the tax due was approximately $47,000.

As to 1997, I anticipate that the proof is going to be that the defendant had wages totaling $172,674 from Federal Express, that she had taxable income that year of $147,999 and the tax due and owing was approximately $42,000.

As to 1998, I anticipate the proof is going to be that defendant received approximately a $168,000 in wages and disability insurance compensation, that she had total taxable income of approximately $137,000, and that the tax due and owing for that year was $36,507.

As to 1999, I anticipate the proof is going to that the defendant had $172,428 in wages from FedEx, that her taxable income after making allowances for deductions and exemptions -- okay, I forgot to turn that on this morning. Hopefully, I won't blow everybody out of their seats. Is that too loud for y'all?

Regarding tax year, 2000, I submit, ladies and gentlemen, that the proof is going to be that the defendant had wages from Federal Express in the amount of $191,000 approximately, taxable income that year of approximately $164,000, and tax due and owing of approximately $47,000.

As to 2001, I submit the proof is going to be that the defendant had wage income of $190,000 approximately in 2001, taxable income of $161,000, in 2001, tax due and owing of approximately $45,000.

Now, the proof is also going to show a pattern with the defendant's W-4 filings. You will see W-4s, but the proof is going to be that that is where you claim your withholding exemptions. The defendant in 1988 submitted a statement to Federal Express in which she claimed six withholding exemptions. I anticipate the proof is going to be in 1990, she submitted a W-4 to Federal Express where she had ten exemptions. Then somewhere along 1996, 1995, Federal Express stopped withholding income tax from the defendant's wages, and that around that time, she submitted the W-4 and -- where she claimed exemption.

Now, the proof is going to be that on W-4 forms, there's a line that says I claim exemption from withholding for the year, and I certify that I meet both the following conditions for exemption. Last year, I had the right to a refund of all federal income tax withheld because I had no tax liability, and this year I expect a refund of all federal income tax withheld because I have no tax liability. If you meet both conditions, write exempt here, and there's a box for exempt.

Then if you go down, there's a signature line

that says, under penalties of perjury, I certify that I am entitled to the number of withholding allowances on this certificate or I'm allowed to claim exempt status. Employee signature of Ms. Kuglin, signed her name and dated it in every case. And in every case except one, she added the language reserving all of my constitutional rights in this matter, to the perjury declaration where you swear under the penalty of perjury that that is a truthful statement.

The proof is also going to show again that once that was submitted, Federal Express withheld no income tax. Further, there is going to be proof that no tax returns were filed by the defendant during this period, and that based on the agent's investigation, except for the one year -- one year where a sum of 13 -- approximately $1300 was withheld from the Kemper Insurance checks, there was no other withholding and no tax payment. And further, the proof is going to be that during this period of time, Ms. Kuglin's check was deposited at the Federal Express Credit Union, and from '96 till -- at least there will be records from '96 to 2000, I anticipate the proof is going to be that she would paid be by electronic funds transfer, and most days that there was a payday, Ms. Kuglin or someone would go down to the bank and withdraw large sums of cash that same day as the

paycheck was deposited. There will also be proof that because of some tax problems that Ms. Kuglin had that there were levies made against her and garnishments and that she was sent notice of these. That is in sum what I anticipate the proof is going to be, and the reason we do this is because we're going to have several different witnesses. This isn't like television where you have one witness who can get up there and give you all the proof. I anticipate the government will have 14, 15 witnesses. Most of it will go pretty quick, but this way we do this so you can understand there will be people coming that will give proof about the mortgage interest, the agent will go through the tax computation, FedEx will come in and there will be proof about the wages paid.

Ladies and gentlemen, I am just about done. I just want to urge you to listen to all the proof in this case, because, remember, you're the judges, and it is going to be up to you to decide whether the defendant did evade taxes and did so knowingly and willfully. Thank you, ladies and gentlemen.

MR. BECRAFT: May it please the court -- I kind of hate these microphones, anybody having any problem with me speaking too loud or are you having any problem hearing me?

THE COURT: Have you got your mic on?

MR. BECRAFT: I thought I turned it on, Judge. I was looking for the red light to come on.

THE COURT: If you don't have it on, it's not through our system, and that way you can't be heard in the clerk's office. And we need -- you know, that's --

MR. BECRAFT: Somehow, the little -- how is that?

May it please the court, ladies and gentlemen of the jury, before I give you at this stage what lawyers call opening statement -- and in opening statement what we like to do is kind of give you a road map of what this case looks like. You know, I want to first express before I get rolling this morning, something that everybody on this side of the courtroom believes. I think Judge McCalla will agree with what I say, I know Mr. Murphy will agree with what I say Ms. Kuglin and Mr. Bernhoft. You know, yesterday when y'all came, we spent a whole day picking the jury. A lot of you saw some of these other people get up, oh, you know, I got some problem, some of those were real problems. But as to each and every one of

you, I think you appreciated and understood the civic duty that was being imposed upon you and the need here in America, particularly in reference to criminal cases, for us to call in our friends and neighbors, people from the community and come in and decide a case that can't be decided without your intervention.

Now, let me just tell you, ladies and gentlemen, on this side of the room, we really appreciate what you have done.

You know, as Judge McCalla has told you, this is a criminal case, and I've -- you know, while he was giving y'all instructions this morning, what I did is I kind of sat down and listened to what he had to say, and I have written out, y'all can fault me for my handwriting, but let me kind of summarize, if I can, what this case is about. Here in America, you know, we have an indictment that comes out, it's a piece of paper or several pieces of paper, and what they do is they make a formal accusation of the commission of a crime. Here in this case, what we have is we have got an indictment, and I want to familiarize yourselves with what we're dealing with. As you have been told before, Count 1 alleges that tax evasion was committed in '96, Count 2 is in '97, Count 3 is in '98, Count 4 is in '99, Count 5 is in 2000 and Count 6 is in 2001. Tax evasion. What is that we're going to

have to look at here? What are the elements, as Judge McCalla told you about earlier this morning? Well, you know, lawyers take a look at statutes, and we sit there and we kind of -- we divide them into what we call elements. Elements are facts. What does the government have to prove beyond a reasonable doubt that a crime that's charge in the indictment was committed. In this situation, as Judge McCalla told you a minute ago, I'm kind of summarizing the fact or element that must be proven was taxes were owed.

MR. MURPHY: Judge, can we approach for a second?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I'm not trying to waylay Mr. Becraft, but this is opening, not closing. And talking about elements at this point --

MR. BECRAFT: I want to just talk about intent, Your Honor, that is where I was headed, real quickly move through some of the things about what is important in this case, make admissions, tell the jury what this case is about, which is all criminal intent. That's where I'm headed.

THE COURT: As a general proposition, the

purpose of opening statement is to give a road map as to what proof is anticipated -- what proof is anticipated by the respective party, and that does not mean usually having a detailed discussion of the elements, that sort of thing.

MR. BECRAFT: I understand.

THE COURT: It is more of a road map.

MR. BECRAFT: I will move on, Your Honor.

(The following proceedings were had in open court.)

MR. BECRAFT: What I want to point out to you is what's important for this case, what y'all are going to have to decide is primarily the criminal intent that Judge McCalla told you what's in issue in this case, willfulness. That's that criminal intent I was telling you about when we were picking the jury. The government is going to come in in this case and offer some proof and you're going to find out most of it is probably not going to be contested by the defense. The defense does not contest -- Vernie Kuglin does not contest the fact that she worked for FedEx and she made good money. She's not going to contest all these other things that the government is going to be talking about. These witnesses, they're going to come up here and testify about how much was made or how much interest was paid on mortgages and

everything else. Ladies and gentlemen, that's not the issue in this case, at least from the defense. What is in question is that criminal state of mind. Did Vernie Kuglin commit the crime of tax evasion with a criminal intent? Did she act willfully?

Now, let me tell you about -- I think you need to know something about who Vernie Kuglin is in order for you to make an assessment of her intent. I've never ask her her date of birth, and I'm not going to, but her parents were missionaries, and they were missionaries to Africa at some time in the past, and Vernie Kuglin was born in Africa, but her parents were from Kansas. And after a certain number of years in the field, that family came back, and Vernie Kuglin enrolled in school in Kansas, and she ultimately, let's say, in the early '60s went to college. The proof is going to be that she had enough high school credits to move without getting a degree straight into college. She went a couple of years to college in Kansas. Right after that, you know, she had, during the course of her teenage years and early college years, she was doing things like waiting tables, being a waitress, but by the mid 60s, '65, 1966, she worked her way down to Dallas where she became a flight attendant for Braniff Airlines. And after a couple of years of being a flight attendant for Braniff Airlines, she met a man out

in California, married him, and as a result of have union, they had a son by the name of Christopher. Unfortunately, that marriage didn't work out and the parties were divorced. So in the early '70s, you know Vernie Kuglin has been a flight attendant, she had been married, she is now divorced, she has got to support a young baby boy, and she does such things as become a librarian, she becomes a book binder, she does other odds and ends, and I think one of her jobs was she worked for Welfare, but ultimately while doing these jobs and raising her young son, she determined that she had an interest in flying. So in the '70s, '75, '76, '77, '78, right around there, Vernie Kuglin decided I want to become a pilot, and I think she was living in Dallas at the time and took her first flying lesson. After that, she became a flight instructor. By some time around 1980 or 1981, there was a company, I think, in Lafayette, Louisiana by the name of Royal Airlines, and she became a corporate pilot for that company. By 1985, she did what most people wanted to do, hey, if you're a pilot and you want to get a job with one of the big commercial airlines. Well, ultimately, she did get a job in 1985 with FedEx. She moved to Memphis from, I believe, Dallas or Louisiana, and she has lived here ever since. By 1985, you know, if you take the trolly all the way down to Beale Street, there is Waterford condos

down there. In 1989, she bought that apartment down there, or that condominium. What she does and what she has done for most of her life is a FedEx pilot or at least since 1985. We all know what FedEx does, those pilots get to the airport about -- you know, sometime in the evening, and while we're in bed, those FedEx pilots are flying all over the country delivering their cargo. And after they go from, say, like from Memphis to Dallas or San Francisco or Portland, then they come back. You know, it is early morning when they get ready to go to bed, and they go to bed, and then they get up and they do the same thing. These are night people, and that's what Vernie Kuglin was doing, and she was paid good money to be a pilot.

As Mr. Murphy mentioned a minute ago, since the early '60S probably, I don't know the exact date, perhaps the government can tell us, all the way up through the '90s Vernie Kuglin was like anybody else, she filed those federal income tax returns. But what changed her mind? What caused her to think otherwise? Let me kind of give you a road map of what her beliefs were. I have kind of summarized them in certain categories. If you can kind of look at this, I want to kind -- if you're like me, you know I want to kind of categorize these types of belief. The first, she has a belief that, well, the federal income tax is an excise tax, and based upon her reading of

materials, an excise tax can't be imposed upon the right to earn a living. That's point number one. Point number two, she has been through this Internal Revenue Code, and she thinks that those that are required to file an income tax returns are parties that are statutorily made liable for a income tax, and she has been unable to find such a provision in the code. And finally her third major belief is that, you know, let's call it the Paperwork Reduction Act argument. The government has got to assign OMB control numbers to certain documents and regulations, and from her investigation of tax laws and other items, she has reached the conclusion that, hey, this Form 1040 doesn't match up with what I see here. Why do I see Form 2555 entitled foreign earned income as what appears to her to be the form that should be required to be filed? All of these are oddities, but they are important for Vernie Kuglin.

Now, how did she arrive at these beliefs? Let me kind of summarize, if I can. In 1992, Vernie Kuglin is probably somebody that's apolitical. One evening, as she is kind of vacuuming around her condominium, she has got the TV on, and there she is listening to C-Span and there is a party convention, a political party convention on, the Libertarian party, and she didn't know anything it, and she sat down to watch this Libertarian party

convention, these people debating, and she said, you know, I'm kind of interested in this. As a result of seeing what she saw on TV, she contacted a man that lives here in Memphis, Don Winfield, and as a result of them talking, ultimately Vernie Kuglin is becoming somebody who is extremely interested in the Libertarian party. She and Mr. Winfield, they kind of go to little meetings around the state to fellow Libertarians. She goes to meetings in other cities across America, and as she is getting into this study and comprehension and understanding of the message of the Libertarian party, she starts encountering and running across tax information. People in the Libertarian party are saying, well, you know -- they're talking about taxes. Well, as a result of the talking about taxes, you know, Vernie hears such things as people saying, well, you know, it's voluntary. And Vernie checks that out, and, you know, she sees actual government documents, our tax system is based upon voluntary compliance. That creates, you know, a view of the tax laws that she has never seen before. She always thought it was mandatory. Now, the government is saying our remember system is based on voluntary compliance. Well, once she starts seeing these documents, she makes a commitment I want to learn something about the federal income tax laws. One of the first things that she did is

somehow some way, she will tell us, but this is a cassette series, constitutional convention by Walter Cronkyte, the ratification debates, the Bill of Rights, the text to the United States Constitution, she starts listening to stuff like this. She starts reading the Declaration of Independence. She reads, you know, publications that are put out, Freedom Daily. She reads books that she has never read before, things that explain politics, economics and taxation. And this process of learning about the law for her for the first time is very revealing. Ultimately, by some time in '92 or '93, she is beginning to engage in a real detailed study of the law, what she perceives to be the law. Now, I need to tell you before I get into the details of this, I want to -- I made a promise to Judge McCalla earlier, and I make a promise to you now, you know, what is going to be important in this case is Ms. Kuglin's beliefs and whether or not you believe that they were her firmly held beliefs. Now, her beliefs, you know, when she gets up there on the stand, I want to you remember this one fact. When she says, well, I think this is the law or I believe that this is what the law is, I want to tell you right now, and I'm going to bring this up with one of the first series of questions I'm going to be asking her, our position is that's what she says up there are her beliefs about the law. Don't confuse it with what

the court is going to tell you in the way of jury instructions at the end of this case. But Ms. Kuglin has certain beliefs about the law. She studied the United States Constitution, she found out that the Constitution authorizes Congress to impose two types of taxes. She did kind of a study of the history of income taxation at the federal level. She learned that in 1895, you know, she read some documents that she thought were decisions of the United States Supreme Court, a case called the Pollock case that held bad income tax unconstitutional. She read and studied stuff about the ratification of the 16th Amendment, the federal income tax amendment. She read a case called the Brushaber case and reached the conclusion that in a constitutional sense, the federal income tax is an excise tax, point number one as I put up here. Now, she didn't stop there. What is important for Vernie Kuglin is in her mind she envisioned, well, the federal income tax is a thing known as an excise tax. So what is an excise tax? And so she started reading cases, and one of the things that was real important for Vernie Kuglin was a case that she thought was the Tennessee -- the Supreme Court case of 1960 called the Jack Cole against McFarland, and she read that case, and it says an excise tax can't be used to tax the right to earn a living. And she concludes that that is a very fundamentally important

case, so fundamentally important that that is the reason why there's no state income tax here in Tennessee. So it is logical from her viewpoint to draw a conclusion based upon what she understands are court cases, and she reaches the conclusion, well, hey, I can see how people are talking about you may not owe the federal income tax. But she doesn't stop there, she moves on and she does some other studying, what I call legal belief number two up there on the screen. What she did is, as you can see, not that we're going to be offering this into evidence, you can see that by July of 1994, Vernie Kuglin had ordered a copy of the Internal Revenue Code. Big thick book. She reads some documents that come from the IRS that identify the various laws that require you to file a return. So she said I'm going to study those laws, and she sits down and does it, and, you know, when she reads what she believes to be Section 6001 of the Internal Revenue Code and 6011 of the Internal Revenue Code, she says that the law for filing returns, it doesn't say something like every American, it says something to the effect that every person liable, without telling you who it is. So as a result of looking at the law, Vernie Kuglin starts looking around and trying to find am I liable for the federal income tax, and to make a long story short, she ultimately goes through the income tax sections of that big thick

book over there and reaches the conclusion, well, I only found one statute that makes anyone liable for the federal income tax, that's the only agent for nonresident aliens and foreign corporations, and I'm not a nonresident alien and I'm not a foreign corporation, and I'm not making payments to nonresident aliens and foreign corporations. So she reaches the conclusion, hey, I don't have to file income tax returns. But then perhaps one of the final things that kind of, you know, kind of solidified her beliefs was this thing about the Paperwork Reduction Act. She will explain what her beliefs are about this particular law. You will hear OMB control numbers on forms. There are OMB control numbers on regulations. She knows that under this particular law, a tax regulation has to have an OMB control number. She knows or she believes that Section one of the Internal Revenue Code is the section that imposes the tax. She knows that the regulation that corresponds to that is Treasury Regulation 1.1-1. Now, Vernie Kuglin took a publication that comes from the government and merely looked up to see what is the form that applies to the tax imposed section of the Internal Revenue Code. And to her amazement, she came up with this Form 2555 entitled foreign earned income.

Now, ladies and gentlemen, you can't say that Vernie Kuglin is a legal scholar, but you can say that she

is an ordinary American, and you can say that an ordinary American has a right to sit down and read what she understands to be the law, to read cases and draw conclusions, and so as a result of her studies, what Vernie Kuglin did is that for '93, '94, '95 or thereabouts, you know, she is working at FedEx and she is having withholding from her wages, but by the fall of '95, she is committed to her position, she really believes that she is not required to file returns, she really believes that she is not subjected to withholding. She has a meeting some time in 1995, one of the people that she met here in Memphis had a little problem with the IRS, and they go down to a meeting, and at this meeting, you know, where Vernie Kuglin gets to see the IRS inter -- dealing with somebody who is claimed to owe taxes, she starts asking questions. And she learns that the IRS agents don't want to answer the questions, and so she is directed to study the law, go to the law library or hire a lawyer. So what does Vernie Kuglin do as a result of what the IRS told her? Goes to the library, runs over there to Memphis State, does studying. She runs into an organization that has lawyers on board. Ultimately, she gets those lawyers to do some things for her. She did what the IRS said do as a result of this meeting. But then by the fall of 1995, Vernie Kuglin -- I think she said she wrote a lot of

this while she was flying, but she writes some letters to the IRS, October of '95, November of '95. She has got a series of questions that she poses to the IRS, one of which is what law makes me liable for the federal income tax and, therefore, required to file an income tax return. She sends it to the IRS. Did she get a response? No. A month later, she sends another letter to the IRS. Does she get a response? No. Those are two letters that we're going to offer into evidence here. Now, having not received a reply from the government, Vernie Kuglin decided that there's something to hide, and she started implementing her beliefs, which are not something that's drawn out of the thin air, but virtually everything that she believes comes from the law or the government itself. So by December 29th, December the 30th of 1995, Vernie Kuglin gets around to submitting to FedEx this document right here, which is the first exempt Form W-4 with a bunch of attachments. Thereafter -- you know, the government is going to bring in somebody from FedEx, hey, think Vernie Kuglin submitted this W-4 exempt. You bet. Vernie Kuglin is a woman that has firmly held beliefs. Those firmly held beliefs caused her to ask questions of the IRS. Ultimately, she hired lawyers to ask these questions of the IRS. You know what, ladies and gentlemen? This whole problem could have been resolved if

somebody in the government had answered those questions. So this case, ladies and gentlemen, let me tell you what it boils down to. I think that this is the redeeming thing of this case. Tax evasion is not committed by reading the law and relying on the government. This, ladies and gentlemen, is acting in good faith. That's what the evidence will show in this case. And that, ladies and gentlemen, is the reason why Vernie Kuglin is not guilty. That concludes my remarks. I hope that we can finish this case by sometime tomorrow afternoon. Thank you.

THE COURT: Mr. Murphy, you may call your first witness.

MR. MURPHY: Yes, sir, Your Honor.

THE COURT: If you would stop right there and raise your right hand at the podium. I'm going to let you get over to the microphone, thanks very much. Do you swear that the testimony you are about to give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE COURT: You may have a seat up here.

MARY ANN OSBORNE,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please, ma'am?

A. Mary Ann Osborne.

Q. And who do you work for, Ms. Osborne?

A. I work for Internal Revenue Service.

Q. And what do you for the Internal Revenue Service?

A. My job title is court witness coordinator.

Q. Okay. Are you also involved with -- you have got knowledge of how the IRS keeps custody of documents?

A. Yes, sir, I represent the custodian of records, I do prepare, research and receive these documents and do prepare them for court.

Q. Okay.

MR. MURPHY: Your Honor, if I could approach.

THE COURT: You may.

MR. MURPHY: We have already shown this to defense counsel.

MR. BECRAFT: May it please the court, for this witness, there's not going to be any objection to the exhibits that Mr. Murphy offers.

Q. Ma'am, I passed you a document, would you tell me what that document is?

A. This is a certified copy of the individual master file transcript, what we call a complete.

Q. Now, what information goes in an individual master file transcript?

A. The individual master file transcript is a record of all actions, transactions or anything taken or done to the taxpayer's account.

Q. Okay. And that particular individual master file that I passed to you, who was that for?

A. Vernice Kuglin.

Q. Would you spell the first and last name?

A. First name V-E-R-N-I-C-E. Last name K-U-G-L-I-N.

Q. And what was the social security number for that taxpayer?

A. The social security number is 514-44-1724.

Q. All right. Now, can you examine that document and tell us what years, if any, Ms. Kuglin has filed income taxes, income tax returns, rather?

A. The first income tax return filed was in 1965. Let me back up just a little bit. The first document we have of something being done to this account was in 1965.

Q. Okay.

A. 1966, 1967.

Q. Now, '66 and '67, tax returns were filed?
A. I'm assuming they were. Looking at this document, I cannot tell you for sure.
Q. Okay. Keep going.
A. There is nothing listed here for 1969, so there is nothing documented for 1969. There was something done to this account in 1970, 1971, 1972, 1973, 1974, 1975, '76, '77, '78, '79, '80, '81, '82, '83, '84, '85, '86, '87, '88, '89, '90, '91, '92, '93.
Q. Were tax returns filed in '93?
A. Yes, there was.
Q. Okay. Now, what kind of tax return was filed in '93? Was that a substitute return?
A. Yes, sir, it was a substitute return.
Q. Okay. What is a substitute return?
A. A substitute return is where enough data has been sent in to Internal Revenue Service by businesses, banks or whatever to enable them to assess tax on a tax return.
Q. Okay. And does the IRS file a substitute return?
A. The IRS does prepare the substitute return.
Q. Okay. And how about '94, was a return filed?
A. Yes, sir, there was. This was also a substitute return.
Q. Okay. Again, who prepares the substitute return?
A. Internal Revenue Service prepares the substitute

return.
Q. Now, does that record indicate that there were any levies on any withholding monies?
A. The 1993, the 1994 and the 1995 tax return show that there was withholding credited to this account.
Q. Okay.
A. The 1993 return shows that there were two payments made to these accounts, and if I'm correct, I think these were levy payments.
Q. Okay. And would a levy payment show up as a payment on the account?
A. Yes, it would.
Q. Does that record indicate that there were notices sent out to the taxpayer of some kind regarding the levies?
A. Yes, sir, it does.
Q. Okay. Can you tell us the date that the notices were sent out?
A. 11-11-1996, what we call a stat notice 26 was sent out to the taxpayer regarding the 1993 tax return. 6-15-1998, a notice was sent out to the taxpayer regarding the 1994 return. 6-15-1998, a notice was sent out to the taxpayer regarding the 1995 return.
Q. Okay. Thank you, ma'am.
MR. MURPHY: Your Honor, at this time, we request that that document be marked as Exhibit 1.

THE COURT: Yes, it will be Exhibit 1 in the case.

(Exhibit Number 1 was marked. Description: Notes to Taxpayer - 1996.)

Q. Ma'am, I'm going to pass you another document. Can you tell me what that document is?

A. This document is certification of lack of record.

Q. And is that a document that you prepared?

A. Yes, sir, it is.

Q. And what does that document indicate?

A. This document indicates that there has been no record of any return being filed by the taxpayer for 1996, 1997, 1998, 1999, 2000 and 2001.

Q. Thank you. So that would be based on your examination of the IRS records, and there was no indication of any type of return was filed?

A. No type of return was filed for those years.

MR. MURPHY: Your Honor, at this time, we would ask that this record be introduced as Exhibit Number 2 in the case.

THE COURT: It will be Exhibit 2 in the case.

(Exhibit Number 2 was marked. Description: Cert. of Lack of Record.)

Q. Ma'am, are you familiar with some records that are referred to in the IRS as IRP documents?

A. Yes, sir.

Q. What is an IRP document?

A. An IRP document is a document that is sent into the service center. It could be W-2 to '98, to '99. Same type of information is reported to social security. This gives information of income that was received and paid by the taxpayer.

Q. Okay. And is this information compiled?

A. Yes, it is.

Q. And is it formatted in a form that's referred to by the IRS as an IRP?

A. Yes, sir.

Q. Okay. And would these documents -- these IRP documents have, for example --

THE COURT: Would you spell the word IRP?

Q. What are the initials?

A. The command code that is used to pull this information up is spelled IRPTRO.

THE COURT: Thank you.

Q. When people shorthand it, they call it an IRP?

A. Yes, we call it IRP, I-R-P.

Q. Okay. Now, would these IRP documents show mortgage payments that was made?

A. Yes, it does.

Q. Would it also show wage income?

A. Yes, it does.
Q. And interest income?
A. Yes, it does.
Q. Ma'am, I'm going to pass to you a document. Can you tell me what that document is?
A. This is an information returns on-line transcript, which is IRPTRO, for the taxpayer Vernice Kuglin, social security number 514-44-1724.
Q. And what year is that for?
A. This is for the tax year 1996.
Q. Okay. And you -- this came from the IRS records?
A. Yes, sir, it did.
MR. MURPHY: Your Honor, at this time we would ask that this be marked as Exhibit 3 in the case.
THE COURT: It Exhibit 3 in the case.
(Exhibit Number 3 was marked. Description: 1996 IRPTRO.)
Q. Ma'am, I'm going to pass another document to you. Excuse me. Can you tell us what that document is?
A. This document is also a transcript, information returns on-line transcript, again, IRPTRO, captioned Vernice Kuglin -- I'm sorry if I'm pronouncing the name.
Q. I think it is Kuglin.
A. Kuglin. Social security 514-44-1724 for the tax year 1997.

Q. And when you use the term tax year, would that be for most individuals the calendar year?
A. Yes, sir, it would.
Q. Okay. So it would run from January the 1st of '97 to December 31st?
A. Yes, sir.
MR. MURPHY: Judge, if we could have this marked as the next numbered exhibit.
THE COURT: Exhibit 4.
(Exhibit Number 4 was marked. Description: 1997 IRPTRO.)
Q. Ma'am, I'm going to pass to you another document. Can you tell me what that document is?
A. This document is also an information returns on-line transcript, again IRPTRO for Vernice Kuglin, social security number 514-44-1724 for the tax year 1998.
MR. MURPHY: All right. At this time, we would ask that this be admitted into evidence as the next numbered exhibit.
THE COURT: Exhibit 5.
(Exhibit Number 5 was marked. Description: 1998 IRPTRO.)
BY MR. MURPHY:
Q. Ma'am, I'm going to pass you another document. Can you tell me what this document is?

A. This document is an information returns on-line transcript, again, IRPTRO for Vernice Kuglin, social security number 514-44-1724 for the tax year 1999.

MR. MURPHY: Your Honor, we would ask that this be marked as the next numbered exhibit.

THE COURT: It is Exhibit 6.

(Exhibit Number 6 was marked. Description: Information Returns.)

Q. Ma'am, I pass you another document, can you tell me what that document is?

A. This is an information returns on-line transcript, again, IRPTRO, for Vernice Kuglin, social security number 514-44-1724 for the tax year 2000.

Q. Thank you.

MR. MURPHY: Your Honor, we would ask that be admitted as the next numbered exhibit.

THE COURT: Exhibit 7.

(Exhibit Number 7 was marked. Description: 2000 IRPTRO.)

Q. Ma'am, I've handed to you another document, can you tell me what that document is?

A. This is an information returns on-line transcript, again, IRPTRO for Vernice Kuglin, social security number 514-44-1724 for the tax year 2001.

MR. MURPHY: Your Honor, we would ask this be

marked as the next numbered exhibit.

THE COURT: Exhibit 8.

(Exhibit Number 8 was marked. Description: 2001 IRPTRO.)

Q. Ma'am, I'm going to hand you another document, can you tell us what that document is?

A. This is a certificate of assessments, payments and other specified matters for a Form 1040, U. S. individual income tax return captioned Vernice Kuglin, social security number 514-44-1724 for the tax year 1992.

Q. Okay. What does that document indicate?

A. This document indicates that a tax return was filed for 1992, it shows the adjusted gross income, the taxable income, the document locator number of the tax return filed, the amount of tax that was assessed on this tax return, the withholding credit that was allowed this taxpayer and the refund that was issued to the taxpayer.

Q. Okay. What were those -- can you go through those figures for us?

A. Yes, I can. I'm showing that the adjusted gross income for 1992 was $112,084. I'm showing of that amount the taxable income was $86,644. The tax on this return was $20,892 with a document locator number of 49221104650003, withholding credit of $22,228 with a refund to the taxpayer of $1,336.

Q. Okay. Thank you.

MR. MURPHY: Your Honor, we would ask this record be made the next numbered exhibit.

THE COURT: Exhibit 9.

(Exhibit Number 9 was marked. Description: 1992 Certificate.)

Q. Ma'am, I'm going to pass to you another document. Can you tell us what that document is?

A. This document is a certificate of assessments, payments and other specified matters for Form 1040, U. S. individual income tax return captioned Vernice B. Kuglin, social security number 514-44-1724 for the tax year 1993.

Q. Okay. What does that document indicate?

A. This document indicates the adjusted gross income, the taxable income, the document locator number for the substitute for return. It also shows that two extensions were filed by this taxpayer.

Q. Now, what is an extension?

A. An extension is filed on or before April the 15th asking for additional time to file your tax return by the taxpayer.

Q. Okay. And does -- does that indicate that there were levies made or assessments made against the withheld taxation -- tax money?

A. Yes, sir, it does.

Q. Okay. And at the end of the year, what was the balance

due and owing in that case?

A. There's a balance due showing of zero on this account.

Q. And what does that mean?

A. It means that all the taxes due on this account had been paid by levy or by withholding and that there is no additional taxes due and no refund due the taxpayer at this time.

Q. For that year?

A. For that specific year.

Q. And does that document also indicate that there was any contact with the taxpayer, any letters or anything like that sent to her, notices?

A. Yes, sir. Delinquency notice was sent to the taxpayer on 4-17-1995. Another delinquency notice was sent to the taxpayer on 6-12-95. Another delinquency notice was sent on 7-24-1995. Another delinquency notice was sent on 9-4-1995. The statutory notice of balance due was sent to the taxpayer on 9-9-1996, and a statutory notice of intent to levy was sent to the taxpayer on 9-30-1996. There are additional notices of balance due on this account of -- from 1997, '99, 2000, 2001 and 2002.

Q. Thank you, ma'am.

MR. MURPHY: Judge, if we could have this marked as the next numbered exhibit.

THE COURT: Exhibit 10.

(Exhibit Number 10 was marked. Description: 1993 Certificate.)

Q. Ma'am, I'm going to pass to you a document. Can you tell me what that document is?

A. This document is a certificate of assessment payments and other specified matters for Form 1040 U. S. individual income tax return captioned Vernice Kuglin, social security number 514-44-1724, for the tax year 1994.

Q. Okay. Now, does that show that any -- that a substitute return was filed?

A. Yes, sir, it does.

Q. Again, who makes out the substitute return?

A. The Internal Revenue Service prepares the substitute for return.

Q. And that 1994 tax year, had there been taxes withheld from Ms. Kuglin's pay?

A. Yes, there was.

Q. In what amount?

A. Withholding credit of $22,218.

Q. Okay. Now, were assessments or levies made for that tax year?

A. Assessments were made for the tax year of -- well, let's see, you have an estimated tax penalty for $395, you have a filing penalty for $2,534. You have tax assessed of $32,353. You have interest assessed for $3,348.97. You have

a fee, our collection cost of $16.

Q. Okay. Does that document indicate any notices were sent to the defendant regarding her tax situation?

A. Yes, sir, there was. There was a statutory notice of balance due sent out on 11-24-1997, statutory notice with intent to levy was sent out on 12-15-1997. There was another statutory notice of balance due sent out on 4-6-1998.

Q. Okay. And there's a balance due and owing on that account?

A. Yes, sir, there is, there is a balance due of $16,428.97.

Q. Thank you, ma'am.

MR. MURPHY: Your Honor, we would move this document into evidence as the next numbered exhibit.

THE COURT: Exhibit 11.

(Exhibit Number 11 was marked. Description: 1994 Certificate.)

Q. Ma'am, I'm going to show you one final document. Can you take a look at that and tell us what it is?

A. This is a certificate for assessment payments and other specified matters for Form 1040 U. S. individual tax return captioned Vernice Kuglin, social security number 514-44-1724, for the tax year 1995.

Q. Now, does it show any -- does it show a tax return was filed for '95?

A. A substitute for return was filed for 1995.
Q. Okay. And does it show any withholding?
A. Yes, sir, it shows withholding of $24,311.
Q. Okay. And what taxes were paid with that sort of thing?
A. No taxes were paid other than the withholding on the account. There's estimated tax penalty assessed of 970. Excuse me, $970.
Q. Okay.
A. There's a late filing penalty for $5,118. The tax assessment on the account was $44,783, and interest is assessed of $3,925.59.
Q. Okay. Does that document indicate that any notices were sent out to Ms. Kuglin?
A. Yes, sir, there was. In 11-24-97, a statutory notice of balance due was sent to the taxpayer. 12-15 of 1997, a statutory notice of intent to levy was sent to the taxpayer. Again, on 3-9-98, an additional notice of intent to levy was sent to the taxpayer.
Q. Any other notices?
A. No, sir.
Q. And what is the balance due on that account?
A. The balance on this account is $30,485.59.
Q. Thank you, ma'am.
MR. MURPHY: Judge, if we could have this

marked as the next numbered exhibit.
THE COURT: Exhibit 12.
(Exhibit Number 12 was marked. Description: 1995 Certificate.)
Q. Ma'am, for people -- if you can answer this, for people living in Tennessee, where do they send their tax returns into?
A. Memphis.
Q. Okay. Is there an IRS Service Center here?
A. Yes, sir, there is a service center here in Memphis.
MR. MURPHY: One second, Your Honor.
Judge, we don't have any further questions for Ms. Osborne.
THE COURT: Cross examination?
MR. BECRAFT: Could I ask the court something about morning break?
THE COURT: It will be fairly soon.

CROSS EXAMINATION

BY MR. BECRAFT:
Q. Good morning, Ms. Osborne.
A. Good morning.
Q. How long have you worked for the Internal Revenue Service?
A. I have worked for the Internal Revenue Service for approximately 28 years.

Q. Did you start out in the position that you're in now?
A. No, sir, I did not.
Q. What was your first job?
A. I was a data transcriber.
Q. And data transcriber, correct me if I'm wrong, if we were sitting down at the IRS office in the spring of every year, you have all of this information that is flowing in and people that are data transcribers are taking information, typing it in, loading it into the computer, is that correct?
A. That's correct.
Q. How long were you a data transcriber?
A. I was a data transcriber for approximately four months.
Q. And what did you do after that?
A. I went to an area called photocopy.
Q. And -- just kind of give us an idea of what you have done at the IRS since you started to work for them.
A. I started as a data transcriber. From there, I went to photocopy unit where requests are sent into the IRS for photocopies of your tax returns. We photocopy this information and send it to you for your records. From there, I went to a typing unit where I transcribed letters that will be sent out to the taxpayers. From there, I have worked many places. I have worked -- majority of my time was spent in collections where I worked with tax delinquent accounts and where I set up installment agreements for taxpayers, written

letters, answered questions concerning these accounts, tried to explain a little bit about the accounts. I have also worked in what we call notice review where after the tax return has been prepared, that's for the balances, whether you're going to get a refund or whether you're going to get a balance due notice is sent to this area, and we check it to make sure it is correct. We go back and check the return to see if any payments or anything else was left off of the account. I was in criminal investigation, worked for the questionable refund unit where we questioned refunds on tax accounts. We verified to see if these refunds were valid refunds.
Q. You mentioned criminal investigation, is that the function that you're in now?
A. Yes, sir.
Q. All right.
A. That's a part of the function I'm in now.
Q. So you have been working criminal investigation for how long?
A. I have been in criminal investigation for nine years.
Q. Nine years. And that requires you to do things like -- you said, I believe, on direct that you're a court witness.
A. Yes, I am.
Q. That means coming to court and testifying in cases like this?

A. Court witness coordinator is my current job title. I do research accounts. I request the information for these accounts and prepare these accounts for court for the special agents.

Q. Now, can I describe for you -- you know, you have offered into -- through your testimony Exhibit Number 1. Can I ask you some questions about that, about how it's created?

A. Yes, sir.

Q. Okay. That's the IMF complete?

A. Yes, sir.

Q. Let me ask you these questions, see if I got the picture right. A whole bunch of information flows into service centers, you got tax returns, you got all sorts of documents?

A. Yes, sir.

Q. And they flow in and the data transcribers sit down and take the information off of it, right?

A. Yes, sir.

Q. And that information gets inserted into the IRS computers, right?

A. Yes, sir.

Q. And so these -- these inputs of information are made at a certain time, correct?

A. They are made all during the year.

Q. All right. And the approximate time in which the data

is input is something that you can ultimately see when you get a computer printout known as an IMF, right?

A. Yes, sir.

Q. For something like a tax return that flows into the service center, is it not true that one of the first things that gets done or at some stage of this process, you mentioned during your direct testimony this thing known as a document locator number?

A. Yes, sir.

Q. It gets stuck on a return, right?

A. Every document that comes into the service center has to have a document locator number because that is what we use to track and try to find this document.

Q. All right. And that information, you know, let's say a 1040 -- you mentioned I think you were reading off on the '92 return a document locator number for Ms. Kuglin's return?

A. Yes, sir.

Q. All right. And that gets inserted about the time that the return gets filed, right?

A. Yes, sir.

Q. And that information gets logged into the computer, right?

A. Right.

Q. And so that if someone like you wants to find something, all you have to do is pull up the electronic file

on every one, right?

A. Clarify by what you mean by electronic file.

Q. Okay. The individual master file.

A. Yes, sir.

Q. For the benefit of the jury, an individual master file is kind of a --

MR. MURPHY: Judge, I'm going to object to counsel testifying. He can ask the witness a question.

MR. BECRAFT: I will frame it in a question.

THE COURT: All right.

Q. Is it not true that an individual master file is basically the computer record regarding the various documents that are filed regarding a particular individual?

A. Yes, sir.

Q. All right. So you can print it out and it will say year?

A. I can call up specific years.

Q. Okay. And -- but then, you know, to take a look -- well, let me ask you this: May I approach the witness, Your Honor?

THE COURT: You may.

Q. Now, I don't have Government Exhibit Number 1, but I have tendered to you a copy of Defense Exhibit Number 52, and I would like to ask if you could identify that for me, please.

A. Yes, sir, this is a IMF, individual master file for a

specific tax year, for the tax year 1996. You also have 1997 in here, 1998, 1999 and 2000.

MR. BECRAFT: Your Honor, can I approach again?

THE COURT: You may.

Q. I've just stuck back on -- in front of you there Government's Exhibit Number 1, and can you kind of compare them? I'm just asking for the -- Government's Exhibit Number 1, I don't know the date on it, but --

A. Number 1 is a complete, which is every year, your entity information, the tax returns that have been filed by this taxpayer. The exhibit you gave me, this one is for a specific year. They are one and the same, but the specific is broken down per each tax year where the complete is all of the tax years together.

Q. You don't deny -- listen to my question, on Government Exhibit Number 1, I don't know the date, but off the top of my head, I think it is November of 2002, is that about right?

A. Right.

Q. Okay. And Defendant's Exhibit Number 52 bears a date, correct me if I'm wrong, it says 10-9-of 2001?

A. Right.

Q. Now, do you deny that this is an authentic print that comes from the IRS's computer regarding Vernie Kuglin?

A. What do you mean do I deny?

Q. Well, do you accept that this is a specific --

A. Yes, sir.

MR. BECRAFT: Your Honor, may I move for the admission of Defense Exhibit 52.

THE COURT: Exhibit 13.

(Exhibit Number 13 was marked. Description: IMF Transcript.)

Q. Can I ask you some questions about this and since I have a copy of this one and not the government's, can we refer to Exhibit Number 13?

A. Yes, sir, I have turned to the same page.

Q. Let's show the jury what this looks like.

MR. BECRAFT: If it please the court, I have got copies.

THE COURT: Have you got your microphone on? We will take a break and let y'all work out the technology.

MR. BECRAFT: Thank you, Your Honor.

THE COURT: Back in ten minutes.

(Recess taken at 10:35 until 10:55 a.m.)

THE COURT: Yes, sir, Mr. Murphy.

MR. MURPHY: We have got one matter to take up at side bar.

THE COURT: Okay. Sure, come on up. I mean there's nobody in here.

MR. MURPHY: The only thing is if we're on --

that's fine, as long as we're not on the microphones.

THE COURT: All I have to do is hit that button and they can't hear you.

MR. MURPHY: Okay. Good.

THE COURT: Now, you're at side bar.

MR. MURPHY: Close enough. Judge, the defense is going to offer a copy of this IMF transcript, and on it, it has got -- for several of these years, and it indicates a modified balance, accrued interest and penalty of zero, zero, zero for some of the years covered in the indictment. And this witness -- this particular witness didn't testify that there was any tax due and owing or that the IRS was carrying a balance on the account for the years in question. So I would submit that it goes outside of the scope of the direct, and it also may be confusing because I believe what the IRS procedure is if they don't have enough information or if there's not withholding, they typically don't figure people's taxes as opposed to a case where they have withholding and they do have information.

MR. BECRAFT: If I may, Your Honor, that's not where I'm headed. The government doesn't doubt that that comes -- that's a document that comes straight out of discovery. For all of my exhibits, I unfortunately premarked all of my exhibits and put defense stickers on

them, but I'm using that particular exhibit because it's handy, it's similar to Government Exhibit Number 1. The witness has authenticated it, and what Mr. Murphy fears is the use to which I will be putting the document is simply not the case. I'm not going to talk about -- you know, we got -- what Mr. Murphy gave to me in discovery bears a date in November of 2001 -- or October of 2001, and the one that the government has used, which is a similar kind of computer record printed out is about a year later, but, you know, I'm not making any bones of contention about the difference in the transactions between the two documents.

MR. MURPHY: Judge, and my understanding is there isn't any difference. We just -- in order for her to certify a copy of it, she had to print a new one.

MR. BECRAFT: Okay.

THE COURT: What do you want to do with Exhibit 13?

MR. BECRAFT: I wanted to use it primarily because I don't have a copy of Government 1, which I would like to --

THE COURT: All you have to do is put it on the screen.

MR. BECRAFT: Sure.

THE COURT: 13 is just duplicate.

MR. MURPHY: That's fine.

MR. BECRAFT: There's two different types of transcripts, Your Honor. One is a complete and one is a specific.

THE COURT: Let me see 1. You want Exhibit 13 stricken or what do you want?

MR. BECRAFT: No, I offered it, Your Honor.

THE COURT: Mr. Murphy wants me to do something to 13.

MR. MURPHY: Well, Judge, I don't think that's -- I don't think you can use another document to cross-examine the witness -- you know, the witness about of a business record like this. Or if I had some idea about what he was trying to do, it may be something that I would just say, yeah, he gets to do it, Judge.

MR. BECRAFT: I mean I can limit it to -- my only -- the reason -- Your Honor, I would like to have a copy of Government Exhibit 1, I don't have one, so I'm forced to kind of operate off of my discovery copy, which is what I was doing.

THE COURT: Okay. Then I'm not clear what is being said, but it sounds like Exhibit 13 is withdrawn, and you just want us to make a copy of Exhibit 1. Let's make a copy of Exhibit 1 and give it to him. Is that all we need to do?

MR. BECRAFT: Yes, Your Honor.

THE COURT: All right. Without objection, Exhibit 13 is withdrawn.

MR. MURPHY: Judge, we're going to see if we have got a copy of what -- of what this witness --

THE COURT: They're making a copy right now. It doesn't make any difference.

All right. I show it as withdrawn. Anything else?

MR. MURPHY: No, sir, Your Honor.

MR. BECRAFT: That's it, Your Honor.

THE COURT: You can bring the jury in.

(Jury in at 11:00 a.m.)

THE COURT: If you're keeping track of the numbers of exhibits, Exhibit 13 was simply withdrawn by agreement. Exhibit 1 apparently has the same data on it, and we didn't need another document, so we now have 12 exhibits, and 13 is withdrawn.

Yes, sir, you may proceed.

MR. BECRAFT: Thank you, Your Honor.

Q. Ms. Osborne, we were, before the break, talking about how Government Exhibit Number 1, a computer printout named individual master file was created. And, in essence, over a period of time, various transactions are made or insertions into the computer are kind of stored so that the IRS can print out a document which contains all -- basically all the entries

that relate to a particular party, right?

A. Correct.

Q. So maybe in a few moments we'll will have Government Exhibit Number 1 back, but generally what you do -- you know, in order for you to make a determination about filing or nonfiling in this case, you had to go to the computer, pull up Vernie Kuglin's individual master file, correct?

A. Would you repeat your question, please?

Q. Government Exhibit Number 13, you probably have printed out the same thing several times before, at least, right?

A. Yeah.

Q. Every time you print it out, it is just basically the same thing except if you got a later transaction, the later transaction will show up on a later print, is that about right?

A. Correct.

MR. BECRAFT: May I approach, Your Honor?

THE COURT: You may. You can just put it on the screen.

MR. BECRAFT: I will do that, Your Honor.

Q. Okay. Ms. Osborne, you can probably refer to the original of Government Exhibit 1 and I will use a copy and I will stick it up on the Elmo, and let's -- okay. This is what Government Exhibit 1 looks like, correct?

THE COURT: Let's just put Exhibit 1 on the

screen, that's what we will do. Is that 1?

MR. BECRAFT: Yes, Your Honor, it is. It's a copy. This is a copy.

THE COURT: Let's use the original.

MR. BECRAFT: All right.

THE COURT: The reason we do that, ladies and gentlemen, is you should be able to look at the original or whatever is going to be shown to you in the jury room, there is no reason for you to later wonder.

MR. BECRAFT: Thank you, Your Honor.

Q. You were talking -- or when you testified on direct about the returns that had been filed, you -- in essence, you were doing -- you were looking at this document, and based upon your knowledge of how things get printed out, kind of interpreting it, is that correct?

A. That's correct.

Q. All right. So looking at page one of Government Exhibit Number 1, you know, you got these transactions -- you see where my finger is pointed over here on the left side of the page?

A. Yes, sir.

Q. These are years down here in the middle so, that, you know, very first year is 1966?

A. Actually, that's a cycle.

Q. Okay, cycle. Would that relate to the year 1966?

A. The cycle was 1966, cycle 20.

Q. Okay. So you can take a look at this type of information and get a real good idea as to what happened?

A. Yes, sir.

Q. All right. So you're interpreting it, correct?

A. Yes, sir.

Q. Now, flip over to the second page, page number two of this. Okay, now --

THE COURT: It should be on your screen right in front of you.

THE WITNESS: Yes.

MR. BECRAFT: Let me move it out a little.

THE COURT: Sure.

Q. It looks like I have got everything on page two up on the screen, is that right?

A. Fairly close, yes, sir.

Q. And right down here where my finger is pointed, there's the words tax period 30, 1993, 12.

A. Yes, sir.

Q. And that's kind of interpreted, that's the -- the 12 is the end of the year?

A. Right.

Q. Of 1993?

A. Right.

Q. Right? And so what the IRS does is that for everything

that related to year 1993, people log this stuff into the computer, and so you're able to print out and show what happened at a particular time, right?

A. Yes, sir.

Q. Now, for -- I flipped over to page three of Government Exhibit Number 1, and I think that you said that for 1993, this is a printout of everything that relates to Ms. Kuglin for the year 1993, is that correct?

A. Everything that came through the service center, yes, sir.

Q. At least up to the date of 11-7 of 2002, right?

A. Yes, sir.

Q. Okay. And so you reached the conclusion that for 1993, there was a substitute for return filed in November of '95, right?

A. Yes, sir.

Q. Okay. Where my fingers are pointed?

A. Yes, sir.

Q. And so to -- you see this number 150 out to the side?

A. Yes, sir.

Q. Is that what is known as a transaction code?

A. That is a transaction code.

Q. All right. Now, let me flip over to '94, let's see, page four has more information about '93, right?

A. Right.

Q. Okay. And then it isn't until you get down to page five that we get into '94 information, right?

A. That's correct.

Q. Okay. Where the jury is looking at my finger?

A. Uh-huh.

Q. You can see tax period, 30, and that relates to '94?

A. Yes, sir.

Q. And '94 has got -- I'm flipping to subsequent pages, and all of this is in computer lingo, so to speak, right?

A. Well, yes, sir, in a way.

Q. The people inside the IRS know what these various transactions mean, right?

A. Most of them do, yes, sir.

Q. But in order to understand what they really mean, is there some kind of a manual that tells you what certain things mean like this transaction code 140 that my finger was on just a second ago?

A. Yes, sir.

Q. Is that a document 6209?

A. Yes, sir, it is.

Q. Is document 6209 something you're familiar with?

A. Yes, sir, it is.

Q. Okay. You have to be very familiar, somebody in your job that has worked in the position that you have worked for nine years, you pull up these computer printouts regarding a

whole bunch of people all the time, right?

A. Yes, sir, I do.

Q. And then you have to kind of look at them and, you know -- this is plainly not English, it's transactions that are kind of coded in a certain way, but you know what their meaning is, is that correct?

A. Yes, sir, I do.

Q. Now, I think on your direct testimony, you mentioned for '94, there was a substitute for return?

A. Yes, sir.

Q. Okay. I'm on page five, what I'm showing on the Elmo here, you see where my finger is, tax period 30?

A. Yes, sir.

Q. So if the jury is looking at this document, going back to page five and six, all the way up to some spot, about halfway down the page of page seven, that's the information that relates to '94?

A. Yes, sir, it is.

Q. And you reached the conclusion about substitute for return -- you see where my finger is on page five?

A. Yes, sir.

Q. Substitute for return that would relate for year '94 is indicated where my finger is placed, SFR 150?

A. Yes, sir.

Q. Now, in order for you to conclude that someone has not

filed an income tax return, what you do for like the later years, what you did is you're looking for a transaction code or the absence of a transaction code, is that correct?

A. That's correct.

Q. And the absence of a transaction code -- let me back up. A minute ago, I mentioned something and you did too, mentioned something about a document locator number?

A. Yes, sir.

Q. And if I could direct us -- I happen to be on page five which relates to the year 1994, and you see this on the far left-hand side where my finger is SFR, transaction code 150, right?

A. Uh-huh.

Q. And then this is date of the year?

A. The date that it was processed.

Q. And that would be -- let's see, that's -- what is that date, that's 1997?

A. 04-21-1997.

Q. And then out here to the side, you see where my finger goes, that's a 14 digit number?

A. Yes, that's document locator number.

Q. If you wanted to find something, if you're looking for a particular return or maybe some other type of document, this computer printout, you know, will have that document locator number over there, and with that document locator number, you

can find any document that has been filed by the IRS, right?
A. I can request that document, yes, sir.
Q. They're not necessarily stored around here, but you would know where a particular document is stored and contact that party and say, hey, give me the document that has this document locator number on it, right?
A. Yes, I have to submit my request to a person and they pull the document.
Q. Okay. Now, but as -- all of this stuff has no real significance to anybody except people in the IRS that can understand what the transaction codes mean, what the document locator numbers mean, it simply is not in plain English, is that correct?
A. That's correct.
Q. And -- but there is a manual that kind of tells us what certain things mean, is that correct?
A. Yes, sir.
Q. And how long have you studied or been using or been familiar with this document 6209?
A. For about 25 years.
Q. Okay.
MR. MURPHY: Judge, could we approach?
THE COURT: You may.
(The following proceedings had at side-bar bench.)

THE COURT: Put one side on this side and one side on this side. Come over here, Mr. Murphy, that way you're talking between her.
MR. MURPHY: Judge, we're going to object to asking questions about the code book. You know, the relevance of it.
THE COURT: It sounds like it would be irrelevant.
MR. BECRAFT: Well, Your Honor, the --
THE COURT: Turn your mic off.
MR. BECRAFT: I think I got it off, Judge. Your Honor, this is -- I don't want to belabor the point, that's not my purpose.
THE COURT: Okay. If you agree with the government, move on.
MR. BECRAFT: The government offered Exhibit Number 1, and there is certain information on there that this witness is going to testify that she is familiar with the very manual I have got. True, the manual is not in evidence, but the manual is what I use in order to interpret the very document that the government has offered into evidence.
THE COURT: It doesn't have anything to do with her good faith belief.
MR. BECRAFT: There's a transaction code on the

government's document that I would like to have the witness explain, that's where I'm headed. One transaction code or one computer entry.

THE COURT: Does it have anything to do with an issue that is going to be decided by the court?

MR. BECRAFT: I think it does.

THE COURT: What issue is it?

MR. BECRAFT: I will go ahead and tell the court. Can I run back here and get something?

THE COURT: Sure.

MR. BECRAFT: This will be my offer of proof if the --

THE COURT: Sure.

MR. BECRAFT: Your Honor, I have got it over here. This is the manual. Mr. Bernhoft got it, I have got my own manual. This is Mr. Bernhoft's copy of the manual.

THE COURT: Does she say that she got the manual, reviewed the manual?

MR. BECRAFT: They use the manual all the time.

THE COURT: Did the defendant say that she got the manual and used the manual?

MR. BECRAFT: No, Your Honor.

THE COURT: All right. Then let me understand how it has got anything to do with anything.

MR. BECRAFT: Your Honor, this is what I would like to point out for the benefit of the jury, in reference to the interpretation of Government's Exhibit Number 1 --

THE COURT: What is the thing we're interpreting?

MR. BECRAFT: And according -- where I'm headed --

THE COURT: I'm looking on my screen. What are we looking for?

MR. BECRAFT: This is -- I had it premarked as 53, but the manual, there's a certain transaction on the Government Exhibit Number 1, it's called a mail filing requirement, it is present on that document, it is mail filing requirement 01, and I think it is beneficial for the jury to have the witness say there is a code on Government Exhibit Number 1 that ultimately construed, according to the manual, says return not required to be mailed to file. That's the point I'm trying to make with this examination.

MR. MURPHY: Well, Judge, here is the thing. This came up when we were getting ready for it, what that has to do with is the -- you know, they mail returns out to everybody.

THE COURT: Right.

MR. MURPHY: That has to do with the mailing of returns. But I mean I think what she is going to say is that that is a misinterpretation, that the return doesn't have to be filed.

THE COURT: The main thing is for me to understand is where do you say that -- the IRS has some document, something that she relied on, she can tell us about it, but this doesn't sound like this is what it is. It sounds like this is an internal --

MR. BECRAFT: I have been down this road a number of times, Your Honor. This is an official document of the government. 6209 interprets all that computer stuff.

THE COURT: Sure.

MR. BECRAFT: There is a code on Government Exhibit Number 1, and as I lead through, Your Honor I can show the court, if the court wants me to run over there and get it off the Elmo, I will show you where it is.

THE COURT: Sure, that's fine.

MR. BECRAFT: That symbol, page number one, MFR 01, it's called mail filing requirement of the manual, and these are the transactions for mail filing requirement.

THE COURT: Uh-huh.

MR. BECRAFT: And that symbol right there construed, according to the manual, it says -- and I think

this is -- this goes to the impeachment of -- well, construction of the document.

MR. MURPHY: Well, but, Judge, unless the defendant relied on it, it's not relevant. And this witness didn't offer an opinion that this defendant had to file a tax return.

THE COURT: I mean we have got -- let's see what the codes are on here. It has got a bunch of codes on here. I mean unless she had something that she relied on, it wouldn't matter what is in an internal document -- this is an internal document?

MR. BECRAFT: Yes, Your Honor.

THE COURT: It is a computer printout. It's their road map.

MR. BECRAFT: Right.

THE COURT: Well, I mean if she had gotten the notice that said 01, not required to file a return, then that's one thing, but that's not -- this isn't it, this is just part of the certificate of official record, and it then has a series of codes on it, a lot of other information. I think Mr. Murphy is right, I don't see how it's going to go anywhere, that is lead to anything that is relevant to any issue in this case to ask this witness about this code. Mr. Murphy, why -- what harm does it do?

MR. MURPHY: Well, Judge, I think it creates

confusion, and the gist of his defense is, I relied, you know, I -- if it's a good faith defense, there is nothing that shows that she relied upon this. And I think it is going to confuse everything.

THE COURT: I think it is conceded that she didn't have this document, that's what I understood to be said.

MR. BECRAFT: Yes.

THE COURT: And that she didn't utilize this document in making -- in forming her beliefs, and, therefore, it really is not probative on the issue before the jury.

MR. BECRAFT: Okay, Your Honor.

THE COURT: So I'm going to sustain Mr. Murphy's objection.

MR. BECRAFT: Your Honor, can I also offer, being mindful that I have stuck exhibit stickers on this, can I move this labeled Defendant's Exhibit 53, which is -- put it in the ID category?

THE COURT: I mean this hasn't been presented through anybody I could receive it through anyway, could I?

MR. BECRAFT: No, this is my offer of proof, where I was ultimately headed. This is a document that construes --

THE COURT: Where is this from?

MR. BECRAFT: That's from their manual. My offer of proof would be that I would get her to authenticate the manual, authenticate that this is a page from that manual, page 8-77.

THE COURT: Okay.

MR. BECRAFT: You know, this is just an exhibit that I would tender in support of this line of questioning elicited from this witness.

THE COURT: That's no problem. If you want to make it A or Exhibit A in the case.

MR. BECRAFT: Okay.

THE COURT: This is not an exhibit received, it is just marked for identification.

MR. BECRAFT: Yes, Your Honor.

THE COURT: This is marked as Exhibit A for identification.

MR. BECRAFT: Thank you, Judge.

(Exhibit Number A was marked. Description: Document 6209.)

(The following proceedings were had in open court.)

Q. Now, Ms. Osborne, I'm going to -- do you have the copy in front of you?

A. Yes, sir.

Q. I'm going to -- you made some statements about -- page number four relates to the year 1993, is that correct? Let me show you -- can you see page number four up there on the screen?
A. Yes, sir.
Q. I'm going to look toward the bottom of page number four, do you see that on the screen?
A. Yes, sir.
Q. You see these things, MF stat notices?
A. Yes, sir.
Q. That's what you call them, right?
A. Yes, sir.
Q. Now, you said during the course of your direct testimony that for '93 and '94 and maybe '95, you correct me if I'm wrong, that there were taxes withheld for Ms. Kuglin?
A. Yes, sir.
Q. And that at some stage there was an SFR or substitute for return that the IRS prepared for Ms. Kuglin, correct?
A. Correct.
Q. And ultimately there was a conclusion made by the IRS that additional monies were due and owing, right?
A. Yes, sir.
Q. And, in essence, the government then levied upon the money that was withheld from her paycheck for '93, '94, '95, is that correct?

A. I have no idea about that.
Q. Okay. Are you familiar with the process that, you know, in a situation like this, that the government has to send out what is known as a ticket to tax court, a 90-day letter?
A. Yes, sir, I'm familiar with a 90-day letter.
Q. Does have it a certain particular transaction code?
A. The TC 300 usually has a 90-day letter that is a associated with it.
Q. Okay. Do you see anything that in reference to the year 1993 -- and I'm looking at page three and moving over to page four, those transaction codes, is there anything there that would indicate to you that this procedure of sending out a notice of deficiency was a procedure that was done?
A. The 90-day letter?
Q. Yeah.
A. I couldn't tell on this specific tax period.
Q. Well, isn't it customary or routine, at least, if the government sent out a 90-day letter to someone to say that you owed additional taxes, that type of transaction would show up on this document, Government Exhibit 1?
A. I couldn't say.
Q. Okay. Well, do you see -- flipping over to '94, and I'm on page five, and I'm going to flip over to page six, where my fingers are, I'm going down the left side of the

page, those are transaction codes, right?

A. Yes, sir.

Q. Now, do you see anything there that would indicate that a 90-day letter had been sent to Ms. Kuglin?

A. Not on this specific document.

Q. Okay. How about -- let me flip over to my next -- I moved over to page seven, is there anything on there that would tell you that a 90-day letter had been sent to Ms. Kuglin?

A. Under the stat notices, no, sir.

Q. All right. Do you have any -- other than you reading from this document, you can't tell us whether or not the IRS -- you know, you said during your direct testimony, you know, a notice was sent on such and such a date. Your testimony in that respect arises just from you doing something like looking at this government exhibit, and, for example, on page number ten, looking at the stat notices down there at the bottom of the page, right?

A. Yes, sir.

Q. And that's the way you reach certain conclusions?

A. Most cases.

Q. And just because something appears there, you say, well, I guess a notice was sent?

A. Notices have specific numbers, and those specific numbers will indicate which notice or what type of notice is

sent to the taxpayer.

Q. You don't know whether a document -- other than seeing an entry that is recorded here, you have no personal knowledge that actual notices were actually sent to Ms. Kuglin, is that correct?

A. No, sir, I don't know.

Q. And you have no actual knowledge that even 90-day letters were sent to Ms. Kuglin at least for '93, '94, '95?

A. Other than the fact that I know what is supposed to go out when a transaction code 300 is assessed, no, sir, I do not.

MR. BECRAFT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. MURPHY: If I could see some exhibits, Your Honor.

REDIRECT EXAMINATION

BY MR. MURPHY:

Q. Ms. Osborne, I'm going to pass to you what has been marked as Exhibit 9 in this case, and would you take a look at that?

A. Yes, sir.

Q. Okay. What is Exhibit 9?

A. This is the certificate of assessments, payments and other specified matters for the year 1992.

Q. Does that contain some of the information that's in

Exhibit 1 without computer codes?

A. No, sir, it does not, '92 was not included on this.

Q. Okay. I'm sorry. I'm sorry. Let me ask this: I've gone back too far. I'm showing you what has been marked Exhibit 10. Now, what is that?

A. This is a certificate of assessments, payments and other specified matters for the Form 1040 for 1993.

Q. Okay. Let's put it up on the screen. Now, does this contain some of the information that's -- that's in Exhibit 1?

A. Yes, sir, it does.

Q. Okay. And is this that information without the codes?

A. Yes, sir, it is.

Q. Okay. And, in fact -- well, does Exhibit 10 indicate that delinquency notices were sent?

A. Yes, sir, it does.

Q. Okay. I'm showing you what's been marked as Exhibit 11 in this case. What is that, ma'am?

A. This is a certificate of assessments, payments and other specified matters for Form 1040 for the year 1994

Q. Okay. Now, I'm going to put this document up on the camera. Now, does this particular document also contain information that was in Exhibit 1, for lack of a better word, in the uncoded form?

A. Yes, it does.

Q. Okay. And does that indicate notices -- well, I'm

going to turn to page two. Does that indicate notices were sent to Ms. Kuglin?

A. Yes, sir, it does.

Q. Okay. And I'm going to show what you has been marked as Exhibit 12 in this case. Again, what is Exhibit 12?

A. It is a certificate of assessments, payments and other specified matters for Form 1040 for the tax year 1995.

Q. Okay. Thank you.

Now, does this also contain information that is in the uncoded form?

A. Yes, sir, it does.

Q. And does that particular document indicate that a statutory notice of intent to levy was issued on March the 9th of 1998?

A. Yes, sir, it does.

Q. Okay. So the -- the certificates of assessments, payments and other specified matters for 1040, those contain uncoded language?

A. Yes, sir, it spells it out in plain English.

MR. MURPHY: Okay. One second, Your Honor.

Judge, I don't have any further questions.

THE COURT: All right. Thanks very much. We will let you step down.

(Witness excused.)

THE COURT: Who is our next witness going to

be?

MR. MURPHY: Your Honor, it is going to be Kim Gillum from Federal Express.

THE COURT: If you would stop there at the podium and raise your right hand. Do you swear that the testimony you are about to give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes.

KIMBERLY GILLUM,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please, ma'am?

A. Kimberly Gillum.

Q. And would you spell your first and last name for the court reporter?

A. K-I-M-B-E-R-L-Y G-I-L-L-U-M.

Q. Who do you work for, ma'am?

A. FedEx.

Q. And what is your position with FedEx?

A. Paralegal records custodian.

Q. They call them at FedEx these days, it's still Federal Express?

A. It is still Federal Express.

Q. And is -- as part of your duties as custodian, are you involved with the records at FedEx?

A. Yes.

Q. Okay. I'm going to hand to you a document and ask you to tell us what that document is, please.

A. This is Vernice Kuglin's employment application.

Q. And does it --

MR. BECRAFT: No objections, Your Honor.
THE COURT: All right.
Q. Is that an employment application for FedEx?
A. Yes, it is.
Q. And what's the date it was issued or signed?
A. June 17, 1985.
Q. Okay. And what position was Ms. Kuglin applying for?
A. Pilot.
MR. MURPHY: Your Honor, at this time, we would move that into evidence as the next numbered exhibit.
THE COURT: Exhibit 13.
(Exhibit Number 13 was marked. Description: Application.)
MR. MURPHY: And I don't have any further questions, Your Honor.
MR. BECRAFT: No questions, either, Your Honor.
THE COURT: Ms. Gillum, thank you. We will let you step down.
(Witness excused.)
MR. MURPHY: Your Honor, the next witness is Elizabeth Edwards.
THE COURT: All right.
THE CLERK: Will you please raise your right hand? Do you swear the testimony you are about to give the court and the jury to be the truth, the whole truth

and nothing but the truth, so help you God?
THE WITNESS: I do.
THE CLERK: You may take the witness chair.

ELIZABETH EDWARDS,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please, ma'am?

A. Elizabeth Edwards.

Q. And how do you spell your first and last name?

A. E-L-I-Z-A-B-E-T-H E-D-W-A-R-D-S.

Q. Who do you work for?

A. Federal Express Corporation.

Q. What do you do at Federal Express?

A. I'm manager of payroll taxes and garnishments.

Q. Okay. And are you involved with income tax withholding on FedEx employees and maintenance of the W-4s, that sort of thing?

A. Yes, sir.

Q. Now, do you know a lady that works for FedEx named Ms. Vernice Kuglin?

A. Yes, sir.

Q. Do you see Ms. Kuglin in the courtroom today?

A. Yes, sir.

Q. And can you describe for us where she is seated and what she is wearing, please?

A. She is at the desk on my right side, has on an orange jacket.

MR. BECRAFT: Stipulate she is sitting next to me, Your Honor.

THE COURT: Well, that's not the question. So you want to finish the question?

Q. Ma'am, does FedEx keep records of the amount of wages they pay people that work out there and the amount of taxes withheld and that sort of thing?

A. Yes, sir.

MR. MURPHY: Your Honor, if I may approach. Judge, if you want -- I don't think there's going to be any objection to these, I can put these on the screen and she can look at them on the screen.

THE COURT: Without objection, they can be displayed.

MR. BECRAFT: Let me just look real quick, Your Honor. No objections, Your Honor.

THE COURT: All right. We can mark them sequentially, 13, 14 -- how many are there?

MR. BECRAFT: I don't know, could we staple it altogether and put one exhibit sticker on it?

THE COURT: It is really up to Mr. Murphy.

MR. MURPHY: Judge, I don't have an objection to that. This is all W-2s I'm going to deal with now. We

could make it collective. Collective Exhibit 14.

(Exhibit Number 14 was marked. Description: W-2s.)

Q. Okay. Ms. Edwards, if you look at the screen up there, I'm going to try and zoom in on this. Do you recognize that document?

A. Yes, sir.

Q. And what is that document?

A. It's a facsimile of a W-2 for the employees.

Q. And is -- did you -- these documents I have got, you gathered a bunch of these up for us?

A. Yes, sir.

Q. And these came from FedEx records?

A. Yes, sir.

Q. Now, is that your handwriting at the bottom of the date?

A. Yes, it is.

Q. And is that a document for Ms. Kuglin?

A. Yes, it is.

Q. Okay. How much in wages were reported?

A. $113,293.25.

Q. Okay. And how much federal tax was withheld?

A. $22,227.65.

Q. Is that that figure right next to fed tax?

A. Yes, it is.

Q. Okay. And, again, what year was that for?

A. 1992.

Q. Now, I'm showing you another document, do you recognize that document?

A. Yes, I do.

Q. And what is that document?

A. It's a facsimile of the 1993 W-2.

Q. And who is it for?

A. Vernice Kuglin.

Q. And what amount of -- what was her pay?

A. Her wages, federal wages?

Q. Her wages.

A. $107,386.87.

Q. And does that particular document show the amount of federal tax withheld?

A. $20,847.53.

Q. Okay. Is that that figure with federal tax next to it?

A. Yes, it is.

Q. Okay. I'm showing you another document, can you tell us what that document is?

A. It's a facsimile of the W-2 for 1994.

Q. Who was that for?

A. Vernice Kuglin.

Q. Okay. And what were the amount of -- Ms. Kuglin's wages in that year?

A. $118.815.
Q. And how much federal income tax was held?
A. $24,311.24.
Q. And is that that figure with the word fed tax written next to it?
A. Yes, it is.
Q. I'm showing you another document, can you tell me what that document is?
A. It's a facsimile of the 1995 W-2.
Q. And is that for a particular FedEx employee?
A. For Vernice Kuglin.
Q. And how much did Ms. Kuglin make that year?
A. $112,112.85.
Q. And that would be that figure right there?
A. Yes, sir.
Q. And does it show how much federal tax was withheld from her paycheck?
A. $22,218.73.
Q. Okay. Ma'am, I'm showing you another document, can you tell me what that document is?
A. It's 1996 facsimile of the W-2 for Vernice Kuglin.
Q. And what was the amount of wages paid to Ms. Kuglin?
A. $183,408.01.
Q. And what was the amount of federal tax withheld?
A. There was no federal tax withheld.

Q. What year was that for then?
A. 1996.
Q. I have got another document that is up there on the screen. Can you see it okay?
A. Yes.
Q. Okay. What is that document?
A. It's a facsimile of the W-2 for the year 1997.
Q. And what amount of wages does that document show?
A. $172,674.37.
Q. And how much federal income tax was withheld?
A. There was zero federal tax.
Q. I'm going to show you another document. What is that document?
A. It's a W-2 for Vernice Kuglin.
Q. Okay. And what year is it for?
A. 1998.
Q. Okay. And what was the amount of wages?
A. $164,196.
Q. And was any tax withheld?
A. No federal income tax.
Q. Okay. I'm going to show you another document that's part of this collective exhibit. What is that document?
A. It's a W-2 for 1999 for Ms. Vernice Kuglin.
Q. And what was the amount of wages she was paid that year?

A. You're going to have to bring that a little closer.
Q. I have the same problem.
A. 1724 -- $172,428.
Q. And how much federal income taxes withheld?
A. There was no federal incomes withheld.
Q. The next document I'm showing you, what is that?
A. It's a W-2 for Ms. Vernice Kuglin from the year 2000.
Q. Okay. And what was the amount of her wages that year?
A. $191,292.99.
Q. And was any federal tax withheld?
A. No, there was no federal tax withheld.
Q. Okay. What's the document that's up there now?
A. It's a copy of the W-2 from the year 2000 for Vernice Kuglin.
Q. Okay. And what was the amount of wages for Ms. Kuglin that year?
A. $190,673.37.
Q. And was any federal tax withheld?
A. There was no federal income tax withheld.
Q. Okay. Thank you.
MR. MURPHY: Judge, we have got a group of Form W-4s, if we could make that collective exhibit.
THE COURT: Certainly. 15.
(Exhibit Number 15 was marked. Description: W-4s.)

Q. Ma'am, can you tell us what a Form W-4 is for?
A. W-4 provides the employer the information from the employee, their social security number, name, address, number of withholdings for income tax purposes, federal income tax purposes.
Q. I'm going to pass you what has been marked Collective Exhibit 15. Can you tell me what that is?
A. This is a Form W-4 from 1988 for Vernice B. Kuglin.
Q. If you would go through all the other documents in there.
A. 1990 Form W-4 for Vernice Kuglin, 1997 W-4 for Ms. Vernice Kuglin, 1998 W-4 for Vernice Kuglin, 1999 W-4 for Ms. Kuglin and a 2000 W-4 for Ms. Vernice Kuglin and 2001 for Ms. Vernice Kuglin W-4.
Q. Okay. And these were records that came from FedEx?
A. Yes, sir.
MR. MURPHY: Your Honor, we would ask this be admitted into evidence as Exhibit 15.
MR. BECRAFT: No objection, Your Honor.
THE COURT: It's received.
Q. If you would, ma'am, in 1988, how many withholding exceptions did Ms. Kuglin claim?
A. Six.
Q. Would you go to the next form, and in 1990, how many did she claim?

A. Ten.
Q. What's the next W-4 form?
A. 1997.
Q. Okay. And in 1997, what did Ms. Kuglin claim as her status regarding income tax withholdings?
A. Exempt.
Q. Okay. And if I can -- keep going through that, what is the next year?
A. 1998 was exempt. 1999 is exempt. 2000 is exempt. 2001 is exempt.
Q. Okay. Now, I have got another document that I would like to show you. Ma'am, I'm going to show you another document, can you tell me what that document is?
A. It's a screen print of our banking screen in our FedEx system, personnel system.
Q. And is that for any particular person at Federal Express?
A. It's for Vernice B. Kuglin.
Q. Okay. And what does that document authorize or direct y'all to do?
A. It's a direct deposit request to have all her wages or anything that she is paid from Federal Express direct deposited.
Q. Where were they to be direct deposited?
A. To the Federal Express Credit Association.

Q. And to a particular account?
A. Yes.
Q. What's the account number?
A. 48512-076, and it goes to the bank ID number is 284084350.
Q. Okay. Thank you. Judge, at this time -- let me ask you this something, before we move this into evidence. Is this the kind of thing that would -- that would take place because an employee directs it?
A. Yes.
Q. Okay.
A. The employee is the only one who can make that change.
MR. MURPHY: Judge, if we could have this marked as the next exhibit.
MR. BECRAFT: No objection, Your Honor.
THE COURT: 16.
(Exhibit Number 16 was marked. Description: FedEx Direct Deposit Entry.)
Q. Now, do you recall an incident where Ms. Kuglin turned in a W-4, but didn't sign it?
A. Yes, sir.
Q. Okay. Do you recall about when that happened?
A. It was in 2000. Probably -- well, we send out notification letters in December to anyone who is filing -- who has had exempt status in the year, and we request them to

be returned to us by February the 15th, so it would have been somewhere around -- from February 15th to the end of February.

Q. Okay. Would this be for tax year 2000?

A. 2001.

Q. 2001, okay. Now, did Ms. Kuglin bring in a form that wasn't signed or how did this -- the situation arise?

A. I believe she sent the form in and it was not signed.

Q. Okay. And do the forms have to be signed?

A. Yes, they do.

Q. And did you talk with her about it?

A. She did call me, yes.

Q. What did she say about the form?

A. She wanted to know why I didn't accept it, and I told her because it wasn't signed and told her that she would have to bring me a W-4 or get a W-4 that is signed in order for me to honor it.

Q. Did she add anything else, say anything about withholding?

A. Not on the phone call itself, I don't think. At the meeting, when she brought me the W-4, she did.

Q. Okay. What did she say?

A. She was very upset because we had held income tax out of her paycheck, and she filled out the form, signed it and said I want you to make sure you refund me my taxes, which we did.

Q. Did she say anything else?

A. No.

MR. MURPHY: One second, Judge, if I can look at my notes, I may be done.

THE COURT: Certainly.

MR. MURPHY: Judge, I don't have any further questions.

MR. BECRAFT: Briefly, Your Honor.

CROSS EXAMINATION

BY MR. BECRAFT:

Q. Ms. Edwards, you have been the head of the payroll at FedEx for some period of time, is that correct?

A. Yes, sir.

Q. Would it be just the last couple of years?

A. Yes, last two years.

Q. Isn't it true that as custodian of the records for the FedEx business records that relate to withholding, you have access to all of the employees W-4 forms going back as far as you keep records, is that correct?

A. What's legally required, yes.

MR. BECRAFT: May I approach the witness, Your Honor?

THE COURT: You may.

Q. I'm going to show you a document, a Form W-4 dated 1995 and ask you if you can identify that for me, please.

A. It is a W-4 for Ms. Vernice Kuglin.
Q. Now, when you came to court, what the government has asked you to do is to bring to court the forms W-4 that would -- that are after that date, is that correct?
A. Yes.
Q. All right. And the one that you have in front of you is an exempt W-4 form dated December the 30th of '95, right?
A. Yes, sir.
Q. Do you know whether or not that is the actual Form W-4 that Vernice Kuglin submitted to FedEx in December of '95?
A. No, sir, I do not.
Q. Have you ever seen that before?
A. I have seen it, yes.
Q. Do you doubt that that is the exempt W-4 form that Vernice Kuglin submitted to FedEx?
A. No, sir, I don't doubt it.
MR. BECRAFT: Your Honor, I move the admission of that as the next exhibit.
MR. MURPHY: No objection, Your Honor.
THE COURT: 17.
(Exhibit Number 17 was marked. Description: 1995 Form W-4.)
THE COURT: Anything else from the government?
MR. MURPHY: Yes, sir, Your Honor, just one question.

REDIRECT EXAMINATION

BY MR. MURPHY:
Q. Ms. Edwards, do you know if there were any problems locating a W-4 for like '96?
A. I don't know that there is a problem. Everything right now is in vital records for that period of time, it's in storage.
Q. Okay. I'm going to show you something, see if that may refresh your recollection. I'm showing you what has been marked Exhibit 15.
A. Right, right. This particular W-4 that's marked 19 -- has 1996 marked through it and 1997 written beside it, there's a note at the bottom that says 1996 is no longer available, it's signed by Kim Gillum.
MR. MURPHY: Judge, I don't have any further questions.
THE COURT: All right. Ms. Edwards, thank you, we will let you step down.
(Witness excused.)
THE COURT: Who will our next witness be?
MR. MURPHY: Judge, our next witness is going to be Karlene Nuby.
THE COURT: If you would step to the podium, please, and raise your right hand. Do you swear that the testimony you are about to give in this case will be the

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

THE WITNESS: I do.

THE COURT: You may have a seat up here, please.

KARLENE NUBY,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please, ma'am?

A. Karlene Nuby.

Q. And would you spell your first and last name for the court?

A. Sure. K-A-R-L-E-N-E. Last name is N-U-B, as in boy, Y.

Q. And who do you work for, Ms. Nuby?

A. Kemper Services.

Q. What business is Kemper Services in?

A. Disability insurance.

Q. Is Kemper Insurance involved in a program with FedEx?

A. Yes, we are.

Q. Okay. And what -- briefly tell us the nature of that program.

A. Basically, our responsibility to Kemper is to provide short-term and long-term disability for FedEx employees.

Q. Okay. I'm going to hand you a document. Can you look at that document and tell me what it is?

A. It's a 1998 W-2 that was issued to Vernice Kuglin.

Q. Okay. And could you spell the first and last name?
A. Sure. First name is V, as in Victor, E-R-N-I-C-E --
Q. And what's the social security number?
A. 514-44-1724.
Q. Okay. Now, what does that particular document indicate?
A. Basically, this document indicates that we at Kemper Services paid to Ms. Kuglin wages in the gross amount of $4,789.37. It indicates the amount of taxes that were withheld for federal, social and Medicare.
Q. What amount of taxes was withheld?
A. Federal income tax that was withheld was $1,341.03, social security tax withheld was $296.94. Medicare tax withheld was $69.45.
Q. And what was the amount of the wages?
A. The wage amount was $4,789.37.

MR. MURPHY: Thank you. Your Honor, at this time we would move this into evidence as the next numbered exhibit.

MR. BECRAFT: No objection, Your Honor.

THE COURT: Exhibit 18.

(Exhibit Number 18 was marked. Description: W-2 Form.)

MR. MURPHY: Judge, if I could check my notes, sir.

THE COURT: Certainly.

MR. MURPHY: No further questions, Your Honor.

MR. BECRAFT: Briefly, Your Honor.

THE COURT: Certainly. I'll do it from here.

CROSS EXAMINATION

BY MR. BECRAFT:

Q. Ms. Nuby, you don't know Vernice Kuglin, do you?
A. No, I do not.
Q. You just work for the insurance company that paid disability, is that correct?
A. Correct.
Q. Do you have any idea when the disability was paid or what it was for?
A. I do not know the -- it was paid for short-term disability. The dates that it was paid for, I don't want to take a guess at it, I believe it was some point in August of '98 for approximately 14 days.
Q. Okay. So the $4,800 that was paid is for payments of disability in August of '98?
A. Correct.
Q. For about some 14 days?
A. Correct.
Q. That's your recollection?
A. Yes, it is, sir.
Q. And, you know, if I got the document that is no longer

in front of you, looked at it, what you just said is probably gleaned from the document?

A. I'm sorry?

Q. I'm sorry. Is that what that document says?

A. That --

Q. Let me get it for you and let me approach the witness, Your Honor.

A. Sure.

Q. This Exhibit Number 18 relates to what you just told us?

A. Correct, sir.

Q. The $4,800 was paid for two weeks of disability?

A. Correct.

Q. In August?

A. Of '98.

MR. BECRAFT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. MURPHY: Judge, I don't have any further questions for this witness.

THE COURT: All right. Thank you. We will let you step down.

(Witness excused.)

THE COURT: Who will our next witness be?

MR. MURPHY: It's going to be Dan Haughton, Your Honor.

Your Honor, how late are we going to be going today?

THE COURT: We're going to stop at 12:25, 12:30. We're going to take a one hour lunch break. Tuesdays, Thursdays, we take a little shorter lunch break, so we will take a shorter lunch break.

THE CLERK: Will you please raise your right hand? Do you solemnly swear the testimony you are about to give the court and the jury to be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: You may take the witness chair.

DANIEL JOSEPH HAUGHTON,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please?

A. Daniel Joseph Haughton.

Q. Would you spell your first, middle and last name for the court reporter?

A. D-A-N-I-E-L J-O-S-E-P-H, Haughton is H-A-U-G-H-T-O-N.

Q. And who do you work for, sir?

A. Starwood Vacation Ownership, Incorporated.

Q. And what business is Starwood Vacation Ownership is?

A. Starwood markets and develops and sells and manages vacation ownerships or time share resorts all over the U. S.

Q. And how long have you worked for the company?

A. It will be five years in October.

Q. Okay. And are you familiar with the records that the company keeps?

A. Yes, I am.

Q. Did you bring some record with you today that has to do with a Vernice Kuglin?

A. Yes, I did.

Q. And specifically was there a record that had to do with

mortgage interest paid?

A. Yes, sir.

Q. Could you -- was it in summary form?

A. Yes.

Q. Would you get that out, because I need --

A. Actually, I have -- there's a computer printout from our computer system that's called a transaction history report.

Q. Okay.

A. And from that report, I summarized interest payments over the course of the loan.

Q. If you could get your summary out.

A. Okay.

Q. Thank you, sir.

MR. BECRAFT: No objections, Your Honor.

THE COURT: All right.

Q. Sir, I'm handing you this document, and if you would explain to us what that document is.

A. It simply summarizes the interest paid on a -- there are actually two accounts that were in the name of Vernie B. Kuglin, and it summarizes the interest paid on each account during the years that the accounts were open, the first account was '92, '93, '94, '95 and '96, and the second was '91 '92, '93, '94, 95.

Q. Would that be mortgage interest?

A. Yes, sir, mortgage interest.
Q. And for 1996, what was the amount of mortgage interest paid by Ms. Kuglin to your -- Ms. Kuglin to your firm?
A. In 1996, the amount paid was $1,047.79.
MR. MURPHY: Judge, if we could have this marked as the next numbered exhibit.
THE COURT: Exhibit 19.
(Exhibit Number 19 was marked. Description: Mortgage Interest Summary.)
THE COURT: Cross examination?
MR. BECRAFT: Yes, Your Honor.

CROSS EXAMINATION

BY MR. BECRAFT:
Q. Mr. Haughton, briefly, where are these time shares located?
A. We have resorts in Orlando, Florida, St. Augustine, Florida, South Carolina, Beaver Creek, Colorado, Mission Hills, California and Maui, Hawaii.
Q. All right. Do you have any idea as to when Ms. Kuglin bought a time share from your company?
A. Yes, I do.
Q. Okay. When was it?
A. Let's see, on this particular account, the purchase date is recorded as October the 31st, 1991, and on the previous account, it was October the 2nd, 1990.

Q. Okay. So this time share, would it be in a condo somewhere in the Orlando community?
A. Yes, sir.
Q. Okay. And so in October of '90 is the first time that she entered into an agreement with your company to have a time share condo down there in Orlando?
A. That's correct.
Q. And did she have, say, like about a week's worth of time?
A. That's typically the way they're sold, yes.
Q. The first -- the October of '90?
A. Yes, sir.
Q. And then a couple of years later, she entered into an agreement to get basically another week?
A. Yes, sir.
Q. Of time share of your condo in Orlando?
A. Yes, sir.
Q. Is there a market -- if somebody wants to get out of these, is there a market where they can sell their interest to someone else?
A. There's a market, but it is entirely saturated with people trying to sell.
Q. Okay. And in the -- the relationship between your company and Ms. Kuglin ended, I take it, sometime in '97?
A. The account was paid off, I believe -- yeah, the

account was paid in full, but that doesn't necessarily end the relationship because --

Q. Okay.

A. Okay.

Q. So you're saying right now she has had -- since October of 1990, she has had a time share even right now with your company?

A. Unless she has sold it, that I'm not aware of, yes.

MR. BECRAFT: Okay. Nothing further, Your Honor.

MR. MURPHY: Judge, I just have one question that I omitted.

REDIRECT EXAMINATION

BY MR. MURPHY:

Q. Is mortgage interest reported to the IRS?

A. Yes, sir.

MR. MURPHY: Judge, I don't have any further questions.

THE COURT: All right. Thank you. We will let you be excused.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Who will our next witness be?

MR. MURPHY: Your Honor, we call Isabelle Baker.

THE CLERK: Will you please raise your right hand? Do you solemnly swear the testimony you are about to give the court and the jury to be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: You may take the witness chair.

ISABELLE BAKER,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please, ma'am?

A. Isabelle Baker.

Q. And would you spell your first name and last name for the court reporter?

A. I-S-A-B-E-L-L-E B-A-K-E-R.

Q. And who do you work for, Ms. Baker?

A. GMAC Mortgage.

Q. And what type of business is GMAC Mortgage in?

A. In the mortgage business.

Q. Okay. That's kind of dumb second question, wasn't it?

A. That's all right.

Q. And as part of your business, do you keep records of the amount of mortgage interest that people pay on mortgages held by your company or serviced by your company?

A. Yes, we do.

Q. Okay. Does -- I'm going to show you some documents, do you recognize those documents?

A. Yes, I do.

Q. Okay. What are those documents?

A. They're 1098s.

Q. Okay. And do they give a figure of the amount of mortgage interest that somebody pays over the course of a year?

A. Yes, sir.

Q. Okay. Now, the first document, what year is that for?

A. For 1999.

Q. And who was the person that was paying the mortgage?

A. On the 1098, it says Vernice B. Kuglin.

Q. Can you spell the entire name?

A. First name V-E-R-N-I-C-E, last name Kuglin, K-U-G-L-I-N.

Q. And what was the amount in -- that sheet we're talking now is for 1999?

A. Yes, sir.

Q. And what was the amount of the interest?

A. Interest paid for 1999?

Q. Yes, ma'am.

A. Was $6,729.39.

Q. If you could turn that over, that page over.

A. Uh-huh.

Q. Turn that page over and go to the second sheet.

A. Okay.

Q. What is the second sheet?

A. Same kind of document for the year 2000.

Q. And what does it show, again?
A. For interest paid?
Q. Yes, ma'am.
A. $7,033.28.
Q. And for what year was that?
A. For the year 2000.
Q. Okay. I'm sorry. And who was the person that it was issued to?
A. Same person, Vernice Kuglin.
Q. Okay. And if you would go to the third document. What does the third document show?
A. The same document for the year 2001.
Q. Okay. And what does -- is it issued to Ms. Kuglin?
A. Yes, sir, it is.
Q. And how much mortgage interest does it indicate she paid?
A. $6,690.56.

MR. MURPHY: Thank you, ma'am. Your Honor, at this time, we would move these three documents into evidence as a collective exhibit.

THE COURT: Yes.

MR. BECRAFT: No objections.

THE COURT: Exhibit 20.

(Exhibit Number 20 was marked. Description: Mortgage Interest Payments.)

MR. MURPHY: Your Honor, I don't have any further questions of the witness.

MR. BECRAFT: Briefly, Your Honor.

CROSS EXAMINATION

BY MR. BECRAFT:

Q. Ms. Baker, the interest that was paid by Ms. Kuglin on this mortgage, you got documents for '99, 2000, and 2001, is that correct?
A. Yes, sir.
Q. Now, is this a mortgage in relation to some real property, land?
A. It is -- I don't know whether it's land or -- I guess -- it must be a residence.
Q. Okay. And is there some brief description there regarding what type of residence is the collateral for this particular mortgage?
A. It has the address.
Q. What is the address?
A. 200 Wagner Place, number 802, Memphis, Tennessee 38103.
Q. Okay. Before 1999, did your company have any relationship with Ms. Kuglin?
A. I'm not aware of that, sir.
Q. Your relationship with her arose during that year of '99?
A. I can't say whether there was a relationship prior to

that year or not.

Q. Your records indicate that some time in '99, your company got a mortgage on her condominium?

A. Pardon me?

Q. Your records indicate that Ms. Kuglin obtained with GMAC a mortgage on her condominium some time, I guess, in '99?

A. Yes, sir.

Q. Probably the early part of '99?

A. Yes, sir.

Q. Okay. And it has been in effect ever since?

A. Yes, sir.

Q. And how much was the mortgage for when it was obtained sometime in early '99, if you know?

A. I just show principal balance, beginning principal balance. I don't have that number that you're asking me.

MR. BECRAFT: Okay. Nothing further, Your Honor.

MR. MURPHY: Judge, I don't have any further questions.

THE COURT: All right. Thank you. We'll let you step down.

(Witness excused.)

THE COURT: Who will our next witness be?

MR. MURPHY: Your Honor, our next witness will be Mr. Leporleon Pruitt.

THE COURT: Okay.

THE CLERK: Would you please walk to the podium and raise your right hand? Do you solemnly swear the testimony you are about to give the court and jury will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE CLERK: You may take the witness chair.

LEPORLEON PRUITT,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please?

A. Leporleon Pruitt.

Q. And, Mr. Pruitt, who do you work for?

THE COURT: Let's get the spelling on that.

Q. I'm sorry, Your Honor. How do you spell your name, Mr. Pruitt?

A. L-E-P-O-R-L-E-O-N. Pruitt, P-R-U-I-T-T.

Q. And who do you work for?

A. FedEx Employees Credit Association.

Q. And what business is the FedEx Employees Credit Association in?

A. The credit union business.

Q. Okay. And do you provide, as part of that business, banking service for FedEx employees?

A. Yes, sir.

Q. Okay. Mr. Pruitt, are you familiar with how records are kept at your company's business?

A. Yes, sir.

Q. I'm going to pass to you two sets of documents. Can

you tell me what the first document is?

A. First document is just the statement of the accounts showing what they have in prime shares, that's savings, or share draft, that's the checking account.

Q. Okay. Can you tell us -- that's a big stack of papers, whose account are we talking about there?

A. Ms. Kuglin.

Q. Okay. Could you spell it?

A. K-U-G-L-I-N.

Q. What's the first name?

A. Vernice.

Q. Spell that, please.

A. V-E-R-N-I-E.

Q. And what's the account number?

A. The account number is 48512016.

Q. Okay. What kind of account is it?

A. She has a prime share, that's a savings, and she has a checking account as well.

Q. Okay. And can you give me the date on the first page?

A. The date from the statement is from February the 1st of '96 to February the 29th of '96.

Q. Okay. How about the statement on the last page?

A. The statement from the last page is from December the 1st of 2000 to December the 31st of 2000.

Q. And are there several -- there's a number of statements

in there?
A. Yes, sir.
Q. Okay. And these are all statements from your Credit Union?
A. Yes, sir.
MR. MURPHY: Your Honor, if we could have this marked as a collective exhibit.
MR. BECRAFT: No objection.
THE COURT: It will be Exhibit 21.
(Exhibit Number 21 was marked. Description: Statement of Accounts.)
Q. Now, sir, there's a second document in front of you, what is that document?
A. This document here is the membership application.
Q. Okay. And for who?
A. Vernice Kuglin.
Q. Vernice what?
A. Kuglin.
Q. Okay. Does it appear to be Kuglin?
A. Kuglin, yes.
Q. K-U-G-L-I-N
THE COURT: It's Kuglin.
THE WITNESS: Kuglin.
THE COURT: It's Kuglin. It is kind of like your first name, it's confusing.

THE WITNESS: Yeah, it's Kuglin.
THE COURT: Because your first name starts with an L?
THE WITNESS: Yes.
THE COURT: I wanted to make sure I got it spelled right.
Q. And is that the document from the Credit Union's records?
A. Yes.
Q. If someone opens an account, they're required to execute that?
A. Yes, sir.
Q. Now, what's the date on that?
A. January the 27th of 1999.
Q. Okay. Now, the statements run before that?
A. Right.
Q. What -- why is that date different?
A. This date here is different because it looks like it was something somebody added on the account or -- yeah, it look like somebody added on the account.
Q. Now, when these documents were originally requested, did you come up with the original account card, account opening form?
A. Now, the original account card, these going through images system, but this is on the system.

Q. Okay. The one in your hand?
A. Yes.
Q. Okay. Thank you.
MR. MURPHY: Your Honor, we would move this into evidence as the next numbered exhibit.
MR. BECRAFT: No objection.
THE COURT: 22.
(Exhibit Number 22 was marked. Description: Application for Account.)
Q. Now, sir, I'm going to put some things up on the camera here and ask you about some entries on some of these documents. I have got a document here from exhibit -- Collective Exhibit 21. Can you see that document?
A. Yes, I can.
Q. Okay. This first column, it says date, what information is in that column?
A. 4-1 of '96.
Q. What type of information do you put in there? Is that -- what dates are those?
A. Those are the current dates like if -- from the statement, when they do any kind of transactions.
Q. Okay. So would that date represent the account transaction took place?
A. Yes.
Q. Okay. And if you go to this middle line, there's a

reference, I have got my finger on it?
A. Yes.
Q. EFT Federal Express?
A. Right.
Q. Salary, what is that in reference to?
A. The EFT is the -- it's electronic funds transfer, it's her salary.
Q. Okay. And then you've got a notation of a withdrawal?
A. Yes.
Q. And what does that mean?
A. That's a withdrawal that she took out on 4-15-96.
Q. And then if you go over to this account, this line that says change to balance where my finger is?
A. Yes.
Q. What information does that represent?
A. That is representing withdrawals, money going in and out of the account.
Q. Okay. Does that give you the amount of a particular transaction?
A. Yes, it does.
MR. MURPHY: Judge, if I can have one second, I'm almost done.
THE COURT: Certainly.
Q. I'm going to show you another page from Collective Exhibit 21. And -- now, the format of these documents is a

little different. What information is in this first column here on the left?

A. The dates -- month, date and year.

Q. Okay. And what do those dates signify?

A. Those dates signify from the whole statement, from November to the end of the month, and it signifies a date that a transaction has happened.

Q. Now, if you go over, there's a line, share draft to cash disbursed, what type of transaction is that?

A. That's a withdrawal from her checking account.

Q. Okay. Now, just so we understand the way this is formatted, you have got some transactions?

A. I can't see your finger on that.

Q. Okay. Am I in the way?

A. Okay.

Q. There you go. Is that better?

A. Yes.

Q. Okay. You have got some transactions that have a minus symbol after them, does that indicate money was coming out of the account?

A. Yes.

Q. Okay. And when you have a transaction with no minus sign behind it, for example, that $9,456.90, does that represent that money came into the account?

A. Correct.

MR. MURPHY: Thank you, sir. One second, Your Honor, I'm just about done.

THE COURT: Certainly.

Q. Mr. Pruitt, when --

MR. MURPHY: Judge, I don't think my microphone is working.

THE CLERK: It may need a new battery.

Q. Mr. Pruitt, does your company also lend money?

A. Yes, sir.

Q. Okay. Now, when -- if it involves mortgage and mortgage interest, you report the amount of the interest to the IRS?

A. Yes, we do.

MR. MURPHY: Okay. One second, Judge.

Judge, I don't have any further questions.

THE COURT: All right.

MR. BECRAFT: Briefly, Your Honor.

THE COURT: Certainly.

CROSS EXAMINATION

BY MR. BECRAFT:

Q. Mr. Pruitt, when was the FedEx Credit Union started, do you know?

A. Back in 1973 -- '72, '73.

Q. Is it your understanding that most, perhaps all of the FedEx employees are members of the Credit Union, right?

A. They have the -- they can join if they're a member -- if they work for FedEx, they have right to join the Credit Union.
Q. And the services that are provided by the Credit Union include, you know, people can open up a savings account there?
A. Yes, sir.
Q. They can have a checking account?
A. Yes, sir.
Q. They can obtain financing for homes and cars?
A. Yes, sir.
Q. In this particular situation, you have been asked to bring in reference -- to this particular case in reference to Ms. Kuglin, you brought in basically her checking account statements for a number of years?
A. Yes, sir.
Q. And those are Exhibits 21 and 22?
A. Yes, sir.
Q. And so she had an account with the FedEx Credit Union, oh, throughout '96?
A. Yes, sir.
Q. '97, '98, '99, all the way up to 2001, correct?
A. Yes, sir.
Q. Did she have any savings account?
A. Yes.
Q. Did she have any mortgages with the company?

A. That, I don't know, sir.
Q. Do you know anything about cars?
A. Yes, sir.
Q. Did she have any mortgages -- or did your company finance any cars for her?
A. That, I don't know, sir.
MR. BECRAFT: All right. Nothing further, Your Honor.
THE COURT: Redirect?
MR. MURPHY: Judge, I don't have any further questions.
THE COURT: All right. Mr. Pruitt, thank you. We will let you step down.
(Witness excused.)
THE COURT: Who else do we have?
MR. MURPHY: Judge, I have got some custodians, but I need to talk to them.
THE COURT: It's fine to take a break now. I think we have done pretty well. Ladies and gentlemen, we're going to take our lunch break, let you come back at 1:30. Do not discuss the case among yourselves. Don't let anybody talk with you about the case. Of course, if anybody tries to, report that immediately to one of our court security officers or a member of my staff or me. As usual, don't speak to the parties or the lawyers in the

case and, of course, don't do any research. Don't read anything or look up anything that might be about this case or cases like it, and continue to keep an open mind.

It's a short -- it's not that long of a lunch break, so, of course, you can -- there are a number of places to eat, and you're probably familiar with those already. You can go north on the mall and south, there's nothing really close, except the cafeteria. There are lots of places about four or five blocks south and about three and a half, four blocks north. We will see you at 1:30.

(Lunch recess taken at 12:30 to 1:35 p.m.)

THE COURT: If we have got everybody, we can bring them in.

(Jury in at 1:35 p.m.)

MR. MURPHY: Judge, I want to alert the court, I think we will be done with the government's proof today.

THE COURT: I understand. I have already started making plans on that.

MR. BECRAFT: The court -- I asked a couple of weeks ago --

THE COURT: Let's come to side bar if we're going to talk about it.

MR. BECRAFT: Just real quick for the benefit of the court.

(The following proceedings had at side-bar bench.)

MR. BECRAFT: When I asked about jury instructions? I thought you asked if we had a disk available -- I have got a disk of our requested instructions.

THE COURT: Did you give them to us?

MR. BECRAFT: I turned in my -- I have got it with me.

THE COURT: If you don't ever give it to me, I guarantee you I won't use it. You should have given it to me at the beginning of the case.

MR. BECRAFT: I filed my jury instructions last Friday. They were filed.

THE COURT: Okay. Well --

MR. BECRAFT: If you want the disk -- I delivered it to chambers.

THE COURT: Don't worry about it. I have got the other two materials, if you will hand the disk to Ms. Saba, she will take care of it.

(The following proceedings were had in open court.)

THE COURT: Mr. Murphy, who will our next witness be?

MR. MURPHY: Our next witness is Mr. Alex

Trivino.

THE COURT: Mr. Trevino, if you would step to the podium and raise your right hand, please. That's it right there. Do you swear that the testimony you are about to give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do, but my last name isn't Trevino, it's Rivera.

THE COURT: Well, good. I'm glad

MR. MURPHY: I'm sorry, Mr. Rivera.

THE COURT: Mr. Rivera, do you also make that oath?

THE WITNESS: Yes, I do.

THE COURT: I think they said Trevino, maybe I'm wrong about that.

MR. MURPHY: Judge, I did. I had it written down wrong.

THE COURT: Tell me your name again.

THE WITNESS: Alex Rivera.

THE COURT: Spell that last name. I will let you get up here and we'll write it down.

THE WITNESS: It's R-I-V-E-R-A.

THE COURT: Thank you.

ALEXANDER RIVERA,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Sir, would you state your name, please?

A. Alexander Rivera.

Q. And would you spell your first and last name for the court reporter?

A. Sure. A-L-E-X-A-N-D-E-R R-I-V-E-R-A.

Q. And who do you work for, Mr. Rivera?

A. CUNA Mutual Mortgage Corporation.

Q. And what is that located?

A. That is in Madison, Wisconsin.

Q. Okay. And what business is C-U-N-A in?

A. It's a -- CUNA Mutual Mortgage is a servicing corporation.

Q. Okay. And what is a servicing corporation?

A. We fund loans and we service those loans for investors.

THE COURT: Just for our sake, I'm going to make sure I have got the spelling on the name of the corporation down.

THE WITNESS: It's C-U-N-A, CUNA.

THE COURT: CUNA, okay.

THE WITNESS: It stands for Credit Union National Association.

THE COURT: Okay. Thank you.

Q. As part of your company's activities as a servicer of mortgages, do you keep records of the amount of mortgage interest payment?

A. Yes, we do.

Q. And did you bring some documents with you today?

A. Yes, I did.

Q. Could you give me those documents?

MR. MURPHY: Thank you, sir.

MR. BECRAFT: We won't have objections to these exhibits, Your Honor, for this witness, and perhaps we ought to put one sticker on all of them.

THE COURT: That's -- whatever suits the government.

MR. MURPHY: Judge, I have no objection to making it a cumulative exhibit.

THE COURT: Cumulative Exhibit 23, that's how we're going to do it.

MR. MURPHY: Or collective.

THE COURT: Collective.

(Exhibit Number 23 was marked. Description: Mortgage Documents.)

Q. Sir, I'm passing you a form that -- for the year 2000,

what is that form?

A. That's mortgage interest statement, a form 1098.

Q. And who is it addressed to?

A. It's addressed to Vernice B. Kuglin.

Q. How do you spell her name on the form?

A. V-E-R-N-I-C-E B. Kuglin is K-U-G-L-I-N.

Q. Does that show that Ms. Kuglin paid mortgage interest in the year 2000?

THE COURT: We're all going to work to get it right, Kuglin, we keep promising to do that. We will try to get it right. It is not always obvious.

A. Yes.

Q. And what amount was the mortgage interest?

A. It is for $5,382.58 for the year 2000.

Q. Do you have a form for the year 2001?

A. Yes.

Q. And what's the amount of the mortgage interest?

A. $12,618,47.

MR. MURPHY: Judge, at this time we would move this into evidence as collective exhibit 23.

THE COURT: Received as 23.

MR. MURPHY: Judge, I don't have any further questions.

THE COURT: All right.

CROSS EXAMINATION

BY MR. BECRAFT:

Q. Briefly, you brought a number of records to show how much interest had been paid by Ms. Kuglin for these two years. Can I ask you some questions about your general records?
A. Sure.
Q. Okay. Did your company, what, buy a mortgage that was on some real property that was owned by Ms. Kuglin?
A. That's correct.
Q. All right. And do you have a judgment or recollection as to when that happened?
A. The date of the loan is July of 2000.
Q. And how much was the note that you bought?
A. I believe it was 156,000.
Q. And so some other company had mortgaged the property and then your company comes along and buys that for a hundred and fifty thousand?
A. A hundred and fifty-six.
Q. And that happened in June of 2000?
A. July.
Q. July of 2000. And is it still currently a valid mortgage?
A. Yes.
Q. Still in effect?
A. Yes.

MR. BECRAFT: All right. Nothing further, Your Honor?

THE COURT: Redirect?

MR. MURPHY: Judge, I don't have any further questions of the witness.

THE COURT: All right. Mr. Rivera, thanks they very much. We will let you step down.

(Witness excused.)

THE COURT: Who is our next witness?

MR. MURPHY: It is going to be Jeanne Griffis with First Tennessee, Your Honor.

THE CLERK: Will you please raise your right hand? Do you solemnly swear the testimony you are about to give the court and jury will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: You may take the witness chair.

JEANNE GRIFFIS,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please?

A. Jeanne Griffis.

Q. And would you spell your first name and last name for the court reporter?

A. J-E-A-N-N-E G-R-I-F-F-I-S.

Q. Who do you work for, ma'am?

A. First Tennessee Bank.

Q. And what is your job at First Tennessee Bank?

A. I'm manager of legal services and ten compliance departments.

Q. And are you the records custodian?

A. Yes, I am.

Q. Now, some inquiry was made about whether a Vernice B. Kuglin had some loans with First Tennessee Bank.

A. Yes.

Q. Okay. Did you check the records?

A. Yes, I did.

Q. Okay. Now, were there loans that she had with First Tennessee Bank?

A. Yes.

Q. Now, you weren't able to get 1098s on those loans?

A. Correct.

Q. Was that interest income reported to the IRS?

A. Yes, it is.

Q. Now, I'm going to pass you what we're going to mark as a collective exhibit, Collective Exhibit 24, and can you tell me what these documents are?

A. This is a personal statement. They're personal statements, all of them for Vernice Kuglin that shows the assets and liability of the customer.

Q. And did those come from the loan documents?

A. Yes.

Q. Okay. And those were made in connection with the loans?

A. Yes.

MR. MURPHY: Your Honor, if we could have this marked as a collective exhibit.

THE COURT: Exhibit 24.

(Exhibit Number 24 was marked. Description: Loan Documents.)

MR. MURPHY: Judge, I don't have any further questions for Ms. Griffis.

THE COURT: All right. Cross examination?

CROSS EXAMINATION

BY MR. BECRAFT:

Q. Ms. Griffis, does your bank at the present time have a mortgage on any property of Ms. Kuglin?
A. I don't know.
Q. All right. Are you familiar with some property called One Main South?
A. No.
Q. How about 802 at Waterford Plaza condominium?
A. No, I would not be familiar with those properties.
Q. Has your bank at any time in the past, say, like, since 1990 forward held any mortgage on property owned by Vernice Kuglin?
A. The mortgage is a separate entity. The mortgage company is separate from the bank. Now, we had several loans for Ms. Kuglin, but whether they were secured as a second mortgage, without looking at them, I can't tell you.
Q. Okay. The only thing that you know about as manager of legal services are these applications that we have just submitted, right?
A. Well, I know there are loans for Ms. Kuglin or there were loans, yes.

MR. BECRAFT: Nothing further, Your Honor.

THE COURT: Redirect?

MR. MURPHY: Your Honor, I don't have any further questions.

THE COURT: Thank you very much.

(Witness excused.)

THE COURT: Who will our next witness be?

MR. MURPHY: John Scobey, Your Honor.

THE COURT: If you would step to the podium, please, and raise your right hand.

THE CLERK: Will you raise your right hand, please? Do you solemnly swear the testimony you are about to give the court and the jury will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: You may take the witness chair.

DAVID SCOBEY,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you state your name, please?

A. David Scobey.

Q. And would you spell your first and last name, please, sir?

A. David, D-A-V-I-D. Last name Scobey, S-C-O-B-E-Y.

Q. And who do you work for, sir?

A. Henry Turley Company.

Q. Mr. Scobey, do you go by the name of John?

A. I do go by the name of John.

THE COURT: That's confusing to me.

THE WITNESS: Well, that's my middle name. David J.

Q. Mr. Scobey, have you had some dealings with an individual named Vernice Kuglin?

A. Our company has.

Q. And specifically why has your company had dealings with Ms. Kuglin?

A. We sold her a condominium unit down on South Main.

Q. Did there come a point in time within the last couple

of years where you got a summons from the Internal Revenue Service requesting records having to do with Ms. Kuglin's property?

A. Yes, we did. I believe it was in October of 2001.

Q. Okay. And did you call Ms. Kuglin about those records, about that documents request, rather?

A. I called Ms. Kuglin just simply as a courtesy to let her know that we had got a summons or subpoena and that I thought we would have to comply.

Q. Okay. And what did Ms. -- what was Ms. Kuglin's response to that?

A. Her response was that she was under the opinion that the summons was faulty or not valid and that she would have her lawyer contact me to, you know, to give his opinion on the matter.

Q. Okay. Did she indicate whether you had to comply with the subpoena?

A. Just that it was her opinion that it was faulty and I would not have to comply.

MR. MURPHY: Okay. One second, Your Honor.

No further questions, Your Honor.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. BECRAFT:

Q. Mr. Scobey, the relationship between, is it the Turley

Company?
A. The Henry Turley company.
Q. The Henry Turley Company. At one time that company owned some property on South Main?
A. It did. It still does. Actually, the company doesn't, but Henry Turley, our shareholder, does.
Q. And it's a two-story building out here on Main Street?
A. That's correct.
Q. A couple of blocks down from this courthouse?
A. Correct.
Q. Somewhere around '92, '93, is that about the time frame in which Mr. Turley sold or conveyed some interest in the property to Ms. Kuglin and her son, Christopher?
A. It was in March of '93, we sold a unit in a condominium to Ms. Kuglin.
Q. And so since that time, there have been periodic payments made by either Ms. Kuglin or her son regarding the amounts that would be owed to Mr. Turley for the purchase of that property?
A. She had a promissory note at the closing, which she has subsequently paid off, and since then, they have been paying condominium maintenance fees to the condominium association, which we manage.
Q. Well, the condominium, basically? It's a two-story building, and the top story is all hers, right?

A. That's correct.
Q. So you have a number of records that would relate to this particular transaction, the purchase from Mr. Turley by her of that unit that she bought in '93?
A. Correct.
Q. And so in October of 2001, somebody from the IRS got in touch with you and delivered a summons wanting all of the financial records regarding Mr. Turley's association or Turley Company's association with Ms. Kuglin, is that correct?
A. That's correct.
Q. Did you meet Ms. Deborah White on that occasion?
A. I did.
Q. Was she the party that delivered the summons to you?
A. She was.
Q. Okay. I take it your company has done this in the past? You know, the IRS comes along and asks for some information, right?
A. Well, in my fifteen years, this was the first time.
Q. How often have you talked to Ms. Kuglin since she has bought this property from Mr. Turley?
A. I've probably spoken to her two or three times. It's very infrequent.
Q. Would it relate to this property?
A. It related to this property.
Q. Did she ever make any comments to you about taxes?

A. No.
Q. She has never discussed her position with you about federal income taxes?
MR. MURPHY: Judge, I object to hearsay.
THE COURT: Objection sustained.
Q. Now, on this particular occasion, when Ms. White delivered the summons to you in October of 2001, you read the summons over, correct?
A. I did.
Q. And do you have an in-house lawyer in the company?
A. No, no.
Q. Do you have private counsel?
A. Yes, we do.
Q. Once of the first things you did when you received the summons, you picked up the phone and called Ms. Kuglin?
A. That's correct.
Q. And she had a position?
A. She did.
Q. And she believed -- at that point in time, had she seen the summons?
A. I have no idea.
Q. Well, the amount of times -- was the summons delivered to you personally?
A. It was.
Q. Okay. And did you provide -- before you picked up the

phone, did you provide a copy of that summons to Ms. Kuglin before you talked to her about it?
A. I don't recall.
Q. Okay. Well, is it likely that you -- or is it more likely that you did not give her a copy of it?
MR. MURPHY: Judge, I'm going to object to the question because I think the witness has said he doesn't know.
THE COURT: Well --
MR. BECRAFT: I'll withdraw it, Your Honor.
THE COURT: Beyond the personal knowledge -- well, he has already said what he had to say about that. Objection sustained.
Q. And when you picked up the phone and called Ms. Kuglin, you said, in essence, that a summons had been requesting certain financial information from the Turley Company, right?
A. That's correct.
Q. And you informed her that it was the IRS that was wanting it, right?
A. I did.
Q. And she told you that -- did you tell her much about the facts of the summons, how it was delivered to you, what it requested?
A. I don't remember that I did tell her very much. She indicated that similar documents had been delivered to others.

Q. Okay. And she did tell you that she had a lawyer that would respond, is that correct?
A. That he would give his opinion to me on why that she didn't feel that I had to comply.
Q. Okay. And do you know who this lawyer was?
A. I believe his name was Baxley.
Q. From Florida?
A. I don't recall.
Q. Okay. Do you recall having received at some time shortly after or within a reasonable time after October of 2001, that Mr. Baxley, in fact, contacted you and sent you something about the summons?
A. He did send me a letter.
MR. BECRAFT: Nothing further, Your Honor.
MR. MURPHY: Your Honor, I don't have any further questions of Mr. Scobey.
THE COURT: Thank you. We will let you step down.
(Witness excused.)
THE COURT: Who will our next witness be?
MR. MURPHY: Our next witness is going to be Special Agent Deborah White, but I need to let a witness go.
THE COURT: Okay.
MR. MURPHY: If I could have one minute.

THE COURT: That's no problem.
MR. MURPHY: Your Honor, the government calls Special Agent Debbie White.
THE CLERK: Will you please raise your right hand? Do you solemnly swear the testimony you are about to give the court and the jury will be the truth, the whole truth and nothing but the truth, so help you God.
THE WITNESS: Yes, I do.
THE CLERK: You may take the witness chair.
MR. BECRAFT: May it please the court, can I take up one matter right now at side bar?
THE COURT: Sure. I'm going to ask you your first name is?
THE WITNESS: Deborah, D-E-B-O-R-A-H, White, W-H-I-T-E.
THE COURT: Thank you.
(The following proceedings had at side-bar bench.)
MR. BECRAFT: This is not something we necessarily called to the attention of the court, but, you know, I haven't formally invoked the rule, but --
MR. MURPHY: This is the last witness.
MR. BECRAFT: I know, but that's --
THE COURT: The rule has now been invoked, it wasn't invoked earlier by anybody. Now, it is invoked.

MR. BECRAFT: Okay. I was told by Ms. Kuglin, the red headed lady in the back of the courtroom may be a witness.

MR. MURPHY: I'm not going to call her.

MR. BECRAFT: Oh, you're not?

MR. MURPHY: I'm not going to call her.

MR. BECRAFT: Sorry, Your Honor. That's okay.

(The following proceedings were had in open court.)

DEBORAH WHITE,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q. Ma'am, would you state your name, please?

A. Deborah White. It's D-E-B-O-R-A-H W-H-I-T-E.

Q. Who are you employed by, Ms. White?

A. I'm employed by the Internal Revenue Service, criminal investigation.

Q. In what capacity?

A. I'm a special agent.

Q. And how long have you been a special agent with the Internal Revenue Service?

A. I have been a special agent for about nine and a half years.

Q. Okay. Now, were you involved in the investigation of Ms. Kuglin's tax situation?

A. Yes, I was.

Q. Okay. And did you do a calculation to determine whether any income taxes were due and owing?

A. Yes, I did.

Q. Okay. Now, in order to do that calculation, what records did you use?

A. I used the IRP documents which contained -- and summoned records that we got from Federal Express and Kemper National Services, and that's basically it. Well, the mortgage interest that she was paid -- or that she paid.

Q. And some of the -- did you get the mortgage interest figures off of some of the 1098s that you were able to get and some of it off the IRPs?

A. Right. I got most of the information off the IRPs.

MR. MURPHY: Your Honor, if we could set the easel up, we have got a calculation.

THE COURT: That's fine.

MR. MURPHY: If the witness could come down.

THE WITNESS: And bring your papers with you.

THE COURT: It's okay also if you want to use the overhead, whichever you want -- okay, you have got it on chart, that's fine.

MR. MURPHY: Judge, we would have put it on the overhead, but making it all fit is kind of hard.

THE COURT: That's no problem at all. But we do have to let defense counsel have a chance to come around to see.

MR. BECRAFT: I have looked at it already, Your Honor.

THE COURT: Okay.

MR. BECRAFT: I do believe I have a letter size

copy.

THE COURT: Well, I'll let them use the form they have got, and we might use the letter size also as an extra exhibit, so that we can more easily fit it in the record.

MR. MURPHY: The problem with the letter size one for the jury to see, they kind of have to go like that.

THE COURT: I understand. That's no problem.

MR. MURPHY: It is kind of a long deal. Okay.

THE COURT: That may need to be lifted up. And there is a way to do that. I tell you what, though, would you move it around so it is a little more in the corner so that I can see it and everybody has a shot at seeing it? And why don't we put the letter size one on the overhead, anyway, if we have got one, counsel.

MR. MURPHY: Yes, sir.

THE COURT: Mrs. Saba, we want the letter sized one on the overhead also.

And we probably ought to give it a number if we're going to show it to the panel.

MR. MURPHY: Judge, what if we numbered the panels two separate numbers and make that a third number.

THE COURT: It will be 25, 26, 27.

(Exhibit Number 25 was marked. Description:

Chart.)

(Exhibit Number 26 was marked. Description: Chart.)

(Exhibit Number 27 was marked. Description: Paper Copy of Charts.)

THE COURT: The charts are 25 and 26.

Q. Now, Ms. White, are these two panels that we have marked Exhibits 25 and 26, are these blowups of the tax calculation you prepared?

A. Yes, sir, they are.

Q. Let's start with this one first. Now, for 1996, the year 1996, what did you compute Ms. Kuglin's wages as?

A. For 1996?

Q. Yes, ma'am.

A. The wages that she received were from Federal Ex -- Federal Express, and they were in the amount of $183,408.01.

Q. And what was the total of all wages she received in 1996?

A. $183,408.01.

Q. And were there any adjustments to the income?

A. No, there were not.

Q. What are adjustments to income?

A. Adjustments to income are those items on the front of the return. They primarily deal with, like, for self-employed people where you get a credit for like half a year

self-employment tax, stuff like that.

Q. And what was the adjusted gross income?

THE COURT: You have the wrong one on the screen. I tell you what, I'm going to take a two or three-minute break, let y'all take a real short break, let these folks get a little more organized and we will come back. Thank you.

(Recess taken at 1:55 until 2:08 p.m.)

THE COURT: It's really easier for some jurors to see the screen no matter where we put the overheads. So that also lets me see it. I have a lot of trouble seeing that far, just to be honest.

MR. MURPHY: I think if I ever have one of these cases again, I'll do tax computations for everybody in the courtroom, and we could --

THE COURT: Oh, this is fine. This is fine. I just knew we needed to give you a break so we wouldn't have everything falling down.

MR. MURPHY: I apologize.

THE COURT: No problem. I think we're ready to go, Mr. Tuggle.

Are you going to move that other chart so the jurors can see it a little bit? It think we're where people can see now, and that's better.

You have a monitor over there too?

MR. BECRAFT: Yes. I don't need to look at that, I have a hard copy.

THE COURT: I understand, I understand. I think we're all set, Mr. Tuggle.

COURT SECURITY OFFICER: All right, Judge.

(Jury in at 2:10 p.m.)

THE COURT: I hope y'all appreciate it, when somebody can't see very well, nothing is more frustrating for me than to try to see something and I can't see it. So hopefully you're all able to see things now, it is real important, and I think we're ready to proceed.

MR. MURPHY: Yes, sir, Your Honor.

Q. Now, Ms. White, we were going through the tax calculation, and basically, we're talking about what has been marked as Exhibit 25, and the 1996 year, what was the adjusted gross income you came up with for that year?

A. The adjusted gross income for 1996 was $183,408.01.

Q. And did you determine whether Ms. Kuglin was entitled to any itemized deductions?

A. On the itemized deductions, yes.

Q. Okay.

A. I concluded that.

Q. Okay. And what was the amount of those itemized deductions?

A. The amount of those itemized deductions was $19,351.26.

Q. Was there some formula you used to determine that?

A. Yeah, just the -- the itemized deductions are phased out after a certain income level, and so in your 1040 tax booklet, there's like a little calculation sheet that you use, you know, it just kind of gives you the formula for determining what your deduction would be.

Q. And did you use that to determine the amount of itemized deductions for '96, that little chart?

A. Yes, I did.

Q. Okay. And did you also determine the amount of the tax exemption for Ms. Kuglin?

A. Yes, I did. Her exemption -- we gave her one exemption for herself, and the exemption amount was $1,173.

Q. Did you also use some formula that was provided in the 1040 tax manual to determine the amount of exemption?

A. Yes, it it's the same type formula that's based on your income.

Q. Okay. Now, going over to -- if we could put chart two on the screen. For 1996, what was the corrected taxable income?

A. For 1996, her corrected taxable income was $162,883.75.

Q. And what was -- did you compute the tax?

A. Yes, I did.

Q. And what was the tax?

A. The tax was $47,708.65.

Q. Okay. In 1996, what was the amount of income that triggered the filing requirement?
A. For 1996, you had to have gross income equal to or in excess of $6,550 in order to have a requirement to file a return.
Q. And what is gross income?
A. Gross income, it's basically all items of income from whatever source derived.
Q. Okay.
A. All monies.
Q. Now, in order to trigger the filing requirement -- the filing requirement, do you -- before you determine, do you subtract the deductions and all that?
A. I'm sorry, go ahead.
Q. The filing requirement, the minimum dollars that require filing --
A. Uh-huh.
Q. -- that's for what?
A. That's your gross income.
Q. Okay. Okay. And that's --
A. Your gross income should be equal to or greater -- if it's equal to or less than that.
Q. Less than what?
A. Than the $6,550, then you're not required to file a tax return.

Q. Now, were there any taxes withheld from FedEx in '96, according to your investigation?
A. In 1996?
Q. Yes, ma'am.
A. No, sir.
Q. Okay. Going over -- now, one more thing before we go to the next year, on your initial computation, was there a mistake made?
A. When I initially prepared our -- can I back up and talk --
Q. Sure.
A. -- kind of how the process we go through?
Q. Yes, sir.
A. When we recommend prosecution when we work our investigation, we go out and gather the facts. If it deems that prosecution is warranted, we write up a prosecution report and attach -- which is just a long narrative report that reports what our findings are. Attached to that would be the exhibits which are, you know, items, bank records, stuff like that that we get throughout the investigation that help prove our case. Anyway, we put them all together in a binder, and we have an agent in -- for Memphis, he's actually located in Arkansas, he reviews all our cases, and does our calculations and makes sure that everything is correct, and at that point, I had actually made an error on my, I think it was

my exemption chart, I was supposed to round up, and I didn't round at all. So that made a difference like in the taxable income and all that. So he sent it -- when it came back to me, I corrected it. These are the correct numbers, but I forgot when I printed out the new worksheets, I didn't swap them out in the exhibits. So these are the correct numbers. And when my case went forward, it had the incorrect calculation on the exhibits. And I think the incorrect numbers were actually provided to the defense during the discovery process, and we -- before we realized that I hadn't swapped them out. That's kind of the error.

Q. But that error was corrected?

A. Yes.

Q. Okay. Let's talk about 1997. What wages based on your investigation did Ms. Kuglin have before in 1997, and we're on chart one.

A. Okay. Her wages for 1997 consisted of her W-2 wages she received from Federal Express. Her wages for the year were $172,674.37.

Q. Okay. And what was her corrected total income?

A. That same amount, $172,674.37.

Q. Were there any adjustments to her income?

A. No, sir.

Q. What was her adjusted gross income at that point?

A. Her adjusted gross income was the same amount,

$172,674.37.

Q. Okay. And did you give her credit for itemized deductions?

A. Yes, I did.

Q. In what amount?

A. $23,137.77.

Q. Were her itemized deductions limited because of her income or anything like that?

A. Right, right.

Q. Okay. Did you also give her an exemption?

A. Yes, I did. It totaled $1,537.

Q. Okay. And what was her corrected taxable income?

A. $147,999.60.

Q. If we could go to page two, what was the corrected taxable income for 1997?

A. $147,999.60.

Q. And what was the tax per the tax rate schedule?

A. $42,050.36.

Q. And that's -- what bracket was Ms. Kuglin in, in terms of was she single or head of household?

A. Single.

Q. Single. Based on your investigation, did she have any dependents at the time?

A. No.

Q. Okay. Now, in 1997, what was the minimum amount of

income that triggered a filing requirement?

A. $6,800.

Q. Let's go over to 1999, page one of the chart. Did Ms. Kuglin -- Ms. Kuglin receive wages from Federal Express?

A. Yes, she did.

Q. And what was the amount of the wages?

A. For 1998?

Q. Yes, ma'am.

A. The wages from FedEx were $164,196. She also received that short-term disability pay from Kemper National Services in the amount of $4,789.37.

Q. And what was her total adjusted gross income?

A. $168,985.37.

Q. And what were the amount of itemized deductions that she received credit for?

A. $30,059.44.

Q. And were those -- the amount of those deductions limited?

A. Yes.

Q. And did you use the tax calculation table for that?

A. Yes, I did.

Q. Let's talk about her exemption, how many exemptions did she get for 1998?

A. Just one for herself.

Q. And what was the amount of that exemption?

A. $1,728.

Q. If we could shift over to page two. And what was Ms. Kuglin's corrected taxable income for 1998?

A. Her corrected taxable income was $137,197.93.

Q. Did you determine what the amount of tax would be on that amount?

A. Yes, I did. I used the tax rate schedule and determined that it was $37,000 -- $37,848.75.

Q. Okay. And did Ms. Kuglin receive any credits for taxes that were withheld?

A. Yeah, I credited back the -- when she filed the claim with Kemper, when Kemper paid her, they withheld taxes from her disability benefit in the amount of $1,341.03, and I subtracted that.

Q. And what was the amount of tax due and owing per 1998, according to your calculation?

A. It was $36,507.72.

Q. And I might have asked this already, what was the income level that triggered the filing of a tax return in 1998?

A. $6,950.

Q. If we could go to page one again. I would like to talk now about 1999.

A. Uh-huh.

Q. Did Ms. Kuglin receive any wages in 1999?

A. In 1999, she received W-2 wages from Federal Express in the amount of $172,428.80.
Q. Okay. And were there any adjustments to her income?
A. No.
Q. What was her adjusted gross income then?
A. $172,428.80.
Q. And did she receive -- did you give her credit for itemized deductions?
A. Yes, I did, in the amount of $24,152.14.
Q. Were those deductions limited because of her income?
A. Yes.
Q. Okay. And did you give her an exemption?
A. Yes, I did. For 1999, she got $1,705 as a personal exemption.
Q. And was that limited because --
A. Because of the amount of income.
Q. -- of the amount of income?
A. Uh-huh.
Q. If we could go over to page two. For 1999, what was Ms. Kuglin's corrected taxable income?
A. Her corrected taxable income was $146,571.66.
Q. What was her tax per the tax table?
A. Per the tax rate schedule?
Q. Yes, ma'am.
A. It was $41,032.30.

Q. And what was your computation of the tax due and owing?
A. The tax due and owing was $41,032.30.
Q. If we could go back to page one, please. Did Ms. Kuglin receive wages in 2000?
A. Yes, she did. Again, they were just wages from FedEx in the amount of $191,292.99.
Q. And what was her corrected total income then?
A. Her corrected total income was $164,000 --
Q. No, this is for 2000.
A. I'm sorry, her corrected total income, I'm sorry, $191,292.99.
Q. And what was her adjusted gross income?
A. Her adjusted gross income was the same amount.
Q. Did you allow her any itemized deductions?
A. Yes, again, we allowed her the itemized deductions for her mortgage interest that she paid in the amount of $25,668.71.
Q. And were those deductions limited by the tax table or the --
A. Yes.
Q. Or by her income, rather?
A. By her income.
Q. And did you -- did she receive credit for an exemption?
A. Yes, she did. In 2000, her personal exemption was $1400.

Q. And, again, was that limited by her income?
A. Uh-huh.
Q. Now, if we could go over to page two. What was her corrected taxable income for 2000?
A. For 2000, it was $164,224.28.
Q. And what was the tax per the tax rate schedule?
A. $47,171.74.
Q. And what was the tax due and owing based on your calculation?
A. $47,171.74.
Q. Okay. And could we go back to page one, please?
Now, referring to 2001, did Ms. Kuglin receive any wages from FedEx?
A. Yes, her Federal Express wages totaled $190,673.37.
Q. And what was her corrected total income?
A. $190,673.37.
Q. And what was her adjusted gross income?
A. $190,673.37.
Q. And there were no adjustments to income?
A. No.
Q. And what -- was Ms. Kuglin credited with itemized deductions for 2001?
A. Yes, she was.
Q. And what were the amount of those deductions?
A. $27,976.30.

Q. And was she credited with a personal exemption?
A. Yes, her personal exemption for 2001 was $1,508.
Q. What was her corrected taxable income?
A. $161,189.07.
Q. If we could go over to page two. For 2001, what was Ms. Kuglin's corrected taxable income? Again, I'm going right down the chart?
A. $161,189.07.
Q. And what was her tax per the tax rate schedule?
A. $45,036.87.
Q. What was her -- based on this calculation, what was her tax due and owing?
A. $45,036.87.
Q. And other than the Kemper withholding in 1998, was there any withholding that reduced her tax liability that you were able to --
A. No, there was not.
MR. MURPHY: One second, Judge.
Q. One more thing. The Ms. Kuglin you investigated, and I know the charts are in your way, is she in the courtroom today?
A. Yes, she is.
Q. Okay. Where is she seated and what is she wearing?
A. She is seated between the two gentlemen with an orange jacket on.

MR. BECRAFT: We will stipulate she has identified her, Your Honor.

THE COURT: The defendant has been identified, and that's reflected in the record.

MR. MURPHY: Judge, I don't have any further questions for Special Agent White.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. BECRAFT:

Q. Good afternoon, Ms. White.

A. Good afternoon.

Q. I believe you testified that you had been working with the IRS for the last nine and a half years, correct?

A. I have been a special agent for the last nine and a half years. I have been employed with the IRS since 1985.

Q. Okay. Could I get a little bit of your educational background, please?

A. Sure.

Q. Where did you go to school?

A. College, I have a bachelor's degree from Sam Houston State University in Huntsville, Texas in criminal justice.

Q. Do you have an accounting background?

A. I have the accounting classes -- in order to become a special agent with IRS, you have to have a bachelor's degree and 15 hours of accounting.

Q. So by the time you graduated, what, in '85, at the place in Huntsville, Texas --

A. No, I graduated in '90. It was on an extended plan.

Q. I see. So you went to work for the IRS in '85?

A. I went to work for the IRS in '85, and I was in college in the evening and --

Q. Okay. Good enough. But that was in criminal justice?

A. Right.

Q. You apparently obviously had designs on being a special agent, is that correct?

A. That's correct.

Q. And -- but your college courses didn't deal anything with necessarily tax and accounting, did it?

A. My -- I mean I took tax and accounting courses at college, if that's what you are talking about.

Q. Okay. Good enough. Now, those courses involved going to like a class in the evening, you said you were -- so you might go Monday, Wednesday, Friday or Tuesdays and Thursdays or some such, you might go and sit in the class for several hours, correct?

A. Right.

Q. To learn accounting and tax?

A. Right.

Q. Okay. Now, since you have been working for the IRS, have you gone to specialized schools that relate to accounting

and taxes?

A. When you get hired as a special agent, you attend the federal law enforcement training center down in -- it is in Brunswick -- Glynco, Georgia. I was down there for like six months.

Q. And did you learn more about taxes down there?

A. Yeah, that school -- that six-month school, it is split up into three different schools. One is criminal investigator training, one is tax, and the other is special agent investigative techniques.

Q. I want to get an idea about how much study -- you obviously recognize this, I hold in my hand, 1986 Internal Revenue Code printed in 1994, right?

A. Right.

Q. And throughout this trial, Mr. Murphy -- oh, no, that's not -- but you had here in the courtroom Internal Revenue codes and other tax information with you, correct?

A. Yeah.

Q. Okay. Now, the courts that you have taken in special agent -- I think you said you went down to Glynco, Georgia and had at least a six-month course on tax?

A. No, I said that we had -- it was split into three different courses. The criminal investigator training is the first, you know, five or six weeks, and that basically teaches you about the law. Basically, all federal agents within the

Treasury Department and other -- I think the only ones that don't go there are FBI agents and DEA agents, the rest of them all attend that -- everybody takes that class. And then we had a tax class and then we had -- we finished out with the special agent investigative techniques, which is the course that teaches you how to do the IRS special agent job.

Q. All right. And since you have been to Glynco, that would be sometime maybe the late 1980s, early 1990s?

A. I got out in -- I went down there in January of '94, and I got out in June, July.

Q. Okay. And since you got out of that course, have you had, you know, kind of refresher courses or continuing education courses that relate to tax?

A. We have -- every year, we have a continuing professional education that's put on, by -- in the criminal investigation area, and we roughly have it every year. I mean if there's updates that, you know, we need to be, you know aware of, or whatever, there would probably be a course presented on that. But generally, the cases that we work aren't current year cases, they're usually -- we have to give you time to file or not file, or, you know, so it is -- they're usually prior years.

Q. Now, would you disagree with me when I say that the study of federal income taxes is complicated?

A. Sure.

Q. Now, in addition to knowing something about -- we don't have your copy of the Internal Revenue Code here, but you use books like this in your regular work, right, the Internal Revenue Code?
A. Yes.
Q. And it's this thick?
A. I don't know, we have a bunch of them, I don't know that we necessarily have that same one.
MR. MURPHY: Your Honor, could we approach?
THE COURT: You may.
(The following proceedings had at side-bar bench.)
MR. MURPHY: Judge, I'm going to object to the cross. I mean how thick the book is and all this stuff, he's not asking about the tax calculation.
MR. BECRAFT: She has been tendered as an expert.
THE COURT: She was entered as a special agent with knowledge about how to calculate taxes.
MR. BECRAFT: That's what she did, and I --
THE COURT: You might want to turn your mic off. But she has not been presented as a legal expert, has she?
MR. MURPHY: Well, all she is presented for is to do tax calculation.

MR. BECRAFT: She has had training, Your Honor, I just simply want to know --
MR. MURPHY: You still don't have it off.
MR. BECRAFT: All I wanted to do, Your Honor, was to show -- I think the jury is entitled to know, she has testified similar to an expert, and all I'm doing is trying to draw out how much training she has had on the Internal Revenue Code and how complex the law is. I think that's fair, because she has drawn legal conclusions, she has testified like an expert.
THE COURT: What about it?
MR. MURPHY: Judge, I don't think she is drawing a legal conclusion. She said I did this calculation. In fact, I didn't ask her whether Ms. Kuglin had the file. All I asked was what was the limit that year. I mean I --
THE COURT: Well, I mean she had fairly limited -- you're outside the scope under 611, that's pretty fair.
MR. BECRAFT: Okay.
THE COURT: And I think we probably ought to go ahead.
MR. BECRAFT: Thank you, Your Honor.
THE COURT: No problem.
(The following proceedings were had in open

court.)

MR. BECRAFT: Can we use the charts or do you need to see something on the screen and ask you questions about it?

THE COURT: You can use the charts. It is probably not a bad idea to put it on the screen too. The screen helps us know for sure where you are. It's a little different than the chart. The chart lets you see it. The screen, you can point out and say this is where I am, and we can't miss it then.

MR. BECRAFT: I think I will stroll over here myself, and can I use my copy?

THE COURT: Sure, that's fine.

Q. Now, you drafted this document up in order to calculate how much she owed in the way of taxes, that's the ultimate bottom line?

A. Correct.

Q. And to get there, you have got to calculate how much Ms. Kuglin made, correct?

A. Right.

Q. And -- but then in order to arrive at and create this chart, you have to have at least some knowledge, a good working knowledge of the tax laws, correct?

A. Yeah.

Q. Now, you have a line here, you know, on one of these

charts. When you compute the taxable income, you took all of these figures here for '96 through 2001, all of these reported figures here, they're based on the evidence that we obtained from FedEx, correct?

A. Correct.

Q. The 1099s or W-2?

A. W-2s.

Q. Okay. For these years, and these are the figures that came from there, correct?

A. Yeah.

Q. Okay. Now, down at bottom after you go through several calculations, you have this corrected taxable income and you have the various figures for the various years, correct?

A. Yes.

Q. And in order to arrive at that figure, you have to use the Internal Revenue Code, consult certain sections, is that correct, Section 61, 62, 63?

A. Yeah. Well, actually, you know, this return is just itemized deductions and her exemptions, I mean you can get all that information from the tax booklet that they mail to you.

Q. You have used your overall broad knowledge of tax laws in order to devise and create this chart, is that true?

A. Yeah.

Q. Okay. But in order to make -- come up with corrected taxable income, either from a booklet like the 1040 booklet or

from the tax code itself, there's an interrelationship between Section 61, 62, 63 to arrive at something called taxable income, correct?

A. Uh-huh.

Q. And you also, to deal with the, you know, moving up the line here to adjusted gross income, in order to calculate corrected taxable income, you take adjusted gross income and you deal with itemized deductions, correct?

A. Correct.

Q. And the tax code itself deals with itemized deductions, right?

A. Okay.

Q. And can you tell us off the top of your head -- I think you have limited it primarily in reference to this particular case, the itemized deductions primarily to interest payments, correct?

A. Right.

Q. Off the top of your head, can you tell us what section of the code that would relate to taking that as an itemized deduction?

A. Off the top of my head, no, I couldn't.

Q. Now, I'm going to flip over to the other chart here, the one where you calculate the tax due and owing. Let's take a look at the year 1998, you have taxes withheld of $1,300, is that correct?

A. That's correct.

Q. That's an adjustment as to the aggregate ultimate tax liability that is dealt with in this case, right?

A. Right.

Q. Somehow, some way, we have got to -- there was the $1,300 that was withheld in '98. Okay, can you tell us the section of the Internal Revenue Code that would allow somebody to have credit for withheld taxes?

A. You know -- no, off the top of my head, no, I'm sorry, I don't know the exact code, but I do know this.

Q. Okay.

A. That -- she didn't have any wages -- I mean she didn't have any federal income tax held withheld from her salary, and so when we do our calculations if we have -- normally, if -- I guess if people file tax returns and maybe they didn't report all their income, we give them credit for the tax that they did pay. So under normal circumstances, we would give them credit for any taxes that they would have reported and paid on their return. In this case, there were no returns filed, so there was no tax paid. The only tax that was actually withheld was that $1,300 from Kemper.

Q. All right.

A. So I'm giving her credit for it.

Q. I understand that, but my question was, it should be a simple matter, can you tell us with which section deals with

giving a credit for withheld taxes?

A. Off the top of my head, no, I don't know what -- I mean if I had a question about it, I could look it up, I suppose but, no, I don't have tall of those codes memorized.

Q. How about Section 31, does that kind of refresh your recollection, would that -- credit for tax withheld?

A. I'm sorry.

Q. Okay. One moment, Your Honor. You have also given testimony that -- I didn't write them all down, but you -- when Mr. Murphy was asking you questions, he asked you about what the threshold amount was for each year for filing?

A. Uh-huh.

Q. I wrote them down -- I didn't write them all down, but I think you said 6500 or 6550 for 1996.

A. 6550, right.

Q. In '97, it was 6800, right?

A. '96 is 6800.

Q. Let's forget all the other figures, but you rattled them all, is that correct?

A. Yes.

Q. Now, is the filing requirement, that provision, do you find it in the law?

A. Do you have to file a return?

Q. Well, yes.

A. I mean I think it's 6011.

Q. Okay.

A. That says that you must make a return if your gross income exceeds the exemption amount.

Q. Now, you mentioned 6011, are you familiar with Section 6001?

A. Yes.

Q. Okay. Is it your understanding that at least two laws that relate to the filing of income tax returns are Section 6001 and 6011 of the Internal Revenue Code?

A. Yes.

Q. And did you consult -- in your testimony, when you gave these figures right here, you know, these are the filing requirement. Did you actually look up the law to determine it or did you do something like consult an instruction booklet?

A. No, actually, we -- I did look at the instruction booklet, because it's right there, it is available, you can download them off the internet, and, yes, I looked at the instruction booklet, but I have since, you know, looked at the code too.

Q. Okay. Do you know whether or not that -- you know, the figures that you used, if you make so much money, if you make 6500, if you make 6800 in '97 or if you make 6950 in '98, whether or not in Section 6001 or 6011 of the Internal Revenue Code that you will find that type of information?

A. I don't know that it says the exact dollar amount, but

it does say about the exemption and all.

MR. BECRAFT: Your Honor, I believe that's all.

THE COURT: Redirect.

MR. MURPHY: Your Honor, I don't -- well, since it came up.

REDIRECT EXAMINATION

BY MR. MURPHY:

Q. Would you go through what the dollar amounts were that required filing of the tax return for each of the six years?

A. Okay. In 1996, if you were single and under the age of 65 and your gross income exceeded $6,550, you were required to file an income tax return.

Q. Okay.

A. In 1997, if you were a single person under the age of 65 and your gross income exceeded $6,800, you were required to file a federal income tax return for that year.

In 1998, for a single person under the age of 65, the amount was increased to $6,950. So if your gross income was in excess of that -- equal to or in excess of that, you were required to file an income tax return.

1999, that amount was increased to $7,050. 2000, that amount was increased to $7,200, and in 2001, the amount was $7,450.

MR. MURPHY: Judge, I don't have any further questions.

THE COURT: Thank you. We will let you step down.

(Witness excused.)

THE COURT: Will there be any other witnesses for the United States?

MR. MURPHY: Judge, there'll be no other witnesses, and at this point the government rests with the exception we would ask Your Honor to take judicial notice of the fact that Memphis-Shelby County, Tennessee is within the Western Judicial District of Tennessee.

THE COURT: I will take judicial notice of that. Of course, ladies and gentlemen, we can only take judicial notice for something that's so obvious that all of us know, and it is obvious that Memphis and Shelby County is within the Western District of Tennessee.

All right. We're going to take about a ten-minute break, and I'm going to see where we're going next, and then we will let you know. So I'm going to take a ten-minute break, we're going to stay out here and work, and we will let you know at the end where we're proceeding. See you in ten minutes.

(Jury out at 2:47.)

THE COURT: Anything from the defense?

MR. BECRAFT: Yes, Your Honor, under Rule 29 real quick, and then we might require maybe about five

minutes to move some exhibits around and get them in -- Ms. Kuglin up there on the stand and then have a way of digging out her --

THE COURT: Sure. Mrs. Saba, let's move those things out of the center of the well while we're doing that.

Yes, sir.

MR. BECRAFT: Your Honor, on -- on my motion, I just -- I will make this real short, sweet and simple. There are three elements the government has got to prove. One is willfulness. You know, this has been an extremely short case. The government has shown, one, that there was a '92 return filed, then there are no returns filed for the years in question. There has been some withholding and then there has been no withholding. We have had proof regarding what the gross amount of wages were, we just completed the calculation of the tax, but it seems like to me that the government has got to have at least a scintilla of something more to show that she had that evil animus, that malignant intent, that bad motive -- I won't add any more adjectives, Your Honor, but you know one of the things about this case is there is something missing regarding intent. And I think that an evasion case has got to be stronger than we have seen here. It has been all paper, not even a letter from the defendant. That's

it, Your Honor.

THE COURT: Mr. Murphy?

MR. MURPHY: Well, Judge, the proof established several things. The proof established that she had taxable income. The proof established that her income was above the levels that required filing. The proof in -- and it was one of the exhibits they introduced from Federal Express that, frankly, we didn't have that and FedEx never gave us, but that -- in 1995, she claimed an exempt status. If you look at the W-4, it -- in order to be exempt, you have to be entitled to a refund of all your prior year tax liability and -- or all your taxes and don't incur any tax liability for the future year. That was not a true statement. Based on the evidence the government put forth, that was not a true statement. Now, at this point she hasn't made that defense, and once she gets up there, we have got to come up with some evidence that rebuts it either through cross examination or whatever, but there was also proof she filed in '93. There was proof that '92 -- there was proof that notices have been sent to her, that she had been subject to IRS levies. And we would submit, Judge -- granted, it's a quick case, but the government shouldn't be penalized for being efficient. And there is also the comment of Mr. Scobey that you don't have to comply with the IRS summons.

THE COURT: Well, certainly, the law and all inferences are taken in favor of the government in the context of this motion for this purpose, and the court doesn't make any determinations on credibility questions or anything like that, and so, therefore, the defense motion is denied.

Is the defendant ready to proceed and do you want a couple of minutes?

MR. BECRAFT: If we could have seven or eight, maybe ten minutes, maybe the afternoon break will be sufficient and then we would have --

THE COURT: Go ahead and tell the jury then, Mrs. Saba, we're going to take our afternoon break at this time. We are going to come back and we do anticipate the defense -- are you going to put on some proof?

MR. BECRAFT: This afternoon, Your Honor.

THE COURT: Okay.

MR. BECRAFT: I just need to --

THE COURT: Only for the purpose of advising the jury.

MR. BECRAFT: Yeah.

THE COURT: And we will come back and there will be some additional testimony, so we will add ten minutes to our break, and this is our afternoon break. See you in ten minutes.

THE CLERK: All rise.

(Recess taken at 2:52 until 3:06 p.m.)

THE COURT: Bring the jury in.

(Jury in at 3:06 a.m.)

THE COURT: Let me see counsel at side bar.

(The following proceedings had at side-bar bench.)

THE COURT: Do you have any objections to the -- to any of the ones submitted by defense, the instructions?

MR. MURPHY: Judge, I have got objections to talking about the Paperwork Reduction Act and all that, because that has been rejected by all the courts uniformly. I have an objection to the stuff about the Anti-Injunction Act because they can go -- they have got avenues of -- Judge, if you want to stay tonight, I mean I have got written down what is the problem.

THE COURT: There's no objection to using quotes from Bishop, are there? I take it that is not a problem.

MR. MURPHY: If that's what the Supreme Court said, I'm stuck with it, Judge.

THE COURT: All right.

MR. BECRAFT: Thanks, Judge.

(The following proceedings were had in open

court.)

MR. BECRAFT: May it please the court, the defendant calls the defendant, Vernice Kuglin.

THE COURT: Would you raise your right hand, please? Do you swear that the testimony you are about to give in this case will be the truth, the whole truth and nothing but the truth, so help you god?

THE WITNESS: To the best of my ability, Your Honor, yes, sir.

THE COURT: I have never had somebody say that, so let's talk with counsel and see if that's okay.

(The following proceedings had at side-bar bench.)

MR. BECRAFT: I will simply tell her to say yes or no, Judge.

MR. MURPHY: I think she has got to swear or affirm, I don't think --

THE COURT: I think it's I do or I so swear or I affirm or I do.

MR. BECRAFT: I will tell her to affirm, Judge, I think that may be the problem.

THE COURT: Well, I'll ask her again and we will see what the answer is. I had somebody one time who -- what did that lady say? It wasn't in your case, I had a lady who said I swam. She didn't say I swear, it

was I swam. It was a culture thing where she didn't want to swear, so we talked about it, and what she wanted to do was affirm.

(The following proceedings were had in open court.)

THE COURT: Sometimes individuals wants to affirm and not swear, and I usually ask them in advance do you wish to affirm or do you wish to swear, it doesn't matter.

THE WITNESS: I can swear.

THE COURT: Okay. Well, then, raise your hand and I'll swear you again so we're all clear. Do you swear that the testimony you are about to give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE COURT: Okay. Thank you.

VERNICE KUGLIN,

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

DIRECT EXAMINATION

BY MR. BECRAFT:

Q. Will you state your name, please?

A. Yes, and I will state it correctly. My name is Vernice Braendli Kuglin.

Q. Okay. I'm sure the court reporter would like it spelled.

A. It is spelled V, as in Victor, E-R-N-I-C-E. Middle name is B, as in boy, R-A-E-N-D-L-I. My last name is Kuglin, K-U-G-L-I-N.

Q. You heard your name pronounced a multitude of different ways in the courtroom. Your last name is Kuglin, correct?

A. That's correct.

Q. You're the defendant?

A. Yes.

Q. Have been throughout this whole trial?

A. Yes.

Q. Could you tell the jury a little bit about yourself, about where you were born, where you grew up, a little bit about your schooling?

A. I was born in Nigeria, West Africa.

Q. Okay. Let me stop you right there. Who are your parents?

A. My parents were Teckla and Carl Kuglin.

Q. Were they American citizens?

A. Yes, they were. My father was born and raised in Kansas. He was a first generation American, and my mother was born and raised in Milwaukee, Wisconsin. She was also first generation.

Q. All right. And what was your -- how was your father employed at the time you were born?

A. He was a missionary. He worked for the Sudan United Mission, and after I was born, he registered my birth with the United States Consul in Nigeria.

Q. Bring us quickly, if you can, up until about your mid teens, about what you did, where you lived, where you went to school.

A. Well, at the age of six -- let me back up a little bit. When I was born, as I said, we were in Nigeria, I was born in a mission hospital, and I grew up out in what we call the bush. It was -- we had a thatch roof house, mud block, no running water, no electricity, the kitchen was about fifty yards from the house, it had a tin roof, and the outhouse was about a hundred yards from the house. So I grew up in a pretty primitive environment or conditions, but it was a life that I learned to love. At age five, I was given

anti-malarial drug, with Aspirin, I was paralyzed, and my parents brought me home to the states where I went to Mayo Clinic for some treatment. Went back out to Africa, and was then -- at age six, I went off to boarding school. Now, all of the missionary children in Nigeria lived in boarding school, and this was 400 miles from where my parents lived, and we lived there nine months out of the year. When I came back to the states again in my fifth grade, went to school in Kansas, and then again when I was a freshman in high school.

Q. All right. And when was it you entered high school?

A. I entered high school in 1961, this was in Kansas.

Q. Did you complete high school?

A. Yes and no. I did three years of high school, and I had all -- I had taken all the credits that were available, and so I went on to college out of my junior year of high school because college only required -- it required fewer credits than it was necessary to graduate. So I went on to college through -- from my junior year.

Q. Give us an approximate range of the years in which you were in school, '65, '66 through whatever?

A. It was about '6 -- let's see, '63 through about '66, and in 1966, I dropped out of college.

Q. Okay. And did you seek employment after that?

A. Yes, I did.

Q. What was that?

A. I had always dreamed of being a flight attendant, and so I went down to Dallas, and I interviewed with Braniff. At that time, Braniff was in its heyday. They had come out with the new Braniff strip, and it was, you know, it was the airlines to fly for. I did not get hired by Braniff, and so I ended up working at Texas Instruments on the assembly line at nighttime, and then later I did door-to-door encyclopedia sales work, a job that I'm glad I'm not doing now. Later on in that year, I decided to go back to Braniff to interview again, and I was hired as a flight attendant, and I stayed with Braniff from 1966 through '69. In March of '67, I transferred out to Travis Air Force Base, and I flew the military contract flights flying troops into Vietnam.

Q. About this time frame, '68, '69, did you meet somebody and get married to them?

A. Yes, I did.

Q. Was that a long marriage?

A. No, that was a rather short marriage.

Q. Okay. As a result, did you have a son born to you?

A. Yes, I did. My son Christopher was born, and when he was two months old, his father and I separated.

Q. Okay. And when was that?

A. That was in 1969.

Q. All right. What employment have you had since you -- since 1969 and had your son?

A. Oh, let's see, I have done many things. I have worked for the Welfare department. I've been a waitress. I've been a kitchen help. I have been a secretary. I have been a file clerk. I was a book manager for a library, and I guess that covers that range.

Q. Okay. And how long was that that you were doing those types of jobs?

A. Well, that was until about '78.

Q. And where were you living at that time?

A. I was living in Baleo, California, Fairfield, California.

Q. Did you get a job in 1978 that had something to do with airplanes?

A. Actually, what I did, in 1975, Emily Wurner had been hired by Western. She was the first woman to be allowed to fly for the commercial carriers, and I was looking for a career so that I would be able to support my son, put him through college and such, and a friend of mine suggested that I might take pilot training.

Q. And did you?

A. Yes, I did. So I went down to the local Nappa County Airport, and I started taking my flying lessons. I got my private license there, and the same friend had gotten then hired by American Airlines and had moved to Dallas. So he told me that if I would come down to Dallas that he would --

and bring along a certain amount of money that he would continue my flying lessons. So I left my son with his father and went to Dallas. Unfortunately, Alex could not -- did not have time to give me the flying lessons, but I ended up taking flight training at Beecham Field there in Fort Worth where I got my commercial, my instrument and my multi-engine rating.

Q. Did there come a time --

MR. MURPHY: Judge, could we approach?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I know that counsel wants to get as much personal to give the jury some personal context, but this is just irrelevant.

MR. BECRAFT: I'll speed it up, Judge.

THE COURT: Okay.

MR. BECRAFT: Okay.

(The following proceedings were had in open court.)

Q. Ms. Kuglin, listen to my question, can you tell us about -- where are you employed now?

A. I'm currently on a personal leave of absence from Federal Express.

Q. Okay. And how long have you been working for FedEx?

A. I have been working for FedEx since 1985.

Q. All right. Where were you working before that?
A. I was working for Royal Airlines in Shreveport, Louisiana.
Q. And what were you doing for Royal Airlines?
A. I was flying their airplanes. I was first a co-pilot and then a captain on the Beech 99 and then on the Bondarondi (spelled phonetically).
Q. So you moved from Royal to FedEx?
A. Yes, I did.
Q. So when did you start to work for Royal?
A. I started to work for Royal, that was after my employment as a corporate pilot in Lafayette, Louisiana, so that was in 1980 -- '80, '81.
Q. So you were -- before Royal, you were flying also?
A. Oh, yes. I flew corporate in Lafayette, Louisiana for an oil company for six months, and prior to that I had been instructing for two years. After I received all my ratings, I instructed for two years. I flew sky divers on the weekend to build time, and those were my aviation jobs. Trying to build my time so that I could get hired by FedEx.
Q. So the late '70s, you were training?
A. Yes.
Q. Flying sky divers, then you went to work for a company as a corporate pilot?
A. Yes.

Q. And then you moved from, I guess, '80 or '81 to '85, you were flying as a pilot for Royal?
A. Royal, right.
Q. And then FedEx?
A. And then FedEx. And my son -- I had mentioned earlier that I had left my son with his father, but that was only for a year. So during this time that I was building time, my son was with me, and we moved around quite a bit.
Q. When was it that you moved to Memphis?
A. I moved to Memphis in June -- excuse me, June of '85.
Q. And you have lived here ever since?
A. Yes, I have.
Q. And for the last -- since 1989, have you lived in a very specific spot in Memphis?
A. Yes.
Q. What's the address?
A. I have lived at 200 Wagner Place, number 802, Memphis Tennessee. It's right on the corner of Beale Street and Wagner place.
Q. Ms. Kuglin, did -- have you read the indictment in this case?
A. Yes, I have.
Q. You heard the -- you understand the indictment, right?
A. Yes, I do.
Q. It charges you with six counts of tax evasion?

A. Yes.
Q. You heard Ms. Osborne come from the service center, and she gave testimony in this case, and you sat right over there and listened to it, correct?
A. Yes.
Q. She said you didn't file returns from --
MR. MURPHY: Judge, I don't believe commenting on other witness' testimony is proper, and I'm going to object.
THE COURT: Objection sustained.
Q. Ms. Kuglin?
A. Yes.
Q. Let me back up, and I'll ask you this: When was it that you started filing returns?
A. First job I had ever had was A&W Root Beer in Holton, Kansas, and that would have been 1960, '61 when we first came back from Africa.
Q. Do you have a recollection as to when it was you filed your first tax return?
A. I would presume that it was probably -- although that may have been with -- on my parents, so I don't know exactly when the first return was filed.
Q. If somebody said '65, would you disagree with them?
A. Oh, no, not at all.
Q. And did you file returns in the late '60s, early 70's

all the way up into the '80's.
A. Oh, yes, I did.
Q. Okay. Did you file returns in '91, '92?
A. I did.
Q. Why were you filing those returns during those years that I have just named off?
A. Because I thought that I was required to.
Q. And was that based on any study of the law?
A. Oh, no, not at all.
Q. Did you ever prepare for these years, '65 through about '91, '92, did you prepare your own returns?
A. Some of them, I did.
Q. All right. Did there come a time in which you had others prepare your returns?
A. Yes, H & R Block did some of my returns. I had an accountant here in Memphis do some of my returns.
Q. If we had -- I don't know the exhibit number, but you have looked at the '92 return that the government has offered into evidence, correct?
A. That's correct.
Q. There's an accountant listed on there as a return preparer, right?
A. Yes.
Q. And that's Mr. Knapp?
A. That's correct.

Q. He prepared your '92 return?
A. Yes.
Q. Did he prepare some of your returns before that time?
A. I believe he did, yes.
Q. For a number of years, whatever amount. Okay.
Have you ever attended any courses on tax all the way up through about '91 or '92?
A. Not at all.
Q. Had you ever looked at the Internal Revenue Code?
A. I didn't even know what it looked like.
Q. Okay. Let me go straight to the matter, for the years, '93, '94, '95, '96 through 2001, Ms. Kuglin, did you or did you not file federal income tax returns?
A. No, I did not.
Q. Why?
A. For the last ten years, I have been asking the IRS either through my own letters, through visits to the IRS and finally through an attorney what section of the Internal Revenue Code makes me liable for the individual income tax and what law requires me to file the Form 1040. And to this day, I have not had my questions answered, and so I decided then.
Q. When was it that you started changing your beliefs regarding the filing of income tax returns?
A. Well, the journey that got me to this point to where we are today actually started in 1992.

Q. What happened then?
A. I was between flights, and as anybody who works for the airlines or sales people, people who are gone, that when you get home, there's a lot of mail, a lot of housework, a lot of everything to do, and so I was cleaning house and turned on C-Span, as you heard Mr. Becraft say earlier.
Q. Can I stop you right there?
A. Yes.
Q. You said -- I brought up something with the jury, can you kind of describe what you do, your daily routine when you're flying for FedEx?
A. Oh, yes, I can.
Q. All right.
A. The routine is different. We as pilots bid every month for the routings that we want to fly, and based on seniority and what we can hold in the seniority level, then we have a different schedule every month. Some of the schedules entail getting up in the middle of the night, flying to the destination, sleeping in the hotels all day, coming back into Memphis at midnight that night and going back out again. That's what we call the infamous hub terms. Those are the flights going in and out every night. Other flights leave Memphis around 2:30 in the morning, go to a destination, sit for a few hours and then back into Memphis. Other flights are international flights which are 15-day flights where we're

gone a long period of time, and I did those flights when I was a co-pilot and flight engineer predominantly. So every month, the schedule is different, but we're away from home probably anywhere from 200 to 400 hours a month.

Q. And basically while we're sleeping, you're working?

A. Basically.

Q. Now, sometime in 1992, I interrupted you a minute ago, you were saying something about you were doing something at home when something came to your attention about something, taxes?

A. Yes, I was cleaning house, and I listen to the TV so I can get things done, and I would on C-Span, and on C-Span that day, they were covering the Libertarian National Convention, it was in July of '92. And I had never heard of the word Libertarian before. I had no idea what it meant. I had no idea there was a political party called the Libertarian Party. So it caught my interest, and there two gentlemen, Andre Maru (spelled phonetically) Dick Body (spelled phonetically) who were vying for the nomination for the presidential candidate, and as I listened to the debates between these two gentlemen, I started hearing things that I had never heard the other two parties talk about. I had been member of both the Republican and the Democrat parties at different times, but these gentlemen were discussing the Constitution, they were discussing the role of government in society and they were

discussing also taxes. And I found it so interesting and so novel that I had never heard any of this stuff before that I called the 800 number and asked them to send me some information and anybody who might -- I might contact in the local area. So I got the information. Excuse me. And they referred me, excuse me, to a gentleman by the name of Don Winfield. Don Winfield at that time was the chairman of the Tennessee State Libertarian party, and he was conducting meetings here in Memphis. So I went to the meeting. It was a small group, and I asked them basically what a Libertarian was or what the word meant, what the philosophy was, and I learned at that time that there were really two words, there were the big L -- there was the big L for Libertarian, which was the political move, and then there was the little l Libertarian, which was the philosophy of the Libertarian movement, and I found out from that that the Libertarian philosophy was basically the same philosophy of the founding fathers, the philosophy that generated the Bill of Rights, the Constitution and the Declaration of Independence, and this philosophy was that in a civil society the initiation of force and the initiation of fraud are not acceptable activities, that we as citizens are absolutely responsible for our actions and we are required to also hold those in power responsible for their actions. I also learned that the role of government in a society is to protect the rights of life, liberty and the

pursuit of happiness for people.

Q. Now, this -- so you became interested in the Libertarian party as a result of hearing this on the TV and meeting Mr. Winfield?

A. Yes.

Q. Can you just briefly tell the jury what was your association with the Libertarian party from that point until about '95 or '96, just what you did?

A. Okay. Let's see. I was elected chairman. The state Libertarian party, the first meeting that I went to, they were looking for somebody and I was interested and I thought it would be good learning the information about the Libertarian party. I was also directed to an organization called the advocates for self-government, and the advocates are located in Atlanta. They are really the educational arm of the Libertarian party, and from them I ordered a lot of information, lots and lots of books. I have a room in my house that the entire wall is a book shelf of videos, books, tapes, flyers and such that I ordered from the advocates and from other places. Don and I went to conventions. Don had seminars. I organized a group in Memphis called the Advocates for Self-Government supper club and once a month, people who were interested would get together and we would discuss the social political ideas of the Libertarian party and of the United States.

MR. BECRAFT: I'm listening to this TV back here, I was wondering if the court could inquire as to whether the jury can hear Ms. Kuglin?

THE WITNESS: Can you hear me all right?

THE COURT: They can hear fine. She is speaking into her mic, I think everybody can hear well. You can turn off the screen, if you want to.

MR. BECRAFT: I may not know how to do it, Judge.

THE COURT: It has got an on/off button. I think the juror can handle that. Thank you.

Q. Did you learn anything about taxes by attending these various meetings where you went --

A. Well, initially --

Q. -- regarding the Libertarian party.

A. I'm sorry.

Q. You told us you went to a lot of Libertarian meetings, did you learn or begin to learn anything about federal income taxes while you were going to these various meetings?

A. I think the first thing that I heard which struck me or made me take notice was that I kept hearing the fact that the income tax was a voluntary tax. Now, I had been paying my taxes, I had been filling out my 1040 forms, and Mr. Becraft asked me earlier why I had been doing it at that time, and I said because I thought I had to. Another factor was that I

was afraid if I didn't that something bad would happen to me. So when I started hearing that it was a voluntary system, it just took me surprise. I couldn't understand how it could be a voluntary system. And they said it was a voluntary compliance.

Now, the words voluntary and compliance to me don't match very well. Voluntary, I looked up in the dictionary, and it -- basically, it was something that wasn't mandatory, it was something that you chose to do, that you -- compliance was completely different. It was something that you had to do. So I was confused by this term, and I -- somebody at one of the seminars suggested that I call the IRS and ask them if the income tax was a voluntary tax. So I did. I called up the IRS, and I said, you know, I would like to know if the income tax is voluntary because if it is, I want to unvolunteer right now. And they said, no, it's voluntary compliance, and I said what does voluntary compliance mean, and they said you have to do it. And I said that doesn't sound very voluntary to me. Well, the conversation didn't get very far. So I decided I needed to look somewhere else, and I kept asking around, reading, trying to find some understanding of this conflict of terms. And I finally met a gentleman, I don't remember his name anymore, heard him at a seminar that I heard him speak at, and he said his understanding was that as American citizens, we are responsible for reading the tax

code, for understanding what it says, for determining whether or not there's a tax that applies to us. If it is, if we determine that we are liable for one of the taxes in that code, then it is our civic duty to fill out the documents which relate to that tax.

Now, once we filled out the documents and self-assessed, it's now our responsibility to comply with our assessment. And I learned that as American citizens, we are responsible for self-assessing. And once we self-assess, then we must comply. But first of all, we have to determine whether or not we're liable for one of the taxes. So that straightened out the different -- the conflict in those words for me.

Q. Okay. But -- one of the first things you kind of ran into when you got involved in this -- on your personal endeavor to learn something about the tax laws, you heard these statements about voluntary?

A. Yes, I did.

Q. Now, down to your left --

A. Yes.

Q. -- on the floor, there is that blue box, can I request that you pull out the files that bear the numbers 5 through 15 and then also 22? Do you have them?

A. Yes.

Q. Okay. Now, can I direct your attention to the one that

is -- has the number on it of five?
A. Yes.
Q. Okay. Can you identify that for me, please?
A. Yes. This is entitled Internal Revenue investigation. It's dated Thursday, February the 3rd, 1953, House of Representatives Subcommittee on Administration of the Internal Revenue laws of the Committee on Ways and Means, Washington, D. C.
Q. Is that something that you read and relied upon that related to your understanding of tax laws?
A. Oh, yes, it is.
Q. Do you have a judgment or recollection as to when it was that you might have seen or read this document?
A. This would have been early on prior to the time that I stopped filing, somewhere between '92 and '95.
Q. Okay. But no later than April the 15th of 1996?
A. Oh, no, not at all.
Q. And what was it in this particular document that was important for you?
A. Well, the -- I can probably quote it better than I can find it. What was happening at this time is there was an investigation of the Internal Revenue Service for corruption within the service, and at this investigation was Mr. Avis who at that time was the -- let's see, Mr. Avis, he, I believe, was the head of the -- of the Alcohol, Tobacco and Firearms

Division of the IRS. And as the committee was asking some questions, they raised a question in reference to where there would be some offices or counsel that would be -- that they would contact, and Mr. Curtis who was one of the Congressmen asked the question -- made the comment an alcohol tax matter that would go to the appeals section, and he was interrupted by Mr. Avis, and Mr. Avis said there is no such thing, that is where the structure differs, and he went on to say, let me point this out now, your income tax is one hundred percent voluntary tax. Your liquor tax is a one hundred percent enforced tax. Now, the situation is as different as night and day. Consequently, your same rules just will not apply.
Q. Now, what's your understanding that that passage that you just read us from, what does it come from?
A. Well, this comes from the government. This comes from a congressional hearing, that comes from a man who is at the head of an agency, and he's telling me here that the income tax is one hundred percent voluntary tax.
Q. Okay. And it was your understanding that you were reading from a government document?
A. Yes, sir.
Q. Okay. Let's kind of flip that over and set it aside for right now.
A. Okay.
Q. And let me direct your attention to the one -- the

document that has a number six on it.

A. All right, I have it.

Q. And can you identify that for us, please?

A. Yes, this is -- it says '79 annual report from the Commissioner of the Internal Revenue.

Q. And what was important about that particular document in reference to your beliefs?

A. Well, I find that throughout this document, there was some six times where the word voluntary was mentioned, and it says -- let me read the several places. Let's see, the whole sentence, there is no doubt that better taxpayer assistance, more sensitive responsiveness to taxpayer compliance, complaints and problems and simpler tax forms and instructions are of great importance in achieving a high level of voluntary compliance with our tax laws. Later on, it says, to put these figures in context in the same tax years individuals voluntarily reported nearly 1.1 trillion in income and paid a total of 142 billion dollars in taxes.

The next paragraph, the report lends considerable weight to the conclusions drawn from past studies that voluntary reporting is highest when incomes are subject to tax withholding. And the next paragraph, in fairness to the millions of taxpayers who voluntarily file, report their income and pay the tax, we must strengthen current compliance efforts. And I believe there's one more, it says the -- let's

see. The great abuse we're finding in this area, if allowed to continue unchecked, could result in serious decline in taxpayers' perception of the fairness and evenhandedness of our administration of the tax system and consequently in their voluntary compliance. So here we have six places where the Commissioner of the Internal Revenue Service talked about the income tax or the tax system being a voluntary system.

Q. Take a look at the file that has the number on it seven -- seven and eight.

A. You want me to set this aside?

Q. Yes.

A. Put it back in the file. Which number was that?

Q. Seven.

A. Seven.

Q. And can you identify the document for us, please?

A. Yes, this is a 1992 1040 form.

Q. Copies of parts of the '92 instruction booklet?

A. Yes, it is.

Q. Is that something you read and relied upon?

A. Yes, it is.

Q. Direct our attention to that particular document, the '92 instruction booklet bearing the number seven on it, what was it?

A. What was the document?

Q. What was on that document that you found?

A. It says right here -- excuse me, I'm sorry, it says a note from the commissioner. Dear Taxpayer. Thank you for making this nation's tax system the most effective system of voluntary compliance in the world.

Q. Let me direct your attention to another one, the next one, number eight. Is that something similar except for '93?

A. Let me get this here. I did have a binder with all of these, and somehow it disappeared last night when I left it here at the court, so I'm not sure where it is. '93, yes.

THE COURT: Let me talk to people at side.

(The following proceedings had at side-bar bench.)

THE COURT: Okay. That was a very inappropriate aside. What is she talking about? You didn't come to me this morning and say something is missing. What is missing?

MR. BECRAFT: No, Your Honor. I left all of our books up here last night.

THE COURT: Where did you leave them?

MR. BECRAFT: Just right there.

THE COURT: Is something missing?

MR. BECRAFT: Well, no, no -- we don't know where it went. After we left court, I left all these exhibits up here so I wouldn't have to bring them back and forth. She has a white notebook that she has had her

boyfriend looking for ever since. We walked down to Gordon Biersch's last night. My suspicions is it got left down there, but it was all her notes in it, but we have -- for our exhibits, we have got so much redundancy built into it that she has misplaced her notebook, but, you know -- so we're just going through the ones that she has got.

THE COURT: The problem with the inference is that somehow she left it here, and Mr. Murphy is here and it disappeared, that's the problem with the inference is that she's blaming it on the government. Frankly, I'm not the government, I'm the judiciary. I know we didn't do anything with it.

MR. BECRAFT: I will ask a question about it.

THE COURT: Mr. Murphy, we don't have to say anything about it, but I want to make sure that there is a not a problem. If she thinks she is missing something, we need to look for it.

MR. BECRAFT: We have, Your Honor. We haven't located it, but we have got so much spare copies that we're proceeding with the box that we have got. It poses --

THE COURT: That's no problem. That's fine.

(The following proceedings were had in open court.)

THE COURT: That's the first I had heard about anybody leaving something in court and it not being here the next morning. I wish they had told me this morning. We try to lock things up every night, and, frankly, we do. We lock up the courtroom. In fact, we even lock up the jury room, have to unlock it in the morning, but I wanted to make sure there wasn't something that we had inadvertently moved around, and we will look for it, although I don't think --

THE WITNESS: May I address the court?

THE COURT: That's okay, I just wanted to make sure we didn't lose something.

THE WITNESS: No, I just meant it was just I had them all in file, and so I was just fumbling around a little bit. I didn't mean to imply that there was anything that -- you know, it's possible that I had taken it with me and left it somewhere.

THE COURT: Sure, that's okay. I just wanted to make sure that we didn't lose anybody, okay.

THE WITNESS: No, no.

THE COURT: It is possible for the federal government to lose something, I agree with you on that.

THE WITNESS: I have everything here, it's just not as easy for me to get to as my own copy.

THE COURT: No problem.

Q. You had the same exhibits organized for yourself in your own little folder?

A. Yes, I did.

Q. Which right now cannot be located?

A. That's correct.

THE COURT: If we find it, we will give it to you.

THE WITNESS: If you don't mind me fumbling around, I won't need it.

THE COURT: That's no problem at all.

MR. BECRAFT: My personal conclusion is it's somewhere on Main Street.

THE WITNESS: Yes.

Q. We have been distracted, let's go back to that exhibit number, what is labeled number 8?

A. It's number 8.

Q. Kind of hit it fast. Is that another statement like the one you just read?

A. Right, it is 1993, 1040, it says you are among the millions of Americans who comply with the tax law voluntarily.

Q. Okay. Let me direct your attention to the one that has the number nine on it.

A. All right.

Q. Or skip that one and go to number ten.

A. All right. I have number ten.

Q. Was that something you read and relied upon?
A. Yes, it is.
Q. What was important about it?
A. Well, the title is Withholding Is Not Required. Employers and employees are volunteers in a tax scheme. It says employers are not required to have money withheld from their earnings.
Q. Okay.
A. Employees, I'm sorry.
Q. Okay. Now, listen to my number, I directed your attention to number ten.
A. I'm sorry, you are absolutely correct, I pulled out the wrong one. Number ten.
Q. What is your understanding of what that document is?
A. This document is -- at the top, it has the Internal Revenue Service logo, and then it says mission. The purpose of the IRS is to collect the proper amount of tax revenues at the least cost to the public and in a manner that warrants the highest degree of public confidence. In our integrity, efficiency and fairness, to achieve that purpose, we will encourage and achieve the highest possible degree of voluntary compliance in accordance with tax laws and regulations. We will advise the public of their rights and responsibilities.
Q. Now, let me direct your attention to -- there's a series of similar documents that are labeled or numbered 13,

14 and 15, can you pull those out for us, please?
A. I also had my documents highlighted, so it is going to take me a little while to find.
Q. Now, you just got through talking about Exhibit Number 10, the mission statement of the IRS, right?
A. Yes.
Q. All right. Do 13, 14 and 15, those documents bearing those numbers, do they kind of relate to this general topic of the mission of the IRS?
A. Yes, they do.
Q. Okay. And is it similar to -- is that mission of the IRS in those documents similar to the one in number 10?
A. Let me find this here right here. Yes, it is. The tax system is based on voluntary compliance and taxpayers complete and return the forms with payment of any tax owed.
Q. Is there something on that -- is that number 13?
A. This is number 13.
Q. Is there something at the top of the page that would indicate a date?
A. Yes, it says 4-1 of '97.
Q. All right. And is it fair to say that the next two exhibits are basically the same type of document, but for later years?
A. Yes, they are, and they are for 4-1-98. Documents come out of 26 Code of Federal Regulations, Chapter 1. And the

third one is for April 1st of '99.

Q. Okay. Of course, these are later in time, but sometime shortly after these documents would have been published and before April 15 of, say, 2000 or 2001, had you read those documents?

A. Yes, I had.

Q. Did you rely upon them?

A. Yes, I did.

Q. For the belief that there's statements from the government about voluntary compliance?

A. Absolutely.

Q. Now, these documents right here, 13, 14 and 15, what is your understanding as to their real nature, what are those documents?

A. These are 601, 602 is tax form and instructions, it's about completing the forms.

Q. All right. Is that regulations?

A. Yes, it is.

Q. Let me direct your attention to -- can you pull out 22? Can you identify the exhibit number or the document that is labeled 22 for us, please?

A. Yes, the document that is labeled 22 is a -- it's from the Supreme Court reporter. It's a case entitled Walter Flora versus the United States of America, and it's dated March -- well, re-argued November 12th, 1959, decided March the 21st of

1960.

Q. Okay. I have to ask you some questions that relate to a promise that I made to the court. Ms. Kuglin, is it your understanding that during your testimony of this case that what you're going to be telling the jury is your beliefs about the law, correct?

A. That's correct.

Q. All right. So if we kind of get rolling along here and you say the law, the law, the law, are you telling us your belief about the law?

A. Yes, it is my belief. Just my belief of the law.

Q. And you understand that later on, the court is going to be telling the jury what the law is?

A. That's correct.

Q. So you're not attempting to tell the jury what the law is?

A. No, I'm not.

Q. Having said about, let's roll back to that document number 22, did you say it is called the Flora Supreme Court case?

A. Yes.

Q. Okay. Did you read that at some time when you first started studying the tax laws?

A. Yes, I did.

Q. Okay. Direct your attention to -- what was it that was

important in that particular case that you noted?

A. This is on this document, it was at page six of 47, and there's a statement which the court returned in their decision. It says our system of taxation is based upon voluntary assessment and payment, not upon distraint.

Q. What did that mean to you?

A. That basically substantiated the things that I had read before about voluntary -- that the tax system was voluntary, that, as I stated before, we as citizens are to understand the tax code, as best we can, assess ourselves, and then voluntarily comply with the rules and regulations if it applies to us.

Q. So would you have read this case and relied upon it at some time before, oh, 1996 or 1997?

A. Oh, yes.

Q. Would it have been before that time?

A. Yeah. Oh, yes.

Q. Give us your best judgment or recollection as to when you were going to these meetings, when was it that you started hearing this stuff about voluntary?

A. It was at the meetings, I first started hearing it, and as I said before, I started to dig into it and accumulate documents. At these conventions and meetings that you go to, there is a lot of people who bring copies, forms and things like that which, you know, talk about the different aspects of

it. And what the speakers always tell you to do is not to rely on what they have said, but to go and research the documents, go to the library, find the documents, substantiate what they have basically said, and that's why I got the documents and what I started doing.

Q. Now, you said you got a lot of your tax information at Libertarian party meetings?

A. Yes, and conventions and other places.

Q. Was the Libertarian party, the speakers there, were they people that -- were the only speakers ones that were speaking about taxes?

A. Oh, no, no, there were other -- I went to other seminars that were being held. Don Winfield put on seminars and he had speakers come. I go to a convention every August called the ARIS Convention in Aspen and sometimes the speakers there are discussing the tax issues.

Q. But are they talking about something beyond or other than taxes?

A. Oh -- they do, yes, they talk about the -- let me see how to put it.

Q. Do they have speakers about politics?

A. Yes.

Q. Economics?

A. They talk about politics, economics, the role of government in society, how we can improve our society, what

the founding fathers intended for our society, how the tax system was developed and just a wide range of subjects.

Q. Well, so by -- between '92 and '93 and all the way up through '94, were you digging into this topic of how do the federal income tax laws operate?

A. Absolutely. I had -- when I -- some of the material I had gotten from the Advocates for Self-Government, several of the books, and I believe that they were in regard to the Constitution. I got a series of cassette tapes on the Constitution. I was very interested in finding out how the founding fathers looked at the tax issues and how they determined what type of tax system would -- was going to be in the country.

Q. Let me stop you right there.

A. Sure.

Q. Just for -- you mentioned tapes and I have shown this before, what do I have in my hand?

A. You have a series of cassette tapes done by Knowledge Products. They're outside of Nashville, Tennessee or, I'm sorry, Chattanooga.

Q. And narrated by Walter Cronkyte?

A. Yes. They have different series, one is on economics, one is on religions of the world, different wars of the world, just -- there's different series of those tapes, and they're narrated by different very prominent people. And I find them

to be very informative and very credible.

Q. Now, you listened to these tapes and learned something about the United States Constitution, correct?

A. Yes, I did.

Q. Did you read any terms or engage in any study that related to the constitutional provisions that relate to taxation?

A. Yes, I did.

Q. Okay. Explain to us what it was that you were reading.

A. Okay. I ordered a tax code -- I'm sorry, I didn't mean tax code, I looked over here. It's bigger than this. I ordered a copy of the Constitution, and I was really surprised when I got it, because the Declaration of Independence, the Bill of Rights and the Constitution are in a book about this small, and I thought, boy, I have never seen this, you know, why did I not get this book in school. And I started reading it, and I ordered the set of tapes so that it would help me understand this, because I had read several places in the Constitution that related to taxes --

Q. Can I stop you right there?

A. Yes.

Q. So you had the tape series, the Constitution itself. Were there any other documents, that in order to understand the constitutional aspects of federal taxation, any other types of things that you read?

A. Yes, I did. After I had read the information they had, there were court cases that I started reading.
Q. Okay. What were -- what were the names of those court cases to your understanding?
A. The first case was the -- that I was directed to, and you'll have to understand that I took --
Q. Now, listen to my question. Just give the names of the questions.
A. The first case was the Pollock case. The second case was the Brushaber case. The third case was Flint versus Stone Tracy. The fourth case was Redfield versus Fisher. Fifth case was Sims versus Ahrens, and the final case in regard to this was Jack Cole versus McFarland.
Q. Okay. So in these materials that you have listed off for us, the Constitution itself, the audio tape series, those cases, do they relate in some way to your understanding about at least the constitutional nature of federal income taxes?
A. Yes, they did.
Q. Give us -- tell us what you learned by listening to the audio tapes, reading the cases, looking at the Constitution, reading anything else that you did.
A. Well, I found out that the founding fathers were very, very interested in the tax issue. The revolution had basically -- the straw that broke the camel's back was a three cent tax on tea, and the whole revolution basically was trying

to get out from under the long arm of the British government, and after the revolution, there was the Articles of Confederation were compiled, and the Articles of Confederation are similar to the Constitution, much looser than the Constitution. And the Articles of Confederation, one of the things it did not allow for was for the national government to be able to levy taxes, and part of this was because the citizens of each of the states, the states had the power to tax within their own borders and they were, very, very hesitant to allow a central government to have the power of competing with them in the taxation arena. So the Articles of Confederation did not allow for that.
However, situations arose where there was some national emergencies that really needed the federal government to intervene, and at this time, the national government, as it was called then, had very, very limited powers to protect from the enemy without, to adjudicate disagreements, force and fraud within the society, but without the ability to lay taxes, they could not really fight a war, and so the -- there was a convention convened in Philadelphia in order to revise the Articles of Confederation to allow the national government to be able to require the states to pay a portion of the monies necessary for a war or something like that. What ended up out of that was the Constitution. They actually wrote an entirely new document. In those cassette tapes, there's some

very, very interesting information on the debates that went on about the tax issue. This was -- this was something very, very serious for the founding fathers, and how they would decide who got taxed, who got to do the taxing and such like that. I found out that generally the strong arm of taxation for -- in the past, kings, governments and such like that had been customs taxes, indirect taxes, and that -- excuse me, I need to take a drink.

Q. You want me to rephrase?

A. Yes.

Q. Okay. What was it that you learned by studying these documents? You were telling us about your studies of the Constitution, relationship to federal taxation, what was it that you learned by engaging this study that had an effect upon your beliefs?

A. Right. I found out in studying this that there were two types of -- basically two types of taxes which were created under the Constitution. There were the direct taxes and indirect taxes. Now, Article 1, Section 8 of the Constitution says basically that Congress shall have the power to -- excuse me, let me get it out. I'm a little nervous here.

THE COURT: Actually, I need to take about a five-minute break.

THE WITNESS: That would be great.

THE COURT: Is that okay?

THE WITNESS: That would be fine. Thank you.

THE COURT: We're going to take a short break, and that way I can get something taken care of in the back that I need to actually sign, and I will be right back. Five minutes. That will also give you a short break. We're going to stay really much past 5:00. We're going to go right to 5:00, and we're going to stop at 5:00. We're going to come back at 9:00 tomorrow, just like we did today. 8:30, come back at 9:00 tomorrow, so that will be our schedule. See you in five minutes.

(Recess taken at 4:10 until 4:15 p.m.)

THE COURT: You all set?

THE WITNESS: Yes, thank you.

THE COURT: Sure. I'm sorry we -- I tried to check on having -- see if the cleaning folks could have possibly gotten that book. I would have had them check earlier this morning --

THE WITNESS: That's all right. We can handle it this way. You know, it will just be a little bit more effort on my part, but that's fine.

MR. BECRAFT: I bet we left it at Gordon Biersch's, that's my bet, Judge.

THE COURT: I wish -- we might make an effort to try to take care of everybody.

MR. BECRAFT: Judge, it's really no problem, because she has made so many copies of the exhibits that we have redundancy built in.

THE COURT: I think I have done what I should do. I will check on everything I can and I will continue to do that.

THE WITNESS: Don't be worried about it because we will be fine. Thank you.

THE COURT: Well, Mrs. Parker, I'm going to let you actually -- we'll be quite and let you go get the jury.

(Jury in at 4:17 p.m.)

THE COURT: Anyway, we're ready to proceed. Thank you.

MR. BECRAFT: May it please the court.

Q. Ms. Kuglin, I have an idea as to where we were before the break. You were telling us -- I had posed some question about from all this material that you read and studied, you know, you had reached a certain belief about the taxes powers of the United States under the United States Constitution, I think you were explaining what you had learned or what you believed in that respect when we broke.

A. That's correct.

Q. All right. I asked the same question all over again.

A. All right. And I said that in the Constitution there

are three places that has a reference to taxes. Article 1, Section 8 of the Constitution states that the Congress shall have the power to lay and collect taxes, excised, imposed and duties, to provide for the common defense and for the general welfare. But all duties imposed and excises must be uniform throughout the United States. In other words, if you have a gas tax in Vermont of 50 cents, you have to have a gas tax in California of 50 cents. They have to be uniform throughout the country. That Article 1, Section nine of the Constitution addresses a different type of tax. It says no capitation or a direct tax shall be laid unless in proportion to the census and the enumeration herein before ordered to be taken.

Now, in Article 1, section 8, they were discussing what is known as indirect taxes. Indirect taxes are those, excised imposed taxes which can be passed on to somebody else. In other words, if you are a business person and you have a certain business expense or you have a federal -- a tax that you have to pay, you can pass that on to somebody else. Direct taxes were taxes that couldn't be passed on, they were basically taxes that were placed upon the property, fruits of labor and such like that. And then later on, you have the 16th Amendment, which we'll get into, I believe, a little later.

Q. Now, did you read something -- you mentioned earlier this afternoon about some cases that you read. Did they --

those cases themselves relate to this issue of, you know, the constitutional nature of federal income taxes, and did they play some role in your beliefs about your requirement to file returns?

A. Oh, absolutely.

Q. Okay. Can you explain to the jury what this Pollock case was about?

A. Well, after the -- let me back up just a moment for the -- back to the war between the states and to the direct tax. There was a couple of things I wanted to explain on the direct tax. There was some limitations on direct taxation. The federal government could tax excise taxes or indirect taxes, but they did have a limit on direct taxes. One of the limitations on those direct taxes was that they could only be levied in states of declared emergency and that the tax must end within two years after that state of emergency ended. The other requirement was that the cost of the state of -- of the state of emergency needed to be computed, divided among the states based on their inhabitance and the bill sent to the states. I think all of us learned in school about no taxation -- no taxation without representation. Well, that's where this came from, that the percentage of the bill for the state of emergency that was sent to any individual state was done so based on the number of inhabitants. Now, one thing I found very interesting was that the Congress could not

directly tax the individuals in the states, that the bill was sent to the individual states, and it was up to the states to determine -- to figure out how they were going to pay their share of the bill. Some states, if they had enough money in their coffers to pay their share of the bill, the citizens of the states might never ever know that the tax had been paid. Other states, if they didn't have enough money would -- could decide how they wanted to tax their citizens. For instance, in the State of Tennessee, they might decide to tax real estate, might decide to tax the number of windows you have in a house, the number of fireplaces or such like that. But that was left up to the state. That was not a rule the federal government had, so I just wanted to clarify on the direct taxes. And as I started reading more and more -- I was going back to the war between the states, there was a tax, direct tax levied for raising the money for the war between the states, and this was done according to constitutional mandates, and the bill was sent to the states. The tax ended not two years after the war, they took a little extra year to do that, but it did end three years after the war, and from that time on, there really was no income tax, direct tax like by the federal government until about 1894 that Congress decided that they needed a little bit more money. I don't think that's very unusual for us. We hear that all the time, they want a little bit more money. And so there was an income

tax of 1894 was passed. And you want me to continue?

Q. Well, my question to you is that you mentioned --

A. Yes.

Q. -- this Pollock case.

A. Yes.

Q. I would like to know what you learned by reading that document.

A. Okay. The Pollock case was really as a result of the income tax of 1894. Mr. Pollock worked for Farmers Loan and Trust Company, and when the income tax was instituted, the directors of the company began taking -- paying taxes out of the profits of his stocks and his bonds. And in 1895, people were still very familiar with the Constitution. Most people, you know, had read it and were familiar with it. And so he felt that the income tax of 1894 was not a constitutional tax, that it could not be levied on the income off of his stocks and bonds, so he took the case to court, he and some other people, and it ended up all the way up at the Supreme Court level. And in that Supreme Court decision, the majority of the judges or the majority ruling of that case was that the income tax was a tax on property and that because it had not been levied in relationship to uniformity, or I'm sorry, let me back up.

Q. Let me ask you this -- why don't you pull out --

A. Thank you.

Q. There's a file folder in that blue box, there's a number 16.

A. Okay. I have 16. Mr. Pollock, yes.

Q. You just stuck something in your hand?

A. Yes.

Q. Is that file folder 16?

A. This is file folder 16, yes.

Q. Okay. Is that something you read and relied upon?

A. Yes, it is. It is the 339 pages of Farmer -- Pollock versus Farmers Loan and Trust.

Q. All right.

A. And I can continue on with what I was saying if you would like me to.

Q. You mentioned that that is an extremely long case, 339 pages?

A. Yes, I did.

Q. Did you read it all?

A. Yes.

Q. Have you studied it?

A. Yes, I have. I have read it several times.

Q. Is it a little harder to understand than a novel?

A. Yes, it is, but not too much harder. You have to read it slowly, and if you read it slowly, then it begins to fall into place.

Q. Now, what was the refined essence of what you learned

by reading that document that you have in your hand?

A. Okay. As I was -- I was tempted to say a little earlier that the majority of the judges ruled that the tax -- income tax of 1894 was a direct tax and because -- on property and that because it had not been apportioned that it was not constitutional.

Now, they defined the direct tax as a tax on property. Interestingly enough, there was a dissenting position in this case, and this dissenting position was written by a new judge on the court by the name of Justice White, and in his dissenting position, Justice White said no, the income tax is not a direct tax, it's an excise tax and, therefore, it must be uniform across the country.

Q. Now --

A. And so the case ruled the income tax of 1894 unconstitutional.

Q. Did you read any studies that related to what happened after the Pollock case?

A. Yes.

Q. Was that type of stuff that was covered in this tape series here?

A. Yes, in that tape series, and also I had read some books that referred to, and there were other cases. There was the next case that I'm going to talk about, had referred to Pollock and some of the decisions in the Pollock case.

Q. Okay. Let me direct your attention to that file folder, 17.

A. Did you want me to lay this aside?

Q. Yes, lay 16 aside.

A. All right. Let me just clarify this, you just want the stack of exhibits that we're using right here or --

Q. Yeah, that will be fine, or you can turn around and put them up there. We're through with them right now, if you need space.

A. Okay.

Q. Now, you have pulled out of the blue box file folder 17?

A. That's correct.

Q. Okay. Can you tell us what that is?

A. Yes, this is another court case, Supreme Court printed out of the Supreme Court Recorder, entitled Frank R. Brushaber versus Union Pacific Railroad Company.

Q. Now, did you read this case?

A. Yes, I did.

Q. And can you tell the jury what you learned, how this had some impact or view or -- impact upon your beliefs regarding federal income taxes?

A. I want to back up just briefly, after the Pollock decision, Congress was not real happy with this decision. And other people were not real happy with it, and so they were

garnering inform -- they were garnering support to attempt to do another tax, income tax, and finally, in 1913, they -- Congress garnered enough support to pass what we know as the 16th Amendment, and the 16th Amendment, I would like to read that, if I might, what it said about -- 16th Amendment said that Congress shall have the power to lay and collect taxes on incomes from whatever source derived without apportionment among the several states. Basically, what the amendment was wanting to do is to get rid of the apportionment requirement which the Pollock case had assigned to the income tax when it defined it as a direct tax. So after they passed the 16th Amendment, another situation -- another situation arose similar to Mr. Pollock's situation. And this one was a Mr. Brushaber,and Mr. Brushaber worked for the Union Pacific Railroad Company, and again, he owned -- I'm sorry, he did not work for the Union Pacific Railroad, he owned stock in the Union Pacific Railroad Company and, again, they began withholding taxes out of the profits of his stocks. So he took this to the court -- excuse me a moment. Again, this went all the way up to the Supreme Court. Now, interesting factors, I told you before on the Pollock case that the dissenting decision was written by a Justice White. By the time the Brushaber came along, Justice White had become the chief justice of the Supreme Court, and he decided to write this opinion himself. And in the opinion, he said that the

Pollock case was incorrect, that income tax was not a direct tax and that it needed not to be apportioned, that, in fact, by virtue of its name, the term the income tax was an indirect tax, and the requirement under Section 1, Article 1, Section 8 of the Constitution says that indirect taxes must be levied uniformly across the country. So the -- the -- one other thing that came out of the Brushaber case was that the 16th Amendment -- many people feel that the 16th Amendment was declared unconstitutional at that time. It was not, and Justice White did not declare it unconstitutional. He simply defined that the constitutional restrictions of direct taxes by apportionment, indirect taxes by uniformity still applied, that had not been changed, but that the term income taxes was an excise tax.

Q. Well, Ms. Kuglin, this is kind of -- you know, of what significance is a case that declares the federal income tax to be an excise tax, of what significance is it to you about filing returns?

A. Well, an excise tax -- and in order to find the definition of what exactly an excise tax was, I had to do a little bit more research.

Q. Let me stop you there, what was that, what was this research?

A. Well, the research that I did -- but the main research was a case entitled Flint versus Stone Tracy.

Q. Did you read that document?
A. Yes, I did. May I take it --
Q. Yes, it is file number 18.
A. Okay.
Q. You can lay the other aside behind you.
A. I need to put this back.
Q. You have file number 18 in front of you?
A. Yes, I do.
Q. Can you identify that for us, please?
A. Yes. This case is entitled Flint versus Stone Tracy, and it was decided in -- let's see the date on this is -- this is in about 1925, I believe, it was an earlier case, and it was in regard to excise taxes, and one of the -- or the decision in this case, one -- the decisions in this case that defined what an excise tax was, because it was rather confusing at that time. And in Flint versus Stone Tracy, the court said that excise taxes are those taxes laid upon the manufacture, the sale and the consumption of commodities within the country. They're taxes laid upon the licensing of certain occupations and also upon corporate privileges. Now, the thing that was really interesting about the Flint versus Stone Tracy Company for me in regard to the income tax is that my earnings from FedEx, I'm a pilot, I'm not a manufacturer of commodities, I -- my job is not a job that requires a special government privilege to do, and I'm not a corporation. So in

light of the fact that Justice White in the Brushaber case said that the income tax was actually an excise tax, and now in Flint versus Stone Tracy, I'm told that excise taxes are those laid upon manufacturers, upon licenses and upon corporations. So I'm beginning to really question what is going on here, because I know that I'm told that the income tax is the tax I'm liable for on my wages, and every -- these documents that I have come across so far tell me a different story.
Q. Let me get you to -- pull out all at once files number 19, 20 and 21.
A. Are we finished with five through 11?
Q. Yes.
MR. BECRAFT: May I approach, Your Honor?
THE COURT: You may.
A. What number?
Q. 19, 20, and 21. Do you have them in your hands?
A. I do.
Q. Now, let me -- turn to file number 20.
A. Okay. File number 20.
Q. Can you identify that for me, please?
A. I can. This is a case that was heard in 1925. It was -- it's entitled Sims versus Ahrens, and this case was heard by the Supreme Court of our neighboring state, Arkansas. This was decided in Little Rock.

Q. What significance about this particular document regarding your tax beliefs?

A. Well, in the rendering of the decision in regard to the ability of a legislature or a legislative body to tax, it says the legislature has no power to tax for revenue purposes those occupations that are of common right. It goes on to say that the legislature does have the power to declare as a privilege and tax for state revenue purposes those occupations which are not of common right. What this showed to me is that further substantiated that the income tax is an excise tax. It's tax on commodities, corporations and licenses, but here Flint versus Stone Tracy is saying that the legislature does not have the power to tax occupations of common right. Well, my job as a pilot is an occupation of common right, anyone can do what I did, go out to the local airport, start taking flying lessons, building the flying time and become a pilot. So this just substantiated for me one more piece of the puzzle that was starting to fit into place and starting to build a foundation which eventually was going to lead to my decision.

Q. Let me direct your attention to that file, number 21, can you identify that for us, please?

A. Yes, this is Redfield versus Fisher. This was a case decided by the Supreme Court of Oregon over on the West Coast and it's dated October 24th, 1930.

Q. What was it that you learned by reading that case that

related to your tax beliefs?

A. I learned about privileges and what are privileges, and the court in its ruling, one of the most significant things that it said was that the individual, unlike the corporation, cannot be taxed for the mere privilege of existing. Said the corporation is an artificial entity receiving its -- excuse me, owing its existence and its charter powers to the state, that the individual's rights to exist and own property are natural rights. The enjoyment therefore -- it's a little difficult the way they say it, it says the enjoyment of which an excise tax cannot be imposed. And what this confirmed for me a little bit more was that my job, my occupation was that of common right and that I have a natural right to existence and that a tax cannot be imposed on that right.

Q. Let me direct your attention to the file folder that bears the number 19. Is that something you read and relied upon?

A. This is something I read and definitely relied upon.

Q. Okay. Tell us about it.

A. This case is probably my favorite case, and perhaps it's because this case actually was heard in the Supreme Court of Tennessee, the Volunteer State. And this was Jack Cole Company versus Alfred T. McFarland, commissioner, this is a recent case, this is not -- the other cases were 1920s, 1930s and prior to that. This was a 1960s case, and so it gave me,

you know, some recent substantiation in the puzzle that was beginning to form for me. And the important part of this case that the court stated was that the realizing and receiving of income and earnings or earnings is not a privilege that can be taxed. It says since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as a privilege, and that was like one of the final pieces in the puzzle as far as understanding why my right to earn a living in the form in which I chose was not a privilege that could be taxed.

Q. When was it that you engaged in this process of reading and studying these cases that you have just mentioned?

A. I'm sorry, say that again.

Q. Okay. What's the time frame when you were reading this stuff?

A. Oh, the time frame in this was '92, once after I had first heard about the issue of tax, the truth in taxation movement in the Libertarian party, and 1990 through '95.

Q. Well, definitely before April 15th of 1996?

A. Absolutely.

Q. You had read all these cases?

A. Yes, I had.

Q. Can you give us a refined essence of your conclusion that you drew from reading and your studying of the Constitution, its taxing powers and the series of cases that

you have just described?

A. From the Constitution, I learned that there were two forms of taxes, direct taxes and indirect taxes. Indirect taxes had to be levied uniformly across the country. Direct taxes were those taxes which were laid upon property and such like that and they have to be apportioned and the bill sent to the state, not the individual. Pollock, in the dissenting case, Justice White, identified income taxes as falling in the category and class of taxes known as indirect taxes and therefore must be uniform. Brushaber in the Justice White reconfirmed this. Flint versus Stone Tracy had defined for me what an excise tax was, and I realized that my occupation did not fall under the categories of manufacturing, corporations or licenses. Redfield versus Fisher identified that as a natural human being, an individual that had the right to make a living could not be taxed and then, let's see Jack Cole versus McFarland was the clincher, I had a right to earn a living, I and every other American citizen has a right to earn a living and that right cannot be taxed, and that really was the final, I guess, piece of the puzzle that said, you know, something is amiss here. And I decided at that point in time that I was going to really take a stand on this and start seriously asking questions. I had been doing a lot of the research, but I hadn't really been asking questions about it. And the -- of course, the IRS, each year -- I had been paying

into taxes through my employer throughout all of this time, and I -- up until '92 I had been filing my 1040 forms. But I made the decision that I was not going to file a 1040 form, and then I would start asking some very serious questions of the organization who I thought should have the answers.

Q. Let me get you to pull out file folders 1 through 4A.

THE COURT: Counsel, it sounds like we're getting ready to be more specific on some questions, is that right?

MR. BECRAFT: Yes, that's correct.

THE COURT: I think I would rather have all of this on the same day so that it will be more easily followed.

MR. BECRAFT: Your Honor, we're here at the pleasure of the court.

THE COURT: Well, I think that's -- I wish that was true, but, anyway, that's a different thing.

THE WITNESS: You have made it very pleasurable. Thank you, sir. Thank you, Your Honor.

THE COURT: We're here because we have a case to try, and that's what -- I think we better do that. That will make more sense tomorrow because otherwise we're going to start this portion of the testimony and then Mr. Murphy is going to start examining, and if we break it up, it will be confusing, we don't want to do that.

Ladies and gentlemen, we're going to start at 9:00 o'clock. That's a pretty good start time. You have to be here at 8:30, hopefully have had your snack and we will be ready to go. We should be ready to go right at 9:00. I don't think anybody is going to come about any more repairs on my house tomorrow morning, although if they do, I will stay and talk to them, I got to tell you that. Is everybody okay on their -- we have no electrical problems here, right, everybody is okay, and you don't have any insurance problems, you got all your repairs taken care of? All right. We're all working on it.

Well, don't talk about the case among yourselves. Don't let anybody talk with you about it. You heard a lot of references to cases and Supreme Court references and that sort of thing, and I know actually for the people who are really computer driven and get home and get on that computer, it is tempting, and I'm just going to remind you don't try to look anything up. That would be very inappropriate. I will give you all the information that you need from the law side in printed form and also orally when we have the case submitted, and the government and the defense will argue the facts, so don't do that. Don't speak to anybody on either side or anybody who is associated with any side. You should avoid them. And if anybody tries to talk with you, of course,

you should report that to one of the court security officers, a member of my staff or directly to me.

And, again, continue to not watch anything on television, read anything in the newspaper or listen to anything on the radio that might be about this case or cases like it. Well, continue to keep an open mind. We have still only heard, frankly, a portion of the case and you need to keep an open mind until you have heard everything in the case, the final arguments of counsel, the final instructions on the law and, of course, have had a chance to go back to the jury room and then discuss the evidence among yourselves, and then make up your mind.

Ladies and gentlemen, thanks very much. We will let you excused, we will see you at 8:30 tomorrow. We will start in here at 9:00. Thank you.

(Jury out at 4:50 p.m.)

THE COURT: I have a couple of questions I want to ask you. I'm going to let you keep your materials, and Mrs. Saba will re-check, because if we find something, we will get it to you. I have a feeling that -- I mean usually they do not remove anything from the courtroom, and usually when we leave it, it is locked except for the custodial folks.

THE WITNESS: My mind, I could have very well --

THE COURT: Oh, I understand, and it's possible to mislay something.

All right. I need to ask a couple of questions about the instructions. One question, I just want to ask Mr. Murphy, it is very clear to me on Counts 2, 3, 4, 5, 6, 7, 8, 9 -- I'm sorry, 2, 3, 4, 5 and 6, that you are relying on the failure to file -- the information on the Form W-4?

MR. MURPHY: Yes, sir.

THE COURT: As the affirmative act?

MR. MURPHY: Yes, sir.

THE COURT: That's perfectly clear. And what I've been trying to figure out, you probably knew what I was trying to figure out -- and we will let you have a seat if you like -- is what is the affirmative act in Count 1, and I'm not sure -- it can't be a failure to file and it can't be a failure to pay.

MR. MURPHY: Judge, what it is going to be -- and I don't mean to interrupt -- what it is going to be is that '95, what do you call it, W-4?

THE COURT: There's a '95 W-4 also?

MR. MURPHY: Yes, sir, and that was introduced --

THE COURT: That was, that was. It's just not stated and I wanted to be sure. So we're relying on W-4s

throughout?

MR. MURPHY: Yes, sir.

THE COURT: Okay. That was the first question. The second question was, is the government going to oppose the giving of the lesser included offense charge? You know, we usually don't do that, and I think there's some authority that says that we don't have to give that. In other words, I don't have to give lesser included offense language, but -- but what does the government want to do?

MR. MURPHY: Judge, you know, I have been so busy getting ready for this thing, I haven't really thought about it. Part of the problem you have got is some of the case law that -- I have read some cases on it, you can have a failure to -- failure to file and evasion are two different crimes.

THE COURT: They're different crimes.

MR. MURPHY: Because you can have an evasion with the filing.

THE COURT: Well, sure, you can.

MR. MURPHY: Bogus tax.

THE COURT: False information contained in the return, misstatement of various -- all sorts of things can be done in a return.

MR. MURPHY: Sure.

THE COURT: That create a false filing. A

failure to file is different, of course.

MR. MURPHY: Yes, sir.

THE COURT: In the Alamo case, we gave both failure to file charges and other charges. It was not a 7201 case. Well, will you think about that?

MR. MURPHY: Yes, sir.

THE COURT: I kind of need to know that fairly early.

MR. MURPHY: I will let you know first thing in the morning.

THE COURT: I'm not real sure about that. And then on some of the things like the Privacy Act and so forth, I haven't heard anything, we haven't gotten all the way through the material, you know, I mean I view this as a pretty straightforward good faith question, good faith defense, and whether the jury agrees or not is a jury question.

MR. MURPHY: Yes, sir.

THE COURT: But what is your position on this?

MR. MURPHY: Well, Judge, I don't think the jury ought to be instructed on all this other law they have cited in the jury instructions for this reason: It doesn't matter what the law is. What matters is her good faith belief.

THE COURT: That's correct. That's correct. I

think you're right on that. I'm not going to take the final arguments on that right now. But that -- that's kind of been the focus. I'm trying to get a set of instructions that we can work from.

MR. MURPHY: Right.

THE COURT: I'm going to go back and refer to the W-4s throughout, and that's where I'm going to be on that. I suppose you could argue other things, and so I'm not going to -- I'm giving a little more instruction on what is an affirmative act of evasion. I'm just going to give a little more instruction on that and make it perfectly clear that omissions are not acts of evasion.

MR. MURPHY: Yes, sir.

THE COURT: All right.

MR. MURPHY: And I have I have no objection to that.

THE COURT: It's a little helpful to me.

Are we going to have any witnesses after --

MR. BECRAFT: Your Honor, I think we have got one witness that -- we were going to bring one in, but I think we have got enough stipulation on that or at least Mr. Murphy is not going to object, and I was going to meet with one other witness tonight, but, you know, I might after -- he wouldn't be -- his name is Don Winfield, he wouldn't be but about 30 minutes, but there's a distinct

possibility I might just say forget him.

THE COURT: Well, I don't want to get into your thought process.

MR. BECRAFT: Okay. I'm just telling the court.

THE COURT: I think you're warning Mr. Murphy and me that we may be to the jury pretty quickly, and I do appreciate that. Okay. Gentlemen and ladies, we will see you tomorrow at 9:00 o'clock.

MR. MURPHY: Thank you, Your Honor.

MR. BECRAFT: Thank you, Judge.

THE CLERK: All rise.

(Court adjourned at 4:55 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 03-20111-Ml
	)	
	)	
VERNICE KUGLIN,	)	
	)	
Defendant.	)	

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
AUGUST 6, 2003
VOLUME III

BRENDA PARKER
OFFICIAL REPORTER
SUITE 942 FEDERAL BUILDING
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W I T N E S S I N D E X

WITNESS	PAGE	LINE
VERNICE KUGLIN		
DIRECT EXAMINATION (CONTINUED)		
BY MR. BECRAFT:	499	11
CROSS EXAMINATION		
BY MR. MURPHY:	568	19
REDIRECT EXAMINATION		
BY MR. BECRAFT:	627	13

E X H I B I T I N D E X

EXHIBIT NUMBER		PAGE	LINE
Exhibit Number 28	2-3-53 Document	506	16
Exhibit Number 29	1997 Annual Report	507	9
Exhibit Numbers 30	1040 Instructions 1992	507	24
Exhibit Number 31	1040 Instructions 1993	508	1
Exhibit Number 32	1997 26 CFR 5601.602	508	22
Exhibit Number 33	1998 26 CFR 5601.602	508	24
Exhibit Number 34	1999 26CFR 5601.602	509	1
Exhibit Number 35	Cole v. McFarland Case	509	23
Exhibit Number 36	1975 1040 Instructions	518	23
Exhibit Number 37	IRS Bulletin	538	11
Exhibit Number 38	1993 Form 2555 Instruction	5	13
Exhibit Number 39	1993 Form 2555	538	15
Exhibit Number 40	1916 Treasury Decision	544	9
Exhibit Number 41	October 18, 1995 Letter	558	4
Exhibit Number 42	November 25, 1995 Letter	558	6
Exhibit Number 43	Flora Case	571	15
Exhibit Number 44	1992 Tax Return	574	9
Exhibit Number 45	1988 Form 1040	576	7
Exhibit Number 46	1990 W-4 Form	578	13
Exhibit Number 47	Blank Form 1040	580	12
Exhibit Number 48	October 31, 1995 Letter	583	24
Exhibit Number 49	June 16, 1997 Letter	584	21

Exhibit Number 50	June 16, 1997 Letter	585	12
Exhibit Number 51	June 22, 1999 Letter	585	20
Exhibit Number 52	June 28, 1999 Letter	586	25
Exhibit Number 53	July 6, 1999 Letter	587	13
Exhibit Number 54	October 30, 2000	588	11
Exhibit Number 55	Tax Returns	601	6
Exhibit Number 56	CFR Passages	605	5
Exhibit Number 57	1993 Instructions	621	1
Exhibit Number 58	1995 1040 Instructions	625	24

WEDNESDAY MORNING & AFTERNOON

AUGUST 6, 2003

The trial in this case resumed on this date, Wednesday, August 6, 2003, at 9:00 o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

_____

MR. MURPHY: Judge, Ms. White is not here, but she has gone to get some exhibits.

THE COURT: Do you need to wait on her?

MR. MURPHY: No, we don't need to wait on her.

MR. BECRAFT: Your Honor, could we take up a matter, an evidence question before we bring in the jury?

THE COURT: Sure.

MR. BECRAFT: I anticipate that Mr. Murphy has got a lot of objections to some of the proposed exhibits that we're going to offer. With reference to that category of exhibits, I'm proceeding with this in mind, and I would like the court to either approve or disapprove. It may take some arguments, and I think it is going to be more beneficial for us to argue the bulk of these motions outside the presence of the jury maybe before a break or after a break or sometime after the

defendant gets off the stand.

THE COURT: Have you shown the materials to Mr. Murphy?

MR. BECRAFT: Your Honor, I gave the government premarked exhibits.

MR. MURPHY: Yes.

THE COURT: I think the answer is yes. Do we have objections.

MR. MURPHY: Judge, as I said yesterday, and just generally, my objections generally fall into three categories. There are Supreme Court cases and IRS materials, and I would be of the opinion that those are admissible.

THE COURT: Are admissible?

MR. MURPHY: Yes, sir.

THE COURT: All right.

MR. MURPHY: And then there are, for lack of a better word, tax protester type materials that may or may not have extensive legal citations. In fact, one of those, it talks about jury nullification and urges people to nullify verdicts. Clearly, some of the text of that may come in, but the document itself wouldn't, and I think the defendant would be allowed to read from it, but I think we need to know in advance what portion she is going to read. And the last group of materials that they seek

to offer are letters from a CPA and an attorney, I believe it is, that represented Ms. Kuglin, and our position would be that those are clear hearsay. They're not -- they don't fit the state of mind exception.

THE COURT: Are they letters that she claims to have relied on?

MR. BECRAFT: Yes.

MR. MURPHY: Well, Judge, here is the problem. I don't think she can claim to rely on those letters, because at the time they were in the midst of a controversy over the tax matter, and if you look at -- if you look at, I think it's 803, the state of mind exception, it clearly says that you can't offer something -- a statement of belief to prove that belief. And I would submit that's what you're doing in this case. It's 803(3), Your Honor.

THE COURT: Oh, I'm not looking for that. I'm looking for the good faith -- bases for good faith. I don't know whether or not a person can rely on -- are these -- I just have to look at the two letters, whatever they are, and see whether they're something on which a person can rely, and I haven't seen those.

MR. BECRAFT: Would the court like to look at them now?

THE COURT: Sure.

MR. BECRAFT: Either my copies or hers. Ms. Kuglin, have you got 43, 44, 45, 46?

THE WITNESS: Yes, I do.

MR. BECRAFT: May I approach the witness, Your Honor?

THE COURT: Why don't you hand them to me, I'm the one that has to look at them? Oh, okay. You're right, it doesn't matter. I don't think this letter from Thomas Roberts states an opinion in which a person can rely. This is the one dated November the 26th, 1997. This one of -- I don't think this one of December the 8th, 1997 also states an opinion on which a person can rely or even suggest that there's an opinion attempting to be stated on which a person can rely. I don't think this one of January the 20th, 1997 also states an opinion upon which a person could rely from a professional. They just talk about request for documents which are not opinions on which a person can rely. Well, the letter from Mr. Pope also does not state an opinion upon which a person can rely, as far as I can tell.

MR. BECRAFT: Your Honor, can I explain the letters?

THE COURT: Excuse me?

MR. BECRAFT: And the purpose?

THE COURT: Well, they have to fall into an

exception. These are hearsay. And -- and -- clearly, so as a general proposition, they're not admissible. Sometimes a person can obtain an opinion, for example, from -- well, from a CPA, and the CPA can state that they have determined that no tax is owed on a particular -- or as to a particular individual, and that they state that that as a CPA in a professional capacity and advise the client that they need not pay any tax on this particular point.

MR. BECRAFT: These are not offered as opinion letters, Your Honor.

THE COURT: Well, that's what I understood, they're not opinion letters. Had they been opinion letters, they would be in a different category, that's true.

MR. BECRAFT: May I offer additional information to the court on this point?

THE COURT: Sure, sure.

MR. BECRAFT: I had lined up to deal with the authenticity question. These letters come from Florida, and I had a secretary in an office that was going to come up and prove the mailing of the letters. I don't think the government is making an objection, we have agreed, although the court is hearing about this for the first time, that the question doesn't relate to authenticity.

What we're offering them for is not for opinion or anything else, but what -- the point that we're offering them for is that at Ms. Kuglin's instructions, these gentlemen -- they're tentatively marked 43, 44, 45, 46, just the numbers that appear on the documents, they're offered for the purpose of showing that Ms. Kuglin said or asked questions through her lawyers to the Internal Revenue Service to answer, and she also makes statements, there is letters -- there's statements in here we're willing to pay, the only thing we want to do is we want to have answers to our questions. For example, you know, just to demonstrate to the court, the one that is labeled 43 that is dated November the 26th of '97 by Tom Roberts, it says specifically kind of at the bottom of the page --

THE COURT: I have read it already, sure. Our client is not refusing to pay and, in fact, will pay any lawful tax owed once the Internal Revenue Service complies with our request as outlines in this document and, of course, it begins earlier, since our client has never been given documents by the IRS, which clearly state specific taxes the IRS claims -- see, that's not how it works, unfortunately, or however you want to look at it. In our system, the IRS doesn't send them a bill, you send them in materials which are reported.

I need to go take a phone call in the back,

apparently, and we will come back and look at this, but I think probably -- well, we will come back and talk about it for a second.

(Recess taken at 9:15 until 9:20 a.m.)

THE COURT: All right. Anything else from the United States on these letters?

MR. MURPHY: No, sir, Your Honor.

THE COURT: Anything else from the defense?

MR. BECRAFT: Yes, Your Honor. These four letters, there is a series of documents that I consider to be the core of the defense. First is the documents that have already been admitted in evidence, it's the exempt Form W-4 dated December, 1995, that is authored by Ms. Kuglin. Thereafter, in order of importance about exhibits that we're going to cover this morning are two documents that she submitted herself in October and November of 1995. Subsequent to that time, we had this series of letters Ms. Kuglin was asked or asked these people, Tom Roberts and Mr. Pope to write letters on her behalf to the Internal Revenue Service asking her fundamental questions and, likewise, at the same time offering to pay.

Now, under -- that being the case, it is our position that it goes to her state of mind, which is the most important factor that I think the jury has got to decide in this case. She read these letters. She said

that she would make an offer -- she would pay the IRS, she had no objections to paying the tax, she just wanted her questions answered. That, Your Honor, goes to reliance, state of mind as well as intent, and these -- these letters are real important for the intent question, what was her frame of mind. She wanted her questions answered, she was willing to pay, and to me, that -- those are real important facts that demonstrate a lack of intent to commit tax evasion.

MR. MURPHY: Judge, if you look again at 803(3), this is being offered as a statement of belief to prove the belief, and it's not admissible. We're -- where these letters emanated from was an IRS proceeding to levy on the defendant's property, and what that -- what that would tend to do, I would submit to the court, is create a situation where there was a motive to lie, and the reliability factor that you typically have in a hearsay statement, because it's on the spot type of thing just wouldn't apply, and, therefore, we would submit that they ought not to come in. They're just hearsay, there's no way around it.

THE COURT: Well, the exception that's asserted by the defense is 803(3), as I understand, and the government simply argues that it doesn't apply. That rule as to hearsay exception says the following are not

excluded by the hearsay rule even though the declarant is available as a witness; three, then existing mental, emotional or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation or physical condition such as intent, plan, motive, design, mental feeling, pain and bodily health, but not including a statement of memory or belief to prove a fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will. So this particular exception to the hearsay rule does not apply to the letters submitted from Mr. Roberts and from Mr. Pope. Objection by the United States is sustained.

All right. Anything else?

MR. MURPHY: Yes, sir, Your Honor, you wanted me to advise the court what our position would be as to a lesser included offense.

THE COURT: Yes, I did.

MR. MURPHY: And our position is going to be that the jury should not be charged with the lesser included offense given the nature of the charge in this case.

THE COURT: Anything from the defense on that?

MR. BECRAFT: Well, I offered one, I offered a lesser included instruction.

THE COURT: Right, but --

MR. BECRAFT: I think under the facts of this case, the indictment alleges, if part of the offense is committed by a willful failure to file. My position is that terminology -- just by the plain terms of the indictment itself includes the lesser included offense and willful failure to file, 7203.

MR. MURPHY: But, Judge, if you look at the defense they're offering, as I understand it, what the witness has testified to, she had no duty to file a tax return, and that's just not consistent with the defense that's offered.

THE COURT: Well, there is discussion about the inclusion of lesser included offense in pattern jury instruction 8.07 of the Sixth Circuit pattern jury instructions, and this does not appear to be a case where the court should include the lesser included offense instruction, so I'll sustain the position by the United States.

There's some discussion of this in the notes contained with -- or the comments contained with 8.07, and I do agree with the United States that this is not -- certainly not required and it's not appropriate in my determination in this case. That takes care of that point.

MR. BECRAFT: One other matter, Your Honor, before the -- we dealt with the letters. The only other point is that should we, on a piece-meal basis, handle the rest of the exhibits or should we take them up outside the presence of the jury was my offer?

THE COURT: Well, you know, the -- I haven't looked at each of the -- Supreme Court cases and materials from the Internal Revenue Service can be used. I mean they're published materials, they're available for everybody, and the law allows an individual to rely on Supreme Court decisions, it allows individuals to rely upon IRS materials, and so those can be used.

As to materials by other people or entities, they fall in the same problem as any other type of hearsay, and unless it is a learned treatise on tax law, certainly read from and not necessarily have been admitted, but refer to that sort of material, but it has to meet some test to show that it is -- that it falls in the an exception of the hearsay rule. Otherwise, we would get up and read from the Marvel Comics or the Wall Street Journal either one, and it would not be -- although parts of the Journal -- part of the Journal are judicial notice materials like the interest rate portions, but articles in the newspaper would not be admissible themselves. So I think that -- we know that they will not be admissible.

Now, that's our situation. If -- how much material do we have like that?

MR. BECRAFT: Well, Your Honor, I slipped to the court a proposed exhibit list. I have committed a grave error by numbering mine in advance. Bad habits stop slowly, Your Honor. But you can take a look at the exhibit list, and what I will do -- I think it's something we can probably take care of in short order outside the presence of the jury is all I'm saying. I could lay the foundation for some of these documents. I'm not going to offer a lot of these. I will take into consideration what the court has already said and move some of that in, but there's some that I think probably require a separate consideration, separate arguments that I anticipate coming from Mr. Murphy.

THE COURT: Well, you have a lot of things, these various opinions, interesting question about using the ones that are very old, but I think you can clarify them. CFR, there's no question about that, is there, Mr. Murphy?

MR. MURPHY: No, sir, Your Honor, I believe that's admissible.

MR. BECRAFT: And we have some forms, but then there's a lot of other material that is not IRS and everything else.

THE COURT: We have covered the things that you listed as 43, 44, 45, 46. Ms. Kuglin's own correspondence to the agency typically not admissible as a general proposition because everybody can write their own material and then would be able to introduce into evidence, but sometimes it's received because there's no opposition, as an admission, for example. So I don't know what the government will say about those things.

MR. BECRAFT: I'll do whatever the court wants. I will move them into evidence as we take them up.

THE COURT: Why don't we deal with them as they come up? I did get the list though, thanks.

Are we ready?

MR. BECRAFT: We are, Your Honor.

COURT SECURITY OFFICER: Yes, Your Honor.

(Jury in at 9:40 a.m.)

THE COURT: Everybody can be seated. I'm sorry we're starting a little late. The -- we did take up some documents that -- as to which objections could be dealt with in advance and ruled on those rather than our doing those at side bars. There are going to be some other documents that as they come up, we will probably try to deal with at side bar. If we can't do it quickly, we will take another break and deal with them. That way, we're not causing you to have to sit out here while we're trying

to sort through the objections under the Rules of Evidence.

The Rules of Evidence do dictate which type documents can be received and the reasons that they can be received, and it does take a little bit of time to go through each document to make sure they can come in or not. I think we're ready to proceed.

MR. BECRAFT: May it please the court.

THE COURT: Go right ahead.

DIRECT EXAMINATION (CONTINUED)

BY MR. BECRAFT:

Q. Ms. Kuglin, yesterday we had finished a particular topic, and I would like to move on to a different aspect of your testimony.

Between 1992 and early 1995 or maybe late 1995, can you describe for us what you were doing in reference to generally studying the income tax laws?

A. Well, after I had reviewed the cases and the constitutional restrictions on taxation and the other study materials I had, I had come to the conclusion that there was definitely a question about whether or not I was liable for the income tax. So I decided it was time that I really delve into the tax code itself and the 1040 form, which is a document that the IRS has asked Americans to complete.

Q. Let me stop you right there. Do you have in front of

you a document that's called file folder one?

A. Yes.

Q. Okay. Now, is this something that during that time frame that I just mentioned, is this something that you read and relied upon?

A. Yes, it is. As I was going to the different conventions and listening to different speakers, I picked up fliers, information, newspaper articles and such like that which substantiate or which discuss -- did not substantiate, but discussed and raised questions which became kind of a road map for the rest of my study.

Q. Is there something that you read in this -- identify for me, please, this number one.

A. The first exhibit or this first document is entitled Who Is Required To File A Tax Return. It's written by a lady by the name of Claire Kelly, and she was a columnist who had done a lot of research in the arena of taxation.

Q. And what was the general theme that you gathered from this and how did it relate to your beliefs?

A. The general theme was much of what I had discussed yesterday in regard to direct taxes, indirect taxes. She quoted Supreme Court cases such as the Brushaber case, the McFarland case and just a little bit more explanation as to the fact that the source of income was very, very important in deciding whether or not that income fell in the category of

direct taxes which the federal government could only levy a portion -- excuse me, through apportionment and send the bill to the state, and that -- which was considered the source which fell under excise taxes or indirect taxes which had to be uniform throughout the state.

Q. Now --

A. Or the country.

Q. Could I get you to identify the next document that has a two on it?

A. This document is entitled Who Is a Taxpayer? And this, again, is an article written by Claire Kelly. You want me to continue?

Q. Yes, tell us what you gathered from reading that document.

A. One of the first things -- it starts out by saying the revenue laws are a code or a system of regulation, a tax assessment and collection. They relate to taxpayers and not to nontaxpayers and what this placed in my mind was the idea that not every one is a taxpayer, and the article goes on to say that the income is allaying of an excise tax upon a taxable event, that the income tax law or -- that was initially debated in 1909 and then passed in 1913 was actually originally named the corporation tax of 1909. And it goes -- the article goals on and quotes some of the court cases that I talked about yesterday, Redfield versus Fisher, and explained

that there are taxpayers and there are tax payers. Taxpayers are those which are entities of the government, corporations, trusts and things like that, and then there are individuals who are tax payers. They pay the indirect taxes, the gas taxes, the wheel taxes and such like that. So it gave me a much clearer understanding that not everybody is considered a taxpayer.

Q. Let me direct your attention to the next document that has a three on it.

A. This document is entitled -- excuse me -- this document is entitled Deceptive IRS Code Words, and it was published by an organization entitled the Free State Constitutionists. And this talks about the words income, the word person, the word taxpayer, shall and must. And it discusses the fact that the common everyday usage of certain words is not necessarily the legal usage of that word. And I would say an example that I found in my personal life that if somebody in my generation, somebody walked up to me and said, Ms. Kuglin, you are bad. Well, I didn't have a very good feeling because I considered that to be a derogatory statement towards me. The younger generation, someone comes up to me and says, Ms. Kuglin, you are bad, then I understand that they're not being derogatory to me, they actually are paying me a compliment, and so we have to understand what the semantics of words mean, and that's what this document really laid out for me. The idea

that income is determined by where the source is, that the named person can mean an individual, it can be a corporation, it can be a trust, a savings and loan association, a homeowners association. The person can either be a live being or it can be an artificial entity, and -- so you have to understand the context in which the code or the regulations use the term person. Taxpayer, again, as Claire Kelly defined taxpayer could either mean a taxpayer, corporation, entity or person, or it could be a tax payer, somebody who voluntarily pays their -- you know, pays the indirect tax, sales taxes and such. Then they come to the word shall and must. Now, typically, we think that the word shall is mandatory. But there are court cases, and it covers -- let me read through here just quickly. Well, I'm not placing my eyes right now on the court cases that talk about this, but it said that the words must and shall are applied in relationship to a liability or a requirement. In other words, if you have a liability, then you must. But then if there is no liability or requirement for specific tax, but a person voluntarily decides that they want to go ahead and pay it, then it is used in the term may. Yes, you may be -- you may do whatever you want to. If you feel that you want to pay a tax that you have no liability for, there's nothing that stops you.

Q. Let me move on the next exhibit, number -- it has a number on it, 5 or 4A.

A. 4A. This is a newspaper --

Q. You acquired this during your early days in which you began your study?

A. Yes, yes, I did.

Q. And you read it?

A. Yes, I did.

Q. Did you acquire certain information by reading the document?

A. Yes, I did. This was really an advertisement for another document. I did not order the document, but what struck me was that this was in USA Today, a fairly prominent paper, it was an advertisement that an attorney at law took out, a man by the name of James Knowles, and it says that James Knowles spends his year penetrating the owners Internal Revenue Service Code to find that most likely you don't have a liability to pay a set of taxes. He's a member of the California bar and has practiced law for 34 years, since his graduation from prestigious Hastings School of Law.

The importance of -- or what I found in this information was that it wasn't -- I was not the only person asking or beginning to question my liability status, that there were attorneys, there were people who were publishing this information and asking the questions in national newspapers and such like that.

Q. Let me direct your attention to a document that is

labeled 4A.

A. This document is entitled Must You Pay the Income Tax. And this -- I'm not quite sure how I attained it, but it was from the Mutual Assistance Plan, which is an organization out in Pima, Arizona at that time, and this was during the same time period as I was trying -- gathering information trying to find clues to the answer of the liability of income tax. And it states: Liability is established by voluntary assessment. Now, some of the cases that were mentioned in this -- and this article actually directed me to the -- to finding the Brushaber case, the Flint versus Stone Tracy case and some of the others. And it says that before World War II, payments or profit received by individuals in even exchange for their labor were not connoisseured to be subject to income taxes. And, of course, we know in Brushaber, it says -- Brushaber defined the word income because Congress had not defined it. As a matter of fact, in the debates, congressional debates on the 16th Amendment, which are very fascinating, I would encourage everybody to read, Congress -- the legislature could never come up with a definite definition of the word income as applicable taxes, and it was understood that they were considered to be excise taxes and, therefore, fell under the uniformity clause.

Q. Let me direct your attention to -- let's go back to something we covered yesterday, the document that has a 5 on

the front.

A. Yes.

Q. I believe you talked about that yesterday.

A. Yes.

Q. Is this something you read and relied upon?

A. Yes, it is. It was one of the first documents I got.

MR. BECRAFT: Your Honor, at this time, I would move for the admission of the document she has in her hand that I have a big 5 on in the lower right -- left corner.

MR. MURPHY: No objection, Your Honor.

THE COURT: It is received as the next numbered exhibit.

MR. BECRAFT: Your Honor, can I approach and give it to the clerk?

THE COURT: Yes, it will be 28.

(Exhibit Number 28 was marked. Description: 2-3-53 Document.)

THE WITNESS: Your Honor, is it all right if I put these papers right here?

THE COURT: Sure, that's no problem at all.

Q. Yesterday, you talked about the document that I have a big 6 on.

A. Yes.

Q. Is this something you read and relied upon?

A. Yes, it is.

Q. Does it appear to you to be an official document?
A. It does. Actually, this is a copy of the official government document.
MR. MURPHY: I have no objection, Your Honor.
THE COURT: All right. We will make that 29, I think.
MR. BECRAFT: Thank you, Your Honor.
THE COURT: 29.
(Exhibit Number 29 was marked. Description: 1997 Annual Report.)
Q. Do you have in your hand the ones that have 6, 7 and 8 -- 7, 8 and 9, I'm sorry. No, 7 and 8.
A. 7 and 8, I was getting a little confused here.
Q. Correct me if I'm wrong, these are parts of the '92 and '93 instruction book for Form 1040?
A. Yes, they are.
Q. You relied upon them and you covered the substance of them yesterday?
A. Yes, on the fact that it was a voluntary tax system.
MR. BECRAFT: Your Honor, I move for the admission of these two.
MR. MURPHY: I have no objection, Your Honor.
THE COURT: It's 30 and 31.
(Exhibit Numbers 30 was marked. Description: 1040 Instructions 1992.)

(Exhibit Number 31 was marked. Description: 1040 Instructions 1993.)
MR. BECRAFT: May I approach the witness, Your Honor?
THE COURT: You may.
Q. Can I get you to take a look at the document that had the -- the series of documents that have 13, 14 and 15 on them?
A. I have them.
Q. Those are official government documents, is that correct?
A. Yes, they are copies of the 26 CFR, Chapter 1.
Q. And we discussed those yesterday?
A. Yes, we did.
Q. And you relied upon them?
A. Yes, I did.
MR. BECRAFT: Your Honor, I move for the admissions of the documents that has 13, 14, and 15 on them.
MR. MURPHY: No objection, Your Honor.
THE COURT: Certainly. They will 32, 33, 34.
(Exhibit Number 32 was marked. Description: 1997 26 CFR 5601.602.)
(Exhibit Number 33 was marked. Description: 1998 26 CFR 5601.602.)

(Exhibit Number 34 was marked. Description: 1999 26CFR 5601.602.)

Q. Ms. Kuglin, yesterday, we talked about a document, number 19, it's a court case.

A. Excuse me.

MR. BECRAFT: Your Honor, I have it up here. May I approach?

THE COURT: You may.

MR. BECRAFT: I stuck it in my stack.

Q. Let me hand you a document that has a big 19 at the bottom of it.

A. Yes.

Q. Is that one of the documents or court cases we discussed yesterday afternoon?

A. Yes, it is.

Q. You read and replied upon it?

A. Yes, I did.

MR. BECRAFT: Your Honor, I move for the admission of that case.

MR. MURPHY: No objection, Your Honor.

THE COURT: It will be the next numbered document, which is 35.

(Exhibit Number 35 was marked. Description: Cole v. McFarland Case.)

Q. Now, Ms. Kuglin, let's move on to a little something

else. Either yesterday afternoon or this morning, you mentioned something about the Internal Revenue Code, and can you describe for us -- I'm looking at something on your -- within reach of your left hand, that's kind of either a blue or purple cover, is that something that you bought?

A. Yes, it is.

Q. And what was it?

A. This is entitled -- this is the July, 1994 edition of the complete Internal Revenue Code.

Q. And when did you -- would you have acquired that at least in the latter half of '94?

A. Yes, sir.

Q. Were there certain studies in which you engaged that related to the Internal Revenue Code?

A. There were, and on the documents that I had commented on earlier, two of the sections of the code which were specifically specified in those documents as sort of being a road map to the understanding of this issue on liability were two of the sections, 6001 and 6011 of the code. So I wanted to buy a code so I could actually look into it and begin to try to find out for myself whether there was validity to the arguments that I had been hearing.

Q. Well, tell us what you did.

A. Well, the 1040 form has -- let me get my 1040. I had a 1040 form as everybody else does or generally every one else.

Q. Let me stop there. It sounds like you're reaching for a document, would that have a big 23 on it? Is that what you're doing? Oh, okay. Go ahead.

A. This is just my prop here. And so in trying to find out or answer my own questions, there's an instruction page on the 1040 form.

Q. Can you identify that document that you have in your hand a little bit more completely?

A. Yes, I will. This is the 1995 Form 1040.

Q. Instruction booklet?

A. Instruction booklet, that's correct.

Q. What in there was of importance to you?

A. The instruction page entitled the Privacy and Paperwork Reduction Act Notice.

Q. Tell us about that.

A. Well, it says the Privacy Act of 1974 and the Paperwork Reduction Act of 1980 say that we -- say that when we ask you for information, we must first tell you our legal right to ask for the information and why we are asking for it and how it shall be used. We must also tell what could happen if we do not receive it and whether or not your response is voluntary.

Now, I -- as I was interested in all the other issues, I wanted to find out what this Privacy Act was all about, how it came about and --

Q. Let me stop you right there, did you do some study in

that area to find out what the Privacy Act was?

A. Yes, I did.

Q. Can you tell us what you did?

A. Yes. I got the -- went to the law library and read -- excuse me, read the case on the Privacy Act. I found out that the whole purpose of the Privacy Act was because the government or the agencies were sending out a lot of forms. I think they dream up forms in their sleeps, and people were beginning to get confused as to whether or not the forms that were being sent out were required to be returned, whether they were necessary and believed that one OSHA regulation had almost 400 forms, and so people were going to their Congressmen and saying, look, we need some kind of idea or get a handle on this river of paperwork that's coming out. So in 1974, the -- Congress passed legislation that basically said any agency of the government which was asking for information or producing information gathering documents must comply with the requirements which I just read, what the authority is to require the document, what the purpose is, what could be done with it and whether or not it was voluntary or mandatory and any repercussions that could happen if the document was mandatory.

Q. After you studied this matter that you thought was the Privacy Act itself, what did you do in reference to the income tax?

A. Well, it says further down in the instructions, the IRS complies with the requirement of telling the authority. It says our legal right to ask for the information is the Internal Revenue Code's Section 6001, 6011, and then later on, they added the 6012. So I thought, well, these are the regulations that require me to file the 1040 form. I think I probably ought to read what those sections say.

Q. Is that one of the reasons why you obtained the Internal Revenue Code?

A. Yes, it is.

Q. Well, tell us what you did after that.

A. Well, after I got my Internal Revenue Code, I started to get acquainted with it. I found out that there were -- there was not just an income tax in the Internal Revenue Code, that this book itself covered over 85 different taxes, that the code is divided out into different sections. You have the income tax, you have estate tax, gift tax, employment taxes, excise taxes, alcohol, tobacco and firearms and procedures. And I found out, turning to the initial section, that the section under income tax has about almost 1600 sections in that part of the code. Now, there's almost, I believe, if I go to the end here, there's over 9000 sections of this code. Only about 1600 actually apply to what the IRS defines as the individual income tax.

Q. Now, bearing in mind what you read a minute ago, the

Privacy Act notice appearing in the 1040 instruction booklet, and once you obtained the Internal Revenue Code, can you lead us through what you did when?

A. Yes. I went to 6001, because it said that that was the regulation which gave the IRS the authority to ask me to fill out the 1040 form, and what that section, in essence, says is that every person liable for any tax under this title shall keep such records, render such statements, make such returns and comply with such rules and regulations as the secretary from time to time may prescribe. It then goes on to say that whenever the secretary feels it necessary, he may upon -- he may require any person by notice upon such person to make such returns, render such statements and keep such records as the secretary deems sufficient to determine whether or not such person is liable for any tax.

Now, when I went to the section, I was expecting it to probably say something like every American who earns wages is liable for the income tax or the individual income tax and, therefore, must fill out the 1040 form. But that, as you can tell, is not what it said. It said every person, and as we discussed before, the term person could mean an individual or corporation or trust, so it didn't give me really any idea as to whether or not I was one of the persons that this section talked about. Again, it says any person liable for any tax under this title. Well, this entire book is called the title.

There are sections and subsections, but this is the title. So what that 6001 said, any person liable for any one of the 85 taxes under here would be required to fill out the form.

MR. MURPHY: Your Honor, could we approach?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I'm going to interpose an objection. She is just rambling on and on and on.

MR. BECRAFT: I will ask questions.

MR. MURPHY: It is supposed to be questions and answers.

THE COURT: Objection sustained. The process needs to proceed in accordance with 611.

(The following proceedings were had in open court.)

Q. Ms. Kuglin?

A. Yes.

Q. Let me ask a question and give us an answer, okay?

A. All right.

Q. Now -- you read the Internal Revenue Code, Section 6001?

A. Yes.

Q. And had directed your attention to that section, correct?

A. Yes.

Q. Can you identify what it was that directed your attention to Section 6001?

A. Yes, it was the 1040 form, the Privacy Act information in the 1040 form.

Q. The privacy notice itself?

A. Right, the statement in the instructions 1040 booklet.

Q. Okay.

A. Yes.

Q. Can I direct your attention to a document that you should have up there that has a big 23 on it? I would like to identify it as being a 1975 document relating to your --

A. Right in front of me, yes.

Q. Can you identify number 23 for us, please?

A. Oh, yes, this was after I had read the Privacy Act, I had -- actually, I had looked back at some other forms. I had found that I had a 1975 1040 form. The Privacy Act was passed in 1974. I had been audited in 1975 and I had kept the documentation for that. Inside of that form was also a Privacy Act notification, and this was the time that I had initially read it when I was completing my 1040 form. At that time in 1975, it really did not make sense to me, and it just began making sense or becoming important in my thought process after I had read some of the articles and the questions of the 6001 and the 6011 had come up.

Q. That document that you have in front of you, it's your excerpts of official government documents?
A. Yes.
Q. What you kept in reference to the 1975 1040 instruction booklet?
A. That's correct.
Q. And that's something you kept for your own personal business affairs, is that correct?
A. That's correct.
MR. BECRAFT: Your Honor, I would move for the admission of the document that has a big 23 on it.
THE COURT: Without objection, it will be received as 36.
MR. MURPHY: Judge, if we could approach.
THE COURT: All right. Let me take a look at the document.
(The following proceedings had at side-bar bench.)
MR. MURPHY: Judge, the only thing I object to, the government language is fine, but her filling out the tax return, I don't think that comes in.
MR. BECRAFT: I don't have any problem with extracting it, Judge.
MR. MURPHY: You need to turn your mic off.
MR. BECRAFT: I thought I had it off, I'm

sorry.
THE COURT: Let me get the --
MR. MURPHY: Your Honor, if they want to put a photocopy in of the front and the back --
MR. BECRAFT: Excise --
THE COURT: This is a 1975 return. How is this relevant?
MR. BECRAFT: What's relevant, Your Honor, is this right here, this is a government document. I think the government's objection is -- I didn't want to in advance tear out those pages. I think those pages are something that you can excise with ease.
MR. MURPHY: Yeah, just make a photocopy.
MR. BECRAFT: I have got photocopies.
THE COURT: You want me to take this page out? I'm not sure -- it just comes out.
MR. BECRAFT: I'm satisfied.
THE COURT: Okay.
(The following proceedings were had in open court.)
THE COURT: The government portion of the form is received as Exhibit 36.
(Exhibit Number 36 was marked. Description: 1975 1040 Instructions.)
Q. Ms. Kuglin, do you need that document? Do you need --

A. No, I don't.
Q. All right. So after you compared the Privacy Act notice that appeared in the 1975 1040 instruction booklet, what was your next step?
A. Well, the next step after I had read through the section on 6001, I still did not have a clear definition of whether or not I was a person that fit under this liability requirement for the tax imposed. The next section that was referred to in the Privacy Act notice was Section 6011. So I turned to 6011, and it says general requirement of return statements or less. It goes on to say when required by regulation prescribed by the secretary, any person made liable for any tax imposed by this title with respect -- or with respect to the collection thereof shall make a return or statement according to the rules and regulations -- excuse me, according to the forms and regulations provided -- prescribed by the secretary.
Well, now, this -- the first section has said that any person liable, but it really didn't identify me as a person liable. The second section 6011 said any person made liable, but again we have got the words person, and for any tax under this title, but it didn't identify how I was made liable for the tax.
Q. What was so important in your mind about being liable for a tax?

A. Well, in the Privacy Act notice it had -- it said -- had mentioned the word liable for the tax and that these were the -- 6001, 6011 were the regulations in which I could determine this.
Q. Okay. Was it your understanding that being liable for a tax had some relationship to being required to file a return?
A. Absolutely.
Q. Okay. What did you believe about someone who was not liable for a tax?
A. Well, if a person was not liable for the tax, then the rules and regulations did not apply to them.
Q. A person that would not be liable for a tax, would he be in your view required to file a return?
A. No, he would not be.
Q. Did you make any effort to determine other sections of the Internal Revenue Code and their relationship to the word liable?
A. I did. Since 6001 and 6011 were the sections that supposedly made me liable and that I could not find that it had, I had, in going through my code, as most reference documents are, there is an index in the beginning of the book, and so I thought, well, if I look under the terms income or tax or liability, which was what I was looking for, that I would find perhaps some indicators where I could see how --

examples of this liability. So I found under this section of -- let me get it, liability, I found liability for tax. And the first entry --

Q. Let me stop you right there. When you say you found something, a liability for tax, can you put it into context, what are you reading from?

A. I'm reading from the index to the code.

Q. Okay.

A. I'm trying to find if there's a section in the code that explains how a person is liable, how they're made liable, since I didn't find it in the 6001, 6011 section.

Q. When you turned to that index, what was your purpose?

A. My purpose was to find some words or some reference to -- in regard to liability, maybe I could find how a person was made liable and who was made liable.

Q. What did you do?

A. Well, after I found this liability for tax, the first entry was alcohol taxes, and it said Section 5005 and 5041, so I turned to Section 5005, and Section 5005 entitled Persons Liable for Tax. Well, this, you know, seemed like I was in the right place, I was trying to find out if I was a person liable for the tax. And it says in general, the distiller or importer of distilled spirits shall be liable for the taxes imposed thereon by Section 5001. Well, this was very clear to me, I thought, they know how to tell a person who is liable.

This was not confusing like the 6001 and 6011, it says the distiller or importer shall be liable. Since it referred me back to 5001, I went to Section 5001, it says imposition, rate and attachment of tax, rate of tax, in general. There is hereby imposed on all distilled spirits produced in or imported into the United States a tax at the rate of $13.50 on each proof gallon and a proportionate tax at the like rate and on all fractional parts of a gallon. Now, that again was very clear to me, I knew exactly what they were talking about, who they were talking about and what tax they were talking about.

I also found it interesting that this Section 5001 is in subtitle E of the tax code which is entitled Alcohol, Tobacco and Certain Excise Taxes, and as I went through the section a little bit more, it talks about tobacco taxes and other types, and it's basically the same format. The manufacturer, the wholesaler is made liable and -- for the tax imposed.

Q. What conclusions -- by engaging in this study of some other tax, what conclusions did you draw?

A. Well, I drew the conclusion that when -- in the arena -- and I found this in the arena of the excise tax, that it was very easy for the IRS to specify exactly who's liable, what tax they're liable for, what the amount of tax is and there was no fussiness about it.

Q. Did you study anything beyond what you just mentioned,

the alcohol tax?

A. I did, because the alcohol tax is not in subtitle A and, of course, the tax that the IRS says that the 1040 form is applicable to is -- excuse me -- is the individual income tax, which is in Section 1 of subtitle A. So I decided to look through the index of the code, starting first with liability for tax, to see if there was any section that fell under the first, say, 1600 sections of the code, which are applicable to individual income tax, and as I'm going down through the list, I see aviation, fuel tax, banking, employment taxes, highway motor occupational taxes, tobacco, all these other taxes, and I get all the way down here right underneath wines, it has an entry, withholding tax, and I thought, well, I know that my employer is withholding money out of my check, and right next to it I see Section 1461. 1461 falls into the criteria of the sections of subtitle A --

MR. MURPHY: Judge, can we approach?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I'm going to object to the rambling, narrative nature of this testimony, it's improper.

THE COURT: It's really -- we do have to follow question and answer format.

MR. BECRAFT: I'll do it, Your Honor.

THE COURT: I didn't say anything earlier to the witness or the jury, but it's time that I told them that we are required to follow question and answer format.

MR. BECRAFT: I will do it, Your Honor.

THE COURT: Okay.

(The following proceedings were had in open court.)

THE COURT: Ladies and gentlemen, we are required to follow a question and answer format, and typically narrative testimony is not allowed. That doesn't mean that the person can't answer a question with a full sentence or maybe a paragraph, but it does have to follow a fairly short answer -- question and answer format. The reason for that is that under Rule 611 of the Rules of Evidence, it's contemplated that we will use that format so that the opposing party can have an opportunity to raise objections to improper questions or questions that are not allowed by the rules and, frankly, so that all of us can more readily follow the testimony. It's been found, typically, that the better format is a question and answer format, so we have been discussing that, and I thought by saying that and explaining a little bit to the witness, because you wouldn't necessarily know that, that it would be helpful to all of us. So we have

to have a question followed by an answer that is responsive to the question, and then the next question. We're going to try to do that.

MR. BECRAFT: Thank you, Your Honor.

THE COURT: Thank you.

THE WITNESS: I have been accused of the gift of gab.

THE COURT: Well, we're going to hopefully solve the question or problem by making it a little briefer.

THE WITNESS: Okay.

THE COURT: A little briefer.

Q. Now, you were going through that index to the Internal Revenue Code looking for some other section that referenced liability, a section that might fall within the range of the income tax sections of the code, is that correct?

A. That's correct.

Q. Were you able to find such?

A. Yes, I did.

Q. Okay. After you found -- tell us what you found.

A. I found 14 -- Section 1461, it says liability for tax withheld.

Q. Now, you found that in the index?

A. Yes, I did.

Q. Did you do something in response?

A. I looked -- well, I checked to make sure that it was in the first 1600 sections of the subtitle A, individual income tax.

Q. By chance, did you happen to turn to that section?

A. Yes, I did.

Q. After you turned to that section in the Internal Revenue Code, can you explain what you did?

A. I read the section.

Q. And did you learn something from it?

A. Yes, I did. The section says every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax.

Q. Now, did you do any -- once you read that code section, did you kind of look -- read anything else that related to it?

A. I -- I drew a conclusion that the person that was liable for the tax was a person -- was somebody who was required to hold and -- deduct and withhold for that tax and --

Q. And did you make any effort to determine who that was?

A. Yes, I went on, and further on in the section, it talks about the -- excuse me.

Q. Let me -- did you study 1461, the code section that you just mentioned to determine who that party was that was liable?

A. Yes, I did.

Q. Okay. And can you tell us what you learned?
A. Yes, I learned that this 1461 is in the code section, which is entitled withholding on foreign taxpayers, and the beginning of the section, I turned to the beginning of the section, which is chapter 3, because -- and it says the withholding tax on nonresident aliens and foreign corporations, so this led me to understand that Section 1461 was applicable to the withholding agents of nonresident aliens and foreign corporations.
Q. Now, this was one section that you had located inside the Internal Revenue Code that related to the income tax, correct?
A. That's correct.
Q. And it used the words in the statute itself liable, correct?
A. That's correct.
Q. What, if any, effort did you make to determine whether or not there were any other similar sections inside the Internal Revenue Code in reference to the income tax?
A. I --
Q. Were there any others that you found?
A. Yes, there were others that I found. There were -- as far as a person made liable and liable for the tax, this Section 1461 was the only section under subtitle A.
Q. Okay. So you found others in reference to other types

of taxes?
A. That's correct, in alcohol, tobacco, excises and the other sections of the code, yes, but in this particular code, in the first 1600 sections of the code, which is individual, subtitle A, I found nothing else.
Q. So what conclusions did you draw as a result?
A. Well, the conclusion that seemed logical to me was, as the tax code was saying, that the only person liable for the individual income tax under subtitle A was the withholding agent for foreign -- I'm sorry, for nonresident aliens and foreign corporations, and my income as a pilot did not fall under that category.
Q. Did you consider yourself a nonresident alien?
A. No, I didn't, I'm an American citizen.
Q. Did you consider yourself a foreign corporation?
A. No, I didn't.
Q. Were you making payments of income to nonresident aliens or foreign corporations?
A. No, I was not.
Q. All right. With that in mind, did you believe or have any belief as to whether you were required to file a federal income tax return?
A. Well, this indicated to me based on the Privacy Act saying that 6001 and 6011 were the regulations that required me to complete the form, that I was not a person required to

file that form based on 1461.

Q. Now, let me direct your attention to -- there should be a document in front of you that has a big 24 on it.

A. Yes.

Q. Do you have it in front of you?

A. I do.

Q. Okay. Is that a document that you obtained somewhere in this time frame between '93 and maybe late '95?

A. Yes, it is.

Q. Is that something that you read?

A. I did.

Q. Okay. Tell us what you gathered by reading that particular document?

A. Well, by reading the document, it starts out with 26 CFR 1.1-1, tax on individuals, and the discussion in the form is about something known as an OMB number and a cross reference.

Q. Okay. Did you engage in or make any effort -- you mentioned this term OMB, what that might mean?

A. Yes, I did. I did some research and found out that the OMB numbers were numbers required on the forms and that the Congressional Act, the Paperwork Reduction Act was the legislation which required these numbers to be put on forms.

Q. You mentioned congressional legislation, the Paperwork Reduction Act. What, if any, effort did you make to determine

what that was and what it required?

A. Again, went down to find the law, and read it and got -- made myself familiar with what the requirements of the Paper Reduction Act was.

Q. Tell us what you learned as a consequence.

A. I learned that similar to the Privacy Act, Congress and agencies had been producing a lot of paperwork, a lot of forms and people were getting confused as to which forms that were required. So by 1980 -- I believe it was 1980, the -- Congress passed the Paperwork Reduction Act. What this act said was that every agency -- I need to back up about the law a little bit, if I might.

Q. Okay. What is it about the law that was important to you?

A. The way the laws are promulgated, the -- Congress passes a law, the law is then given to the agency which is responsible for developing the regulations to fit that law, and those regulations have to be published in what is called the Federal Registry, which is the citizens newspaper advising us of what the government is anticipating to do with us, and once those -- the public has the ability to comment --

MR. MURPHY: Judge, could we approach?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I'm getting a little concerned that we're going beyond talking about her beliefs into what the law is, and I don't believe that's a correct statement of the law.

MR. BECRAFT: I anticipated that in advance, and I told the jury yesterday, correct me if I'm wrong, but I think I brought that issue up when we were going through voir dire, but I know that I did it in my opening statement, and I know that I --

THE COURT: I think Mr. Murphy is right, we're sort of trying to tell what the law is. I will just remind the jury that at the end of the case, I will give the instructions as to the law, and whatever the witness or the lawyers say about the law is not the controlling law in the case, that the law is what the court gives them as the law, and that may help us.

She can -- you can ask her what she believed the law to be and why did she believe it, and the jury is going to have to decide the ultimate question, but Mr. Murphy is correct on this.

MR. BECRAFT: Thank you, Your Honor.

(The following proceedings were had in open court.)

THE COURT: Ladies and gentlemen, it's a point that we need to always keep in mind that if a witness or a

lawyer attempts to tell you what the law is, you should not accept the law from them. It's my job to give you the accurate statement of the law, and you should not be in any way confused about a statement that a lawyer or a witness might make about the law.

THE WITNESS: Right.

THE COURT: I know in this case we're going into an inquiry as to what Ms. Kuglin's beliefs were, and you're going to have to make some decisions about whether or not they are good faith and there will be various criteria that you can use in making that determination. So a defendant is allowed to state what she believes the law was, obviously, and why she believed that, but her statement about what the law is not to be considered by you as in any way reflecting what the law, in fact, is. I will give you those statements. We may need to remind you of that a couple of times during the trial.

THE WITNESS: I apologize.

THE COURT: Actually, we're going to take a short break and discuss what we talked about a little bit, it might make us a little more efficient in the presentation, and it's not inappropriate to make sure that we know exactly how we're going to proceed. We're going to take a 15-minute morning break. We didn't get a break earlier. We actually started pretty early in here, and

I'm going to see some lawyers who have been waiting to see me on a matter that was just brought to my attention just about 30 minutes ago, and they have been waiting that whole period of time, so we will take our morning break a little early. Remember, today is a day where we take a lunch break from about 12:30 to 2:00, and I think we're going to finish all the proof probably today, it's hard to be sure, but I think we will. Don't discuss the case among yourselves. Don't let anybody talk with you. We will see you in 15 minutes.

(Jury out at 10:25 a.m.)

THE COURT: We will let y'all take your break so everybody gets a restroom break.

(The court took up another matter.)

(Recess taken at 10:30 until 10:45 a.m.)

THE COURT: Bring the jury in.

(Jury in at 10:46 a.m.)

THE COURT: You can be seated. I think you can all tell, I'm still trying to deal with insurance agents during the break. It doesn't go any better for me than you guys. I'm sorry it has taken a little bit more time, but I'm trying to deal with some problems that I need to get taken care of too. Sorry. I found out also if I tried to deal with them after 5:00 o'clock or before 8:30, it doesn't work either.

Gentlemen, ladies, you may proceed.

MR. BECRAFT: May it please the court.

Q. Ms. Kuglin, let me give you a direction here, can you pull out the documents that have a big 26 and big 27 and big 28 and big 29 on them? Do you have those in front of you?

A. I have them in front of me.

Q. The one that has the numbers -- well, how about also 25, do you have that in front of you?

A. I do now.

Q. Okay. Now, can you describe the one that has the number 25 on it for me, please?

A. Yes, this is entitled the Internal Revenue Cumulative Bulletin 1985-1 January through June.

Q. Do you have a recollection or judgment as to whether or not that is a document that you read and relied upon at some stage before, say, April the 15th of 1996?

A. Yes, it is.

Q. Okay. How was your attention directed to that document?

A. My attention was directed to this document through the Paper Reduction Act.

Q. Did you have an understanding -- give us a brief description as to your understanding and belief about what the Paperwork Reduction Act was?

A. My brief understanding about the Paperwork Reduction

Act was that it was a legislative action by Congress in order to get a handle on the number and amount of information gathering forms that the agencies and the government were promulgating.

Q. Okay. And did you have any understanding as to whether or not there was some type of a requirement imposed on government agencies in reference to this paperwork and OMB numbers?

A. My understanding is that when -- before a regulation could be enforced, before an information gathering document could be authorized, both the regulation and the document had to be submitted to the office of management and budget for approval.

Q. And what was your understanding about how something was approved by office management and budget?

A. My understanding about how these documents were approved was that the office of management and budget, otherwise known as the OMB for short would read the regulation, determine that it was a valid regulation, they would then review the information gathering form which was attached to that regulation or form, and once they had determined that both the regulation and the form were appropriate that they would affix an OMB number to that form, and that the OMB number on that form could only -- that form could not be cross referenced to another regulation.

Q. Now, do you have -- I think I noticed earlier in the day that you had a '95 1040 instruction booklet there with you?

A. Yes, I do.

Q. Can I ask this simple question? Did you make an inquiry back when you were studying this Paperwork Reduction Act as to what OMB control number appeared on the Form 1040?

A. Yes, I did.

Q. Okay. Do you have that in front of you?

A. Yes, I do.

Q. Do you have a Form 1040 in front of you?

A. Yes, I do.

Q. Did you make such an examination back whenever you were doing this in '93, '94, '95 as to what OMB control number appeared on the Form 1040?

A. Yes, I did.

Q. What did you learn?

A. I learned that the OMB number on the Form 1040 is OMB number 1545-0074.

Q. Now, let me direct your attention to the exhibit that has a big 25 on it.

A. I have got that.

Q. Okay. Tell us what you did once you obtained that document, Exhibit Number 24 or big 25?

A. I knew through the Paperwork Reduction Act that every

agency was required to publish a cross reference or an index, cross referencing the regulations with the approved information gathering forms.

Q. Now, briefly identify 26 and 27 for us, please.

A. 26 and 27 is entitled 1993 instructions for form 2555.

Q. And 27 is?

A. 27 is form 2555.

Q. All right. Are these documents that you read and relied upon, say, sometime prior to April 15th of '96?

A. Yes, they are.

MR. BECRAFT: Your Honor, could I move for the admission of those next three?

MR. MURPHY: No objection.

THE COURT: Yes. They're received as 37, 38 and 39.

THE COURT: Can I ask you a simple question? Wait just one second. We keep a running list, ladies and gentlemen, and if the deputy is not here, I maintain a duplicate list, that's why we have to do that, and sometimes folks don't know that I have to do that.

MR. BECRAFT: Your Honor, I wrote down a note, the one that says 25, put 37 on it.

THE COURT: Oh, okay. Let me see 25.

THE WITNESS: Did I not pass them to you?

THE COURT: No, ma'am, that's why I do that.

Make sure I have got them all. I don't think so. I have got 26 and I have got 27.

THE WITNESS: Oh, I'm sorry, 25 is the one I have.

THE COURT: Yes, ma'am, that's what we're looking for. All right. There we go.

MR. BECRAFT: 26 will have 38, Your Honor.

THE COURT: I have got it now. Thanks so much. And I will hand it back in just a second, let me make a notation.

(Exhibit Number 37 was marked. Description: IRS Bulletin.)

(Exhibit Number 38 was marked. Description: 1993 Form 2555 Instructions.)

(Exhibit Number 39 was marked. Description: 1993 Form 2555.)

THE COURT: You may proceed.

MR. BECRAFT: Thank you, Your Honor.

THE COURT: Thank you.

Q. Now, Ms. Kuglin, you have in front of you Exhibits 37, 38 and 39, correct?

THE COURT: I have still got 38 and 39.

Q. Can we proceed without that?

A. Yes, we can.

MR. BECRAFT: If the court doesn't mind.

THE COURT: No, that's fine.

Q. These three documents you acquired before April the 15th of 1996, and you looked at them and studied them, what was it that you concluded by your examination of them?

A. I looked at the cross reference, the cumulative bulletin, and it lists the 26 CFR part of the section and then the current OMB number for the form applicable to that, and the first entry on that index is 1.1-1, which I was familiar with, was the individual income tax, and I looked to the right, and the form -- the number -- the OMB control number for the form applicable to that is 1545-0067.

Q. Now, did you have some mental operation at the time as to whether or not that was the form that related to the Form 1040?

A. Well, the Form 1040 has an OMB number of 1545-0074.

Q. And this one had a different number?

A. Yes, it does. The last four numbers are 0067.

Q. Okay. Did you make any effort to determine what form it was that that related to?

A. Yes, I did. I went down to the IRS, and I asked them whether or not or how I could find out what form that was. I may have called the IRS, as far as how to find out the form number, and then they told me that it was Form 2555, and I went down to the IRS office and picked one up.

Q. So you picked up both the form itself as well as the instructions?

A. Right. It may have been the Post Office.

Q. Okay.

A. But I acquired the Form 2555.

Q. So tell us what that meant to you in reference to some obligation on your part to Form 1040?

A. Well, since this was a document that was required by the Paperwork Reduction Act for the agencies to give us an idea of what forms are approved for specific regulations, that listed here the only form that is listed for 1.1-1, individual income tax, is the 0067 form, that that was the form that I would be responsible for completing.

Q. Let me -- can you pull out from the exhibits the document that has a big 28 on it?

A. I have that document.

Q. All right. Somewhere around the time frame in which you were examining or studying the prior three exhibits, did you obtain that document?

A. Yes, I did.

Q. Okay. Can you tell us what it is?

A. It's entitled TD, which is my understanding treasury decision. Treasury decision under Internal Revenue laws of the United States, volume 18, January to December, 1916.

Q. And is the document that you have in front of you

Treasury Decision 2313?

A. Yes, it is.

Q. Let me kind of back up, and I want to ask a broad question about what you have done to locate documents and cases. Before you made these studies of the tax laws, had you ever even gone to a law library before?

A. Not before I started my study, no, I had never walked into one.

Q. Had you ever even really studied any law whatsoever before '92?

A. No, I had not.

Q. Since then, between 1992, the time that you heard Andre Maru (spelled phonetically) on TV and, say, like all the way up through April 15th of 1996, you started studying the law, what you perceived and understood to be the law --

THE COURT: We have an equipment failure, wait just a second.

THE REPORTER: Could you repeat the last question?

Q. Had you gone to a law library before '92?

A. No, I had not.

Q. Did you go to the law library after '92?

A. Yes, I did.

Q. How frequently?

A. I went each time I needed to find a copy of a case, and

I would sometimes go just to read through and get familiar with some of the older tax laws and such like that.

Q. All right. What law library did you visit?

A. The University of Memphis has a very good law library.

Q. There on Central?

A. Yes, sir.

Q. Have you also attended meetings where you have gathered some of these same type of documents that was available?

A. Yes, I did.

Q. And did you obtain documents from the Internal Revenue Service itself?

A. I obtained like a 2555 from either the Internal Revenue Service or the Post Office, somebody who had the forms available.

Q. Now, by the time that you're looking at this Form 2555, you had done what you just described, visited the library, read a whole lot of material, obtained it from various sources, including the government and the IRS and the law library, correct?

A. That's correct.

Q. You had certain beliefs at that stage as to whether or not you were required to file an income tax return, is that correct?

A. That was correct. I was beginning to really question whether or not the 1040 was the appropriate form.

Q. All right. And once you made this comparison, you had Exhibit Number 37 in your hand which listed some OMB control numbers and you had Exhibit Number 26 and 27 in your hand, what conclusions did you draw?

A. Well, I drawed -- I drew the conclusion, after seeing Form 2555 which had the OMB control number 0067, which the cross reference said was the appropriate information gathering form for the individual income tax, 2555, and the heading of that form is -- excuse me -- the title on that form is foreign earned income.

Q. Now, looking at the one that has Exhibit Number 28 on it.

A. You'll have to tell me which form, since they have changed the --

Q. No, this one --

A. -- the numbers.

Q. This one should only have 28 on it.

A. I have got that. Treasury Decision 2313.

Q. Right. Now, were you obtaining documents like that from a wide variety of sources?

A. Yes.

Q. Did you obtain that before -- sometime before April 15th of 1996?

A. Yes, I did.

Q. Okay. Is that something you read and relied upon?

A. Yes, I did.

Q. And it related to your formation of your beliefs about whether or not you were required to file an income tax return?

A. That's correct.

MR. BECRAFT: Your Honor, I move for the admission of the document that has the big 28 on it.

MR. MURPHY: No objection, Your Honor.

THE COURT: Exhibit 40.

(Exhibit Number 40 was marked. Description: 1916 Treasury Decision.)

Q. Tell what it was you learned by reading that?

A. Well, this was in regard to the taxation of nonresident aliens and foreign corporations.

Q. Do you need the document back?

A. That would probably be helpful.

Q. Look at that document and give us the refined essence of what you learned from it?

A. Well, initially, it talks about the Brushaber case in which it says that they hereby held that the income accruing to nonresident aliens in the form of interest and from bonds and dividends of the stock of domestic corporations is subject to the income tax imposed by the Act of October 13, 1913. In other words, the 16th Amendment.

Q. Is there anything in there that relates to the filing of Form 1040?

A. Let me read on. There is one mention of a form, and it says that -- it's at the end of quite a long paragraph, so I will just summarize the paragraph, it talks about nonresident aliens and such, and it says that sum will be sufficient to pay the normal tax of one percent imposed by law and shall be made on an annual return of 1042. There is another form, form 1008 for deductions applicable to nonresident aliens and other agents and representatives.

Q. Did you reach any conclusion as to whether or not what they were talking about in that treasury decision had any application to you?

A. I did not. There's another mention of a form on the third page.

Q. Let me direct your attention --

A. Yes.

Q. There's a page that has 53 at the top.

A. Yes.

Q. Okay. And then using that page at the very bottom going over to page 54.

A. Yes.

Q. Is that a section that you read and relied upon?

A. Yes. The responsible heads, agents or representatives of nonresident aliens who are in charge of the property owned or business carried on within the United States shall make full and complete return of the income tax form on the Form

1040, and I missed that as I was reading it.

Q. Okay.

A. My other form was highlighted.

Q. Let me ask you this question: What was going through your mind at this stage about whether or not you were required to file a Form 1040?

A. Well, the documents that I had in front of me, which were government documents and the cross reference, which is required by every agency to be completed, indicated to me that the only form that had been approved by the office of management and budget for the individual income tax was the form 1545-0067, entitled foreign earned income. It confirmed for me what I had found in the tax code under 1461. The only section under subtitle A, individual income tax, which makes any person liable for the tax on subtitle A, which is nonresident alien -- I'm sorry, the withholding agent for nonresident aliens and foreign corporations, and I realized that I did not fit in either one of those categories and, therefore, that Form 2555 was not applicable to me.

Q. Now, let me -- you did some other studies, and let me direct your attention to Exhibit Number 41, if I may. Big thick one.

A. Yes.

Q. Is that something that you read, studied and relied upon?

A. Absolutely. That was a long read.
Q. Okay. Just tell us what you learned by reading that document.
A. This document is entitled Jurisdiction Over Federal Areas Within the United States, a report of the interdepartmental committee for the study of jurisdiction over federal areas within the states. This was submitted to the attorney general and transmitted to the president on June of 1957. President Eisenhower was interested in finding out what the jurisdictional limitations of the federal government was, and he asked the state's attorney general to compile a document.
Q. Can you give us the refined essence of what it was that you learned by reading that document?
A. Yes, I found out that federal jurisdiction extended into the state territories in one of three ways they could have acquired that. One of the ways was that land within the states could be sold to the federal government and, therefore, they would acquire jurisdiction over that, that land could be ceded by the legislature under certain prescribed methods to the federal government for its military grounds, other facilities, and that federal jurisdiction applied to those areas. And that the third way that the government could receive federal jurisdiction within the states was when a territory became a state, the government could retain

jurisdiction over some of that land.
Q. Now, was this -- is this an official government document to your understanding?
A. To my understanding, it is.
Q. Did what you read -- what you read in that work, did it have an impact on your beliefs regarding your requirement to file Form 1040?
A. Yes, it did because -- yes, it did.
Q. Okay. What was it?
A. Well, it said to me that because the federal government had not acquired jurisdiction over where I lived, the area that I lived or over the place that I worked, employment, that this was not subject -- that I was not subject -- a person subject to that jurisdiction in regards to the income tax, and with all of the other -- substantiated the other court cases and things that I had read. Also, I looked in the index to find out what the jurisdiction of the federal government in the realm of income tax was, and the only thing I could find in the index was in reference to the state's ability to tax people that were on federal land. There was no reference whatsoever of the ability of the federal government to directly tax property that I owned.
Q. Now --
MR. MURPHY: Judge, could we approach?
THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I'm going to object. We're getting back into the long narrative.

MR. BECRAFT: If I can tell the court, I'm through offering exhibits. I am at the stage now where we're getting ready to go into the long stretch, what she did with the IRS, letters you wrote, those Don Roberts' letter and we're wrapping up.

MR. MURPHY: I'm going to object to any mention of the Roberts' letters at all.

THE COURT: There's no indication that there were no opinions which she relied, so they're just hearsay.

MR. BECRAFT: Okay. Just to tell the court where I'm headed, we have concluded all her beliefs.

THE COURT: Are we going to finish before lunch?

MR. BECRAFT: I'm hoping maybe 15 minutes for me and then it depends on Mr. Murphy.

THE COURT: All right.

(The following proceedings were had in open court.)

MR. BECRAFT: Before I proceed, can I get an exhibit?

THE COURT: We have to let Mrs. Parker have a chance to replug her equipment in.

MR. BECRAFT: May I approach the witness with a couple of exhibits, Your Honor?

THE COURT: You may.

Q. Ms. Kuglin, there has been offered into evidence, I don't know the exhibit number for it, but the '92 return, is that correct?

A. That is correct.

Q. And that was prepared by an accountant, is that correct?

A. That's correct.

Q. Mr. Napp?

A. Yes, sir.

Q. Did you file a '93 return?

A. No, I did not.

Q. And at the time that you -- where were you living then, in '93?

A. I was living where I am now, 200 Wagner Place.

Q. Shelby County, Tennessee?

A. Yes, sir.

Q. Downtown Memphis?

A. Yes.

Q. And where did you work?

A. I worked at Federal Express.

Q. Out at the airport?
A. That's correct.
Q. Also in Shelby County?
A. Yes.
Q. And I think we got evidence here that -- you were either sent checks from or there was an account that you had at the Credit Union where FedEx just deposited your paycheck into the account?
A. Yes.
Q. Did that happen from '92, '93, forward?
A. I believe that that is the case. I'm not quite sure when I set up automatic deductions. I was flying international at that time, and it was convenient.
Q. Now, there's a '90 Form W-4 that's submitted into evidence, and do you recall that it says, you know, you're taking your normal exemptions?
A. Correct.
Q. Now, we don't have anything here for '93, '94, but were you subjected to withholding in '93 and '94?
A. Yes.
Q. And do you have a judgment or recollection as to approximately what the rate of withholding was for you during '93 and '94?
A. I'm not sure of the total amounts, I believe it was specified yesterday it was about in the 30 or $40,000 ranges.

Q. You don't have any contentions, whatever those figures --
A. Yeah.
Q. -- they're correct?
A. That's correct.
Q. Did you file a '94 return?
A. No, I did not.
Q. Did you file a '95 return?
A. No, I did not.
Q. Were you subjected to withholding in '95?
A. Yes, I was.
Q. So what did you do ultimately regarding this problem of withholding from your pay?
A. Ultimately, by December 30th of 1995, I come to the conclusion that there was -- I had found significant enough information to really question the fact that I was required to file the Form 1040, the question that whether or not it was an appropriate document and a required document.
Q. Okay. Now, let me direct your attention to -- can you take a look at those exhibits in front of you and pull out 47, the one that has 47 on it and the one that has 48?
A. Can you tell me the name of -- in this pile?
Q. I believe so.
A. The ones that you just gave me?
Q. No, not the ones that I just gave to you. In the stack

that you had when you began your testimony this morning.
A. All right.
Q. I believe they're your letters bearing your signature in October of '95 and November of '95. Do you have them?
A. I have these letters.
Q. Before we get into the substance of that, did you have any conversations with anybody at the IRS sometime in 1995 that related to your investigations of the tax laws?
A. Yes, I did. I had an acquaintance --
MR. MURPHY: Judge, can we approach?
THE COURT: You may.
(The following proceedings had at side-bar bench.)
MR. MURPHY: Judge, I don't know that her conversations with the IRS are relevant. It's hearsay.
MR. BECRAFT: I was merely pinpointing a time. I'm not going to -- I'm going to expressly disinvite her to relating what they said, Your Honor, and mention that she had a meeting in July, that she reached certain conclusions. They have an effect upon the other reasons why she wrote those letters in October and November. Although we do have a date of the meeting with the IRS, not that I'm going to offer it, Your Honor. I just mention that in passing.
THE COURT: Okay.

(The following proceedings were had in open court.)
Q. Just to make a point -- just to make a point, did you have some type of actual sit down face-to-face meeting, not in reference to yourself, but in reference to someone else, in reference -- with some IRS agents in the summer of '95?
A. That's correct, yes, I did.
Q. Let's not get into the substance of that, okay. Now, what was your -- what was going through your mind at that stage after that meeting?
A. I had -- the thing that was going through my mind based on the meeting was that contrary to the information on the documents which said that I could go to the IRS and ask the questions that I had in regard to my liability under the individual income tax --
MR. MURPHY: Judge, could we approach?
THE COURT: All right.
(The following proceedings were had in open court.)
MR. MURPHY: Judge, I'm going to object to relevance. What does this have to do with her belief?
MR. BECRAFT: Her intent and belief led her -- I'm getting ready to offer those two letters, October and November of '95 that she wrote to the Internal Revenue Service, Your Honor.

THE COURT: Do you have any objection?

MR. MURPHY: I don't have any objection to the letters, Judge.

MR. BECRAFT: I will speed it up, I'll move to the --

THE COURT: Move to the letters. Good.

MR. BECRAFT: Thank you.

(The following proceedings were had in open court.)

Q. Ms. Kuglin, let me direct your attention, let's just go to the heart of the matter, to the letter that, I believe you wrote in October of '95. It has a big 47 on it.

A. I have got that letter.

Q. Okay. Now, does it have a date on it?

A. Yes, it does. It is October the 18th, 1995.

Q. All right. And take a look at the next one.

A. That one is dated November 25th of 1995.

Q. All right. Are those letters that you composed?

A. Yes, they are.

Q. All right. Do they relate to your tax liens or tax positions?

A. They relate to the questions that I wanted to ask, yes.

Q. Okay. And to whom are they addressed?

A. They were addressed -- the October the 18th letter was addressed to the Internal Revenue Service, Memphis, Tennessee.

Q. What with the other one?

A. The other one was addressed to the Internal Revenue Service in Memphis, attention of James Gaither, chief collection branch.

Q. All right. Did you sign those letters and mail them to the IRS?

A. Yes, I did, and I have certified copies of the receipt.

Q. So you sent them certified to the IRS?

A. Yes, I did.

MR. BECRAFT: Your Honor, I move for the admission of the documents that have 47 and 48 on it.

MR. MURPHY: Judge, there's some attachments on, I believe it's 48 that I'm taking the position that aren't admissible.

THE COURT: Let me take a look at them and we will go over them at side bar.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I believe it's 48, there's an attachment, I don't know if it is from the IRS, it says someone is not liable to file a tax return. The names are blacked out. Judge, I don't think that ought to come in. There's two of them.

THE COURT: Let's make sure we're --

MR. BECRAFT: Of course -- yeah, those are it.

THE COURT: These are letters which are from -- of an individual in Delano, California, that the name is blacked out, the taxpayer's name is blacked out, and the taxpayer in Ogden, Utah, and the name is also blacked out on that, so these are hearsay documents, and they're not --

MR. BECRAFT: I would redact them, Your Honor.

THE COURT: Subject to any --

MR. MURPHY: Judge, I don't have a problem with the exhibit.

MR. BECRAFT: Can I tear them?

THE COURT: Let's see if we can't find a staple remover.

MR. BECRAFT: I will pull those apart without those pages.

THE COURT: Sure.

MR. BECRAFT: And I see a stapler right there. I will pull out those two appending documents, and now we can staple it back.

THE COURT: Okay. All right, gentlemen.

(The following proceedings were had in open court.)

THE COURT: We will mark Exhibit 41 and Exhibit 42. 41 is an October 18, 1995 letter to the Internal Revenue Service from Ms. Kuglin, and Exhibit 42 is a

November 25th, 1995 letter with certain attachments, and it's addressed to Internal Revenue Service to Mr. Gaither from Ms. Kuglin.

(Exhibit Number 41 was marked. Description: October 18, 1995 Letter.)

(Exhibit Number 42 was marked. Description: November 25, 1995 Letter.)

Q. Ms. Kuglin, what was going through your mind at that time, what did you believe about the necessity on your part to file Forms 1040?

A. At that time, based on my research, based on the government documents that I relied upon, the 1040 was not the form that I had -- excuse me, let me start this again. I come to the conclusion or the belief that there was no regulation in the Internal Revenue Code that made me liable for the individual income tax and that the 1040 form, there was no law that required me to file that form for that particular tax.

Q. Looking at Exhibit Number 41, did you pose certain questions in the letter?

A. This is the new 41 we're talking about?

Q. Yes. It will have a yellow sticker on it that says 41 now.

A. And would you repeat your question?

Q. Did you pose by means of that letter certain questions?

A. Yes, I did.

Q. What were the questions that you posed to the Internal Revenue Service?
A. The initial question was in regard to the OMB cross reference number and the fact that the 1040 form had the 1545-0074 number on it, and the cumulative bulletin index showed that the only form that had been approved for the individual income tax was the 2555 form, foreign earned income. I listed a court case that said for federal tax purposes, federal regulations govern, and I discussed my understanding of the requirement of the statutes and implementing regulations in regard to determining liability for any individual in regard to the taxes.
Q. Now, sometime later -- let me ask you this question: Were the questions that you posed in that letter, were they answered by the IRS?
A. No, they were not. And I, in the last paragraph of that letter, I did make a note that if I did not receive answers to the above requested information within ten days of certified receipt date, it will indicate to me that even in absence of receipt of a Form 2358C, which is a form that says I'm not required to file, that you, the IRS, are in agreement with my assessment that there is not a requirement for me to return to you a completed Form 1040.
MR. BECRAFT: May I approach the witness, Your Honor?

THE COURT: Yes, you may.
Q. Can you hand me the next exhibit, November?
A. Yes.
Q. Now, I have on the Elmo here your letter dated November the 25th of 1995.
A. Yes.
Q. Sent to the Internal Revenue Service. Was there something that prompted this?
A. I did not get a response for my first letter, and I had received a CP 515, 516, 517 and 518 letters which were requests for a 1040 form to be filed.
Q. Now, let me direct your attention to the second page of this letter. You sent it certified, right?
A. That's correct.
Q. And you got the certified return receipt here?
A. Yes.
Q. Now, the second page of this letter that I have got on the screen, it's kind of light, but is this the series of questions that you were posing at that time to this addressee of this letter, Mr. Gaither?
A. Yes, they are.
Q. Okay. Describe those questions for us.
A. Well, my monitor is a little blurry.
THE COURT: You can focus it and make it a little larger.

A. That's fine. The first question that I posed -- actually, I said, therefore, if you feel I have been misinformed regarding the above information, please provide me with the following or give me an appointment with someone who can. And this was based on Internal Revenue Code 6110. The first question that I asked them to address was the statute asking them for the statutes and implementing regulations which required that I file a tax return. Two, I wanted the statutes and implementing regulations which specifically designate the exact tax for which I am liable for on the 1040 form. Third question, the statutes and implementing regulations which authorizes the IRS to enforce number one, the statutes and implementing regulations which authorizes the IRS to compute taxes, penalty and interest based on income reported to you by any employer -- I'm sorry, my employer, banks, et cetera, as shown on page five of your letter. And five, in lieu of one through four above, a letter 2358C determination letter stating to me that I am no longer required to file a tax return. I am receiving -- let's see, I am reserving all of my rights in this matter. Respectfully awaiting your reply, Vernice Braendli Kuglin.

Q. Did you receive any reply to this letter?

A. No, sir, I did not. Not to the questions on this letter.

Q. What was so important -- what was going through your

mind about the importance of being told about what statute makes you liable for the federal income tax?

A. Well, under the Privacy Act, the 1040 form said, it said that those -- the 6001, 6011 were the regulations under which I was required to file the 1040 form. And in my research, I had determined that that form was not applicable to the individual income tax based on the cumulative bulletin index and that the form 2555 entitled foreign and earned income did not apply to me, and I was wanting the IRS to clear up this confusion for me.

Q. And nobody from the IRS ever scheduled an appointment with you?

A. No, they did not.

Q. Nobody called you and said, Ms. Kuglin, here is the answer to your questions?

A. No, they did not.

Q. Okay. Let's say by December 30 -- well, Christmas of '95, what did you think -- what went through your mind, here you have sent two letters to the IRS asking them questions and nothing has happened?

A. Well, by December of 1995, as a result of the fact that I had asked the question what regulation -- excuse me, what implementing regulation made me liable for the individual income tax and what law required me to file Form 1040, I had asked this question through letters, I had asked it personally

to IRS agents, and I got no response, so it was indicative to me or I came to the conclusion that since they had not responded to me in regards to that question, that my research and my data was accurate, and I made the decision at that point in time to stop my withholding.

Q. Did you have a willingness, if answers had been obtained by you to your questions, did you have a willingness to go ahead and file returns and pay the taxes?

A. Absolutely. And even later on when I hired an attorney, which I was told to do by the IRS agents, to write my letters for me, I thought that perhaps if they were ignoring my own letters that they would not ignore the letters of an attorney, that I asked them to ask the same questions.

Q. Okay. Now, you filed December 31st, 1995 for the first time an exempt W-4 form, correct?

A. Yes, I did.

Q. Do you have that in front of you?

A. Yes, I do.

Q. Okay. Can you explain that to us, what you did?

A. Yes, this is a Form W-4, 1990 -- it is actually dated 1995. By December the 30th, 1995, I had made a decision that I would stop my withholding until such time that I got an answer to my two questions from the IRS. I went into my employer, FedEx, anticipating that I might have a little difficulty persuading them to accept my W-4 form, but when I

got there, I realized -- I was actually told how to file this form, and I filed an exempt W-4 form.

Q. I think the jury has, without getting into the substance of that -- let me withdraw that and ask you to summarize the position that you take in reference to that exempt W-4 form dated December the 30th, 1995?

A. On the W-4 form, it says in number seven, I claim exemption from withholding for 199 -- this said 1995, and I certify that I meet both the following conditions for exemption: One, last year I had a right to a refund of all federal income tax withheld, because I had no tax liability; and, two, this year, I expect a refund of all federal income tax withheld, because I expect to have no tax liability. In view of the fact that I had determined, based on all the documentation that I received, that I was not a person who had been not -- that had not been made liable in Section 6001 and 6011, that for the individual income tax that I qualified for this as a person who had no liability.

Q. Let me ask you -- I don't think we need to pull them out and look at them, but do you recall, we have got in evidence here the other subsequent Forms W-4 that you submitted to FedEx.

A. Yes.

Q. Okay. Is it your recollection that they say exempt on them as well?

A. That is correct.
Q. Let me ask you some questions about that group. You claimed exempt on all those later forms for a specific reason?
A. Yes, I did.
Q. Can you tell the jury what that specific reason was?
A. Okay. Can you go over the years that we're talking about?
Q. Okay. You know, it's my recollection there's '97, '98, '99 forms exempt W-4 --
A. Oh, yes, yes.
MR. MURPHY: I'm going to object. I think a better way to do it would be to show her the exhibits.
THE WITNESS: I'm familiar with what he's talking about.
THE COURT: Mr. Murphy is right, though, mainly because you can't ask the lawyer a fact question.
THE WITNESS: Okay.
THE COURT: That is why they usually pass it up. Why don't you pass it up, make sure that we have got the document?
MR. BECRAFT: Judge, I don't know if I have the numbers real handy.
Q. Oh, wait, I think I gave them to you. Do you see one later?
A. Oh, yes, I do. Well, no, I have got a copy.

Q. Let me withdraw these questions. Are you cognizant of the fact that you claimed exempt on those forms?
A. Yes, I am.
Q. Let me ask the questions that don't relate to having the documents in front of you. Can you tell the jury why you did so?
A. I claimed that exemption because I had been asking questions, via letters and visits to the IRS, for the implementing regulation that made me liable for the individual income tax and the law that required me to file a 1040 form. I had not gotten responses to those letters, and based on all of my research and study, understanding from the court cases, especially Jack Cole versus McFarland that my right to earn a living was a right of common occupation and, therefore, could not be taxed under the individual income tax.
Q. Let me ask a couple of final questions, if I may, Ms. Kuglin. You agree that for '96, '97, '98, '99, 2000, 2001, you didn't send in 1040 forms to the IRS, right?
A. That's correct.
Q. On April 15th, after all those years, all the way up through April 15th of 2002, did you have a belief that you were required by law to file those forms? Did you have a belief that you were required to file the forms?
A. What were the dates that you just gave me?
Q. For all the years covered in the indictment, '96

through 2001, I think April 15th, after every year.

A. No, I was not under the belief that I was required to file the Form 1040 form.

Q. Okay. In reference to filing, give us what your belief was, very specifically.

A. My belief was that I was not a person that the regulations had made liable for the individual income tax and that there was no law requiring me to file the 1040 form.

Q. Now, in reference to all those exempt W-4 forms that you submitted, starting also with the one dated December of '95 and the subsequent ones, did you believe that any statement that you had made on those was false?

A. I did not believe that. In fact, I attached to my -- first the 1995 one some documentation which substantiated my belief.

Q. Did you believe that the statements that you submitted those forms W-4 were --

MR. MURPHY: Judge, I'm going to object to the leading.

THE COURT: Objection sustained.

Q. Okay. What, if any, belief did you have regarding the truthfulness of your exempt W-4 forms?

A. I believed that it was true, I believed that I did not have taxable income for the year -- the prior years. I believed that I did not have taxable income for the years that

I filed exempt.

Q. Ms. Kuglin, from 1993 all the way up through April of 2002, did you engage in tax evasion?

A. I did not. I always offered to pay my taxes that I was liable for.

MR. BECRAFT: One moment, Your Honor, if I may.

THE COURT: All right.

MR. BECRAFT: Nothing further, Your Honor.

THE COURT: Cross examination?

MR. MURPHY: If I can have a minute to get my stuff ready.

MR. BECRAFT: Well, I need a minute to pull away my stuff.

THE COURT: That should work out fine.

THE WITNESS: Do you want these exhibits now?

MR. MURPHY: No, that's fine.

Thank you, Your Honor.

CROSS EXAMINATION

BY MR. MURPHY:

Q. Ms. Kuglin, I want to start with some of these cases that you based your conclusions on. Now, you would go over to the Memphis State -- when I was there, it was Memphis State -- it was the University of Memphis law library and study?

A. Yes.

Q. And it's true that law library has all sorts of

materials dating back, you know, a 150 years to the present, correct?

A. That's correct.

Q. Okay. Now, this Pollock case that you were talking about, that case was decided in 1880, wasn't it?

A. That's correct.

Q. And that case overruled the income tax prior to the 16th Amendment, correct?

A. What they said is that Congress had the right to levy a direct tax on property.

Q. Okay. But that -- that case was prior to the 16th Amendment, correct?

A. That was prior to the 16th Amendment, that's correct.

Q. The 16th Amendment is what gave us the modern income tax, correct?

A. The 16th Amendment, yes, gave the Congress the power to lay and collect income taxes from whatever source derived.

Q. Right, from all income, right, from whatever source derived?

A. That's correct, that's what the amendment says, yes.

Q. Now, the Brushaber is an 1896 opinion?

A. No, Brushaber is 1913, I believe.

Q. 1913?

A. After the 16th Amendment was passed.

Q. Okay. You're correct, it's a 1913 case.

A. Right.

Q. Now, the -- this Jack Cole case.

A. Yes, sir.

Q. Now, that's not a case that dealt with the federal income tax, was it?

A. No, that was a case that dealt with state income taxes.

Q. Right. And they don't mention the federal income tax in Jack Cole, do they?

A. No, they do not.

Q. Okay. And the Oregon case, what year was that?

A. I believe that was a 1925, 1930 case. I would have to look at it.

Q. That case, they don't deal with the federal income tax either, do they?

A. No, they deal with -- more defining the difference between excises and occupations and individuals and corporations.

Q. Okay. So the answer would be no, they don't deal with the federal income tax in that case?

A. No, they do not.

Q. Now, the Flora case was decided in 1960, right?

A. I don't have the case in front of me, but I think that's about right.

Q. I have got a copy of it.

MR. MURPHY: May I approach the witness, Your

Honor?

THE COURT: You may.

Q. Is that a copy of the Flora case?

A. Yes.

Q. What year was that decided?

A. Actually, that was 1960. I was thinking it was earlier.

Q. Is that one of the cases you relied upon?

A. Yes, that was one of the cases that I relied on to get some of the information, yes.

MR. MURPHY: Your Honor, could we have this marked as an exhibit, please?

THE COURT: Yes, Exhibit 43.

COURT SECURITY OFFICER: I got it.

(Exhibit Number 43 was marked. Description: Flora Case.)

Q. Now, the Flora case was a case that involved the method that you used to settle a dispute of the income tax, correct?

A. That's correct.

Q. Okay. Whether you could go to district court or tax court?

A. That was correct.

Q. Okay. And, in fact, the Flora case is -- starts at page 630 and ends at page 658, and there's only one line in that case where they talk about the voluntariness of the

income tax, correct?

A. I would say that is correct. I would have to read through it again.

Q. Well --

A. But I'll accept that.

Q. I'll show you where it talks about that.

Okay. But as far as you know, there's no other reference to it?

A. I will accept your -- that that is the case.

Q. Well, you studied the case.

A. I studied the case and I got information out of it, but I don't know every line in every case. If you're saying that's the only reference to it, then --

Q. You don't dispute that?

A. I will not dispute that.

Q. Okay. And it's one sentence, right?

A. I will accept that.

Q. Well, why don't we have you read it?

A. If you want me to know everything that is in every case, I cannot do that today. I gleaned information -- I was looking for supporting documentation for the answers of questions I had.

Q. Okay. I have got a page from Exhibit 43 up there, and it says our system of taxation is based upon voluntary assessment and payment, not upon distraint. A full payment

requirement will promote the smooth function of this system; a part payment rule would work at cross-purposes with it.

A. Right. And I have no disagreement with that sentence.

Q. Okay.

THE COURT: Would you pull the page down so we can see the top of the page where the case name is?

MR. MURPHY: Yes, sir.

THE COURT: Thank you.

Q. Now, the Arkansas case that you cited is part of the basis for your study. That case didn't deal with the federal income tax, did it?

A. No, it did not. It dealt with an excise tax or a tax that was being laid by the legislature of Arkansas.

Q. And, in fact, those courts that dealt with those state cases, they weren't federal courts, were they?

A. No, they were not. They were the state Supreme Courts.

Q. Okay. Ms. Kuglin, you don't have the W-4s up there, do you?

A. I have my -- the 1995 W-4.

Q. Okay. Can I have the 1995 W-4 form?

A. Yes.

Q. You filed income tax returns and paid your income taxes from sometime in the mid '60s up until 1992, is that correct?

A. That's correct.

Q. And I'm going to show you a document, can you tell us

what that document is?

A. This says it is an individual income tax return Form 1040 for 1992 and has my name on it.

Q. Okay. Is that a copy of your 1992 tax return?

A. Yes.

MR. MURPHY: Your Honor, we would ask this be marked as the next numbered exhibit.

THE COURT: 44.

(Exhibit Number 44 was marked. Description: 1992 Tax Return.)

MR. BECRAFT: Your Honor, that was government's -- that was Exhibit Number 9 previously, I thought.

MR. MURPHY: Judge, I don't think it is. I don't think we admitted --

THE COURT: Number 9 was the certificate of assessments, and this is the 1992 tax return. It appears to be separate.

MR. MURPHY: Judge, I cannot find the W-4s, but I have got some copies and I'm going to use some copies.

THE COURT: All right. You just need to -- sure. The W-4s should be Exhibit 15.

Q. Do you have those up there, ma'am?

MR. BECRAFT: If I may, Your Honor, I did hand those to the witness during my examination. I thought 13,

and 15 may be up there on the witness stand.

THE WITNESS: Well, let me look again.

THE COURT: Sure, Exhibit 15, and then --

THE WITNESS: What were they originally, Larry -- Mr. Becraft?

MR. BECRAFT: Starts around 13. 15, I believe, is a collective exhibit, Your Honor.

THE COURT: Okay. You may proceed. You can use your copy.

MR. MURPHY: Judge, that's fine.

Q. Ms. Kuglin, we're going to use some copies.

A. All right.

Q. Can you take a look at Exhibit 44?

A. Yes.

Q. In 1992, you had one dependent?

A. Yes, sir.

Q. Okay. And would you take a look at this document, it appears to be a 1988 Form W-4. Do you recognize that document?

A. Yes, it has my signature on it.

Q. Okay. And is that a W-4 you submitted out at FedEx?

A. Yes, it is.

Q. Okay. And what date did you submit it?

A. I submitted this on June the 7th of 1989.

MR. MURPHY: Judge, if we could have this

marked as an exhibit. Well, I don't think we need to do that.

Q. Can you tell us -- let's have it marked as an exhibit.

THE COURT: 45.

MR. MURPHY: I had her testify about it.

THE COURT: That's no problem.

(Exhibit Number 45 was marked. Description: 1988 Form 1040.)

Q. How many exemptions do you claim on that W-4?

A. It says six exemptions on there.

MR. MURPHY: Now, if we can have this marked as the next numbered exhibit.

THE COURT: Are we -- is this 45, or is this 46, the new one?

MR. BECRAFT: I wrote down 45.

THE COURT: I tell you what, let me take a look at it and ask you -- this is Exhibit -- let's talk at side bar.

MR. MURPHY: I think it is going to be 46.

THE COURT: I want to see 45, and, Mrs. Saba, we need to get them all -- we just need to get them all sequentially sorted. It looks like we're having a little problem here.

THE WITNESS: I have 37 and 40 here also.

THE COURT: Let's pick them all up.

(The following proceedings had at side-bar bench.)

THE COURT: Is there a 45?

MR. BECRAFT: That's the -- no, no, 44 is the --

THE COURT: 44 is the --

MR. MURPHY: There is not a 45.

THE COURT: 44 is the '92 tax return.

MR. MURPHY: It is right there.

THE COURT: 45, I think, is this.

MR. BECRAFT: Yeah, that's it, that's correct.

THE COURT: It is the 1988 W-4 form. This is 45. Okay. We're okay.

MR. BECRAFT: No objections to their admission.

(The following proceedings were had in open court.)

THE COURT: Got them in order now?

MR. MURPHY: I think so, Judge.

THE COURT: I think so.

BY MR. MURPHY:

Q. Ma'am, I'm going to pass to you another document, what document is that?

A. This is -- this is a 1990 Form W-4.

Q. Okay. And was that a W-4 you submitted to FedEx?

A. Yes, it is.

Q. What date did you submit it?

A. I submitted this on 11-26 of 1990.

Q. And how many exemptions did you claim?

A. It shows 10 exemptions.

Q. Thank you. Now, at the time, was your son living with you?

A. 1990, my son --

MR. MURPHY: Judge, we move this into evidence.

A. No.

MR. BECRAFT: Is that 46?

THE COURT: That's 46. And it's the W-4 for 1990.

(Exhibit Number 46 was marked. Description: 1990 W-4 Form.)

Q. Ma'am, I'm going to pass you another document. Can you tell us what that document is?

A. Yes, that's a 1995 W-4 form.

Q. And is that your W-4 form?

A. Yes, it is.

Q. And what is the date on that form?

A. That's December 30th, 1995.

Q. Okay. Thank you, ma'am.

MR. MURPHY: Your Honor, could we have this marked as the next numbered exhibit?

MR. BECRAFT: It has been admitted into

evidence, Your Honor.

MR. MURPHY: We can't find it, Judge, and --

THE COURT: Mrs. Saba, we need Exhibits 13, 14 and 15.

MR. BECRAFT: I have it as Exhibit 17, Your Honor.

THE COURT: It won't do any harm for us to mark it as 47.

THE CLERK: 13, 14 and 15?

THE COURT: The collective W-4 forms are Exhibit 15.

MR. MURPHY: Judge, I've got 15.

THE COURT: Okay. We're all right. We will not mark the other document as 47.

MR. MURPHY: We will withdraw that, Your Honor.

THE COURT: Okay.

Q. Okay. Now, this is your 1995 -- or 1996 W-4?

A. That's what it says. It has got 1996 crossed out and 1997 on there. One of the situations that would happen at FedEx is they didn't always have the current year forms.

Q. Is that a form that you claimed exempt on?

A. It is a form that I claimed exempt signed on January the 1st of 1997.

Q. Can you take a look at this form and tell me what that form is? Now, I don't mean to interrupt you, but the top part

of this form is not there.

A. Yes, this is a W-4.

Q. Does that appear to be a --

A. For 1996, yes.

Q. -- government document?

A. Yes.

Q. Is it similar to the document that you executed?

A. Yes, it is.

MR. MURPHY: Judge, could we have this blank form marked as an exhibit.

THE COURT: Yes, that will be 47.

(Exhibit Number 47 was marked. Description: Blank Form 1040.)

Q. Ma'am, what I'm going to put up here this is this Form 1040.

A. Yes.

Q. You see the part where it says exemption from withholding?

A. Yes, I do.

Q. Could you read that for us?

A. The -- from where it says withholding or the yellow highlighted area?

Q. Why don't you read exemption from withholding?

A. It says exemption from withholding, read line seven of the certificate below to see if you can claim exempt status.

If exempt, only complete lines one, two, three, four and seven and sign the form to validate it. No federal income tax will be withheld from your pay. Your exemption expires February 18th, 1997. Note: You cannot claim exemption from withholding if, one, your income exceeds $650 and it includes unearned income, for example, interest and dividends; and two, another person can claim you as a dependent on their return.

Q. Okay. In 1996, you earned interest, didn't you?

A. I did earn interest, yes.

Q. Okay. Can I get that exhibit back from you?

A. Yes.

Q. Look for something else. Now, is that your 1998 W-4?

A. That is signed by me on January 1st of 1998.

Q. Okay. And again, this is coming from Collective Exhibit 15. Can you read the language from the 1998 W-4 that begins up at the top with note?

A. It says: Note: You cannot claim exemption from withholding, if, one, your income exceeds $650 and includes unearned income, for example, interest and dividends; and, two, another person can claim you as a dependent on their tax return.

Q. And this information was on the form when you signed it, correct?

A. Yes, it was.

Q. And you earned interest income in 1998, didn't you?

A. I believe that the testimony yesterday was to that effect.

Q. Okay. And it's true, isn't it, the 1995 W-4 has the same sort of language up there at the top, doesn't it?

A. Yes, it does. I would presume it does.

Q. And you earned interest in 1995 too, didn't you?

A. I would have to defer to the testimony yesterday.

Q. Okay. Now, regarding your 1993 tax situation, the IRS levied against the taxes that had been withheld from your paycheck, didn't they?

A. They did not levy against the taxes that were withheld, they did an additional levy.

Q. Okay. Well, but they got all that money, right?

A. Yes, I -- in 1993, withholding was taken out of my check.

Q. And the IRS got al that money, right?

A. I'm presuming, yes, that FedEx sent it to the IRS.

Q. And you didn't get a refund of a dime of your money in '93, did you?

A. No, I did not.

Q. Now, in 1994, the IRS got the withholding again, didn't they?

A. Yes, they did.

Q. Okay. And did you get a refund of any of that withholding?

A. No, I did not file a 1040 form for a refund.
Q. So you didn't get a refund in '93, correct?
A. I did not file for a refund in '93, and I did not file for a refund in '94.
Q. Let's back up a second and answer my question, you did not get a refund of your taxes in 1993?
A. No, I did not.
Q. You did not get a refund of your taxes in 1994, did you?
A. No, I did not.
Q. Okay. Thank you, ma'am. Now, the IRS had a number of contacts with you regarding your tax situation, correct?
A. That's correct.
Q. For example, on October the 31st of 1995, did you receive this letter?
A. That letter looks familiar, yes.
Q. So do you believe you received it?
A. Yes, I do.
MR. MURPHY: Mark this as the next numbered exhibit, Your Honor.
MR. BECRAFT: May I look at it, Your Honor? No objections, Your Honor. I believe that's 48.
THE COURT: Exhibit 48.
(Exhibit Number 48 was marked. Description: October 31, 1995 Letter.)

MR. BECRAFT: One moment, Your Honor.
THE COURT: All right.
Q. Now, that letter that you just said you received, that was a letter from the IRS about your taxes, correct?
A. Yes, it was.
Q. Now, did you receive that letter from the IRS?
A. Yes, I did.
Q. Okay. And is that also a letter -- and you received that June of 1997?
A. That was June 16th of 1997.
Q. And that's a letter about your taxes, isn't it?
A. Yes, it is.
Q. Okay. And about asking -- putting you on notice that they have no record of your 1040 and indicating that they will assess tax penalties against you, correct?
A. That's correct.
MR. MURPHY: Your Honor, we ask this be marked as the next numbered exhibit.
MR. BECRAFT: No objections, Your Honor.
THE COURT: 49.
(Exhibit Number 49 was marked. Description: June 16, 1997 Letter.)
Q. Ma'am, I'm going to pass to you another document that's dated July the 16th of '97, what is that?
A. This is another letter from the IRS, the Department of

Treasury, dated July 16th, 1997. It says notice of deficiency.

Q. And you received that letter?

A. Yes, I did.

Q. And this is giving you notice of a deficiency and the payment of your taxes, correct?

A. That's correct.

MR. MURPHY: Judge, if we could have this marked as the next numbered exhibit.

THE COURT: 50.

MR. BECRAFT: No objections, Your Honor.

(Exhibit Number 50 was marked. Description: June 16, 1997 Letter.)

Q. Ma'am, I'm going to pass to you a document dated June 22nd of 1999. And did you receive that letter?

A. This letter looks familiar, June 22nd, yes.

MR. MURPHY: Your Honor, if we could have this marked as the next numbered exhibit.

THE COURT: 51.

(Exhibit Number 51 was marked. Description: June 22, 1999 Letter.)

Q. Now, this letter that has been marked 51, this gives you notice that you have got an appointment to talk to the IRS, correct?

A. Yes, it does.

Q. And you didn't ever go talk to them about this?

A. I did not go talk to them. I had an attorney respond to this letter.

Q. Okay. But did you have an opportunity to sit down and talk to the IRS about your tax situation?

A. Yes, I did.

Q. Okay. And you're not disputing that?

A. I'm not disputing that.

Q. Ma'am, I pass a document to you dated June 28th, 1999, can you tell us what that is?

A. This is a letter that says final notice, notice of intent to levy, notice of your right to a hearing.

Q. And that is addressed to you?

A. That is addressed to me.

Q. And this particular letter gives you notice that the IRS is going to put a levy against you?

A. That's correct.

Q. Okay. And put a levy against you for your taxes that you owe, correct?

A. That's correct. The taxes that they say I owe, yes.

MR. MURPHY: Your Honor, could we have this marked as the next numbered exhibit?

MR. BECRAFT: No objections.

THE COURT: 52.

(Exhibit Number 52 was marked. Description:

June 28, 1999 Letter.)

Q. Ma'am, I'm going to pass to you another letter dated July the 6th, 1999 from the IRS. Did you receive that letter?

A. Yes.

Q. Okay. And that letter is also a letter where there's an attempt to set up an appointment to sit down and talk with you about your taxes?

A. That's correct.

MR. MURPHY: Your Honor, if we could have this marked as the next numbered exhibit.

MR. BECRAFT: No objections, Your Honor.

THE COURT: Exhibit 53.

(Exhibit Number 53 was marked. Description: July 6, 1999 Letter.)

Q. Ma'am, I'm going to pass to you another document. Did you receive this document?

A. I'm not saying I didn't. This document doesn't seem as familiar. I do know a copy was sent to Ray Pope who had my power of attorney at that time in Florida.

Q. Okay. How about this reminder document?

A. This reminder document is familiar.

Q. Okay. And do you believe you received that reminder document?

A. Yes.

Q. And what this reminds you -- document reminds you of is

that you, in fact, still owes taxes to the Internal Revenue Service?

A. Yes, it tells me that the Internal Revenue Service believes that I still owe them some taxes.

MR. MURPHY: If we could mark this as the next numbered exhibit, Your Honor.

MR. BECRAFT: Let me take a look at it, Your Honor.

No objections, Your Honor.

THE COURT: 54.

(Exhibit Number 54 was marked. Description: October 30, 2000.)

MR. BECRAFT: Your Honor, we probably going to need a side bar on this.

THE COURT: All right.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, this is -- Ms. Kuglin disputed part of the assessment and collection process, and there's a tax court opinion, and I would submit that it was issued within the time to file for 2001 and that that would provide her with notice of her obligation to file.

MR. BECRAFT: I don't understand where the government is coming from. It bears a date of February

25th, 2002. I expect that the answer from this witness is that she had her attorneys -- she didn't find out about that decision until right before this case got started, so if the witness' response is no foundation, no receipt, I object to its admission.

MR. MURPHY: Judge, I'm probably going to ask her first if she took her case to tax court and if she knows what the outcome of it is and when did she learn that.

THE COURT: Okay.

MR. BECRAFT: If the answer is sometime after April 15th of 2002, I would object, Your Honor.

MR. MURPHY: Well, I just don't think the decision comes in then.

(The following proceedings were had in open court.)

THE WITNESS: Your Honor, may I ask you a question, please?

THE COURT: It would be better to let you ask your lawyer a question.

THE WITNESS: All right. May I ask my lawyer --

THE COURT: You can walk around there and ask them.

THE WITNESS: This is a physiological question.

I just want a restroom break.

THE COURT: Why don't we take an early lunch? Anybody be upset if we take an early lunch today? I didn't think so. I don't blame you. We will take an early lunch, and then I will have a chance to talk with the lawyers just a little bit about some things that will come up later, and that will save us maybe time.

Ladies and gentlemen, you get a long lunch today. Don't let anybody talk with you about it and we will see all of you at 2:00. I will let the witness step down, of course, and I will hold the lawyers here for a moment, we're going to go over a couple of more things. We will let you be excused. Thank you very much.

(Jury out at 12:10 a.m.)

MR. BECRAFT: Can she waive her appearance in the courtroom for a few minutes, Your Honor, and we can proceed in her absence?

THE COURT: Is it okay we talk about a few questions on the --

THE WITNESS: That's fine.

THE COURT: In fact, I'm just going to talk for a second about them, about the instructions.

THE WITNESS: I'm in good hands.

THE COURT: Thank you. I'm just going to ask them a couple of questions.

MR. BECRAFT: Go ahead.

THE COURT: Gentlemen and ladies, we do need to make sure that we have all of the materials that are going to be submitted by everybody. Can I get the materials that I got from -- that I sent back in the back that have the notations -- I need the defendant's marked up exhibits -- instructions, proposed instructions. I might have them here, let me look. I do have those proposed instructions out here. Thanks.

Okay. Let me run through them real quick, the defendant's proposed instructions, the government's proposed instructions are pretty much out of Sand, and they're not very unusual. The defendant did have a few things that we need to talk about. I am going to try to use just Defendant's 11. Some of these are not a problem, but we're not going to include the instructions on lesser included offense. I'm just using --

MR. BECRAFT: I'm sorry, Your Honor.

THE COURT: Lesser included offense.

MR. BECRAFT: Okay.

THE COURT: We have already talked about. I'm just using the Sand instruction, which is not much different really from the Devitt instruction on elements of the crime charged.

And then we go over to willfulness. I will

probably use Exhibit -- or number 11 as sort of a transition into the willfulness discussion. I will probably use -- I'm not real clear on this number 12. I'm not so clear that the proof -- what the proof has been on number 12.

MR. BECRAFT: Your Honor, could I respond and withdraw?

THE COURT: You're going to withdraw it.

MR. BECRAFT: I kind of like to offer to the court kind of a series of instructions, kind of basically get you in your frame of mind on willfulness. I will just tell the court what I'm primarily driving at is the long one 18, I believe it is.

THE COURT: Okay. And I wasn't sure about 12, so is that not one you're going to pursue?

MR. BECRAFT: No, Your Honor.

THE COURT: Okay. Let me mark through it, because I wasn't so clear about that. Let me make a note about it then.

MR. BECRAFT: Let me kind of pull -- I will just tell the court.

THE COURT: Sure.

MR. BECRAFT: Don't be concerned with 12, 13, 14, although 15 has relationship to one later on that I think the court is already getting into anyway, but we can

pull 15, 16, and I think the court said in reference to 17, at least in reference to introductory instructions that you gave, you seemed to indicate to me that you were going down that road.

THE COURT: I have already got some language about that.

MR. BECRAFT: Yeah. Beyond that, that's --

THE COURT: You may want to look at that. I did revise 18 just a little. Because we have to take out for failing to file any tax return, because there's no lesser included offense, so I assume that's -- you want -- that needs to go out, and I changed it and said if there is any doubt in your mind as to this issue -- well, if there's any reasonable doubt, that's the standard. I will change that. Okay. We will use 18, if we can. 19 is correct, no reason not to use that.

MR. BECRAFT: The court is going to give it then?

THE COURT: Well, defendant is not presumed to know the law, that's true. I mean they're not required to be legal experts, so -- otherwise, it wouldn't make much sense.

Then I go over to the next thing that would be includable probably would be probably 29. You hae no right to find the defendant guilty only for purposes of

deterring others from committing crime. Well, that's true, that's always true. I don't usually have to give that, but that's all right. And I have some language from one of the Supreme Court decisions which deals with 30, but there's nothing wrong with 30, particularly.

MR. BECRAFT: All I'm asking, Your Honor, is for the topic to be covered.

THE COURT: Okay.

MR. BECRAFT: The court can pick the language.

THE COURT: Okay. And it is true in 31 that the commissioner does have the power to make a return and assess your tax when no return has been filed. That's already been discussed. I mean they have done that in the case.

MR. BECRAFT: Well, Your Honor, let me withdraw it, because I did have some exhibits on that, but as the court saw, I kind of collapsed our exhibits and we didn't cover that point, so, at least from our viewpoint, I'm not insisting on it.

THE COURT: If you don't want it, it doesn't need to be given. It's one of those things where it is sort of surplus probably, and if you have withdrawn it, there is no reason to worry about it.

And what I have done on the representations question is I have basically said at one point that the

defendant can reply on Supreme Court decisions, on IRS publications and regulations and instructions, which is true.

MR. BECRAFT: The court give an instruction like that, and I consider that to be then, therefore, covered or covering this requested instruction.

THE COURT: Right. And Mr. Murphy agrees that's the situation, so I don't see any reason -- don't you, Mr. Murphy?

MR. MURPHY: Judge, I don't have any objection to that.

THE COURT: I think we have got everything covered. I wanted to cover these, and I may have included some things now that I can -- I will narrow it down a little more. Mr. Murphy, the cross is going to take a little while longer, right?

MR. MURPHY: Yes, sir, Your Honor, but I -- you know, I won't belabor it. I will make my points -- part of the problem I was trying to find what I needed, and I will get up here before we come back from lunch, and I will get organized.

THE COURT: Well, that's no problem. We'll let you have a chance -- that's a good thing to do.

I have got this sort of -- I fine tuned a little bit some of the Sand materials, so what we will do

is we will try to get you a copy of the draft material as soon as possible after lunch.

All right. Gentlemen, ladies, thanks very much.

(Lunch recess taken at 12:25 until 2:00 p.m.)

THE COURT: All right. The witness can come back around.

MR. MURPHY: The government is ready, Judge.

THE COURT: Mr. Tuggle, we can bring the jury in.

COURT SECURITY OFFICER: Yes, Your Honor.

(Jury in at 2:00 a.m.)

THE COURT: All right. Mr. Murphy, you may proceed.

MR. MURPHY: Yes, sir, Your Honor.

Q. Ms. Kuglin, I want to talk a little bit about some of these documents that you contend you relied upon. You have got the article by Ms. Claire Kelly?

A. Yes.

Q. Okay. I don't know that you need to look at it. You can probably answer this without looking at it.

A. All right.

Q. But Ms. Kelly was not an IRS employee or government official, was she?

A. That's correct.

Q. Okay. And this is reprinted from a publication called Justice Times dated January of 1979?
A. I believe so, yes.
Q. Did you get this as part of a package of materials you bought to drop out of the tax system?
A. I cannot answer ten years later whether I bought this material or whether I picked it up at a seminar. I picked it up for information only.
Q. Okay. But Ms. Kelly is not a government official of any type?
A. Not that I know of.
Q. Okay. Now, what you also relied on was a publication called Deceptive IRS Code Words?
A. That's correct.
Q. Okay. And that was the document that said shall doesn't mean shall?
A. That's correct.
Q. Okay. Now, that's not a government publication, is it?
A. No, it is not, and I should say that I did not rely on the document itself. That document led me to other information that I relied on.
Q. Okay. Okay. But that's not a government document?
A. No, it is not.
Q. And this advertisement from W. James Knowles, attorney at law?

A. Yes.
Q. He also doesn't hold himself out to be a government official of any type, does he?
A. No, he holds himself out to be an attorney at law.
Q. Okay. But you don't know whether he is or not, all you know is you saw an advertisement?
A. That's correct. I've not met the man.
Q. Must You Pay Income Tax, that's another article you cited; that's not a government publication, is it?
A. No, it is not.
Q. Okay. And would you agree with the statement in that article that, quote, money is taken from the productive sector of society by the income tax to support the nonproductive sector, foreign aid, give-aways in a bloated needless bureaucracy. Would you agree with that statement made in that document?
A. In reading all the material that I came across, I find that there is information and there is knowledge --
Q. Well, what I asked is would you agree with that statement in that document?
A. I do not necessarily agree with that statement in that document.
Q. Okay. Turning to what was marked as Exhibit 28, this is the Internal Revenue investigation.
MR. MURPHY: If I can approach, Your Honor.

THE COURT: You may.

A. I believe I have it here. Oh, no, I do not. There we go.

Q. Now, that Internal Revenue Code investigation that is going on there, that wasn't an investigation that had to do with income taxes, that had to do with the alcohol tax, correct?

A. That had to do with the Internal Revenue Service, and it was Mr. Avis who was the head of Alcohol, Tobacco and Firearms at that time.

Q. Okay. But on Thursday, February the 3rd, 1953, when these statements were made, what they were talking about was politics and the alcohol tax department?

A. That's correct.

Q. Okay. And this statement about voluntariness of the income tax, that's a one sentence deal, right?

A. Yes, he was showing the difference between the income tax side of the IRS and the ATF side.

Q. Now, you also said you relied on what's been marked as Exhibit 40. I'll pass you a copy of that.

A. Thank you.

Q. There you go, ma'am.

Now, that was treasury decisions from 1916, correct?

A. That's correct.

Q. Okay. You also, I believe, talked about a treatise

that had to do with the federal income tax under the Act of 1913 that had to do with United States residents. We didn't admit that into evidence, but I have got a copy of it.

A. Let me just look this over, briefly. Yes. I recognize the document.

Q. That's dated 1915?

A. That is dated -- federal income tax under the Act of 1913, and the date was 19 -- the date of this opinion was 1915.

Q. Okay. Thank you.

A. Thanks.

MR. BECRAFT: No objections to the exhibit, Your Honor.

MR. MURPHY: Your Honor, can I approach the witness?

THE COURT: You may.

Q. Ma'am, I'm going to show you a bunch of 1040 returns for 1996 through 2001. Can you look at those, and do you recognize those as 1040 returns?

A. Yes, I do.

Q. Now, highlighted on each one, there's an OMB number, isn't that correct?

A. That's correct.

Q. What is that number?

A. That number is 1545-0074.

Q. Okay. Now, if you would look at --

MR. MURPHY: Judge, if we could move that into evidence as a collective exhibit, all those tax returns, the blanks.

THE COURT: Exhibit 55.

(Exhibit Number 55 was marked. Description: Tax Returns.)

Q. And that OMB number is on every one of those, correct?

A. I am presuming that it is. I did not look at every one.

Q. Look at every one, please.

A. All right. That's correct.

Q. Okay. Thank you. Now, was your study -- you described your study of the income tax law as a thorough study, correct?

A. I believe it was as thorough as I could do of it.

Q. Okay. And basically one of your contentions is that under the OMB requirements, and you submitted as Exhibit 37, a list of OMB control numbers for documents, correct?

A. That's correct.

Q. Okay. Now, those income tax returns had the number 1554-0074 on it, right?

A. That's correct.

Q. Now, that control number is all over that list that you put into evidence, isn't it?

A. Yes, that is correct. However, the only number --

Q. Ma'am, ma'am.

A. Yes, that is correct.

Q. Is it all over there?

A. It is all over that list, along with many others, yes.

Q. Right, in several places. Would you look and see if that number is at -- for Section 1.6012-1, that particular control number?

A. That was 1. --

Q. 6012-1.

A. I don't find a 1.60. Maybe I'm missing it here somewhere.

Q. If I could take a look at it. I didn't want to mark the exhibits up. Do you see where I have circled?

A. Yes.

Q. Okay. Now, it's true, isn't it, that that particular portion of the CFR has to do with individuals required to make returns of income and specifies that the Form 1040 return is to be used?

A. It's saying on this form that the form 1545-0074 is an applicable form for 1.6012.

Q. Okay. Can you -- you see up here on the screen?

A. Yes.

Q. Okay. And would you read the highlighted language?

A. Yes, it applies to individual citizens or residents, and it says in general except as provided in subparagraph two

of this paragraph, an income tax return must be filed by every individual for each taxable year beginning before January 1st, 1973, during which he receives six hundred dollars or more of gross income and for each taxable year beginning after December 31st, 1972, during which he received $750 or more of gross income. If such individual is, one, a citizen of the United States whether residing at home or abroad; two -- excuse me.

Q. Let's --

A. -- a resident of the United States even though not a citizen thereof; or, three, an alien bona fide resident of Puerto Rico during the entire taxable year.

Q. Okay. And then if you would flip over, would you read that highlighted language?

A. Yes, this is number six, I believe, and it says forms of return. Form 1040 is prepared for general use in making the return required under this paragraph.

Q. Now, you came across that section of the Code of Federal Regulations in your research, didn't you?

A. Yes, I did.

Q. Okay. And, in fact, that's what that code says, isn't it?

A. That is what that code says. That is not in the subtitle --

Q. Ma'am, ma'am.

A. I'm sorry.

Q. I need you to answer the question, that's what it says?

A. That's what it says, yes, sir.

MR. MURPHY: Judge, could we have the CFR marked as an exhibit?

THE COURT: Exhibit 56.

MR. BECRAFT: Your Honor, could we have a side bar?

THE COURT: Certainly.

(The following proceedings had at side-bar bench.)

MR. BECRAFT: I think that the prosecution's offer is for the whole rather than the parts that we have covered in testimony.

MR. MURPHY: Judge, I will make copies and substitute it later.

THE COURT: Just the passages.

MR. MURPHY: Just the passages. I don't have a problem with that, Judge.

(The following proceedings were had in open court.)

THE COURT: We're going to make copies of the pages and passages that are referred to and not put the whole book in, because that would be too voluminous, so we will make copies of those particular passages that are

referred to.

MR. MURPHY: Judge, I will take care of that at the break, and what was the exhibit number for that?

THE COURT: 56.

(Exhibit Number 56 was marked. Description: CFR Passages.)

Q. Do you have your IRS code book with you up there, ma'am?

A. I do.

Q. Could you open it up -- oh, I don't mean to skip around. Before we go there, now, did you look up -- you had access to the Memphis State law library?

A. That's correct.

Q. And they have a complete collection of federal law books there, correct?

A. Yes, they have a lot of books there.

Q. Did you read the case of United States versus Wunder, a Sixth Circuit, 1990 case?

A. No, that is not familiar to me.

Q. So you didn't run across the Wunder case where they -- basically, the court rejected this type of argument having to do with OMB?

A. There are a lot of decisions that rejected this type of argument. The courts don't seem to be able to agree on the definition of income.

Q. Well, I'm talking about the OMB aspect.

A. Oh, I'm sorry, no.

Q. There are several decisions that have rejected this argument that you don't have to file a tax return because of the OMB number, correct?

A. That is not something that is of my knowledge. I will accept that that is what you're stating that that is correct.

Q. Okay. But you didn't -- you didn't go to those law books and conduct a search to see if the courts had upheld this kind of argument, did you?

A. No, I relied on the IRS's index which was required under the Paper Reduction Act.

Q. Okay. If you would get your code book out, if you would go to Section 1.

A. All right.

Q. Section 1 reads tax imposed, correct?

A. Yes, that's correct.

Q. And it -- subsection C, it reads unmarried individuals other than surviving spouses and heads of household?

A. That's correct.

Q. Okay. And it says -- it follows that there is hereby imposed on the taxable income of every individual other than a surviving spouse as defined in Section 2 or the head of a household as defined in Section 2B, who is not a married individual as defined in 7703, a tax determined in accordance

with the following table.

A. That is what it says.

Q. And you would agree that that is what it says?

A. I agree that's what it says.

Q. Okay. Now, would you turn to Section 7203 of your code book? Once you get to 7203, let me ask you some other questions real quick.

A. I have 7203.

Q. Going back to your one, in your study of the tax code, you came across Section 1, didn't you?

A. Yes, I did.

Q. Okay. So today is not the first time you're hearing about this?

A. Not at all.

Q. In fact, you came across it years ago, didn't you?

A. Yes, I did, when I was doing my research.

Q. Now, in -- what your belief is that the government can't tax your wages or they can't tax your income you make as a pilot, right?

A. What my understanding is that the courts have ruled that occupations of common right are not taxable as an excise tax. In other words, income tax.

Q. Okay. Well, no federal court that has dealt -- that has applied the current income tax code has made that ruling, have they?

A. Well, I believe that that was Chief Justice's ruling, Justice White in the Brushaber case, which actually defined income as an excise tax.

Q. Well, I'm not talking about a tax code that they passed in 1913, I'm talking about the current tax code.

A. That was not a tax code, that was a Supreme Court decision based on the --

Q. Ma'am, no federal court has held that wages aren't subject to income tax.

A. I believe the Brushaber case did.

Q. Well, after Brushaber, in the last hundred years.

A. I don't -- I can't say that, because I haven't read all of them.

Q. Okay. But you did extensive research?

A. Yes, I did research on cases which I had been given information, would explain certain questions that I had, yes, but I did not -- I have not read every case, that would be impossible.

Q. Okay. Look at 7203.

A. All right.

Q. Now, that makes a penalty or provides that any person required under this title to pay any estimated tax or tax required by this title or by regulations made under the authority thereof to make a return, keep any records or supply any information who willfully fails to pay such estimated tax

or tax make such return, keep such records or supply such information at the time or times required by the law or the regulations shall, in addition to other penalties, be guilty of -- and I'm just going to say a crime.

A. Right.

Q. But that provides that if you don't file, you have committed a crime, right?

A. I agree it says any person required under any tax of this title shall make a return.

Q. Right. Okay. Now, can you turn to 6651 of your tax code? Let me ask you this: You came across 7203 in your study of the tax code.

A. Oh, yes. What was the other section?

Q. 6651.

A. I have it.

Q. 6651, it's true, isn't it, provides for penalties for failure to file a tax return, an income tax return?

A. Well, it says any -- the failure to file any return required under authority of subchapter eight of chapter 61, it says chapter 51, it says alcohol, tobacco, cigars, cigarettes, cigarette papers and a list of numerous other ones.

Q. Let's back up, let's talk about subchapter A of chapter 61. Subchapter A, it's true, isn't it, that's the subchapter of the Internal Revenue Code that has to do with income taxes?

A. I would agree with that.

Q. Okay. And if -- I have got an index here that might help you from the United States Code Annotated. What does chapter 61 deal with.

A. It deals with gross income defined. Oh, 6001?

Q. Right.

A. Are you talking about Section 61 or Section 6001?

Q. I'm talking about chapter 61 of subtitle A.

A. Well, let me look for chapter 69.

Q. This index might help you.

A. All right. Okay. It says chapter --

Q. What does it say there highlighted?

A. It says subtitle A, income taxes, I'm looking for chapter 61.

Q. Why don't you go down here, what does chapter 61 say?

A. This does not say chapter -- this is -- oh, chapter, it says information returns.

Q. That does say chapter?

A. Right, right, I see what you mean now, because that other section referred to 61, and you brought -- right, okay, now, I have got it.

Q. It's true that it said --

A. We're on the same page.

Q. Okay. So what it is referring to is --

A. 6001.

Q. 6001?

A. Right.
Q. Okay. Let's talk about what 6001 says. Now, it's true, isn't it, that 6001 says every person liable for any tax imposed by this title or for the collection thereof shall keep such records, render such statements, make such returns and comply with such rules and regulations as the secretary may from time to time prescribe. Whenever in the judgment of the secretary it is necessary, he may require any such person served -- by a notice served upon such person or by regulations to make such returns, render such statements or keep such records as the secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer should be required to keep under this section in connection with charge receipts, records necessary to comply with Section 6053 and copies and statements furnished by employees thereunder or employees under Section 6053.
A. That's correct, that's what it says.
Q. Now, if you would turn to 6011.
A. 6011, I have it.
Q. Yes, ma'am. That says, it's true -- and this -- this 6001 section, you have known about that for several years?
A. Yes, I did.
Q. You knew about that before you stopped filing income taxes?

A. Yes, I did.
Q. Okay. And you were aware of the regulation that had to do with the 1040s we talked about before you stopped filing income tax returns, correct?
A. I was aware of the fact that the 1040 said that the authority by which they could ask me to file, it was this section, 6001, section 6011
Q. Okay. But you also testified you were aware of that regulation we talked about?
A. The regulation 1.1-1?
Q. Well, no, this was -- I'm talking about -- this regulation in this book. Remember, you read it, we put it on the screen, it was in yellow.
A. It was, I believe, in the 6000 series of that section.
Q. Yes, ma'am.
A. Right.
Q. You have been aware of that for several years?
A. Yes, I have.
Q. Okay. In fact, you were aware of that before you stopped filing income tax returns?
A. That's correct.
Q. Okay. Now, 6011 says when required by regulations prescribed by the secretary any person made liable for any tax imposed by this title or with respect to the collection thereof shall make a return or statement according to the

forms and regulations prescribed by the secretary.

A. Yes, it does say any person made liable shall.

Q. And it says shall, right?

A. Yes, it does.

Q. Okay. Thank you, ma'am.

Now, can you turn to -- and this 611 section, you have known about that for years?

A. Oh, yes, it is torn out of my book.

Q. Okay. If you turn to 6012, 6012.

A. Yes, 6012.

Q. Okay. Now, that provides, doesn't it, that returns with respect to income taxes under subtitle A shall be made by the following?

A. Yes, that's what it says.

Q. It goes to list who has got to make the returns. Again, that says shall, doesn't it?

A. Yes, it says each individual -- let me read this. Yes, it says returns with respect to income taxes under subtitle A shall be made by the following.

Q. Okay. Now -- and it lists who --

A. It lists individuals, it goes on and lists corporations, every estate, be it political organization, homeowners association, persons under disability, receivers, trustees, it goes on for several pages.

Q. Let's back up a second. The first section you come to

deals with individuals?

A. Yes, it says every individual having for the taxable year.

Q. Okay. And you have known about that section of the code for several years, haven't you?

A. Yes, I have.

Q. In the study of the case law, you have read a number of cases that you told us about. Did you read the case of United States versus Shift where the Second Circuit said --

MR. BECRAFT: Your Honor, before we -- may we approach?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. BECRAFT: The prosecution is assuming facts in evidence. If the government wants to try to impeach her with cases, I think the first thing that must be done is to confirm whether or not the witness has any personal information or knowledge about the case that he's going to be examining her on. If the witness says I don't know anything about the case, then quoting from it or asking further questions about it, there's lack of personal foundation for the question then.

THE COURT: It wouldn't impeach her good faith, I don't think.

MR. MURPHY: Well, Judge, I think it would, because the Shift case is right on point about the voluntariness of taxes.

MR. BECRAFT: She doesn't know --

MR. BERNHOFT: The question isn't whether her belief is correct about the law.

MR. MURPHY: I understand that. The question is, is there a good faith basis for belief, and I think I can go into the extent of her --

THE COURT: You're going to her lack of thoroughness of the inquiry?

MR. MURPHY: Yes, sir. And that that would result in a lack of good faith.

THE COURT: What is the case?

MR. MURPHY: Judge, I just have a snippet from it, because I was going to do a Power Point, but I ran out of time.

THE COURT: I was just making sure it preceded -- it was during the period she did the research, and I think it is. I think it would be unfair to ask her about a case --

MR. BECRAFT: The witness doesn't know, is my point, Your Honor.

THE COURT: Well, I think that some inquiry as to the thoroughness of one's -- one person's investigation

is allowed. I'm not saying -- inquiring into it ad nauseam would be inappropriate, because there would have to be some indication that there was a case that a person would have had access to had they made diligent inquiry, but not necessarily that she --

MR. MURPHY: Judge, what about the general questions, in your research -- well --

THE COURT: You're entitled to examine the thoroughness of her research.

MR. MURPHY: I think I can ask her this.

THE COURT: And I think you can ask her a few questions about a specific case or two, but not ten cases.

MR. MURPHY: I won't, Judge.

MR. BECRAFT: How about the substance, Your Honor? It seems like to me, though, if the witness has not read it, having the government ask a question through its cross and it's a leading question, but to lead off --

THE COURT: I'm going to allow it on this case. I mean the government's argument -- otherwise a person -- it's somewhat of a logical inquiry, and I think you can test a person's logic.

MR. MURPHY: Judge, I won't beat the horse to death, I think I'm getting near the end. I'm going to ask her about the '92 and '93 tax books.

THE COURT: Sure.

MR. MURPHY: And that's going to be about it.

THE COURT: Okay. I'll overrule the objection with the limitations that we discussed.

MR. MURPHY: Yes, sir.

(The following proceedings were had in open court.)

BY MR. MURPHY:

Q. Ms. Kuglin, during the course of your research, did you come across the case of United States versus Shift at 876 F.2d, 272, a 1989 decision, Second Circuit where they said to the extent that income taxes are said to be voluntary, however, they're only voluntary in that one files the returns and pays the taxes without the IRS first telling each individual the amount due and then forces the payment of that amount. The payment of income tax is not optional. Did you run across that opinion?

A. I don't recall running across -- there were many, many cases I brought into court with me, the ones that I felt were the most descriptive of my thought process, and I know that there are contradicting cases all through the judicial system.

Q. Okay. So the answer is --

A. That is not one of the cases that I chose to bring into the court. I may or may not have read it at some point in time, I can't confirm on that.

Q. So you could have read it, maybe you did, maybe you

didn't?

A. Right. And I may have read excerpts -- many cases I had experts from, that I did not actually go to the law library and find those specific cases and read entirely through them.

Q. Now, one of your exhibits was Exhibit 36. And I'm going to put page two up here on the screen.

A. I can see.

Q. Can you see it?

A. Yes, I can.

Q. That says in -- and this is from the instructions, the code provides for penalties for failure to file a return, failure to supply information required by law or regulations, failure to furnish specific information required on return forms or for furnishing fraudulent information. Other effects of not providing all or part of the requested information may include the disallowance of claimed exemptions, exclusion credits, deductions or adjustments resulting from an increased tax liability, the loss of social security credits, loss or delaying the issuance of a refund for overpayment, interest and penalty charges, unpaid taxes or other disadvantages to the taxpayer. Now, this is some of the language in this notice that you claim you relied on in including that you weren't required to file taxes, correct?

A. Yes, that part that you just read does say there are

penalties for persons required by the law or regulations.

Q. Okay. But this is -- this is part of what you relied on in arriving to the conclusion that you didn't have to pay taxes?

A. Yes, Section 6001 and 6011 of the beginning of that paragraph -- those paragraphs.

Q. But what I'm saying is this document right here --

A. Yes.

Q. -- that you claim that says -- makes the payment of taxes voluntary, it also talks about penalties if you don't pay. You relied on that in formulating your conclusion?

A. I need to correct your sentence there. You said that I relied on it to say that it was voluntary. I did not.

Q. Ma'am, is the answer yes or no?

A. Well, your question is wrong, Mr. Murphy.

Q. Well, did you rely on the information in this?

A. I relied on the information that is written there. I did not rely on that information to determine whether or not the tax was voluntary or not.

Q. Okay. But -- so you did rely on this information, you read it?

A. Yes, yes, I did.

Q. Okay. I stand corrected on it.

A. Thank you.

Q. Now, do you recognize this document?

A. Yes, 1992 Form 1040.

Q. Okay. And this is a government publication?

A. Yes, it is.

Q. Okay. And the 1992 1040 was one of the documents that you relied on in arriving at your conclusion, correct, that you didn't have to file taxes?

A. I believe I did file a 1992.

Q. Okay. You filed -- well, let me ask you this: Let me back up a second. I may have something wrong here. I think I got the right one now.

A. All right.

Q. Okay. What is this?

A. This is -- should be a 19 -- well, there's no date. 1993, yes, it's big letters, 1993 1040 form.

Q. Now, this is one of the publications that you relied on in making your conclusion or arriving at your conclusion that you didn't have to file returns or pay taxes?

A. I relied on the Privacy and Paperwork Reduction Act instructions to determine if I was a person referred to in 6001 and 6011, yes, sir.

Q. So you relied --

A. On the information in that document, yes.

MR. MURPHY: Judge, could we have this marked as the next numbered exhibit?

THE COURT: 47 -- 57. 57, excuse me.

(Exhibit Number 57 was marked. Description: 1993 Instructions.)

MR. MURPHY: Judge, was that 57?

MR. BECRAFT: Your Honor, I have 57.

Q. Okay. Ma'am, I am going to -- I'm going to put a passage up there. This is from page four. Would you agree that it says if you do not file a return, do not provide the information we ask for or provide fraudulent information, the law says that you may be charged penalties; in certain cases, you may be subject to criminal prosecution?

A. That is what it says.

Q. Okay. And, in fact, that's the same page that talks about the Paperwork Reduction Act, isn't it?

A. That is correct.

Q. Now, I'm going to show you page seven of that same document, and this is a page that's entitled Do I Have to File?

A. Yes, that's what it says.

Q. Okay. And there's a little chart, and what does the highlighted language say?

A. It says single, including divorced and legally separated. It says filing -- I'm sorry, it says marital status; single (including divorced and legally separated; second column is filing status, single head of household; age, under 65, 65 or older, under 65, 65 or older; and then it says

gross income, and the highlighted portion says $6,050.

Q. Okay. And it also says use -- this is chart A we just talked about, right?

A. Right, it says chart A for most people.

Q. Okay. And it says use chart A on this page to see if you must file a return?

A. That's right, it says use chart A on this paper to see if you must file a return.

Q. Okay. Okay. And I'm putting up page 15.

A. All right.

Q. Okay. Would you read the highlighted language on page 15?

A. The highlighted language, it says -- it's under wages salaries, tips, et cetera. Show the total of all wages, salaries, fees, commissions, tips, bonuses, supplemental unemployment benefits and other amounts you were paid before taxes, insurance, et cetera, or taken out for a joint return. Be sure to include your spouse's income on line seven.

Q. Okay. And it goes on to say, included in this total, the amount that would -- that should be shown in box one on W-2, report all wages, salaries and tips you have received even if you do not have a Form W-2.

A. That is what the form says.

Q. Okay. Now, referring to page 36, there's language there, would you read the highlighted language?

A. Yes. The first highlight says because you take a frivolous position, and the other highlight says other penalties can be imposed for negligence, substantial understatement of tax and fraud, criminal penalties may be imposed for willful failure to file, tax evasion or making a false statement.

Q. Okay. And that's all information that was in this 1993 1040, part of which you relied upon in arriving at your conclusion that you didn't have to file a tax return and pay taxes?

A. That is correct, that was information that I relied on to determine if I was a person liable, yes.

Q. Okay. Now, the document that I'm handing you, what is that document?

A. That's a 1995 Form 1040.

Q. Okay. Now, did you have a '95 1040 booklet like this?

A. I believe so. Let me double check. Yes, 1995.

Q. Okay. And I believe you testified you used this booklet in aiding your testimony, correct?

A. Yes.

Q. Okay. Now, if you look at what I have got up there, that first full paragraph, our legal right to ask you for information is Internal Revenue Code Section 6001, 6011 and 6012A under regulations, they say that you must file a return or statement with us for any tax you are liable for. Your

response is mandatory under these sections. Now, that's what that section says, correct?

A. That is absolutely correct.

Q. Okay. And it also goes on in the underlying language to say if you do not file a return, do not provide the information that we asked for or to provide fraudulent information, you may be charged penalties and be subject to criminal prosecution?

A. That is correct, that's what it says.

Q. Now, I'm going over to Section 2, if you would look at page eight, ma'am. I'm going to put it up here, but --

A. Page eight? I have page eight.

Q. Under Do I have To File?

A. Yes.

Q. It says use chart A, B or C to see if you must file a return?

A. That's correct.

Q. Okay. And if you go over here to chart A, it indicates you must file a return if your gross income for single, including divorced or separated if your gross income was $6400, correct, if you're under 65?

A. That is correct, that is what it says.

Q. Okay. And turning to page 35, there's also a provision on page 35 that provides other penalties can be imposed for negligence, substantial understatement of tax, and fraud.

Criminal penalties may be imposed for willful failure to file, tax evasion or making a false statement, correct?

A. I would like to see what the top -- what the top of that page is.

Q. Sure.

A. I'm looking for page 35 right now. All right. This is under the section for general information, and it says other penalties --

Q. Well, this is under the section of interest and penalties.

A. Interest and penalties, yes, I was looking at the general session, which starts -- this section starts on the previous page. Under interest and penalties, yes, that is what it says.

Q. And this is one of the books -- is this one of the publications that you used in determining that you didn't have to pay taxes?

A. This is one of the documents I used. I determined whether or not I had a liability -- whether I was liable or had been made liable, yes, sir.

MR. MURPHY: Judge, if we could have this marked as an exhibit.

THE COURT: Exhibit 58.

(Exhibit Number 58 was marked. Description: 1995 1040 Instructions.)

MR. MURPHY: Judge, if I could have one second to look at my notes.

THE COURT: Sure.

Q. Ms. Kuglin?

A. Yes, sir.

Q. Now, you have not filed a refund for all these taxes you have paid all over the years, have you?

A. Since 1993, that's correct.

Q. Okay. And your general practice is on the day you get paid, you go down to the bank and you take out large amounts of cash that same day or the next day, correct?

A. It depends. It depends upon what my flying schedule is, whether I'm going to be in town for awhile and what funds I'm required to pay of my general bills which are not automatically deducted, yes, sir.

Q. But if you look at the bank records --

A. Yes.

Q. -- there's several big withdrawals like four, five, six thousand dollars the day after you got paid?

A. That's correct, yes.

MR. MURPHY: I don't have any further questions, Your Honor.

THE COURT: Redirect?

MR. BECRAFT: Can the witness be handed Exhibits 48 and 54 and 57 and 58?

THE WITNESS: Would you like Exhibit 28 back?
THE CLERK: I'll get it when I come up there.
MR. BECRAFT: Can I help her, Your Honor?
THE COURT: Sure.
THE WITNESS: Which one was that, Mr. Becraft?
MR. BECRAFT: 28 through 54.
THE CLERK: There's 48 through 54.
MR. BECRAFT: May I also get Exhibit 15, Your Honor?
THE CLERK: It's probably in that other stack in numerical order.

REDIRECT EXAMINATION

BY MR. BECRAFT:

Q. Ms. Kuglin, I want to ask you some questions about the W-4 forms that you submitted to FedEx, if I can.
A. Yes, sir.
Q. The first one you submitted was in December of '95, is that correct?
A. That's correct, December the 30th, I believe.
Q. I'm going to flip it down here on the Elmo, and I want you to tell me what was it on this form that you thought was -- that you read that related to it being permissible for you to claim exempt. Can you kind of see?
A. Yeah, if you move the form just slighted to your left. A little bit more. Five, six and seven. Yes. Actually, it

was -- earlier in the instructions, it said, I believe, if I felt that I file exempt, that I would then fill out sections -- Section 7. Section 7 says I claim exemption from a holding for 1995, that I certify that I meet both of the following conditions or exemptions. Last year, I had a right to a refund of all federal income tax withheld because I had no tax liability; and this year, I expect a refund of all federal income tax withheld because I expect to have no tax liability. And the fact that based on --

Q. Can I point out here? Watch on the screen what you just read, see where that pen is?
A. Yes.
Q. On Government Exhibit -- I mean on Exhibit Number 17 down here at the bottom, it says 17.
A. Yes.
Q. I am now pointing with the pen to number seven, which is about an inch below the --
A. Yes, that's correct.
Q. And you relied upon your ability to file exempt because the form said --
MR. MURPHY: Judge, I'm going to object to the leading.
THE COURT: Objection sustained, it is leading.
Q. Is this what you relied upon?
A. Yes, I did.

Q. The language you just read?
A. Yes.
Q. Now, all these other Form W-4s, did they have the same language? I'm going to go down on the screen here to Exhibit 15, you see that? I'm going to move what I think is a spot that would be similar.
A. This is a 1998 form?
Q. I'll show you, it says 1998.
A. Right, 1988.
Q. And this has a series of forms W-4 in it. Now, is there the same language that appears on this one that's in 1988?
A. Under 6B, it says: I claim exemption from withholding because, and then A says last year I did not owe any federal income tax and had a right to refund of all income tax withheld; and this year, I do not expect to owe any federal income tax and expect to have a right to a refund on income tax withheld. Yes, that's the same language.
Q. Now, let me just quickly -- in this particular exhibit, we have also in one that I believe you testified on direct that this was the '97 one?
A. Yes, '96 is crossed out and 1997 is written in.
Q. And on the screen, it doesn't look too good, but is that a date of January 1?
A. I believe that's January 1, 1997.

Q. Now, was there something on this particular form that you can direct our attention that allowed you to claim exempt?
A. Yes, if you will move the form just slightly to your left under number seven, it says I claim exemption from withholding for 1998, and I certify that I meet both of the following conditions. And would you like me to read those conditions?
Q. First, is my pen pointed at the right spot?
A. Yes, it is, that is correct.
Q. Could I get to you read that line?
A. Yes. Last year, I had a right to a refund of all federal income tax withheld because I had no tax liability; and this year, I expect refund of all federal income tax withheld because I expect to have no tax liability.
Q. I flipped to the next page in Exhibit Number 17, and I'm going to show to you a W-4 form for, I guess, 1998, is that correct?
A. Yes, that's correct.
Q. Your signature appears down there on the bottom?
A. Right.
Q. I'm going to kind of move around on the screen and see if my pen goes to the spot where you think it is important?
A. That is correct, number seven.
Q. And is this what are you relied upon in claiming exemption?

A. Yes, I did.
Q. Were these words important where I'm flashing my pen right now, because I had no tax liability?
A. Yes, those were the most important words in those two.
Q. I'm going to put my pen on, I think, the line of the form that was important for you, is that correct?
A. That is correct, line number seven, and the words which were essential where I had no tax liability, and I expect to have no tax liability.
Q. Correct me if I'm wrong, the same language appears for this one for 2000?
A. That's correct, number seven, I had no tax liability and I expect to have no tax liability.
Q. Okay. Now, 2001, same language?
A. Yes, dated February the 10th of 2000, same language, number seven, I claim exemption because I had no tax liability and expect to have no tax liability.
Q. Ms. Kuglin, what is it about being liable that is important to you?
A. The instructions on the 1040 form say that Section 6001 and 6011 are the sections that I should rely upon to determine whether or not I am liable for the individual income tax and -- or whether I have been made liable. And I found in reviewing those sections and other sections of the code, I could not find any section of the code that made me liable for

the individual income tax, and I could find no law that required me as such to complete the 1040 form.
Q. Ms. Kuglin, I would like to ask you some questions about that November of 1995 letter that you wrote to the IRS, do you remember that?
A. I remember that, yes.
Q. Can I ask you some broad general questions about it without digging out the exhibit?
A. Yes.
MR. MURPHY: Judge, can we approach?
THE COURT: Yes.
(The following proceedings had at side-bar bench.)
MR. MURPHY: Judge, I'm going to object to that. Defense counsel is going outside the scope of direct. I didn't -- cross, I didn't ask about that letter.
THE COURT: I don't think he asked about that the '95 letter.
MR. BECRAFT: Okay. All right. Good enough, Your Honor.
THE COURT: Thank you.
(The following proceedings were had in open court.)
Q. Ms. Kuglin, do you have in front of you Exhibits 48 and

54?

A. I have 48 and I have 54.

Q. Okay. Have you seen them before, that series of letters?

A. Yes I have.

Q. Can I ask general questions without going to a specific exhibit?

A. Yes.

Q. What's the first letter dated there, 48, I believe?

A. This is a letter from the IRS.

Q. To you?

A. To me, dated October 31st, '95.

Q. Did you at any time after that date in reference to these letters that you were getting from the Internal Revenue Service that are there in front of you, Exhibits 48 through 54, did you make any effort to seek legal counsel?

A. Absolutely, I did. This number three on this form dated October 31st says if you're not required to file, please explain why. And I had written the letter -- the November letters asking the questions, explaining my -- the information that I had obtained and asked for a response. When I did not get a response, I had an opportunity to go to the IRS and speak with an agent to get some response, and did not; and then later I decided that it was time to -- I was actually directed to go to a law library or hire an attorney.

Q. Let me stop you right there.

A. Yes.

Q. You were directed to do what by whom?

MR. MURPHY: Judge, I'm -- it's irrelevant. It's hearsay and it's irrelevant.

THE COURT: It is hearsay.

MR. BECRAFT: Okay, I will move on, Judge.

A. All right. I -- due to certain circumstances, the fact that I had not gotten answers to my specific questions, I had made a decision to hire --

MR. MURPHY: Judge, objection, I'm going to object to the relevance of this.

THE COURT: Let's talk about it. I need to check one thing.

(The following proceedings had at side-bar bench.)

THE COURT: She is not asserting she relied on the advice of attorney.

MR. BECRAFT: No, my whole point, Judge, is she got Exhibits 48 through 54. She sought counsel and turned the matter over to counsel, that's -- and that's the point I want her to make. Not what counsel said, I'm not going to -- I'm not offering any --

MR. MURPHY: Judge, I think that it doesn't matter. The reason those letters come is they give her

notice, and I can argue they gave her notice of the requirement that she pay her income tax.

MR. BECRAFT: And we can show the context in which the letters are sent to her, her response, which would include her turning the letters over to an attorney.

THE COURT: She doesn't have any -- it's a little confusing, though, because if she turned them over to a lawyer and the lawyer said on my advice you shouldn't do anything, then she can assert that and rely on it. We might have a lawyer here, but she can assert that, but she didn't do that. I'm a little confused about how --

MR. BECRAFT: The only point I want to elicit is she is unfamiliar with administrative procedures, she started receiving letters, she sought counsel and turned these matters over to her counsel and just leave it at that.

THE COURT: What -- Mr. Murphy, how does that work?

MR. MURPHY: Judge, I think it is irrelevant. I think the letters are significant for this reason: She got notice that -- of the tax -- that she owed taxes and taxes were due and owing during the period that she didn't file. I don't think that the fact that she hired an attorney has any relevance to the case.

THE COURT: Well, it would if she had --

MR. MURPHY: That is not what they're relying on.

MR. BECRAFT: It kind of ties back into those other exhibits. You know, some of these letters will be responsive. These letters offered here provoke the response from the lawyers that are these other letters that we have excluded, Your Honor.

THE COURT: Well, it's not relevant to an issue in the case that I can -- somebody -- somebody can explain it so I will understand what it is, but I don't perceive it as being a relevant issue in the case, because she didn't do anything in response to the lawyers. I mean if she sent them to her CPA, then took no action because she was awaiting a response from the CPA, I think you could maybe show that we gave it to them and got no response. I am confused about how --

MR. BECRAFT: I think to address this question of the government arguing closing, Your Honor, that they were sent these letters --

THE COURT: Right.

MR. BECRAFT: -- and they went to her.

THE COURT: Right.

MR. BECRAFT: And she was silent. In response, I think the defense can say, well, she received those letters and at least turned them over -- sought counsel

and turned them over to counsel. To directly address what I see is coming up in closing argument --

THE COURT: Turned them over to counsel, for what purpose?

MR. BECRAFT: Sought advice about what to do.

THE COURT: She has never said she had gotten any --

MR. BECRAFT: We haven't got to the point of turning it over to counsel.

THE COURT: Okay. Okay. I'm going to let you ask the question, but then depending on how we go, it may end up that Mr. Murphy has a motion to strike. I'm just not sure -- I don't want to cut off -- if she has got something meaningful to say on this point, I want her to get a chance to do it.

MR. BECRAFT: But there's no legal opinion given by lawyers that directly relate to this, Judge. It's the mere fact that they were turned over to counsel.

THE COURT: Well, I think that's pretty tenuous, but I think I ought to let her answer the question and see what else -- you said that was stuff that you needed to take, and then you had some other stuff that you were going to take. Well, if there is another step that follows that makes it relevant or just a preparatory question or preliminary question, then it is an

appropriate question. If it turns out that's the only thing, Mr. Murphy's motion to strike will probably -- let's try it.

(The following proceedings were had in open court.)

BY MR. BECRAFT:

Q. Ms. Kuglin, in response to those letters that you received from the IRS, let's talk about them collectively, 48 through 54.

A. All right.

Q. Did you seek or -- let me ask you this: Are you familiar with or what familiarity do you have with administrative procedures regarding federal income taxes?

A. I'm familiar that there are special procedures that need to be followed. I am familiar, and I can't quote again, I don't have the documents up here, that I have a right to ask questions, I have the right to seek counsel and I have a right to have hearings, and that there's specific procedures that must be adhered to.

Q. Did you have -- in your studies, have you sat down and studied the point of what you should do if you get letters from the IRS?

A. The -- the letters needed to be responded to within a certain period of time and --

Q. Listen to my question.

A. Yes, sir.
Q. Have you studied -- you have told us at length what you have done in reference to the study --
A. Right.
Q. -- the substantive tax law itself, my question that is now pending is on a different matter, but it relates to taxes. Had you engaged in any type of a study regarding administrative procedures in dealing with the IRS?
A. I know I have. I know I have. I'm not --
Q. Okay. That's fine. Have you studied it in detail so you would comfortable enough --
A. I have read it over. I did not feel that I knew enough to respond, do the legal responses that I felt that these letters were requiring.
Q. And did --
A. And so as a result of that, I felt that since I was not getting responses to the letters I had written that perhaps they were not in the proper format and that if I hired legal counsel, someone to write the letters for me, that the -- all the intricacies that were required would be in those letters, and I wanted to make sure I had someone who was asking the same questions that I had been asking.
Q. To your knowledge, did your counsel offer any --
MR. MURPHY: Judge, we're now at a point that it's not relevant.

MR. BECRAFT: I will back off, Your Honor.
THE COURT: Thank you.
A. I'm just not quite sure what I'm allowed to answer and what I'm not allowed to --
Q. There's no question pending, don't worry about it.
THE COURT: Right.
Q. Ms. Kuglin, in your studies of the income tax, Mr. Murphy pointed out a couple of cases to you where maybe some of your issues have been raised by other parties, do you recall that?
A. Yes.
Q. He mentioned this Wunder case.
A. Yes.
Q. Have you ever heard of Wunder?
A. I don't believe that I have heard of Wunder.
Q. And have you engaged in any type of a study down at the law library or on any other occasion? I want to find out if there are other cases that may relate to the ones that I believe in?
A. Well, I can probably -- I have got a list of cases that I have read. There's merchants -- some of the documents explain the cases, if I might look at the documents.
Q. Okay.
A. There are cases like Isner versus McCulmer Merchants Loan and Trust that address these same issues that we have

been talking about.

MR. MURPHY: Judge, I'm going to object to the response. It's --

THE COURT: I think it's --

MR. BECRAFT: Let me back up.

THE COURT: It's nonresponsive.

MR. BECRAFT: Your Honor, I will back up and ask another question.

THE COURT: I think we need to ask a question that can be responded to.

Q. Cases that were brought to your attention were brought to your attention in some particular way, is that correct?

A. That's correct.

Q. Would you have cases brought to your attention by the various materials that you would read?

A. Yes, I did.

Q. Okay. And if you saw a case in the materials that you read, would you go down and try to locate the case and read it?

A. Yes, I did. That's what I did.

Q. Did you make any effort to go to try to find cases that you didn't know anything about?

A. Yes, I did.

Q. About cases that you did not know anything about?

A. No, these were cases that I had -- that I had not

personally read that I didn't know -- I had read quotes from the cases and I looked at these cases, the ones that I felt would answer some of the questions that I had.

Q. Okay. Listen to my question.

A. Yes, sir.

Q. When you wanted to read a case and when you wanted to go get it, did you find out about the case in some materials, explanatory materials that you were reading? For example, pull out that folder one to Claire Kelly.

A. Yes.

Q. Would the Claire Kelly article be similar to other articles that you would read?

A. Yes.

Q. Did these articles that you read mention court cases?

A. Yes, it did mention court cases.

Q. What, if any, effort did you make once you saw a case in such material as such, what effort would you make to try to read the case?

A. I would go down and read the case and copy the case.

Q. Okay. Now, for cases -- there are obviously cases that were not mentioned in your reading material.

A. There were cases that were mentioned in the cases themselves that I would go back and look at some of those cases which substantiates some of the arguments in those cases.

Q. But you wouldn't -- if there was some case --
MR. MURPHY: Judge, I'm going to object to him leading.
THE COURT: Yes, objection sustained.
Q. In reference to this case that Mr. Murphy asked you about, the Wunder case, had cases like that ever been brought to your attention by your reading material?
A. I don't know that specifically the Wunder case had.
Q. Okay. Would you know about the existence of any other cases other than what you would discover in your reading materials?
A. I would hear about cases when I went to seminars and people who talked about the different cases.
Q. Now, looking at this from the totality.
A. Yes.
Q. Were there any cases that you had learned about through this way that you were pursuing in reference to studying that gave you any indication that what you were reading and studying was wrong?
MR. MURPHY: Judge, I'm going to object to the leading.
A. No.
THE COURT: I think it is simply too suggestive of the answer. A leading question is one that suggests an answer, and kind of like pitching somebody a softball, and

we don't let them do that, because we want to actually have a real answer. So I'm going to have to sustain that. I explain a little bit to the jury so we all understand that we need to avoid that.
Q. What, if any, cases adverse to your position was brought to your attention?
A. Well, the Pollock case, for one thing, was adverse to my position.
Q. In what way?
A. In the fact that it determined that an income tax was a direct tax rather than an excise size tax.
Q. What, if any, other cases were brought to your attention that indicated to you that your beliefs were erroneous?
A. Let me think on that one just a little bit.
Q. Let me withdraw it and I will frame it a different way.
A. All right.
Q. Did you ever learn about any cases that might have dealt with your issues that you talked about here in court over the last day and a half?
A. I don't know if I'm just tired or if I'm missing the point of the questions.
Q. Let me frame it another way. In your studies, in what you read, what, if any, cases did you find that rejected your arguments? Did you find any?

A. No. I found quotes in cases that I read that discussed other cases and differing opinions, but there were always answers to those opinions explained in the cases given down by -- you know, the decisions given down by the judges in those cases.

Q. All right. Good enough.

A. So they questioned it, but they also gave an explanation as to why those were not valid.

Q. Mr. Murphy, during cross, brought to your attention this big thick book that we have had here this afternoon, the Code of Federal Regulations.

A. Yes.

Q. Have you seen that type of book before?

A. Yes, I have.

Q. Whereabouts?

A. The Code of Federal -- excuse me, it's in the library.

Q. Now, he directed your attention to a particular regulation, is that correct?

A. That's correct.

Q. 1.6012-1, correct?

A. That's correct.

Q. And you testified that you have seen that before?

A. Yes.

Q. Why does that regulation in your view not apply to you?

A. Let me go to the regulations or to the code, and I

don't have that regulation sitting right in front of me.

Q. Let me ask you this question: Can you turn to Section 1 of the Internal Revenue Code?

A. Yes, I can.

Q. You were asked questions about tax imposed.

A. Yes.

Q. In reference to corresponding regulations, do you know what regulation corresponds to Section 1 of the code?

A. That is CFR -- 26 CFR 1 --

MR. MURPHY: Judge, I'm going to object because I'm not sure what he means by corresponds because I don't know that there's a corresponding relationship, necessarily.

THE COURT: Well, I'm going to allow the question on this one.

Q. Is there a regulation that applies to Section 1 of the code to your understanding?

A. Yes, there's regulation 1.1-1.

Q. Have you read that regulation before?

A. I have read parts of that regulation before. I don't know that I have read the entire thing.

Q. Now, did you come to any understanding or what, if any, understanding did you have as to whether or not that particular regulation solicited information?

Okay. I'll ask another question. Mr. Murphy brought

to your attention that the Form 1040 instruction booklet has an OMB control number?

A. Yes.

Q. 1040 form has an OMB control number, right?

A. Yes.

Q. Have you looked through, I don't know the exhibit number, but we have offered it into evidence, that big long list of all these control numbers?

A. Yes, the control numbers that are in Section 602.

Q. And in that particular list of OMB control numbers --

A. Yes.

Q. -- did you see when you first started engaging in this study that there were a lot of other regulations that listed the same control number for Form 1040?

A. Yes, yes, I did. There was a large number of them.

Q. Okay. Out of that list of OMB control numbers, what was it that was so important for you about how the 1040 form was to be or what relationship it had with the actual regulations themselves?

A. Well, the -- knowing that the individual income tax regulation is regulation 1.1-1 on that index, there was only -- only one entry that applied to that particular regulation, and that one entry was the entry 1545-0067 which applied to the Form 2555, foreign earned income. And that was of significance to me of that particular index and that

section, under the Paperwork Reduction Act.

Q. Now, Mr. Murphy asked you some questions about Section 6001, 6011 and Section 6012 of the Internal Revenue Code?

A. Yes, that's correct.

Q. And you had read those sections of the Internal Revenue Code a long ago?

A. Yes, I read it during the period of time I was formulating my opinions.

Q. What was it that was important -- when you read Section 6001 of the Internal Revenue Code, what was it that was important in that section of the code that related to your beliefs about whether or not you were required to file returns?

A. It said that a person that was liable, any person liable for any tax imposed by this title.

Q. Did you determine whether or not you were liable pursuant to Section 61 -- or Section 6001.

A. I could not determine by just reading that, that I was. I read 6011, which said a person made liable, and when that did not define whether or not I was a person made liable, I then went to the index to determine whether or not there was any section under subtitle A, taxes, which addressed the issue of liability, and that's when I found the Section 1461, which said that the withholding agent for nonresident aliens and foreign corporations were made liable for the individual

income tax.

Q. Have you -- what, if any, research about looking for the word liable in subtitle A of the Internal Revenue Code beyond the table of contents or the index, have you engaged in any type of search to find the word liable in subtitle A?

A. Yes, later on when computers became available and this information was on the computers, I did search under subtitle A, individual income tax for the word liable, and it came up, I think, three times, one -- two times were in reference to some dispute, and the only other time it came up was in regard to Section 1461 of subtitle A.

Q. Mr. Murphy directed your attention to Section 6012 of the Internal Revenue Code?

A. Yes.

Q. Do you have a belief -- or what, if any, belief do you have as to whether or not you are required pursuant to Section 6012 to file 1040 forms?

A. Well, based on the fact that I could only find one section, 1461, in the entire section of individual income tax that addressed anybody that was liable, and that was the withholding agent of foreign corporations or nonresident aliens. Yes, nonresident aliens and foreign corporations. Since I did not fall under that category, then I made the determination that I was not a person that was required under Section 6001, 6011 to complete the 1040 form.

Q. Is it your understanding that section 6012 would apply to people who are liable?

A. Absolutely. I believe that foreign -- the withholding agents of nonresident aliens and foreign corporations are absolutely liable and have a requirement to complete the 1040 form and also the Form 2555.

Q. Let me ask one final set of questions. Do you have that '93 1040 instruction booklet or '95 that you had up here on the stand with you?

A. Yes, I do.

Q. Okay. I was going to use these exhibits, but can you use those, that one?

A. Yes, I can.

Q. All right. Have you looked through there to see -- your testimony is that you're an American citizen?

A. That is correct.

Q. All right. Did you make any study of that instruction booklet to determine how often the instruction booklet relates to United States citizens?

A. Yes, actually, I did, and I, again, as I found out with the Internal Revenue Code, that it is good to go to the index, so I went to the index instructions of the 1040 form, and I looked for the word citizen in that document, and I finally found one place where it was listed.

Q. What was listed?

A. Where the word citizen was listed.
Q. Okay. And what was that?
A. And that was listed under the use, it says U. S. citizens and resident aliens living abroad, and that was the only place that I could find any reference to the word citizen.
MR. BECRAFT: One moment, Your Honor. Nothing further, Your Honor.
THE COURT: All right. Thanks very much. We will let you step down. Thank you.
(Witness excused.)
MR. BECRAFT: We rest.
THE COURT: All right. The defense rests.
Will the government -- and we're going to take a break, but, Mr. Murphy, does the government anticipate calling any rebuttal witnesses?
MR. MURPHY: No, sir, Your Honor.
THE COURT: Ladies and gentlemen, that does conclude all the proof in the case. I'm going to talk with counsel and see if we have got our -- I know we have been working on the instructions, we hope we're very close, but that will take at least 15 minutes. This is our afternoon break, 15 minutes. If we can't get everything done today, then, of course, we will revise our schedule. We will see you in 15 minutes. Don't discuss

the case among yourselves, don't let anybody talk with you. We will see you in 15 minutes.
(Jury out at 3:30 p.m.)
THE COURT: We will let you have a seat, and we're going to go over a few things.
MR. BECRAFT: Your Honor, could I -- could I do something real quick for the record?
THE COURT: Sure.
MR. BECRAFT: Could I renew my Rule 29 motion on the same grounds?
THE COURT: This is a case in which there is -- the rule simply doesn't contemplate the court making any decisions about really any of the issues that are before this jury. The jury is going to have to decide credibility questions and, therefore, there is sufficient evidence for the government to proceed on each element of the asserted offense.
What we have handed out to -- so motion is denied. We have handed out to you a set of instructions. Mr. Murphy, there is -- you both will note that there's one that I haven't really quite -- they have got some overlap, I may give both of them, it may be okay to do that. You have got a cover sheet, and it runs quickly through some of the things that are very basic. I will flip through the pages with you. They're not numbered

because there's going to be rearranged.

It begins with the general instruction, they're to decide the case and they're not to -- they're to follow the law, decide it based on the testimony of other evidence, the first two pages. And then the burden of proof and reasonable doubt and what proof beyond a reasonable doubt is. Talking about the evidence and what they can consider, direct evidence and circumstantial evidence. Also, reference that they can't take anything I have said -- I haven't said much, can't take anything I've said as indicating as to how the case should be resolved.

Multiple crimes, that's 2.01A, that is requested. Stipulations, I'm aware of one stipulation, really, and that's the one as to Memphis Shelby County, Tennessee being located in the Western District of Tennessee.

Number of witnesses and credibility, that's the standard instruction. The number of witnesses is not controlling. Of course, that's an appropriate one.

Then credibility as to defendants. Since she did testify, we usually give the 7.02B instruction, and just say they apply the same things in determining credibility of the defendant as any other witness.

Law enforcement witnesses, we certainly had law enforcement witnesses, and it just cautions them to treat

those witnesses with the same type of inquiry that they would anybody else. The reference to the indictment and the reading of the indictment, and the reference to 59.1, which is the Sand instruction, which is the very brief statement regarding evade or attempt to defeat any tax. Statutory purpose, which is 59-2.

The elements, I combined the concept of the elements contained in the defendant's Devitt reference with the Sand one, and also with Mr. Murphy's statement, and really it seems to be everybody's statement that I'm going to have to describe what an affirmative act is a little more, and I have done that later on, and I've said -- and I haven't made reference to the affirmative acts set out in the indictment because Mr. Murphy has actually put in some proof about some things that might be affirmative acts other than the acts in the indictment, but I'm going to talk about what those could be. Tax due, that's the first element, obviously.

Second element, affirmative act, I have actually elaborated on this somewhat. In the middle of the paragraph of -- the second paragraph, there are different ways in which a tax may be evaded or an attempt may be made to evade it. For example, in this case, the government asserts that Ms. Kuglin attempted to evade or defeat the income tax by filing false Form W-4s for

application as to each year -- each tax year alleged in the counts in the indictment. I didn't say that -- I used that for example language because the government also is making the argument and has put on proof about large cash transfers. It's not a real strong one, so I'm willing to strike that.

MR. MURPHY: Judge, what I'm going to argue -- I'm not going to argue cash transfers were necessarily acts of evasion, but that they were --

THE COURT: Let me tell you what I said about it.

MR. MURPHY: Okay.

THE COURT: And you may not find it to be -- I didn't say they were acts of evasion, I said it might be evidence.

MR. MURPHY: That is what our position is going to be, Judge.

THE COURT: That's what I said, I didn't say it was. It could be, it can be an act. Anyway, I think you're relying on the W-4s, primarily.

I do go through the fact that the government has to prove an affirmative act constituting evasion, that must be a positive act. I say it's not failure to file or a failure to pay, which is true, that's not an affirmative act, let me make that clear. I then reference the Supreme

Court. The Supreme Court has defined this element as requiring proof of conduct, the likely effect of which would be to mislead or conceal. In other words, in any act which is likely to mislead, the government -- or conceal funds satisfies this element. Thus, filing a false form, for example, a W-4 withholding form, or a false tax return is sufficient -- there's no lost tax return here, but that's an example -- as are false statements made to the Internal Revenue Service after the return was due or filed. Large cash transactions may also be evidence of an affirmative act of evasion. I said evidence of, Mr. Murphy, I didn't say an affirmative act. I think that's what I should say.

MR. MURPHY: Judge, that's correct, that's what we're going to argue.

THE COURT: And then it says it is not necessary to prove a separate act constituting evasion for each year, tax year, which is the subject of the prosecution; thus, filing a false W-4. I think in this case you have got a W-4 for each year, but it can be for filing a false statement for withholding form satisfies this element as to each year for which it was in effect. I think that's the law, so -- the third element is the willfulness element. There is a lot of discussion here, and this is really more than either one of you submitted,

and if you don't like it, you need to tell me. Whether or not the defendant acted knowingly and willfully is a question of fact to be determined by you based on all the evidence in the case. An act is done knowingly if it's done purposefully and deliberately and not because of mistake, accident, negligence or some other innocent reason. The government must also prove beyond a reasonable doubt the defendant acted willfully. A willful act is defined as voluntary and intentional violation of a known legal duty, and we talked about the government has to prove that.

And then we say willfully, defined further, referring to the Supreme Court case, one of the Supreme Court cases that we have been looking at. The word willfully in the criminal tax statutes requires a voluntary, intentional violation of a known legal duty, so repeating it, but then I'm going to say more about it. The requirement of willfulness, therefore, means an act undertaken with bad faith or evil intent or evil motive and want of justification in view of all the financial circumstances of the taxpayers. That's direct language from -- I have a copy of the opinion, but of a '93 -- '73 Supreme Court opinion. In our complex -- this is the language that the Supreme Court says.

The next paragraph. In our complex tax system,

it certainty often arises even among taxpayers who earnestly wish to follow the law. It is not the purpose of the law to penalize frank differences of opinion or innocent errors made despite the exercise of reasonable care. Degrees of negligence give rise in the tax system to civil penalties. And I think that's fair because we have heard some things about civil stuff. The requirement that an offense be committed willfully is not met, therefore, if the taxpayer has relied in good faith on a prior decision of the Supreme Court. The Internal Revenue Code or the regulations and instructions published by the Internal Revenue Service. Thus, the word willfully under -- I think we have got our code number wrong here, it's 26, I'm sure, isn't it?

MR. MURPHY: Yes, sir, Your Honor, Title 26.

THE COURT: That's a typo. USC -- U. S. Code, Section 7201, includes the concept of bad faith or evil intent that separates the purposeful tax evader -- or tax violator, from the well-meaning, but sometimes confused, mass of innocent taxpayers.

Now, Mr. Murphy, that's pretty much what the Supreme Court said, and I think we kind of need to make this distinction because I perceive the government is arguing that she is not in the mass --

MR. MURPHY: That's correct. Judge, I don't

have an objection to that.

MR. BECRAFT: You want to hear from me, Judge? I'm pleased with your willfulness instructions.

THE COURT: I'm not even through yet. Well, then to go to good faith defense, you're right. And then we start talking about good faith defense. There is one thing on good faith defense we may need to add. I noticed something earlier. What I have done is I've taken the defendant's and the government's, but the government, there was a little bit of stuff missing, so I put them together side-by-side. Willfulness is -- the first part of the willfulness defense is from the defense, and that is just the intro on willfulness, is negated by the defense of a good faith mistake of the law requirements, and I think that's the more complete statement. To make such a determination, one must inquire into the defendant's mind or mental attitudes and approach the situation which the law required of her. I may have this wrong, which the law required of her some action. That doesn't look quite right. I will look it up here.

MR. BECRAFT: Perhaps the court is reading too closely, I don't see that there is a --

THE COURT: This is exactly what you wrote down.

MR. BECRAFT: Yes, sir.

THE COURT: But I'm not sure it sounds good.

MR. BECRAFT: Okay. All right.

THE COURT: That last phrase in that sentence for mental attitude and approach to the situation which the law required of her some action, and this is exactly what you wrote, but I think that's not what you meant.

MR. BECRAFT: Okay. Are we on the page that says willfulness is negated by the defense of a good faith mistake --

THE COURT: Yes, it's good faith defense. It's the first one. Do you want to say it that way? I mean that last little phrase just doesn't quite -- do you think it is okay?

MR. BECRAFT: Well, if it is causing some problems, maybe we can strike it.

THE COURT: Which the law requires.

MR. BECRAFT: If you believe that the defendant, subjectively in her own mind, believed that she was not required by the law to file the tax returns in question, it will be your duty to find her not guilty. Is that the line that the court is --

THE COURT: What I'm having trouble with is this second line of the sentence, and I had a lot of trouble before, and I thought I would bring it up to you. It is, to make such a determination, you should must

inquire into the defendant's mind, her mental attitude and approach to the situation which the law required of her some act, and I think that's okay. I just think it's kind of --

MR. BECRAFT: Awkward.

THE COURT: -- awkward. If you want it, I will leave it.

MR. BECRAFT: Okay, if the court will leave it, I'll live with it.

THE COURT: And approach the situation. I usually like my instructions to sound good. That's the problem I'm having. No offense. I would like to change it and make it sound a little better, if we can. Her mental attitude -- let's just say this: Her approach to the situation which she believed the law required.

MR. BECRAFT: That will be good, Judge.

THE COURT: Is that okay?

MR. BECRAFT: Yes, Your Honor. I'm real pleased with what the court has done.

THE COURT: Well, okay. Mr. Murphy, I think that's -- that's all a part of the case.

MR. MURPHY: Judge, I'm stuck with that, I don't think there's a lot I can do about it. If I could write the jury instructions --

THE COURT: Well, we wouldn't --

MR. MURPHY: They follow the law, I don't know that mine would be a whole lot different.

THE COURT: Okay. Well, then I just wanted to -- I didn't want to change the defendant's language without the defendant agreeing to it is the main thing. I think we have got that changed now, I feel comfortable with it.

Then we go to what the government said, which was a part of the Sand material, and then I go to the defendant's good faith, and we may want to try to change our font on that because I don't particularly like the way the font came out because there's a change in font. And then this is their repeated one. I wanted you to look at this, Mr. Murphy. I was inclined to give something real close to it because the defense is entitled to something pretty close to it. If the defendant acted in good faith, that is to say she actually believed the actions she took were allowed by the law, then she is not guilty of the offense of tax evasion or willfully failing to file income tax returns. And it does not -- I think we're taking out the willfully failing because that's not -- we don't want to confuse the jury there. It does not matter whether the defendant was right or wrong in her beliefs, nor does it matter that her beliefs make sense or sound reasonable to you, the jury, or to me, as the judge. The only thing

that matters is whether or not the defendant actually believed she was correct in her actions. Also, it is not the defendant's burden to prove that she did believe her actions were correct, rather the government's burden to prove that she did not. That's true. You stated that a little differently than the Sand instruction, which is the burden. I may later on at some point modify that. It is for you, the jury, to decide whether the government has proved that the defendant willfully committed tax evasion by proving beyond a reasonable doubt that she did not actually believe her actions were correct, and by proving all the other elements that I have explained to you in these instructions, or whether the defendant believed her actions were proper. If you find that the government has failed to meet its burden, then you must find the defendant not guilty of these offenses. If there's a reasonable doubt in your mind as of this issue, or even if you conclude that the defendant could have only believed her actions were proper by abysmal ignorance and the rankest kind of stupidity -- and I think you're allowed to have language like that -- yet you find that she believed she was correct, you must find the defendant not guilty. Mr. Murphy, I mean there is a lot of cases that say that.

MR. MURPHY: Judge, I don't have an objection to that.

THE COURT: I'm a little concerned that we don't have that burden language from the instruction, I may switch and add that in. I will show you where. I think I will. Remember, the burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove her good faith, rather the prosecution must prove bad faith or knowledge of falsity beyond a reasonable doubt. We will add that right there at that point. I think that's what we ought to do. Okay.

All right. The next one in this case, the defendant is not presumed to know the law, that's true.

Government, this is the one on the IRS publications and word voluntarily. I think we better give that, Mr. Murphy, there has been so much talk about voluntary, I think I probably better give it.

MR. MURPHY: Judge, I agree, and I know you took the Paperwork Reduction Act --

THE COURT: Actually, I put a little piece of it over there on G9, the next one over.

MR. MURPHY: Yes, sir. And I think that should be given, and a third thing that should be given, I believe, based on the testimony, the Seventh Circuit has taken up the question of whether wages are income several times, and Judge Bower has said in a footnote in a case

Colabowski (spelled phonetically), that although not raised in his brief, on appeal, the defense's entire case at trial rested on the claim to be in good faith belief that wages are not income for taxation purposes. Whatever his mental case, he, of course, was wrong, as all of us are already aware; nonetheless, the defendant still insists that no case holds that wages are income. Let us now that to rest, wages are income. Any reading of tax cases by would be tax protesters should now preclude a claim of good faith belief that wages or salaries are not taxable. I think we ought to have an instruction that wages are income for income tax purposes.

THE COURT: You're entitled to something like that. We had a gross income definition in the Tony Alamo case. We usually give something like that. Nobody submitted it, but I actually had one out to ask about. If you have got that written down, I would rather use one that is written down.

MR. MURPHY: Judge, I don't have it written down, but I can write something down for you.

THE COURT: Have you got the case right there?

MR. MURPHY: Yes, sir.

THE COURT: Why don't you just hand Ms. Wherry the case?

I'm going to put add wages are income. I don't

perceive that as being particularly the defendant's position.

MR. BECRAFT: It isn't, Your Honor.

THE COURT: But I think that because of the evidence there might be some confusion on it. So what we will say is -- I'm going to add that where I have got the -- in this case, the defendant is presumed to -- is not presumed to know the law. I should -- I instruct you, however, that the law is that wages are income, I was going to say, and must be included in gross income for purposes of income tax, and must be included in gross income when determining income tax liability.

MR. MURPHY: Judge, I have no objection to that.

MR. BECRAFT: Neither here, Your Honor.

THE COURT: Okay. That will clear that up, and that takes care of that. Okay. I've put that in the earlier section, Ms. Wherry. And then we have got inferring mental state. Obviously, this is all about mental state, so I'm just going to give the standard instruction on inferring mental state. If nobody has any objection, that will be just a sum up. I have got the summary. If you find that the government has proved beyond a reasonable doubt each of the elements of the offense as set out in these instructions, then as to the

count that you're considering, you must return a verdict of guilty as to that count. If you find that the government has not proved beyond a reasonable doubt each of elements of the offense as set out in these instructions, then as to the count that you're considering, you must return a verdict of not guilty as to that count. That's to remind them that we have concluded the discussion of the substantive questions.

Then I caution you to -- it's just the normal caution about they're only deciding this case, they're not deciding any other case. They're here to determine the guilt or innocence of the accused, not to return a verdict as to anybody else. I usually put that in just in case somebody is confused.

I also put the defendant's instruction in. You have no right to find the defendant guilty only for the purpose of deterring others from committing crime. That's certainly right, they have got to decide whether she committed this crime or not, not whether they were concerned about somebody else not paying taxes when they should pay.

I did include, again, a reference, because we referenced civil liability earlier, so I included defendant's D-30, there's a distinction between the civil liability of a defendant and a defendant's criminal

liability. This is a criminal case. The defendant is charged under the law with the commission of a crime, and the issue is whether the defendant has or has not -- now, there's no -- do I need -- I thought there might be some proof on this, but there wasn't anything about her settling any civil liability questions.

MR. BECRAFT: None. There wasn't, Your Honor. It's one of those things that, you know, you kind of think about what jurors are going to think about, and that's the only reason why I ever ask it. Well, gee, if we acquit her on a crime, she doesn't have to pay taxes.

THE COURT: Oh, I see what you're saying. I didn't have any problem, it was not an inappropriate inquiry and, obviously, everybody knows that there are both civil and criminal aspects of the tax law, I think.

I did include this: When you're instructed that the Commissioner of Internal Revenue has the power to make a return and assess a tax -- but I don't think we need to do that now, do we?

MR. BECRAFT: No, Your Honor.

THE COURT: We're going to strike that.

MR. MURPHY: I have no opposition to that, Judge.

THE COURT: And then the verdict has to be unanimous, explain the verdict form and excuse our

alternate jurors, and then we have got a verdict form, which just says Counts 1, 2, 3, 4, 5 and 6, and it has guilty or not guilty. I'll tell them about that. It has got a copy of the indictment with all the prison ranges taken out, because that's not appropriate for a jury to consider.

All right. Gentlemen, ladies, have we -- any objections to the instructions as revised?

MR. MURPHY: Judge, the only thing I'm wondering, I wonder if, given the proof, if I would be entitled to the deliberate ignorance instruction? I don't know how that plays out --

THE COURT: No, no, I'm worried about that.

MR. MURPHY: I don't think that would fit in with the good faith --

THE COURT: Mixing that in with the good faith, I think --

MR. MURPHY: I think I can argue a deliberate ignorance kind of argument, that she ignored parts of the law.

THE COURT: Right. You can argue the unreasonableness of her position in attacking whether she actually had a good faith belief.

MR. MURPHY: Yes, sir.

THE COURT: I --

MR. MURPHY: Judge, I would rather not --

THE COURT: I think if I gave deliberate ignorance in this case, it might be reversed.

MR. MURPHY: I don't disagree, Your Honor.

THE COURT: If you find a case that says to the contrary, we might consider it, but otherwise...

All right. Let me ask you both, do you want to come back and start at 9:00 o'clock tomorrow and do your closes at that time? I -- that's perfectly okay, we don't expect the jury to finish anyway, and it's -- you know, about six minutes till 4:00.

MR. MURPHY: Judge, I think that's an appropriate way to do things, go ahead and end for the day.

MR. BECRAFT: I concur, Your Honor.

THE COURT: Okay. Well, then you have got your sets of instruction. You can use the instructions in your close. You can quote from the instructions. You can put something on the screen if we get a final one that's all clear for you, and we will probably have that for you a little before 9:00 o'clock tomorrow morning.

MR. BECRAFT: Judge, can I make some objections?

THE COURT: Sure.

MR. BECRAFT: You know, I presume this is kind

of like a charge conference.

THE COURT: That's what we thought we were doing.

MR. BECRAFT: Okay. Good enough. Then my only objections, Your Honor, I submitted, defense requested instruction seven through nine that relate to the lesser included offense, and we have dealt with that matter, I think.

THE COURT: I overruled the submittal and concurred with the government.

MR. BECRAFT: That's all I have, Your Honor, and I'm pleased with the court's instructions.

THE COURT: Mr. Murphy, anything else from you?

MR. MURPHY: No, Your Honor, I have no objections to the court's instruction.

THE COURT: We're going to bring the jury in and let them go come back at 8:30 tomorrow, we will start in here at 9:00 with closing argument and then final instructions inclusions on the law.

(Jury in at 3:55 p.m.)

THE COURT: Ladies and gentlemen, we have had our charge conference, we've gone through all the provisions of the law. Everybody agrees it would be better, because we cannot finish the arguments this afternoon, to do them all tomorrow morning. We can do

that and then have the instruction. I think that's always better than having to split them up, that's just not -- that's probably not the best way to do it. And I'm going to tell you there's no way we could get the case to you this evening so that you could begin your deliberations, that would not be practical. So we have decided to let you go home early, if that's all right. Anybody object? All right. Without objection, then we're going to let you go home early, and we will spend -- we will start at 9:00 o'clock tomorrow morning in here with the closing argument by Mr. Murphy and then, of course, defense counsel has a chance to make a closing argument. Mr. Murphy has a short rebuttal, if he wants to, and then we will have the instructions on the law.

Have a very pleasant evening. I want you to do one thing, I want you to avoid anything in the newspaper that might be about the case. If you happen to see anything, I want you to not pay any attention. And you should let me know if you see something and you're concerned at all that it might influence you. I want you to be careful to avoid that. Just don't read the paper tomorrow. That's probably the best thing to do. You can look at it when you go home tomorrow afternoon maybe, depending on whether you have concluded your determination in the case.

Well, now, let's go back through everything. Don't discuss the case among yourselves. Don't let anybody talk with you about it. You have heard all the evidence, but you have not heard the final arguments of counsel, you have not heard the final instructions on the law, and you have not had a chance to go to the jury room and then have that discussion among yourselves. So you're to keep an open mind until you have done all those things, then you're to begin that process in making up your minds individually and then making up your mind as a jury.

As you leave today and when you come tomorrow, of course, avoid any contact with defense counsel or with government counsel or with anybody associated with any side in the case. If anybody tries to talk to you about the case, report it promptly to one of our court security officers or directly to me, we will take the appropriate steps. Do not do any -- make any inquiry or do not make any -- do not do any research or make any investigation at all, as you know, and, of course, avoid anything on television, radio or TV that might be about this case or cases like it. Keep an open mind. We will see y'all tomorrow at 9:00 o'clock. We should start right on time, there shouldn't be any problem. We will see you then.

(Jury out at 3:58 p.m.)

THE COURT: If you want to wait -- if you want

to have somebody stay around until they bring out the final version of the charge, you're welcome to do that. Of course, you're welcome to be excused and pick it up tomorrow, whichever you want to do is fine. I going to go back and finish it up, and I'm sure we will get it completed within the next 30 or 45 minutes, at the most.

MR. BECRAFT: Your Honor, I will just read it in the morning.

THE COURT: Whatever you wish to do. We will make it available for you as soon as you like it. Thank you very much.

MR. BECRAFT: Have a good evening, Judge.

THE CLERK: All rise.

(Court adjourned at 4:00 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 03-20111-Ml
	)	
	)	
VERNICE KUGLIN,	)	
	)	
Defendant.	)	

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
AUGUST 7, 2003
VOLUME IV

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A P P E A R A N C E S

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THURSDAY MORNING & AFTERNOON

AUGUST 7, 2003

The trial in this case resumed on this date, Thursday, August 7, 2003, at 9:00 o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

_____

THE COURT: Everybody ready to proceed?

MR. MURPHY: The government is ready, Your Honor.

MR. BECRAFT: Your Honor, I think we have got two quick matters to take care of. Yesterday, we had, I thought it was Exhibit 50, I don't know what the exhibit number is, but he had the Code of Federal Regulations book, and he substituted in lieu thereof some pages --

THE COURT: Right.

MR. BECRAFT: Which the clerk has got. Second point, I offered, but the court didn't admit those letters from the lawyers, and I would like to make sure that they're in the record. I gave them to her.

THE COURT: Okay. They will just be collective, I think we have already got an A, I think it's B as submitted. We could give them ID numbers now that

we're end at the end, it wouldn't make any difference matter. It would just be Collective -- what's the next number for identification only, not received?

MR. BECRAFT: Can I make one inquiry with the court? Will you give the instructions to the jury when they go back to deliberate as well, a copy?

THE COURT: Yes, sir. Right.

THE CLERK: Exhibit 58.

THE COURT: My sheet is missing. Maybe I can find it.

That will be 59 for identification. 58 was the 1995 1040 form instructions, so 59.

THE CLERK: ID.

THE COURT: ID only, four letters.

(Exhibit Number 59 was marked. Description: Four Letters.)

THE COURT: Anything else?

MR. MURPHY: Judge, you want us wearing the mics this morning, the sound equipment?

THE COURT: I think it's probably a good idea. You know, we all think we can be heard easily, but it's not always -- I know you're pretty easy to hear actually, Mr. Murphy, but I kind of have to get everybody to do the same thing.

MR. MURPHY: Yes, sir.

COURT SECURITY OFFICER: Good morning, Your Honor.

THE COURT: Good morning. We got everybody, Mr. Tuggle?

COURT SECURITY OFFICER: Everybody is here.

THE COURT: I've found if we let people pick and choose, people that need the mics don't want them.

All right. Is everybody set?

MR. MURPHY: The government is ready, Your Honor.

THE COURT: Mr. Tuggle, we can bring everybody in.

(Jury in at 9:02 a.m.)

THE COURT: You may be seated. And, Mr. Murphy, is the United States ready to proceed with closing argument?

MR. MURPHY: The government is ready to proceed, Your Honor.

THE COURT: You may proceed.

MR. MURPHY: Good morning, ladies and gentlemen.

THE JURY: Good morning.

MR. MURPHY: We're at the end of the case as far as the terms of presentation of proof. What we're going to start with now is presentations of the argument, and your real work will begin shortly when you go back into the jury room and you make a decision regarding this case.

I would like to thank you for your jury service. I suspect nobody is looking forward to jury service. It takes time out of everybody's schedule. It's difficult. As busy as folks are today, it is difficult to accommodate in your schedules, but it's important because in the United States, the people, ordinary people, ordinary citizens decide these cases, and the system doesn't function without you, so everybody thanks you for it. We appreciate it.

Now, this is a case about taxes. Obviously, the question of taxes -- taxes is a pretty charged issue. It goes without saying, taxes are always controversial. Most folks would probably say they pay too much, but taxes are part of the price we pay for living in the freest wealthiest society in the world. And remember, this isn't a case about whether taxes are good or bad; it's a case

about whether the defendant evaded the taxes in this case.

Now, she's charged with six counts of income tax evasion. There are three counts -- there are three elements to income tax evasion. That means there are three things the government has to prove. The judge is going to instruct you on this, but the government has to prove an affirmative act of evasion, and I would submit to you, ladies and gentlemen, that based on the evidence in this case, that affirmative act of evasion was the filing of the false W-4 forms where the defendant claims she was exempt for the period of years throughout which the taxes were not taken out of her check. The government has to prove beyond a reasonable doubt willfulness and, again, the government -- the judge will instruct you on that, but that is the violation of a known legal duty. In this case, the defendant has made a good faith defense, and the government has to prove that the defendant did not act in good faith.

Third, the government has to prove a tax deficiency, so that -- beyond a reasonable doubt. Those are the three things we have got to prove. So let's start with the tax deficiency, and let's talk about the case -- the facts of the case as we go through.

The proof in this case established, I would submit to you, ladies and gentlemen, beyond a reasonable

doubt that the defendant was employed by Federal Express Corporation as a pilot from sometime in the 1980s up until the present. Now, the period we're dealing with in the indictment is '96 through '97. The proof in this case showed wages from FedEx of a 183,000, 172,000, $168,000 172,000 in '99, 200,000 -- I mean 191,000 in 2000 and a 190,000 in 2001. You heard the tax computation. The taxable income is on this bottom line. For '96, it was 162,000, 147,000 in '97, '98 was a 137,000, it was a 146,000 in '99, it was a 164,000 in 2000 and a 161,000 in 2001. The tax due and owing $47,000 in 1996, $42,000 in '97, $36,000 in '98, $41,000 in '99, $47,000 in 2000 and $45,000 in 2001, tax due and owing. I would submit the government proved that beyond a reasonable doubt.

Let's talk a little bit about the facts in the case overall. In addition to being a pilot, the proof showed that the defendant, and this is Exhibit 15, I would urge y'all to look at it. You can take any of these exhibits back in the courtroom you wish to take back. But these are the W-2s. For 1998 or '88 rather, the defendant claimed six exemptions. In 1990, she claimed ten.

Now, the proof in this case was that the defendant had one child, and if you look at the '92 tax return, it was actually submitted in that case, she had -- her child was the only dependent she claimed. She claimed

exemptions, ladies and gentlemen.

Now, if you go forward to 1996, 1995, that period of time, the defendant begins to submit W-4 forms where she claims she is exempt from taxes. Now, she didn't file in '93, she didn't file in '94. The IRS took action against her in both years to collect that tax. She admitted on the stand she didn't get a refund in '94, and if you look -- if you look at the forms -- if you look at all these forms, they basically say two important things that you need to look at. I claim exemption from withholding for 1997, and I certify that I am both -- that I meet both the following conditions. Last year, I had a right to refund of all federal income tax withheld because I had no tax liability, and this year I expect a refund of all taxable income withheld because I have no tax liability.

If you go to this top portion, if you look at this first paragraph there, it says no, you cannot claim exemption from withholding if, one, your income exceeds $650 and includes unearned income, interest and dividends, and two, another person can claim you as a dependent on their tax return.

Now, beginning with the '99 W-4 -- and the language on most of these is the same. In later years, they imposed a specific amount of unearned income,

interest income you had to have. '94, the IRS anyway, and Ms. Kuglin knew about it, she didn't get a refund of all her tax -- all her taxes. And the IRS levied against all of it. Now, does that square up? You don't get the tax money back. The IRS levies against you and you claim you don't have any tax liability and you got a refund, you're entitled to a refund. Well, that's not what the IRS said, and she had notice of a lot of this stuff. We've got the letters, we introduced approximately seven letters beginning in '95. Also, her income, if you look at the proof was more than $650 in 1996, and if you -- I would also urge you, ladies and gentlemen, to look at these documents called the IRP documents. For example, here is one for 2000. If you go to the back page of it, it shows the amount of interest income she got in dividends in every case. What you're going to see, if you look at those IRP documents, and those are Exhibits 3, 4, 5, 6, 7 and 8, I believe, if you look at those documents, you're going to see that a lot of these years where the note on the W-4 said do not claim exempt if you have more than $650 in income and received unearned income, i.e. interest. She had interest, she had more than $650 in income and still she submitted the exempt certificate. I would submit, ladies and gentlemen -- and we're going to talk some about the good faith defense -- that that just

wasn't true, that was an act of evasion, that was an untruth statement.

Now, one other thing that is kind of interesting about these W-4 forms, if you look at them, there's a statement down there that you have to sign, under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on the certificate or entitled to claim exempt status, and then Ms. Kuglin, in every case but one, adds reserving all my constitutional rights in this matter.

Well, ladies and gentlemen, if you're entitled to it, why not sign it under penalty of perjury. I mean if you're entitled to it and you think you're entitled to it, and I would submit that that's an indication that she didn't believe she was entitled to it, that she was trying to limit her liability under that statement where she was swearing under penalty of perjury that she was entitled to those exemptions.

Now, let's talk -- we proved the acts of evasion, I would submit to you, ladies and gentlemen, beyond a reasonable doubt, and the proof establishes that. Now, let's talk a little about the good faith defense. Under the good faith defense, if the defendant has a good faith belief, in other words, she really believes that she wasn't violating the law, the judge is going to instruct

you, ladies and gentlemen, that you have to acquit her, but that belief has got to be good faith. And I would submit, ladies and gentlemen, this case turns on the question of the defendant's good faith.

Now, the instruction the judge will give you is -- and this is part of it, this isn't the whole instruction -- however, you may consider whether the defendant's belief was actually reasonable as a factor in deciding whether she held that belief in good faith. It should also be pointed out that neither the defendant's disagreement with the law, nor her own belief that the law is unconstitutional, no matter how earnestly that belief is held, constitutes a defense of good faith. This case turns on good faith.

Now, let's -- in talking about that, let's talk about credibility. The judge is going to instruct you about credibility. What credibility is, that's a lawyer's way of saying you can decide whether you're going -- how much of a person's testimony you're going to believe, are you going to believe all, are you going to none of it, are you going to believe some of it. As fact-finders, you make that determination. In other words, is somebody telling you the truth. And in this case, was this some made-up deal to beat the tax system. And the reason I put that question mark after good faith, that's what this case

turns on, her good faith.

Now, let's talk a little bit about the defendant's contentions regarding the income tax that you heard yesterday when she was testifying on the stand. I would submit the testimony you saw yesterday was the defendant claimed you can't tax ordinary occupations. There's problems with the Paperwork Reduction Act. The income tax is voluntary. There's no provision of the tax law that imposes taxes on individuals, and there's jurisdictional problems. That's more or less, I would submit, what the proof showed she claimed her basis was for not paying taxes and not filing returns. So the question then is did she have a good faith belief, and, ladies and gentlemen, again, if she doesn't have that good faith belief, I would submit the proof in this case -- if you determine she didn't have a good faith belief, I would submit that the proof in this case indicates and establishes that she ought to be convicted.

Now, what indicates she didn't have a good faith belief? Well, first of all, let's talk about the age of some of those cases and where those cases were from. She talked about the Pollock case from the 1800s. She talked about Brushaber which was a case prior to 1920. Prior to 1920, like 1914 or something, along those lines, 90 year-old case. She talked about cases from the Oregon

Supreme Court, the Arkansas Supreme Court and the Tennessee Supreme Court, which through her own testimony admitted that those were not -- that they were state court cases, not federal cases, and that they did not deal with the federal income tax laws. I would submit that that is what the testimony was.

Now, ask yourself this: If you were going to take a trip from Memphis to, say, Los Angeles -- well, backing up a second, a lot of this -- the law she quotes, for example, if you look at Exhibit 40, treasury decisions from 1916, Jack Cole case, 1960. The Internal Revenue investigation 19 -- Exhibit 28, 1953. Kind of out of date, isn't it? If you were going to take an automobile trip from Memphis to Los Angeles and somebody came up today and they had a 1918 map, what would you think? Would you think that's reasonable? Now, is that -- was that a good -- does that constitute good faith? In her own testimony, she had access to the Memphis State law library over there at the law school. All kinds of books over there. Does that constitute good faith? And you talk about credibility, does the defendant have anything to lose in this case? This is a defendant that over the six-year period encompassed in the indictment made over a million dollars and paid $1300 in tax is all, when the tax due and owing was over a quarter of a million dollars.

Does she have a reason not to be truthful to you, ladies and gentlemen?

Now, let's talk about the state cases. She claims she relies on state cases. Ask yourself is that reasonable. She admitted, I would submit the testimony was, that those cases didn't deal with the income tax. If you get stopped for speeding in the State of Tennessee and the trooper comes up and says, sir, ma'am, you were speeding, and you say, well, the speed limit is 80 miles an hour over there in Germany on the Autobahn or it's 80 miles an hour in Iowa, does that sound like a good faith excuse? Think about it. It's not -- I would submit that is not good faith, ladies and gentlemen.

The W-4s, let's talk about that. Now, if Ms. Kuglin really believed that she wasn't subject to tax, why not pay your tax and contest it? You heard -- I would submit the proof was Ms. Kuglin testified yesterday that she has never filed a refund for all this tax money she has paid in the past years. She filed for 25 years, at least tax returns, but she has never filed a refund. She claims to really believe this, but she hasn't filed a refund. Does that sound like something that somebody that good faith believed this was true would do.

The W-4s, is that true? Ask yourself that. I would submit does that constitute good faith or does

that -- is that emblematical of somebody who is sneaking around trying to beat the system? Does that constitute good faith? Ask yourself about taking the money out of the bank. We introduced the stuff from the bank. Pull out any statement and what you're going to see, I submit, ladies and gentlemen, if you examine it, is there's a deposit from Federal Express to the defendant that same day or at the next day, she goes and makes big cash withdrawals, several thousand dollars. I would submit that is emblematical or indicative of somebody who is trying to beat the IRS out of tax money. Why do it -- if you have got a good faith belief, what have you got to worry about? And, again, if you have a good faith belief that you're exempt, why not just sign the W-4 that you certify under penalty of perjury that you're entitled to it? Why not just sign it? Why add all this language about reserving all my constitutional rights. If it is the truth, just sign it, what do you have to be worried about?

The defendant talked about the fact that -- and so -- you know, I would submit, based on a lot of this stuff, that first issue of I'm not subject to a tax on occupations, look at the age of the cases. Look at what they're talking about.

Now, let's talk about voluntariness. We

introduced several exhibits like the '95 and '93 1040, and the defendant talked about using some of this material in arriving at her conclusions regarding the income tax, but -- that it didn't apply to her.

Judge, my mic is falling apart. I may blow everybody out of their chairs. If you look -- go through these books, the highlighted portions, it's clear there's language about penalties, and, you know, she talked about -- she talked about the OMB issues. But you want to know something, the same section that they talk about the OMB issues in here, they talk about penalties for not filing. And there's also language in these books that indicate if you have a certain amount of income, you have to file.

Now, one thing that is striking about the defendant's claimed study of the law, remember the old song by Tiny Tim, Tiptoe through the Tulips, you have to be a little older to remember that. Tiptoe through the tulips with the garden with me. Well, she tiptoed through the tulips. Stuff that helps her support her argument, and I would submit it doesn't support her argument. Boy, she can talk all about it, tell you all about that stuff, tell you about a 1914 case, a 1916 Treasury Department decision, tell you all about that. Now, doesn't know anything about the modern law, hasn't read anything that

doesn't support her position, none of that. But a lot of what she claims to be the law, there's stuff in the very material that she used that disputes that fact. She is tiptoeing through the tulips, ladies and gentlemen. If it helps me, I'm going to pick it. If it doesn't help me, I'm going to disregard that. Taxes are voluntary. She got on the witness stand and told you, I would submit, ladies and gentlemen, that there was no provision in the law that required payment of the income tax. I asked her are you familiar with Section 1 of Internal Revenue Code, tax imposed? She turns to it in her book, said that she had been -- knew about this section for years. Section one, the first section of the Internal Revenue Code, unmarried individuals other than surviving spouses and heads of household, there is hereby imposed on the taxable income of every individual, other than the surviving spouse as defined in Section 2A or the head of a household as defined in Section 2B1 who is not a married individual a tax determined in accordance with the following table.

Now, ladies and gentlemen, could anybody read that and say in good faith, well, I'm not required to pay tax. And we went through all those other code provisions yesterday, which she admitted she read that says shall make returns, all that sort of language, y'all remember that. Now, how could you read that stuff and say I'm not

required to pay, I'm not required to file?

You heard her talk about some of the materials she used. Now, a lot of those materials were not government materials and, specifically, there was testimony about IRS code words, that wasn't government, and you ought to ask yourself, does a reasonable person say shall doesn't mean shall, is that reasonable?

The OMB argument, you know, the Paperwork Reduction Act wasn't complied with. A couple of things about that. There's an OMB number on all these tax forms. It's right up here, it is highlighted, it's 1545-0074. Now, Ms. Kuglin's claim, I would submit, that the evidence has established is that the OMB -- the OMB requirement hasn't been complied with and she can't determine what tax form she is supposed to use. Okay. Now, this is somebody that was able to go out and find an Internal Revenue cumulative bulletin from 1985. This is the one for the first half of the year. She can find that, find cases from 1890s, 1914 or '13, can find Treasury Department decisions from 1916, but in this index, well, I don't find the reference to the 1040 form. Well, if you go over, if you -- if you look at that number on the 1040 form, it's all up -- in and out throughout this whole list. Okay. It's right there. We circled it. And that code provision or this regulation, Exhibit 56, I can tell I'm getting

older, I have trouble reading things close up, 1.6012-1, it reads basically that except as provided in paragraph -- in subparagraph two of this paragraph, an income tax return must be filed by every individual before the taxable year beginning January 1, 1973 during which you received $600 or more of gross income and for each taxable year beginning after December 31st of 1972, during which you receive $750 if such individual is a citizen of the United States. And her testimony, I would submit, ladies and gentlemen, that she was a citizen of the United States. Her testimony was also that she knew about this regulatory provision. She had known about it for several years.

If you flip over further, this says forms of return, Form 1040 is prescribed for general use in making the return required under this paragraph. Form 1040A is an optional short form, which in accordance with paragraph A7 of this section may be used by certain taxpayers. This says you have got to file a 1040, but under the defendant's explanation, somebody that has something to lose and has had time to concoct all this stuff, who selectively reads the IRS code, I would submit that the defendant whose testimony was I can't find anything in the code that says I have got to file a tax return or pay. Her testimony is I know about it, but, you know, shall

doesn't mean shall. Isn't it odd that you can find something like that? She can find something like this, but she can't find anything that disagrees with her position. And I would submit to you, ladies and gentlemen, it was because she was selective. It wasn't because she really believed it, it was because she was selective. It was because she didn't like paying the tax. She disagrees with the law, she doesn't really have a good faith belief. However, you may consider whether the defendant's good faith belief was actually -- was actually reasonable as a factor in deciding whether she held that belief in good faith. Is this stuff actually reasonable? Ask yourself that. Remember, this case turns on good faith. Ask yourself that.

Now, one other thing, we're not dealing with an uneducated person here. We're dealing with somebody who has got a pilot's license, that flies with FedEx, that is a big income earner.

The defendant claims she didn't believe she had to file a return. Well, the IRS, I would submit the proof was, sure believed she did and kept sending her notices, send her notice after notice, and those were introduced into evidence. She admitted she got them. Where is your 1040? She claims she tried to get answers from the IRS. Well, ladies and gentlemen, here is the thing: If you get

stopped for speeding, for example, and you ask the officer -- he gives you a ticket and you say, well, I don't think I should have gotten the ticket, do you think you have got an obligation not to go to court that day or go to the court appearance on that basis? Is that reasonable? I would submit it's not. And that's really what -- well, I wrote the IRS these letters, and look at the letter, there's one letter, the only issue -- initially what she raised was that OMB argument. She got asked, how about cases that dealt with the OMB issue. Well, I -- I don't know anything about those, don't know anything about 1989 cases and, again, this is a woman that can get up there and tell you about -- about a 258 Supreme -- page Supreme Court decision in the Pollock case, but can't tell you -- who flies planes internationally for FedEx, makes well over a hundred thousand dollars a year, but she doesn't know anything about any of these cases later on that might hurt her position. Is that reasonable? Is that believable? Is that credible? That is for you, ladies and gentlemen, to decide, but I would submit that based on this evidence, it's not.

You heard testimony. She knew that there were penalties for failure to file. We asked her about that from the code. Oh, yes, I know about that. It goes back

to the same thing, I'm not somebody liable for the tax.

Well, Section one, you didn't hear her testify indirectly about Section one, did you? Because that cuts the legs out from under her argument.

You heard the testimony from Mr. Scobey, and that was short testimony, but I would submit it was significant, and here is why. If you're not doing anything wrong, what do you care whether somebody you have a business relationship with cooperates with the IRS in an investigation. What do you care? I'm not doing anything wrong, haven't done anything wrong, I really believe this stuff, or if you really didn't believe it, if it was all a come on, if really what was going on was you disagreed with the tax law, ask yourself would you not want the IRS talking to somebody you had a business relationship with. I would submit, ladies and gentlemen, that common sense indicates you wouldn't.

Ladies and gentlemen, I have probably talked too long now. Thank you for your participation in this case. Thank you for listening to the evidence and the lawyers.

In closing, I would like to say to you, ladies and gentlemen, I submit that if you consider the proof in this case, all the proof, you're going to come to the conclusion -- and remember you don't -- the fact that the

defendant got up there, she has made the good faith defense, the burden is on the government to rebut that defense, to prove beyond a reasonable doubt that she didn't believe it in good faith, but if you look at her own testimony, look at her own testimony, what she testified to on cross, I would submit that establishes she didn't have a good faith belief. Look at the other things she has done, like the false W-4s, like that little deal with reservation of all my constitutional rights where she is supposed to certify it's true, stripping the money out of the bank, those are indicative of attempt to evade. The fact that she had an opportunity to sit down with the IRS and talk about, I would submit the proof was, her taxes, not somebody else's, not some general kind of, well, why does the code apply to me, but her taxes, ladies and gentlemen, her situation, what she owed the IRS, what she was required to file. She had that opportunity, she didn't do it. I would submit there's a reason why.

In closing, ladies and gentlemen, I would submit that the government has established beyond a reasonable doubt that the defendant evaded income taxes as charged in the indictment, and I would ask you, ladies and gentlemen, based on that proof to return a verdict of guilty as to all six counts of the indictment. Thank you, ladies and gentlemen.

THE COURT: Does the defense wish to give a closing argument?

MR. BECRAFT: Yes, Your Honor.

MR. BECRAFT: May it please the court, ladies and gentlemen of the jury, you were picked, we went through a jury selection process on Monday, you had a bunch of questions asked of you, the lawyers got together and we made a selection of the potential -- of the jurors that would sit down and try this case. I have watched you over the last several days, and it's clear to me, and I know it's clear to Ms. Kuglin, I know it's clear to Ms. White, and I know it's clear to Mr. Murphy, and I know that Judge McCalla knows that this is the case that each and every one of you have been attentive. You have listened and you have diligently discharged the obligation of being a juror. Being a juror is real important for justice to be meted out here in America. Be it a civil case or a criminal case, these controversies that we have in our society are resolved only because people such as yourselves, the people of a community acknowledge that we have to have a way of resolving our controversies here in America and they have a willingness to come in and decide disputed cases such as this one.

And let me just tell you, ladies and gentlemen, everybody on this side of the courtroom from the court on down, we want to thank you for the service that you have given in this case. As Judge McCalla -- and there is no doubt -- there can be no doubt that this is a criminal

case, and the way we try criminal cases here in America is they are a little bit different from a civil case. You know, we got -- picture in your mind, if you will, that the lady, the lady of justice that holds the scales, the balances. Well, the system of justice here in America says that in a civil case, the party that prevails is the one that has the preponderance of the evidence which is the way it goes. Whose weighty evidence weighs just a little bit more than the other side? If it tips and balances this way in a civil case, that's the way you make your decision, except here in America, in criminal cases, we have a different standard, if you will. In criminal cases, we require that the government prove its case beyond a reasonable doubt. Now, I want to tell you a little bit about reasonable doubt, give you some of the things that I think are important.

You know, after all these lawyers sit down, the court is going to give you some instructions, and I really think that it is going to be beneficial, and I have no doubt that you will do this, but the court is going to read off these instructions right here, and he's going to tell you the various things that you must consider in a case such as this one.

Now, one of the points that he will cover with you is this concept of reasonable doubt. Now, a

reasonable doubt is a doubt based on reason and common sense, and a lot of people really understand that in a criminal case, the government has got to prove their case beyond a reasonable doubt, but there is a real important concept that I want you to remember, and it has direct application to this case. Judge McCalla is going to tell you that that doubt is the doubt that you would have when you're considering the most important affairs of your life.

Now, you have got to be -- that means that you have got to look at the situation and conclude that what are some of the most important affairs of people's lives. Well, you know, buying a car is an important affair. Getting a job is an important affair. Buying a house is an important affair. Getting married. But may I suggest to you what it takes, what is perhaps the most important affair in a party's life. Let me give you an example. We all have children, or most of us, and may I suggest to you that important affairs are something like this: Suppose your child is injured, is in the hospital and you have got to go down to that hospital and make certain decisions. You make a decision is an arm cut off, do you make a decision to cut off an arm that has to be amputated. I suggest to you that that is the caliber of things that are most important in life. What if a child -- what if you

have to make a decision about whether a child lives or dies. That, ladies and gentlemen, those types of matters are the most important in life. And so in this situation, what you have to do is you have to look at the totality of the evidence, weigh it, consider the burden that the government has, must carry and make a determination. This is one of those most important affairs of your life. Just like making a decision for a child, and you have got to weigh this case and determine has reasonable doubt been proven in this most important affair in the life of Vernie Kuglin.

Now, what is it that the government must prove? Well, the court has permitted me to tell you a few things in advance of what the court is going to tell you. Now, perhaps this is a little light, I will try to improve it. I have a copy here, I hope that you can see this good. Now, in criminal cases -- you know, this is a tax evasion case, as I told you in opening, lawyers can kind of catalog, courts kind of catalog things, and we call them elements. But what elements are, are facts. In order to find Vernie Kuglin guilty of Count 1 or Count 6, the government has got to go through for each count and prove very specific facts. The first fact that must be proven is a tax deficiency. Well, ladies and gentlemen, let's go through this case, we didn't have any objections to this

chart right here. Did you see Vernie Kuglin get up and object when FedEx came in and said how much she made? Did we have any questions when Ms. White got up and said, well, gee, this is what she owed? No, ladies and gentlemen, that is not really a disputed element of fact in this case.

Let me tell you about the second element in this case. The second element that the defendant committed an affirmative act constituting tax evasion or attempted tax evasion. Well, to a degree, that is a disputed element, but what I want to discuss with you now that I have this closing opportunity to kind of hit our side of the case, is I want to discuss this last bottom issue here, that the defendant acted willfully, meaning Vernie Kuglin as to each count acted willfully.

Well, moments ago, Mr. Murphy got up here and, you know, he has the right to do that, you know, he pulled out an excerpt from the jury instructions and -- you know, he pointed out, he kind of focused in on what the government thinks is important. Well, let me kind of put the whole thing into context and not just pull out a little part. What the court will be telling you about this defense of good faith is this: If the defendant acted in good faith, that is to say she actually believed the actions she took were allowable by law, then she is

not guilty of the offense of tax evasion. It does not matter whether the defendant was right or wrong in her beliefs, nor does it matter if her beliefs make sense, sound reasonable to you, the jury, or to me, as the judge. The only thing that matters is whether or not the defendant actually believed she was correct in her actions. That, ladies and gentlemen, that's the standard there for willfulness. Willfulness means, in essence, you got to know, Vernie Kuglin has got to know she was required to file an income tax return. She has got to know that she had to pay income taxes, and with knowledge of that duty, she deliberately and maliciously with evil intent, no, I'm not going to do that. What the government has done here with this illustration, that excerpt out of the jury instructions, is this: He has focused in on a point that we don't deny, that you can consider the reasonableness of the defendant's belief in making a determination as to whether or not she actually believed them.

Well, we have some very, very specific defenses that have been asserted in this case, and the judge will be telling you about it, but I think to need to in advance tell you about them right now. We contend Ms. Kuglin did not act willfully, that she does, in fact, have a good faith defense. And the reason why we say that is there

are certain points of law that do support what she has done. First and foremost, she has the right to rely on government documents. Doesn't it make sense that that is the law? I mean if you read something from the government, shouldn't you be entitled to consider -- to rely upon what the government has to say and even act upon it, and then when the government comes along and says, oh, you have done something wrong, are you to be deprived of saying, well, the government said this? No, that is a very reasonable, it's an acceptable defense.

Now, there's even another aspect of the defense that we're asserting in this case is the species of this overall good faith defense is this: The court will tell you that Vernie Kuglin is not presumed to know the law, meaning that, as she sits here clothed with the presumption of innocence, as she sits here, you know, you got to look at her, well, the law -- she really doesn't have any knowledge of the law, but she engaged in times in the fast, starting off in 1992 with this presumption that she didn't know anything about the law, we know that starting in 1992, she started a study of the law.

Now, that study of the law, I think, is entirely reasonable. You can rely upon what you read in the law and you can rely on what the government documents have to say. Now, that, ladies and gentlemen, reliance on

those government documents as well as, you know, don't presume some other aspect of the law and clothe her with that presumption that she knows such. The only thing she can really know is what she told you about in this courtroom.

Now, I want to -- I want to go, if I can, to the particulars of her specific arguments. One was this argument about liability. Is this some concocted, something drawn out of the air argument? Well, I just happened to grab real quick Exhibit Number 36, which incidently is the 1975 federal income tax form. You know, the front and the back of a Form 1040 instruction booklet that belongs to her, but Ms. Kuglin, you know, she testified during her testimony that she was reading, she -- you know, she came to some knowledge, some appreciation of this thing known as the Privacy Act, and to her, you know, her belief about the Privacy Act is this: It's a -- it sounds like it's a reasonable law if it doesn't exist, but she thinks that it does exist. Government agencies should tell people what laws requires them to do something, particularly if it is submit information.

Now, ladies and gentlemen, look at this big thick thing. Nobody disputes this is the Internal Revenue Code. And don't you know -- I think we can all

appreciate, just from our own knowledge, common knowledge that this is just the beginning, that there are manuals, there are books, that there is everything else in the world dealing with this incredibly complex law.

Now, Ms. Kuglin has this question, as does every other American, what law requires her to do something. Well, that's what is talked about in the Privacy Act. And here we know for a fact that the government, the IRS complies with the Privacy Act, because in this Exhibit Number 36, there's a Privacy Act notification. What does the IRS itself say about the laws that require someone to submit a return? Let me kind of blow this up a little bit.

MR. MURPHY: Judge, can we approach for a minute?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I hate to interrupt defense counsel's closing, but he's arguing the law. I'm not hearing what Ms. Kuglin believed. He's arguing about what the law is. I don't think he can get do that.

MR. BECRAFT: I was just getting ready to get into a very specific exhibit.

THE COURT: I'm going to tell them what the law

is. I think that's probably what we need to do.

MR. BECRAFT: Can I take care of it, Judge?

MR. MURPHY: Sure, sure.

MR. BECRAFT: I will do it.

(The following proceedings were had in open court.)

THE COURT: Wait just a second. Thank you.

MR. BECRAFT: You know, I started off in this case, and I said, I think I did in opening, and we did it when Ms. Kuglin was on the stand, I want to restate it right now, you know, we started off this case, and the court said -- told y'all that what the witnesses say and what the lawyers say is not the law, and what I'm telling you right now is really the facts and beliefs about the law. But don't take -- you know, if you were -- if I slip up, like Ms. Kuglin did and say, oh, this is the law, you're to get the law from the court rather than me, you're to get the facts from her.

Now, that having been said, let me get back to what the government said in this particular exhibit. Look down there, it says -- page two, bottom left-hand corner -- the Internal Revenue Code requires every person liable for any tax imposed by the code to make a return or statement according to the forms and regulations prescribed by the Internal Revenue Service, Section 6001

and 6011 of their regulations.

Now, we know that from this document what, according to Ms. Kuglin, are the two laws that require her to file a return. Did we not have in this case, I think -- Mr. Murphy, correct me if I'm wrong, but I think that Mr. Murphy and Ms. Kuglin were yesterday afternoon engaged in reading of the code. And I recall that the words that both of them spoke on that occasion were something to this effect, that the law -- these two laws right here or their beliefs about the law, you know, it applies to persons liable just like that statement says, those who are liable for tax. Now, let's step into Vernie Kuglin's mind. She engaged in this study and she did not find that when she looked at the laws that require the submission of returns, it didn't say something like, you know, everybody making so much money is required to file a return. If you use these terms of art, I think the exact testimony she gave, terms of art every person liable, and that prompted her to engage in a study of the code, and she went through here and, sure, she used this index, she pulled out this book that she got in 1994, she told you she studied the index, and she looked at the section of the index that said liability for tax, and she starts looking at all these other taxes and sees provisions in the Internal Revenue Code, if you do something here, you

know, you're liable for the tax or, you know, there's other sections making someone liable, and so Vernie Kuglin comes to the position, that, you know, I need to find the sections of the code, the Internal Revenue Code in reference to the income tax whereas Congress has used the words somebody is liable for a tax. Because Vernie Kuglin said you're only required to file a return if you are liable. And so she sits down and she takes that index, finds one section that makes somebody liable for the filing of or makes somebody liable for the federal income tax. nonresident aliens and foreign corporations. Now, there wasn't any testimony that -- I didn't hear it, the government had the opportunity to prove one other section of the code what makes someone liable, that didn't happen. And also, Ms. Kuglin, my recollection is, that during an exchange with the government on cross examination, Ms. Kuglin said, well, you know, I engaged in a search, a computer search for the word liable in the income fax sections of the code and I still only came up with that one section.

Now, ladies and gentlemen, what we have right here is a fundamental problem. You know, Vernie Kuglin, presumed not to know anything about the law, starts her studies by '93 and '94 and '95, and she has reached the conclusion filing returns applies to those parties that

are liable, and the only section I find is -- the only section that I find of someone being liable is this nonresident aliens or foreign corporations.

Now, there's nothing in this evidence that shows that she didn't believe that. Now, we do have -- the government wants to try to make a big point about these letters coming from the government. You know, we have got one letter here, if I can go ahead and address it that the moment -- we have got this letter here in October of 1995 when Ms. Kuglin got around to asking the government some -- asking the government some questions. Let me go ahead and flip it up on the screen. This is the first letter that she wrote to the IRS. It is Exhibit 41. It is dated October 18th, 1995. It sets forth some positions down here, and let me just tell you, you read these parts of this letter right here, you can see that Ms. Kuglin didn't invent anything about this Paperwork Reduction Act argument. You know, she is mentioning 0067. You know, she is mentioning the Paperwork Reduction Act. She is mentioning individual income tax 1.1-1, she knows about this stuff. But what Ms. Kuglin did is she didn't invent something here. We know that, you know, this document right here shows that the IRS received this letter, IRS, P. O. Box -- I can't read it, Memphis, Tennessee. It was received November 13th, 1995, the IRS

got this letter. It asks simple questions. I want to know, says Ms. Kuglin, the statutes and implementing regulations that require me to file a return, the statutes and implementing regulations which specifically designate the exact tax for which I am liable. You know, I think here in America, American people have the right to ask the government questions. You know, to say the American people cannot -- you know, I think even the Bible says you can ask God questions. And I don't think that the IRS is greater than God. And I think it's perfectly logical --

MR. MURPHY: Judge, can we approach?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, I'm going to object. This is an improper argument. That stuff about the IRS isn't greater than God, he's just --

MR. BECRAFT: Okay, I won't do it again.

MR. MURPHY: He's appealing to the prejudices of the jury.

THE COURT: I think it is an appeal to prejudice. I'm going to tell the jury it is an appeal to prejudice and they have to disregard it.

(The following proceedings were had in open court.)

THE COURT: Ladies and gentlemen, there's some subjects that are very sensitive in our society. One is a reference to religion. It is inappropriate for an attorney on any side to refer to a deity and to make comparisons with any other entity in a negative or positive way. We're here to decide this case on the facts and the evidence and the law. I'm going to ask you to disregard the comments by counsel about God and the IRS. I say that in appropriate respect to our separation of powers of the First Amendment. You shouldn't consider that at all.

MR. BECRAFT: Thank you, Your Honor.

But it just makes sense that American people ought to have the right to ask questions of government.

Now, the prosecution's position is that once Ms. Kuglin asked these questions, about a month later -- take a look at exhibit number --

THE CLERK: Is your microphone on?

MR. BECRAFT: No, it's not. I turned it on now. Take a look at Exhibit Number 42. Oh, that other exhibit was October 18th of '95; this is -- what does it say? November 25th of '95. Here again, Ms. Kuglin is asking questions. I don't think we need to necessarily look at them all right now, but, again, I direct your attention to the second page, compare the questions she

asked on the first exhibit and look at this one, and she is again asking the same questions. I think this one has a couple of more questions that are being asked. Well, the government wants you to think that someone -- certainly has the right to ask questions -- was -- received a reply by means of this series of letters here from the IRS. You know, I guess if you ask a question of government and you get some paperwork back from them again and it doesn't answer your questions, the government's suggestion is that you're under some type of requirement to fold, you know, you don't need to insist any more that you get an answer to your question. Yet, Vernie Kuglin's questions are critically important. Right or wrong, she has the right to try to ask questions of government and insist on an answer.

Now, examine -- you know, I don't know all the exhibit numbers right here, but they're sitting right up here, and those letters that you got back, does the IRS answer a single question she posed? In November of 1995, there was the opportunity for the government to come along, the IRS to come along and answer those questions, and if that had happened, ladies and gentlemen, may I suggest --

MR. MURPHY: Judge, Judge, he's speculating now, and I submit he can't do that.

THE COURT: That's beyond the scope of the proof in the case. Objection has to be sustained.

MR. BECRAFT: The point I make, ladies and gentlemen, is that you can examine those letters, and they do not constitute a reply to the questions of Vernie Kuglin. That happened back in 1995, and this controversy has rolled on and Ms. Kuglin has gone through '96, '97, '98, '99, 2000, 2001, 2002, maybe up throughout this trial without having received a reply from the government. And to say that in a situation like this that an American is culpable, criminally culpable, that you have acted with an evil intent, that you really didn't believe these things and you acted willfully just simply does not match the facts of this case.

Let me move on to a couple of other documents. The government mentions some of these -- the age of some of these cases, these documents that are used. You know, the government casts aspersions upon a statement by a government official appearing in Exhibit 28, Mr. Dwight Avis, making a statement. You see where my finger is? Let me point this out to you now. Your income tax is one hundred percent voluntary tax and your liquor tax is one hundred percent enforced tax. Now, ladies and gentlemen, words, words, something like this, you present to an ordinary American like her, an airline pilot, and it has a

certain meaning, and Americans are not presumed, she is not presumed to know the law, but you can't presume what she -- what type of conclusion she is supposed to reach from that. You know, the government makes much of the fact that she's a pilot. Well, she is not a lawyer, ladies and gentlemen. Well, I'm a lawyer. There's no way I can climb into, I guess, a 757 and push down that throttle and take off out here at the airport. I don't think we need to compare Vernie Kuglin to a lawyer. I think we need to take into consideration what the facts are, that she is a pilot trying to learn a little bit about the law. So, you know, Vernie Kuglin has told us that this statement here has some significance for her. She has told us that, you know -- and we're not saying, and I don't think the evidence supports this proposition that Vernie Kuglin was down there at Memphis State, down there at the law library on Central spending oodles of time going through those books. She told us that what she was doing was she was getting references from cases from the things that she read. She was talking to people and finding documents, and while I don't think that there was any specific testimony about -- you know, she did read this document here Treasury Decision 2313, she read it before April of 2000 -- April of 1996. But, you know, it's a document that she did read. It is a document that

comes from the government that had an impact upon her belief. And there's -- its age doesn't mean anything. It is offered to prove that she believed what the government had to say. Read the document here. It is talking about nonresident aliens filing Form 1040.

Ms. Kuglin went a step further. Let me kind of roll into at this stage the Paperwork Reduction Act argument. Let's take a look at a document right here that she found very, very important. Look at this, this is Form 2555, it is named foreign earned income, and it has this OMB control number up here, you can take this back to the jury room and look at it. Now, take a look at this and ask yourself a question, can someone, from government documents, reach a conclusion different from a lot of people? Well, I suggest to you that that is not only possible, it did here in this situation. Vernie Kuglin, having a copy of the Internal Revenue Code, knows what Section 1 of the Internal Revenue Code deals with. There could be no question about that, because that was a matter that Mr. Murphy covered with her specifically that read from the code. What Ms. Kuglin was intrigued by is something entirely different. She found that it seems only logical to her -- and see this number right here, this 1.1-1? You know, that's not an invention on the part of Ms. Kuglin, because I think that she is especially

stating it -- I'm going to refer back to Exhibit Number 41 right here, correct me if I am wrong, but I see that this document says, flat out, it's talking about Form 2555, foreign earned income, and she is talking about 1.1-1, and this is no invention on her part because she mentions it in a letter to the IRS dated October 18th of 1995. So to explain to you, the jury, how she reached these conclusions, we offer an official government document. Now, there wasn't any testimony that Ms. Kuglin acquired this document in any other way than what she has already told you, people tell her things. She checks it out and goes and gets information. She knows -- she said we had a little -- we were wondering about how to express it in clear language for the benefit of the jury yesterday, but I think I asked a question, you know, I used the term implementing regulations, but Ms. Kuglin, I think she concludes, she said this is the regulation that matches and supports Section 1 of the Internal Revenue Code. And to her, the document that is required to be filed in reference to meeting the requirements of Section 1 of the Internal Revenue Code is this document that has that 0067 OMB control number on there, which is Form 2555.

Now, that's odd, people. It's real odd. But the question I want to present to you is, where is it shown that Vernie Kuglin did not believe that? Right or

wrong, that's not really the issue in this case. The question is did she believe it, right or wrong, and if she believed it, it's your obligation to conclude that she did not act with that criminal state of mind, which is essential for you to convict her on any count in the indictment.

I want to move on to -- I think I have covered a lot of the points that need to be covered here, but there's one final thing that I need to point out to you. You know, Ms. Kuglin said she is a member of the Libertarian party. I think it is kind of common knowledge that the Libertarians, they believe in the rights --

MR. MURPHY: Judge, I'm going to object to counsel's comment.

MR. BECRAFT: I will withdraw that.

THE COURT: I think that is outside the proof. We know she is a member, but that's about it.

MR. BECRAFT: There can no doubt, once you take the totality of what she -- who she is, that she is someone that really is committed to this proposition, you know, I -- how many of us have sat down and listened to a tape series on the Constitution, Democracy in America, Common Sense, Text of the Constitution, Bill of Rights? I think we all know what the Bill of Rights does is it protects rights. We have got a lady here that listened to

tapes on the Bill of Rights. Is it something that you denigrate her for, for trying to protect rights? Well, this gets back around to the most fundamental question in this case. The most fundamental question in this case centers upon what Ms. Kuglin learned regarding the -- you know, the nature of the federal income tax here in Tennessee. She read this case, Jack Cole against McFarland, it had a direct relationship to her beliefs about the federal income tax. You know, she testified that she believed that the federal income tax was an excise tax. Is that something that is concocted out of thin air? I would suggest to you it is not concocted out of thin air, and the reason for that is that if you take a look at Exhibit Number 17, which is the 1995 Form W-4, you will look through this documents, and one of the cases that she talked about in her testimony was this Brushaber case, an exhibit, document provided to her employer, nobody doubts it was signed, you know, 12-30 of '95. The attachments, the exhibits that are attached to this document, it says there, it says Brushaber versus Union Pacific. Read the sentence here. It says taxation of income is in its nature an excise case. Right there. Brushaber, Union Pacific, an excise. That's what Vernie Kuglin believes. She described for you about her beliefs about what the Constitution of the United States provides

for with reference to powers of taxation. She told you about the old -- the history of the taxing provisions of the United States Constitution. She told you about that Pollock case. She told you about the 16th Amendment. She told you about the Brushaber case. The Brushaber case says, oh, in a constitutional sense, the federal income tax is an excise tax.

Now, ladies and gentlemen, I think when a court is talking about, you know, constitutional things, those are kind of permanent, and, you know, the mere fact that long ago in legal history there was this case before 1920 that described in a constitutional sense the federal income tax as being an excise tax, I don't suggest that its ages makes it irrelevant like the government does. I would suggest that the age of a case is indicative of its wisdom.

Let me talk about this one case here that Ms. Kuglin found real important, Jack Cole versus McFarland, here you can see it on the screen, it is Exhibit Number 35. I merely direct your attention to what I -- what appears to be a very important point made by the Tennessee Supreme Court in 1960. Realizing and receiving income or earnings is not a privilege that can be taxed. Now, when you're dealing with constitutional questions, as Ms. Kuglin did, you know, it -- it just seems natural that you

would accept without question, well, the Supreme Court of the United States says it's an excise tax, and it just seems so natural for someone to have the United States Supreme Court -- I mean the Tennessee Supreme Court say an excise tax, can't be used to tax -- or you have a natural right of receiving and realizing income, and cannot an American like her read these documents? She is not a lawyer that's going to go down and do tons and tons of research. She is going to read these basic things and reach certain conclusions. Is she not entitled to rely on these documents? I would suggest that she is.

Now, one final point that I think I need to address right here is Mr. Murphy brought in -- he held up a big thick book yesterday. He pointed out in his arguments in closing, he points to this Section 56 -- I mean Exhibit 56, 1.6012-1, you know, which I guess the jury probably knows enough about this to determine that this is an income tax regulation. Look at it from Ms. Kuglin's viewpoint. She looked at these provisions of the code. She has looked at these things like this, and what she is looking for is what makes me liable. I want to see where Congress has made me liable. Congress knows how to make someone liable. They did so with that Section 1461, according to her beliefs. Nonresident aliens and foreign corporations. She is looking for one -- that was her

question to the government, what makes me liable for the federal income tax. She did a computer search looking for the word liable or tried to find a statute liable. Well, the only thing that you can surmise from all of this is that, well, gee, the law appears to -- or at least her belief is that the law appears to impose a requirement on people who are liable, and then just kind of have this Section 6012 dangling out here and having no connection to being made liable. Now, that's -- that's Vernie Kuglin's beliefs.

Now, she is a pilot. She is not a tax law professor. She is not a lawyer. She has just simply honestly sat down and examined the tax laws, found some conflicting things. She has read certain information that reaches her -- that causes her to reach certain conclusions, and the government hasn't really established any type of a case that she did not believe these things.

In closing arguments, there has been indications from the government or suggestions that all of this stuff was recently invented, which is simply not the case, because the very documents that have been offered into evidence show that she was talking about this stuff before the years covered by the indictment. It's not an invention. The totality of this case is this: Vernie Kuglin does her studying. In the fall of '95, she writes

two letters to the IRS. I think they're Exhibits 41 and 42, get them and read them, poses the questions to the IRS, what statute makes me liable, and gets no direct answer. Presume her to be wrong, is being wrong criminal? And I want to get back to what I did when I had my opening statement up here, I just want to grab this and throw this down one more time. Tax evasion is not committed by reading the law and relying on the government. This is good faith.

Ladies and gentlemen, that right there is the reason why I contend that Vernie Kuglin is not guilty of tax evasion.

Now, I want to address one final point that relates to your duties as jurors. You know, we're all familiar with the fact that in America, we have got three branches of government. May I make a suggest that the truth of the matter is that there are four branches of government?

MR. MURPHY: Judge, can we approach?

THE COURT: You may.

(The following proceedings had at side-bar bench.)

MR. MURPHY: Judge, it sounds like we're heading into a nullification argument, and I object that there are not four branches of government, there's three.

MR. BECRAFT: I'm going to tell the jury that the jury is the fourth branch of government that makes the decisions in criminal case --

MR. BERNHOFT: Basic civics.

MR. BECRAFT: It's not a nullification argument, Your Honor.

MR. MURPHY: Oh, yes, it is, Judge.

MR. BECRAFT: I'm going to say you represent the judiciary, he represents the executive branch, that code is the work product of Congress, but there is a fourth branch of government, it's them.

THE COURT: There's not a fourth branch of the government. If there is, it's not the jury. The jury is part of the judicial system, so they're part of the -- if they're part of any branch, they probably -- they're part of the third branch.

MR. BECRAFT: I won't call them the fourth branch.

THE COURT: The fourth branch is the press and media, if we wanted to talk about sort of -- have a discussion about how things work, but the jury is part -- I will tell them right now if you want me to, they're part of the function of the judicial branch. I think that's right.

MR. BECRAFT: I won't get into that, Judge, and

I won't label them a branch of government. What I'm leading up to is what their function is. They're going to take this contested case.

THE COURT: They're part of the functioning of the judicial branch in administering the law. I mean they're paid by the judicial branch. They're drawn by the judicial branch. I mean they are part of the judicial branch.

MR. BECRAFT: I'm not unaware. I was colloquially expressing them as being the fourth branch of government.

THE COURT: I think -- I think it is an area that we best avoid.

MR. BECRAFT: Okay.

(The following proceedings were had in open court.)

THE COURT: We're going to take a restroom break, and it will be -- we're going to take our 15-minute break at this time. When we come back, we will conclude the argument from defense counsel, we will have a short rebuttal argument, and then we will have the instructions. Thank you.

(Recess taken at 10:30 until 10:45 a.m.)

THE COURT: Bring the jury in.

They should be here in just a second. You can

have a seat until they come out.

(Jury in at 10:46 a.m.)

THE COURT: You may be seated. Mr. Becraft, you may proceed.

MR. BECRAFT: May it please the court, ladies and gentlemen, I've just about wrapped everything up. I've got a few concluding remarks. You know, in a criminal case here in America, what we do is -- and I talked about that burden that is imposed upon the government. Well, to enable the government to meet its burden, in closing arguments, this is the structure, the government gets to open, the defense gets up to give its say, and then there is -- what's left over is the rebuttal argument that the government can make. In a few moments, Mr. Murphy is going to get up here and address some of the things that I said, but please remember that I won't have any opportunity to get up here and engage in surrebuttal and point out some of the things that he points out to you in a few moments. I simply ask something of you, you know --

MR. MURPHY: Judge, Judge, I'm going to object. All the jury has got to be asked to do is follow the law.

THE COURT: Well, I think the normal thing to ask is that they think about what the counter position has been. I think that's all you're going to say, is that

right, Mr. Becraft?

MR. BECRAFT: You anticipated where I was going, Your Honor.

THE COURT: I have been here before, and that's a pretty -- we ought to let you make that argument, so I understand the reason for the objection, but I think we have resolved it by the discussion.

MR. BECRAFT: When you get back there in that jury room, let me tell you when Mr. Kuglin's presumption of innocence will leave. You know, during a trial, the parties can look at the jurors, and you don't know what is going through their minds, maybe somebody is accepting our position, maybe somebody is not accepting our position. You know, it's obvious that jurors in any type of case, and particularly a criminal case, there's going to be differences of opinion, and you may have certain leanings at this stage one way or the other, I don't know what they are, but I think that's a fair statement to make. What will happen from this point forward is that after he gets the rebuttal and after the court gives you the applicable jury instructions in this case, which since I mentioned it, I do want to tell you, please listen very closely, once you go back in that jury room, then what you will be about is making a collective judgment, 12 of you will get together and you'll express your opinions, you'll talk

about the facts, and what you do when you come back into this jury room is to tell us what your collective judgment is.

And I want to make this one final comment about what you do when you exercise this activity of deliberations in trying to reach that collective judgment, please consider the facts. Please consider that the government has the burden of proving beyond a reasonable doubt. Please consider that the decision that you make is one of the most important that you make in your life, and it is the most important you're making in the life of Vernice Kuglin. So when you get back there, please consider the evidence.

If you hear something from Mr. Murphy, also take into consideration the facts that support our side of the case. Here in America, our criminal justice system is dependent upon us bringing in 12 people to try the true members of our community and to decide disputed facts. There are disputed facts in this case. But I would suggest to you that once you weigh those disputed facts, take into consideration the old scales of justice, take into consideration the government's burden of proof beyond a reasonable doubt. And consider it as the most important thing that you do in your life. When you take that into consideration and consider all the facts in this case,

there is but one conclusion that can be reached, Vernie Kuglin did not willfully commit tax evasion for the years '96, '97, '98, '99, 2000 and 2001, and the only fair and just verdict to return in this case is not guilty on all of those counts. Thank you, ladies and gentlemen.

THE COURT: Mr. Murphy.

MR. MURPHY: Thank you, Your Honor.

Ladies and gentlemen, at this point, I'm allowed a brief period of time for rebuttal. We get back to the same thing. This case turns on the good faith defense and what constitutes good faith.

Now, just a couple of things. In the proof yesterday, Ms. Kuglin said she went to the Memphis State library, law library, had access to all this stuff. There are several important things, the Jack Cole case, it's in evidence, you can read it. I urge you to look through it, see if there's one mention of the federal income tax code. You're going to -- the judge is going to tell you that you can rely on the decisions of the U. S. Supreme Court. This is not a United States Supreme Court case. This is another example of tiptoeing through the tulips. This helps her. Look at all this material she submitted on voluntariness, you're going to see references in there, and in every case the collection efforts, enforcement efforts, she goes in and she picks out a sentence and takes it out of context, tiptoeing through the tulips.

The form books we put in, look there. They got requirements about paying the tax, filing returns. They talk about penalties, tiptoeing through the tulips, the stuff about the OMB, you know, I was reading it for that, not this other stuff. She ignores anything that

undermines her argument. Now, we're not claiming that this was recently invented. She has been doing this for years. What our position is, ladies and gentlemen, is that it is not in good faith. Ask yourself, a good faith belief, what is it based on? No federal cases other than that Flora case prior to maybe 1914. Just because a case is old doesn't make it wise. That just means it is an old case. Didn't do any recent research, evidently. But now she knows the tax code, and the defendant stood up here and told you about her belief that she couldn't find anything that required her to file a 1040 or file a tax return or pay tax. Well, section one, which she admitted she knew of years ago was aware of it, says, according to her testimony, there is hereby imposed on the taxable income of every individual a tax determined in accordance with the following table. Tiptoe through the tulips, ignore that. You got a copy of 26 Code of Federal Regulations 601-21-1, individuals required to make return of income. She knew about this for several years. This document says you got to make a return on a 1040 if you have more than certain income. Tiptoe through the tulips, this doesn't apply to her.

Now, is it reasonable to believe that she concluded she didn't have to pay income tax or file income tax returns? Look at the letters they submitted. You

know, Mr. Becraft makes this lady that's an airline pilot sound like some kind of innocent -- she is not a lawyer, she is not a lawyer. Well, look at those letters. There's a jillion legal citations in there, ladies and gentlemen. You know, she knows enough law to say -- to form a belief that she doesn't have to file because of the problem with the OMB number, but there's an OMB number on the 1040, and it's in that list she talks about. What is kind of interesting about the list is here is another example of tiptoeing through the tulips. You go to the list, she goes to the first one, and she says I don't -- I don't see the number. Well, that number for the individual tax income return, the 1040, it's on this whole list all over the place. And this doesn't say citation of the tax code up here. It says 26 CFR part of section, not tax code, not United States Code, CFR. Tiptoe through the tulips. Well, you know, I read this. Is this good faith? Does this sound like good faith? I would submit it is not, ladies and gentlemen.

One other thing, and I'm going to sit down. Look at all these letters she got from the IRS. Now, how could you say in good faith that after you got all these letters that I didn't believe, you know, I had to file? After they're levying against you. If she believed this in good faith, why the bogus W-4s, why did she never ask

for a return of the prior taxes? That was the defendant's testimony. She has never asked for a refund of those tax monies. Never. Now, if you believe it in good faith, why not, why wouldn't you want to do that? Why would you strip the money out of your bank account every payday? I submit you do that because you know you violated the law and you know that the IRS is going to come after your money. This case turns on your estimation of the good faith. I would submit, ladies and gentlemen, that there isn't good faith. They can't have it both ways. She can't be an airline pilot that makes -- that in six years has made over a million dollars, in six years has beat the government out of $259,507.64 in income tax, but she's an idiot when it comes to the law. The question is not whether she was a lawyer, but did she have good faith, and what you saw through her testimony, and we can -- the government can rely on her testimony in order to meet its burden of proof beyond a reasonable doubt was somebody who selectively ignored things that hurt her position, that undermined her position. Tiptoe through the tulips. If it helps me, if it is a 1916 decision that helps me, I found it, that's the law. If it is the code, if it is the instruction booklet, the most basic thing that hurts me, well, no, I didn't know about that or it doesn't apply to me. It is like a dog chasing its tail. Well, what about

this section? Oh, it doesn't appear to me. The section that says you shall pay your tax, it doesn't apply to me. What about this section where it says you shall make a return? Well, it doesn't apply to me because shall doesn't mean shall. Does that sound reasonable?

I would submit that based on the evidence that the defendant's position is so ridiculous that it can't constitute a reasonable position. And you can determine the reasonableness of it in making your judgment about good faith.

Ladies and gentlemen, I'm going to sit down now, but I submit that if you go back in that jury room and you look at all the evidence and you consider her position that you're going to come to the conclusion that this was a scheme to evade tax, that she didn't like paying tax, she didn't like the way the code was written and that she is guilty of each count of this indictment. Thank you, ladies and gentlemen.

THE COURT: Now, ladies and gentlemen, it is now my duty to instruct you on the law that applies in this case. When I finish, you will go to the jury room and begin your discussions, what we call your deliberations. Of course, you're going to have a full set of these statements, so you won't really need to take any notes now. You will have all of the materials in front of you.

It will be your duty to decide whether the government has proved beyond a reasonable doubt the specific facts necessary to find the defendant guilty of the crimes charged in the indictment. You must make your decision only on the basis of the testimony and other evidence presented here during the trial, and you must not be influenced in any way by either sympathy or prejudice for or against the defendant or the government.

You must also follow the law as I explain it to you whether you agree with that law or not, and you must follow all of my instructions as a whole. You may not single out or disregard any of the court's instructions on the law.

The indictment or formal charge against the defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require the defendant to prove her innocence or produce

any evidence at all. The government has the burden of proving the defendant guilty beyond a reasonable doubt as to each charge in the indictment, and if it fails to do so, you must find the defendant not guilty of the charge that you are considering.

While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. It is only required that the government's proof exclude any reasonable doubt concerning a defendant's guilt.

A reasonable doubt is a real doubt based upon reason and common sense after careful and impartial consideration of all of the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As stated earlier, you must consider only the evidence that I have admitted in the case. The term evidence includes the testimony of the witnesses, the exhibits admitted in the record and any facts of which the court has taken judicial notice. Remember, that anything

the lawyers say is not evidence in the case. It is your only recollection and interpretation of the evidence that controls. What the lawyers say is not binding upon you.

In considering the evidence, you may make deductions and reach conclusions which reason and common sense lead you to make, and you should not be concerned about whether the evidence is direct or circumstantial. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances indicating that the defendant is either guilty or not guilty. The law makes no distinction between the weight that you may give to either direct or circumstantial evidence.

Also, you should not assume from anything that I may have said or done that I have any opinion concerning any of the issues in this case. Except for my instructions to you, you should disregard anything that I have said in arriving at your own decision concerning the facts.

The defendant has been charged with six crimes. The number of charges is no evidence of guilt, and this should not influence you in your decision in any way. It is your duty to separately consider the evidence that relates to each charge and to return a separate verdict

for each one, for each charge. You must decide whether the government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

In reaching your decision on one charge, whether it is guilty or not guilty, you should not be influenced by your decision on any of the other charges.

You are instructed that the court has taken judicial notice of the fact that Memphis, Shelby County, Tennessee is located in the Western District of Tennessee. Since you are the fact-finders in this case, you may, but you are not required to accept even this fact as conclusively established.

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say and how important that testimony was. In making that decision, you may believe or disbelieve any witness in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling. You may decide that the testimony of a smaller number of witnesses concerning any fact in dispute is more believable than the testimony of a larger number of witnesses to the contrary.

In deciding whether you believe or do not

believe any witness, I suggest that you ask yourself a few questions. Did the person impress you as one who was telling the truth? Did the witness have a particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things the witness testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness' testimony differ from the testimony of other witnesses?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact or whether there was evidence that at some other time the witness said or did something or failed to say or do something which was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as the witness remembers it, because people naturally tend to forget some things or remember other things inaccurately. So if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of

memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or with only an unimportant detail.

You have heard the defendant testify. I just talked with you about the credibility or believability of the witnesses, and I suggested some things for you to consider in evaluating each witness' testimony.

You should consider the same things in evaluating the defendant's testimony.

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

It is your decision after reviewing all of the evidence whether to accept the testimony of the law enforcement witnesses and to give to that testimony whatever weight, if any, that you find that it deserves.

I told you at the outset that this case was initiated through an indictment. An indictment is but a formal method of accusing a defendant of a crime. It includes the government's theory of the case, and I'm going to read the entire indictment again to you in just a moment. The indictment is not evidence of any kind

against an accused.

The defendant has pled not guilty to the charges pled in the indictment. This plea puts in issue each of the essential elements of the offenses as described in these instructions and imposes upon the government the burden of establishing each of these elements by proof beyond a reasonable doubt.

I'm going to read to you the indictment at this time. Of course, you will have the indictment along with the instructions with you in the jury room.

Count 1. That during the calendar year, 1996, the defendant Vernice B. Kuglin, had and received taxable income in the sum of approximately $162,883.75, that well knowing and believing the foregoing facts, the defendant on or about April 15, 1995, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 15, 1997, as required by law, to any proper officer of the Internal Revenue Service and by failing to pay the Internal Revenue Service the said income tax, in violation of Title 26, United States Code, Section 7201.

Count 2. That during the calendar year, 1997, the defendant, Vernice B. Kuglin, had and received taxable

income in the sum of approximately $147,999.60, that well knowing and believing the foregoing facts, the defendant on or about April 15, 1998, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year, by failing to make an income tax return on or before April 15, 1998, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay the Internal Revenue Service said income tax and by filing a false Form W-4 in 1997, in violation of Title 26, United States Code, Section 7201.

Count 3. That during the calendar year 1998, the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $137,197.93, that while knowing and believing the foregoing facts, the defendant on or about April 15, 1999, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 15, 1999, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay the Internal Revenue Service said income tax and by filing a false Form W-4 in 1998, in violation of Title 26, United States Code, Section 7201.

Count 4. That during the calendar year 1999,

the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $146,571.66, that well knowing and believing the foregoing facts, the defendant on or about April 15, 2000, in the Western District of Tennessee, did willfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 17, 2000, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay the Internal Revenue Service said income tax and by filing a false W-4 -- Form W-4 in 1999, in violation of Title 26, United States Code, Section 7201.

Count 5. That during the calendar year, 2000, the defendant, Vernice B. Kuglin, had and received taxable income in the sum of approximately $164,224.28, that well knowing and believing the foregoing facts, the defendant, on or about April 15th, 2001, in the Western District of Tennessee, did unlawfully attempt to evade and defeat the said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or before April 16, 2001, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay the Internal Revenue Service said income tax and by filing a false Form W-4 in 2000, in

violation of Title 26, United States Code, Section 7201.

Count 6. That during the calendar year, 2001, the defendant, Vernice B. Kuglin, had and received income tax or taxable income in the sum of approximately $161,189.07, that well knowing and believing the foregoing facts, the defendant on or about April 15 of 2002, in the Western District of defendant, did willfully attempt to evade and defeat said income tax due and owing by her to the United States of America for said calendar year by failing to make an income tax return on or about April 15th, 2002, as required by law, to any proper officer of the Internal Revenue Service, by failing to pay the Internal Revenue Service said income tax and by filing a false Form W-4 in 2001, in violation of Title 26, United States Code, Section 7201.

Simply put, the indictment alleges that the defendant violated Section 7201 of Title 26 of the United States Code, which provides in relevant part:

Any person who willfully attempts in any manner to evade or defeat any tax imposed by the Internal Revenue Code shall be guilty of a crime.

The tax -- the system of tax collection in the United States relies upon the honesty of taxpayers. The government needs taxpayers to report timely, completely and honestly all taxes they owe so that it can collect the

taxes due. Congress, therefore, has made it a criminal offense for a taxpayer to evade taxes, to file false returns or to file no return under certain circumstances.

In order for the crime of income tax evasion to be proved, the government must establish beyond a reasonable doubt each of the following elements:

First, that there was a tax deficiency.

Second, that the defendant committed an affirmative act constituting tax evasion or attempted tax evasion.

And, third, that the defendant acted willfully.

The first element of the offense which the government must prove beyond a reasonable doubt is that there was a tax deficiency, that is that the defendant owed federal income tax for the years specified in the indictment as to the count that you're considering. The government does not have to prove the exact amount of the taxes the defendant owes, nor must the government prove that the defendant evaded all of the tax that she owed.

The second element that the government must prove beyond a reasonable doubt as to each count is that the defendant committed an affirmative act constituting tax evasion.

The Internal Revenue Code makes it a crime to attempt, in any manner, to evade or defeat any income tax

imposed by law. There are many different ways in which a tax may be evaded or an attempt may be made to evade it. For example, in this case, the government asserts that Ms. Kuglin attempted to evade or defeat the income tax due by filing false Form W-4s for application as to each tax year alleged in the counts in the indictment.

There has been evidence in this case that the defendant failed to file a tax return for the years 1996, 1997, 1998, 1999, 2000 and 2001. I instruct you that failure to file a tax return is not sufficient by itself to satisfy this element. Indeed, the government must prove beyond a reasonable doubt an act of evasion. Specifically, the government must prove that the defendant committed an affirmative act constituting evasion. This must be a positive act of commission designed to mislead or conceal. A willful act of omission is insufficient to satisfy this requirement, therefore, neither the failure to file a return nor the failure to pay income tax can be the basis for conviction.

The Supreme Court of the United States has defined this element as requiring proof of conduct the likely effect of which would be to mislead or conceal. In other words, any act which is likely to mislead the government or conceal funds satisfies this element. Thus, filing a false form, for example, a W-4 withholding form

or a false tax return is sufficient, as are false statements made to the Internal Revenue Service after the return was due or filed. Large cash transactions may also be evidence of an affirmative act of evasion.

It is not necessary to prove a separate act constituting evasion for each tax year which was the subject of the prosecution; thus, filing a false W-4 withholding form satisfies this element as to each year for which it was in effect.

The third element of the offense which the government must prove beyond a reasonable doubt is that the defendant acted knowingly and willfully.

Whether or not the defendant acted knowingly and willfully is a question of fact to be determined by you based upon all of the evidence in this case. An act is done knowingly if it is done purposefully and deliberately and not because of mistake, accident, negligence or any other innocent reason.

The government must also prove beyond a reasonable doubt that the defendant acted willfully. A willful act is defined as a voluntary and intentional violation of a known legal duty. Thus, the government must prove beyond a reasonable doubt that the defendant possessed the specific intent to defeat or evade the payment of income tax the defendant knew it was her duty

to pay.

The word willfully in the criminal tax statutes requires a voluntary, intentional violation of a known legal duty. The requirement of willfulness, therefore, means an act undertaken with bad faith or evil intent or evil motive and want of justification in view of all of the financial circumstances of the taxpayer.

In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law. It is not the purpose of the law to penalize frank differences of opinion or innocent errors made despite the exercise of reasonable care. Degrees of negligence give rise in the tax system to civil penalties. The requirement that an offense be committed willfully is not met, therefore, if a taxpayer has relied in good faith on a prior decision of the Supreme Court, that's the United States Supreme Court, the Internal Revenue Code or the regulations and instructions published by the Internal Revenue Service. Thus, the word willfully under 26 United States Code, Section 7201 includes the concept of bad faith or evil intent that separates the purposeful tax violator from the well-meaning, but sometimes confused, mass of innocent taxpayers.

Willfulness is negated by the defense of good faith mistake of the law's requirements. To make such a

determination, you must inquire into the defendant's mind, her mental attitude and her approach to the situation which she believed the law required. If you find that the defendant subjectively in her own mind believed that she was not required by the law to file the returns in question, it will be your duty to find her not guilty.

A defendant does not act willfully if she believes in good faith that her actions comply with the law. Therefore, if the defendant actually believed that what she was doing was in accordance with the tax statutes, she cannot be said to have the criminal intent to willfully evade taxes. Thus, if you find that the defendant honestly believed that she owed no taxes, even if that belief was unreasonable or irrational, then you should find her not guilty. However, you may consider whether the defendant's belief was actually reasonable as a factor in deciding whether she held that belief in good faith. It should also be pointed out that neither the defendant's disagreement with the law nor her own belief that the law is unconstitutional, no matter how earnestly that belief is held, constitutes a defense of good faith. It is the duty of all citizens to obey the law regardless of whether they agree with it.

If the defendant acted in good faith, that is to say she actually believed the actions she took were

allowed by the law, then she is not guilty of the offenses of tax evasion. It does not matter whether the defendant was right or wrong in her beliefs, nor does it matter if her beliefs make sense or sound reasonable to you, the jury, or to me, as the judge. The only thing that matters is whether or not the defendant actually believed she was correct in her actions. Also, it is not the defendant's burden to prove that she did not believe her actions were -- excuse me, it is not the defendant's burden to prove that she did believe her actions were correct. She doesn't have the burden, but rather it is the government's burden to prove that she did not.

It is for you, the jury, to decide whether the government has proved that the defendant willfully committed tax evasion by proving beyond a reasonable doubt that she did not actually believe her actions were correct and by proving all the other elements that I have explained to you in these instructions, or whether the defendant believed her actions were proper. If you find that the government has failed to meet its burden, then you must find the defendant not guilty of these offenses. If there's a reasonable doubt in your mind as to this issue or even if you conclude that the defendant could only have believed her actions were proper by abysmal ignorance and the rankest kind of stupidity, yet you find

that she believed that she was correct, and by correct, I mean in conformance with the law, you must find the defendant not guilty.

The burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove her good faith. The prosecution must prove bad faith or knowledge of falsity beyond a reasonable doubt.

In this case, the defendant is not presumed to know the law. I instruct you, however, that the law is that wages are income and must be included in gross income when determining income tax liability.

As a part of defendant's good faith defense to the charge in this case, the defendant asserts that she did not file income tax returns or pay income taxes because she had a good faith belief based upon the use of the word voluntary and various Internal Revenue Service publications that the filing of tax returns and the payment of income taxes was voluntary. Regarding this matter, I instruct you that the word voluntary is not the equivalent of optional. To the extent that income taxes are said to be voluntary, they are only voluntary in that one files the return and pays the taxes without the Internal Revenue Service first telling each individual the amount due and then forcing payment of that amount. The

payment of taxes is not optional.

As part of the defendant's good faith defense to the charges in this case, she asserts that she did not file income tax returns or pay income taxes because she had a good faith belief based upon her reading of the Paperwork Reduction Act that she was not required to comply with the tax laws because the fax forms and instructions did not comply with the provisions of the Paperwork Reduction Act. Regarding this matter, I am instructing you as a matter of law, the Paperwork Reduction Act does not apply to the statutory requirement that an individual file a tax return, but applies only to the forms themselves which contain the appropriate number.

Finally, I want to explain further something about proving a defendant's state of mind. Ordinarily, there is no way that a defendant's state of mind can be proved directly because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted and any other facts or circumstances in evidence that show what was in the defendant's mind.

You may also consider the natural and probable

results of any acts that the defendant knowingly did or did not do and whether it is reasonable to conclude that the defendant intended those results. This, of course, is all for you, the jury, to decide.

If you find that the government has proved beyond a reasonable doubt each of the elements of the offense set out under these instructions, then as to the count that you are considering, you must return a verdict of guilty as to that count. If you find that the government has not proved beyond a reasonable doubt each of the elements of the offense as set out in these instructions, then as to the count that you are considering, you must return a verdict of not guilty as to that count.

I caution you, members of the jury, that you are here to determine from the evidence in this case whether the defendant is guilty or not guilty of Counts 1, 2, 3, 4, 5 and 6 of the indictment. The defendant is on trial only for the specific offenses alleged in the indictment.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If the defendant is convicted, the matter of punishment is for the judge, and actually for the law to determine.

You are here to determine the guilt or

innocence of the accused defendant from the evidence in this case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. You must determine whether or not the evidence in this case convinces you beyond a reasonable doubt of the guilt of the accused regardless of any belief you may have about the guilt or innocence of any other person or persons.

You have no right to find the defendant guilty only for the purpose of deterring others from committing crime.

There is a distinction between the civil liability of a defendant and a defendant's criminal liability. Remember, this is a criminal case.

The defendant is charged under the law with the commission of a crime, and the issue of whether the defendant has or has not settled any civil liability for the payment of taxes is not to be considered by you in reaching a verdict. Your verdict in this case has no effect on the government's ability to collect any back taxes and penalties in a civil case.

Any verdict that you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict, all of you must agree. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement, if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way, you are judges, judges of the facts.

When you go to the jury room, you should first select one of your members to act as your presiding juror. The presiding juror will preside over your deliberations and will speak for you here in court.

A verdict form has been prepared for your convenience. The verdict form will be placed in a folder and handed to you by the court security officer. At any time that you're not deliberating, that is when you are at lunch or during any break, the verdict folder and verdict form should be delivered to the court security officer who will deliver it to the courtroom deputy clerk for safekeeping.

The verdict form in this case provides as

follows:

We the jury, on the charges in the indictment for our verdict say:

1. We find the defendant, Vernice B. Kuglin, as to Count 1, and there's a blank line. Underneath that line are these words, guilty or not guilty. And I will tell you they are in alphabetical order, certainly no preference, just in alphabetical order.

Count 2. We find the defendant, Vernice B. Kuglin, as to Count 2, and there's another blank line with the choices underneath those -- that line.

Count 3. We find the defendant, Vernice B. Kuglin, as to Count 3, and there's a blank line with those choices.

We find the defendant, Vernice B. Kuglin, as to Count 4, another blank line with those choices.

5. We find the defendant, Vernice B. Kuglin, as to Count 5, another blank line with those choices.

Count 6, we find the defendant, Vernice B. Kuglin, as to Count 6, another blank line with those choices.

There's then a line on the bottom left with the word date underneath and a line on the bottom right which is supposed to have presiding juror underneath it.

You will take the verdict form to the jury

room, and when you have reached unanimous agreement, you'll have your presiding juror fill in the verdict form and sign and date it and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the court security officer who will then bring it to my attention. I will then respond as promptly as possible after consulting with the parties and counsel. And I will respond either in writing or by having you return to the courtroom so that I can address you orally.

I caution you, however, that with regard to any message that you might send that you should not tell me your numerical division at any time. In other words, you can never tell me the results of a vote of the jury, only that you have reached a verdict or not reached a verdict.

If you a feel to see the exhibits, and they're not being sent back right now, simply advise the court security officer and, frankly, we will let you have whichever exhibits you would like. You can have them all, if you would like.

Let me see counsel at side bar.

(The following proceedings had at side-bar bench.)

THE COURT: Objections by the United States?

MR. MURPHY: No, sir, Your Honor.

MR. BECRAFT: None, Your Honor. What was at the charge conference, that was it.

THE COURT: Okay. I'm going to let the alternates go at this time. Of course, once they're excused, they cannot return.

(The following proceedings were had in open court.)

THE COURT: We have two alternates in the case, Ms. Sanders and, of course, Mr. Stewart, and in a moment, I will excuse them, and then they will be discharged in the case and they cannot return, so I need to be sure that everybody is okay, that you don't have any crisis that is going to cause you not to be available or that you're ill, I certainly want to know those things. If anybody is not well or has a problem that is, they think, going to take them away from the deliberative process, then this is your chance to tell me. I don't see any problems in that regard. Well, Ms. Sanders, we appreciate your service, we're going to let you be discharged. And Mr. Stewart, I will actually let both of you go out through the jury room first, and you can actually come around so you don't have to walk in front of everybody. Thank you for serving on the panel, and we appreciate it. Thank you very much. You want to come back and watch? Sure. But you can't talk to anybody. Okay. All right. That's no problem.

All right. I made a couple of very minor changes, and I still may not have caught every little grammatical matter or misspelling, but I'm going to make those before I send the instructions back to you. I am going to hand the folder with the indictment and the verdict form in it, and we will probably have these very quickly, it is very minor changes. But we will -- I will make those changes before I send them back. Mrs. Saba, I think I'm going to go ahead and hand the folder to you. Mr. Tuggle is there, of course, already.

Ladies and gentlemen, if you want to take your lunch break at the regular time, all you have to do is return the folder to the court security officer, and that's our signal that you're taking your lunch break. If you do take a lunch break, I suggest that you make it not terribly long, probably an hour, or if you want to make it less, it is up to you, you have control of that at this point in time. We will not be staying particularly late, that's usually not a good idea, but if the jury asks me to stay late, we will, but typically we usually let you go home about 5:00 or a little after 5:00 and you come back at your regular time tomorrow. And you can take breaks, as I indicated in the afternoon. If you want to take a break, then again hand the folder back to the court security officer, and that's an indication that you're on

break.

All twelve of you do have to be together at the same time for any deliberations to occur. If somebody does take a restroom break, you should stop your deliberations at that time and resume when everybody is reassembled.

All right. Mr. Tuggle, we're going to hand to you the folder, and ladies and gentlemen, you are excused to begin your deliberations. Thank you very much.

(Jury out to begin deliberations at 11:50 a.m.)

THE COURT: I did assume that we now have all of the exhibits in order. I think we do. I didn't actually look at the one that was the modified CFR material, but I take it everybody has looked at that. And I did indicate to the jury that they could retrieve them all. Does anybody have any objections to them having the exhibits if they request them?

MR. MURPHY: Judge, I don't have any objection.

MR. BECRAFT: No, Your Honor.

THE COURT: And defense has no objection also.

MR. BECRAFT: No objections, Your Honor.

THE COURT: All right. I think that takes care of everything. By the way, if we do not hear from the -- I will ask you to make sure that Mrs. Saba has a pager

number and so forth, cell phone, whatever is necessary to be in touch with everybody, and if you have not heard from anybody at all, and this could happen by, say, quarter of 5:00, you should be back here at that time anyway because we will be letting the jury go home, and you probably will want to be back when we let the jury go home.

MR. BECRAFT: We will probably camp out downstairs in the snack bar, Your Honor.

THE COURT: Wherever you want to be is fine. Okay.

THE CLERK: All rise.

(Recess taken at 11:51 a.m.)

(The following proceedings were had at 4:45 p.m.)

THE COURT: We have a note from the jury, and the jury note reads: We, the jury, cannot reach a decision on this case at this time. Signed by the foreman. I'm trying to -- his name is a little hard to read, Joseph Schingle is in seat -- the last seat. I'm not sure.

Well, it's actually been a fairly short period of time to deliberate, frankly, and normally, simply tell them that it has not been very long and that they need to deliberate some more.

MR. MURPHY: Judge, I don't have any objection

to that, I think that makes sense.

MR. BECRAFT: Neither do I. If the court wants to kind of move in the direction of maybe a weak Allen charge, is that a suggestion?

THE COURT: Well, we could do that. Let's see, there is a -- the modified Allen --

MR. MURPHY: Judge, I think it's kind of early.

THE COURT: I think it is too. I was just looking at 9.04. Normally, what I do is just tell people that, you know, it's just not been really very long in a six-count case, frankly, and I'm going to ask them to go home now since it is almost 4:00 o'clock, come back tomorrow at 8:30 and resume deliberations when they're ready tomorrow and see how things go, and that's what I think we ought to do, and I think that's about all I'm going to say now.

MR. BECRAFT: No objection.

THE COURT: Any objection?

MR. MURPHY: No objection, Your Honor.

THE COURT: Well, let the jury come in and let them go home.

(Jury in at 4:47 p.m.)

THE COURT: I have a note from the jury -- and I will let everybody be seated. The procedure is the same in every note, and that is that I first talk with the

parties, and then we decide -- actually, I get to decide what the response is after input from them, but we always read the note out loud first. The note says, August the 7th of 2003 at 4:32 p.m. We, the jury, cannot reach a decision on this case at this time. Signed by Joseph Schingle, the foreperson in the case. I hope I got the name right.

JUROR SCHINGLE: Yes, sir.

THE COURT: Well, let me tell you what I think we ought to do. It is not uncommon for jurors to send me a note like that fairly early in deliberations. You have actually not been deliberating that long. It may seem like a long time to you, it probably does, but you have not really been deliberating that long. And the thing we ought to do is, pretty straightforward, I'm going to let you go home at 5:00 o'clock today anyway and ask you to come back at 8:30 tomorrow like you have been doing every day. When you're all together and you have had your cup of coffee and snack and you're ready to begin your deliberations, simply knock on the door, and Mr. Tuggle will probably -- you will be here tomorrow?

COURT SECURITY OFFICER: Yes.

THE COURT: Mr. Tuggle will be here tomorrow, and he will hand you the verdict folder with the enclosures and let you resume your deliberations. Just

say that you have not really been deliberating that long, and it's not uncommon for juries to have to deliberate significantly longer to reach agreement. You can always communicate with me. You know how to communicate with me, and I'm not trying to be indifferent to your note, but I think that's what we ought to do at this time.

So I think a good night's sleep would be good, let everybody rest up and come back fresh tomorrow. Mr. Tuggle asked me if the Red Birds were playing, and I don't have tickets for every game, so I'm not sure if they're playing tonight. Do something else, don't think about the case, and when you come back tomorrow and you're all together, we will let you resume your discussions. So have a -- the temperature has been nice today, it has not been very hot, you get to get out a little early. Have a nice afternoon. We will see you at 8:30 tomorrow. Don't discuss the case with anybody, don't let anybody talk with you about it, the same instructions that you have had in the past. We will see you tomorrow at 8:30. Thanks very much.

(Jury out at 4:50 p.m.)

THE COURT: Y'all can be seated. I do need to ask, any objection to the instruction by the United States?

MR. MURPHY: No, sir, Your Honor.

THE COURT: Any objection from the defense?

MR. BECRAFT: None, Your Honor.

THE COURT: All right. Gentlemen and ladies, you really don't have to be here at 8:30 at all tomorrow. And I know you have things to catch up on. You're welcome to be here. I'm glad to have you here if you would like to be. We have something at 9:00. It's really a light day. I do have a few things in and out of here during the day, but make sure Mrs. Saba has a number where we can reach you. We will see you tomorrow.

THE CLERK: All rise.

(Court adjourned at 4:50 p.m.)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 03-20111-Ml
	)	
	)	
VERNICE KUGLIN,	)	
	)	
Defendant.	)	

TRIAL PROCEEDINGS
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE
AUGUST 8, 2003
VOLUME V

BRENDA PARKER
OFFICIAL REPORTER
SUITE 942 FEDERAL BUILDING
167 NORTH MAIN STREET
MEMPHIS, TENNESSEE 38103

A P P E A R A N C E S

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FRIDAY MORNING & AFTERNOON

AUGUST 8, 2003

The trial in this case resumed on this date, Friday, August 8, 2003, at 2:00 o'clock p.m., when and where proceedings were had as follows:

———————

(The following proceedings were had at 2:00 p.m.)

THE COURT: All right. The procedure is that we will have the jury come in, and the foreman in this case is Mr. Schingle. We will ask him to bring the folder to the stand, the podium closest to me, he will hand it to Ms. Flagg, and she will hand it to me. I will look at it to make sure it is signed and dated and filled in. If it is signed and dated, then I will hand it back to Mr. Schingle and have him read the verdict. The procedure is that, of course, after that, after he reads the whole verdict, then I will start with Ms. Vasser in seat one and ask each person is it their verdict, and then if everybody says it is, then it becomes the official verdict in the case. I just remind everybody that whatever it is, and I don't have any idea what it will be, I ask everybody not to say anything, there isn't anything to say really at

this point in time, and we will take up any later matters, if there are any to take up, as soon as I discharge the jury. Okay. Bring them in.

(Jury in at 2:00 p.m.)

THE COURT: I will have the foreman come around to the podium. Everybody have a seat. I'm going to ask -- to this podium.

JUROR SCHINGLE: Oh, I'm sorry.

THE COURT: That's no problem. What you have to do is, we're going to, in just a second, let you hand the folder with the material to me first. I have to look at it, make sure it is signed, dated and filled out. Before we read anything, if something wasn't signed and dated and filled out, I have to hand it back, so I have to always check.

Everything is in order. I will hand it back and, Mr. Schingle, I'm going to ask you to start with Count 1 and just read them, 1, 2, 3, 4, 5 and 6, and give us your verdict on each one as you read the verdict form. And then I'm start with Ms. Vasser in seat one, I will ask each of you in order is this your verdict, because, of course, the verdict does have to be unanimous.

JUROR SCHINGLE: Do I read it or just tell you?

THE COURT: I can do it like they do on television too. Would you tell me what the verdict is on

Count 1?

JUROR SCHINGLE: Not guilty, Your Honor.

THE COURT: What is the verdict on Count 2?

JUROR SCHINGLE: Not guilty, Your Honor.

THE COURT: What is the verdict on Count 3?

JUROR SCHINGLE: Not guilty.

THE COURT: And what the verdict on Count 4?

JUROR SCHINGLE: Not guilty, Your Honor.

THE COURT: The verdict on Count 5?

JUROR SCHINGLE: Not guilty, Your Honor.

THE COURT: And the verdict on Count 6?

JUROR SCHINGLE: Not guilty, Your Honor.

THE COURT: Let me ask you as foreman and also in your individual juror capacity, do you agree with the verdict?

JUROR SCHINGLE: Yes, I do.

THE COURT: Let me ask Ms. Vasser, is this also your verdict?

JUROR VASSER: Yes.

THE COURT: And Mr. Vetter, is it also your verdict?

JUROR VETTER: Yes.

THE COURT: Ms. Snodgrass, is it your verdict?

JUROR SNODGRASS: Yes, it is.

THE COURT: Mr. Stovall, is it your verdict?

JUROR STOVALL: Yes.
THE COURT: And Mr. Smith -- and there are several Mr. Smiths, so I better say Mr. Alphonso Smith?
JUROR ALPHONSO SMITH: Yes, sir.
THE COURT: Mr. Keith Smith?
JUROR KEITH SMITH: Yes, sir.
THE COURT: Mr. Shaneyfelt?
JUROR SHANEYFELT: Yes.
THE COURT: Ms. Stidham?
JUROR STIDHAM: Yes.
THE COURT: Mr. Inderbitzen?
JUROR INDERBITZEN: Yes, it is.
THE COURT: And Ms. Stout?
JUROR STOUT: Yes, Your Honor.
THE COURT: And Mr. Simpson?
JUROR SIMPSON: Yes.
THE COURT: All right. I'm going to ask you to hand the -- well, you have handed the folder, I'm going to let you go back to your seat then, and hand the folder to Ms. Flagg, it does become the official verdict in the case, and it is recorded, so it will conclude all matters in the case.

I need to tell you a couple of things. First of all, in just a second, I'm going to discharge you as jurors in the case. And at that time, you can talk with

anybody you would like to about the case. There's one rule, and that is that the lawyers and the parties can't really quiz you about the verdict. You can speak to them, you can tell them about the verdict if you want to, and you may be interested in talking to them, that's fine, there's nothing wrong with that, but they're not going to ask you a lot of questions because the jury deliberations are not something that they are allowed to inquire into, so, you know, they might ask you, you know, what was it like to serve on a jury, but that's about it. So I need to let you know that that is the reason they won't be asking you. If you do speak to them, they won't be asking you any questions at all.

The next thing is that we want you to encourage other people to serve on juries. We have a lot of folks who try not to, and we just want you to please tell people not to. And the third thing is that I want to thank you for serving on the panel. It turned out to be about the length we projected, it doesn't always work out that way, so I feel pretty good about this case in terms of the length, but we do appreciate each of you being able to serve on the jury.

So what I'm going to do in just a second is I'm going to discharge you, let you go to the jury room. I'm going to let the parties here be excused, and then if you

want to speak to them after you have gone to the jury room, then Mr. Tuggle will open the door after I've left, and then you can either come back in here or you can leave and go out the other door, whichever way you want to go. Again, you're not obligated to speak to anybody at all. Don't feel like you have to. Again, thank you very much for serving on the jury, and at this time, ladies and gentlemen, you are discharged in the case and you are excused. Thank you very much.

(Jury out at 2:05 a.m)

THE COURT: There is one thing I need to tell the parties about and then we will be concluded. And I didn't tell the parties this morning about this, frankly, because the jury had begun deliberations -- you can have a seat just for a second. I frankly don't attribute anything to this, but if somebody tells me something, I need to convey it to you. And that is that last evening about 5:30 or so, I think it was Ms. Pigues and perhaps Mr. Tuggle did come in and say that the jurors, as they were leaving in the basement area, I think somebody was taking their photographs, and I don't really attribute much to that. I think they did ask perhaps someone who was a member of the audience to take pictures, maybe the alternates may have, I don't know, is that what happened? I have got my two alternates here. Is that all that

happened?

UNIDENTIFIED PERSON: Yes.

THE COURT: I have got my two alternates here, I thought I would just say that while you were here. That's all, you just wanted to get a picture with everybody, is that right?

UNIDENTIFIED PERSON: Yes, sir.

That's what I understood that happened, I didn't attribute any particular significance to that.

Who took your picture?

UNIDENTIFIED PERSON: It was just --

UNIDENTIFIED PERSON: I did, Your Honor.

THE COURT: That's okay. But there wasn't any big deal about it. That's a little unusual. It's nothing wrong with it in the least, but if somebody comes and tells me about something, I just have to tell these guys, that's the way it works. So anything else from the United States?

MR. MURPHY: Just one thing, to put Ms. Kuglin on notice, she has got to pay taxes, I think the court ought to instruct her that that is the law. She has got to file returns and --

MR. BECRAFT: Your Honor, that is going to be cleaned up totally.

THE COURT: Okay. Well, Mr. Murphy is not

incorrect that it is the law, and I think what he's also saying is there will still be civil penalties.

MR. BECRAFT: I expect probably 90-day letters to be coming pretty quick.

THE COURT: Okay.

MR. BECRAFT: And there's going to be civil proceedings, and she is going to being take responsibility -- she is going to be doing things to respond to all of that like file returns, Your Honor.

THE COURT: Well, I'm just the judge here, I'm not the IRS, so I think I'll leave that up to the other folks. Anything -- I asked the government. Anything from the defense?

MR. BECRAFT: Your Honor, I think on behalf of all the lawyers, I would like to say that it has been a pleasure to be in your court.

THE COURT: Well, thank you. We're going to let everybody be excused.

MR. MURPHY: Thank you, Judge.

MR. BECRAFT: Thank you, Your Honor.

MR. BERNHOFT: Thank you.

THE CLERK: All rise, please. This Honorable United States District Court now stands adjourned.

(Court adjourned at 2:15 p.m.)

C E R T I F I C A T E

I, Brenda Parker, do hereby certify that the foregoing pages 1-778 are, to the best of my knowledge, skill and ability, a true and accurate transcript from my stenotype notes of the trial on August 4-8, 2003, in the matter of:

United States of America

vs.

Vernice B. Kuglin

Dated this 26th day of September, 2003.

_____

BRENDA PARKER
Official Court Reporter
United States District Court
Western District of Tennessee