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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

UNITED STATES OF AMERICA \* Criminal Action  
No. 06-50164  
VERSUS \*  
Shreveport, Louisiana  
TOMMY K. CRYER \* July 9, 2007  
\* \* \* \* \*

VOLUME I  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE S. MAURICE HICKS, JR.  
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

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PROCEEDINGS PRODUCED BY MECHANICAL STENOGRAPHY AND TRANSCRIBED  
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1 MORNING SESSION

2 JULY 9, 2007

3 (Court called to order with defendant  
4 present at 8:39 a.m.)

5 THE COURT: Good morning. Please be seated. When we  
6 left following Friday's hearing, there were some developments  
7 that the Court was made aware of on Friday afternoon.  
8 Mr. Campbell, where are we this morning?

9 MR. CAMPBELL: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. CAMPBELL: Just to kind of recap what's happened,  
12 basically, late Friday afternoon the Government reassessed the  
13 case and it was -- a decision was made at that time to proceed  
14 on the lesser included offenses. And so the issue became,  
15 since the Court had dismissed those pursuant to the defense's  
16 motion to dismiss for -- I think the way the motion was styled  
17 was for duplicity because we charged the lesser included  
18 offenses as separate offenses. The question is: Where does  
19 that stand as far as the indictment? And it is the  
20 Government's contention that the two counts of the superseding  
21 indictment that were left, the language does provide all of the  
22 essential elements to plead the lesser included offenses for,  
23 basically, 7203, a misdemeanor failure to file or pay taxes.  
24 And because since the language of the indictment plead that,  
25 certainly the defendants were on notice that the lesser

1 included offenses would be a part of this trial, because in  
2 their motion they certainly plead it or certainly argue that  
3 those counts were lesser included offenses, and the Court in  
4 its order stated that it would present those offenses as lesser  
5 included offenses. The defense certainly was on notice that  
6 part of this trial would be those charges; and, therefore, it  
7 is the Government's position that, at this point, to proceed  
8 forward on the lesser included offenses of 7203, failure to  
9 file and pay taxes. And in support of our posture at this  
10 point, the Government will submit case law to the Court and  
11 Defense Counsel.

12 (Counsel hands document to the Court.)

13 MR. CAMPBELL: And for the record, the cases that  
14 I've just submitted, there's a Supreme Court case, United  
15 States v. Hutcheson. The cite is 312 U.S. 219. And the other  
16 case -- two Fifth Circuit cases: United States v. Quintero,  
17 872 F.2d 107; and United States v. Mitchell, 484 F.3d 762. And  
18 then a case from the Sixth Circuit which is probably about as  
19 on point as it's going to get with this particular issue is  
20 United States V. Perez, 457 F.2d 555.

21 And so for the Government, the issue is, first of  
22 all, does the superseding indictment as it stand allege the  
23 offense of willful failure to file and willful failure to pay  
24 taxes. And when you look at the language of the superseding  
25 indictment, for example, on Count 1, it alleges all of the

1 elements that would be required. You have the willfulness  
2 alleged. You have the failure to file taxes. You have the  
3 applicable deadline date. For example, on Count 1, the  
4 deadline is April 17 because of the weekend where the 15th fell  
5 on that particular year. You have the fact that taxes were  
6 owing, even though that's not a requirement for willful failure  
7 to file. And you also have the same allegations made on behalf  
8 of the trust as well.

9           So when you look at it, you have the willfulness  
10 pleading, you have the fact that they failed to file the return  
11 as required by law, and you also have the applicable deadline  
12 dates. Those are basically the elements of willful failure to  
13 file or pay taxes under 7203. And so Count 1 alleges the  
14 misdemeanor, a lesser included misdemeanor. It's a willful  
15 failure to file and pay taxes. And the same is applicable to  
16 Count 2. And so that certainly puts Defense on notice of those  
17 lesser included offenses.

18           And even though those are two particular counts  
19 reported to plead mis -- I mean, excuse me, felony offenses of  
20 evasion, in Huteson the Court said -- and I'm looking at page  
21 229 pinpoint cite: "In order to determine whether an  
22 indictment charges an offense against the United States,  
23 designation by the pleader of the statute under which he  
24 purports -- purported to lay the charge is immaterial. He may  
25 have conceived the charge under one statute which would not

1 sustain the indictment, but it may nevertheless come within the  
2 terms of another statute." So that certainly is on point in  
3 this particular case here where the indictment purported to  
4 charge a felony, but it also charges misdemeanors.

5           Then you go to the case of United States v. Quintero,  
6 which is a Fifth Circuit case, and here's just the general  
7 proposition -- and I'm looking at page 111 for pinpoint  
8 reference here. The test for determining whether an indictment  
9 is sufficient, quote, is whether it contains the essential  
10 elements of the offense so that it is fairly -- so that it  
11 fairly informs the defendant of the charges against him and  
12 adequately enables the defendant to be protected against  
13 further prosecution for the same offense.

14           And certainly the indictment meets that threshold as  
15 well as far as the lesser included offenses.

16           Now, in Mitchell, which is 484 F.3d 762, this is in a  
17 different context because it's talking about a variance wherein  
18 you have a situation where the evidence at trial was different  
19 than what was alleged in the indictment. So it's kind of  
20 different because at this point we haven't gotten into the  
21 evidence at trial because we haven't taken any testimony yet,  
22 but I think the principle applies here the same. In this case,  
23 and just looking at basis pinpoint -- it's hard to find the  
24 pinpoint on these. I believe around 772. Basically, it talks  
25 about a situation where the government charged the defendant

1 with possession of a firearm during the commission of a drug  
2 trafficking offense. And in this case, the drug trafficking  
3 offense that the government alleged in the indictment was  
4 possession of crack cocaine with intent to distribute. And the  
5 facts of this particular situation is that in this particular  
6 count the defendants broke into a home, they were armed, and at  
7 the time the government alleged that they broke into the home  
8 and stole crack cocaine out of the home. But at trial, the  
9 evidence showed that they did break into the home, that they  
10 did -- that they were armed, but there were no drugs in the  
11 house. So the question is, you had a variance issue. And so  
12 the court resolved this issue by saying even though the  
13 government did not prove the crime alleged in the indictment,  
14 that is, possession of crack cocaine with intent to distribute,  
15 because there were no drugs in the home, the government did  
16 prove the lesser included offense, that is, attempted  
17 possession of crack cocaine with the intent to distribute.  
18 Because when they went into the home, they had every intent to  
19 possess crack cocaine. So the court resolved that by saying  
20 the indictment did plead the lesser included, and that lesser  
21 included offense is included in the greater offense of  
22 possession with intent to distribute crack cocaine. And so the  
23 court said the remedy at that point is basically to modify the  
24 sentence to show that the person was convicted of the lesser  
25 included offense as opposed of the greater offense, which is

1 possession of -- excuse me, possession of a firearm with  
2 intent -- possession of a firearm in furtherance of a drug  
3 trafficking crime, and the crime being possession of crack  
4 cocaine with intent to distribute it. In this case, the  
5 evidence at trial showed that there was no crack there, so the  
6 lesser included offense of attempted possession was proven and  
7 the court modified the sentence accordingly. And then,  
8 finally -- and just with time reference, that's a 2007 case,  
9 May 15 -- excuse me, April 12, 2007 case. That's a pretty  
10 recent case.

11           And then, finally, the last case, it's probably about  
12 as on point as you're going to get, is U.S. v. Paris out of the  
13 Sixth Circuit. And here is an interesting case where the  
14 defendants were charged in the indictment for escape from a  
15 hospital where they were committed. Now, that was the charge  
16 in the indictment. And they were charged under 42 USC 261,  
17 which makes it a crime for anyone to escape from a mental  
18 hospital under federal control where they've been committed.  
19 Now, these particular defendants, they were sent to prison,  
20 they were part of a drug program, and they completed a drug  
21 program as part of their particular sentence. They were sent  
22 to this particular hospital as workers or as volunteers. Okay.  
23 But yet when they got there, they escaped. So the question is:  
24 Did the indictment charge the correct offense? Because they  
25 were never committed there. And so the court determined that

1 the indictment did not charge the correct offense because the  
2 purpose of this statute was to deal with escape by persons who  
3 are committed to the hospital, not people who happen to work  
4 there or may be doing other services there. But the court said  
5 that when looking at the indictment, the indictment charged  
6 another offense, which is escape from a prison or -- escape  
7 from the custody of the institution or officer. And in this  
8 case, the indictment alleged all of the requisite facts as far  
9 as the person escaped from an institution that was in the  
10 control of the Attorney General of the United States. And so  
11 the court looked at that and said: Well, it didn't charge "A"  
12 because "A" was not intended to apply to these facts, but  
13 instead they charged "B," and therefore we're going to let the  
14 conviction stand and sentence them accordingly for "B."

15 And so there you have several examples of cases  
16 that's kind of dealt with this issue. And I think the  
17 overriding issue is: Does the indictment as stand plead the  
18 essential elements of the offense? In this case, it does.

19 Then the next question that comes: What is the  
20 prejudice? Certainly the defense is not prejudiced in the  
21 sense that instead of now of the Government proceeding on a  
22 felony, we're proceeding on a misdemeanor. So in one sense,  
23 the Government's position inured to the defendant's benefit as  
24 far as sentence exposure and so forth. No. 2, there's no  
25 prejudice because it really doesn't change the trial, because



1 when you get to the bones of this trial, this trial is about  
2 willfulness. It's not about challenging the government's case  
3 in chief. It's not about whether there is insufficient  
4 evidence to show that he filed a, failed to file a tax return  
5 or whether there's insufficient evidence to show whether he was  
6 required to file a tax return. The elements are pretty much  
7 conceded. It's just a matter of whether or not there's an  
8 affirmative defense applicable here because of the good faith.  
9 And that analysis doesn't change. It doesn't change the  
10 rulings that the Court has made as far as the exhibits that  
11 were excluded by the Court. Even with you go forward with the  
12 willful failure to file, those exhibits are not relevant that  
13 the Court excluded. And so there's very little prejudice, if  
14 not none at all, from going forward with the misdemeanors. It  
15 certainly inures to the defendant's benefit, because there's a  
16 felony exposure here. And the indictment properly put the  
17 defense on notice of the charges that are being tried.

18 And so with the authority that the Government cited,  
19 the Government contends that it is appropriate at this point to  
20 proceed in this posture and to go forward with the misdemeanor  
21 counts of 26:7203, failure to file and failure to pay taxes.

22 THE COURT: There would actually have to be a  
23 redacted indictment prepared substituting the statutory  
24 citation for 7203?

25 MR. CAMPBELL: That's correct. And there also would

1 have to be some redactions in accordance with the Court's  
2 earlier ruling to dismiss Counts 3 and 4. So those would have  
3 to be completely redacted from the indictment, and then the  
4 appropriate citation changes would have to be made, as well.

5 THE COURT: Mr. Becraft?

6 MR. BECRAFT: May it please the Court. This is a  
7 change in the trial posture for which we've had little notice,  
8 and the Government has had the opportunity to dig in and pull  
9 out some cases which we have not been, and I would like to also  
10 ask during the course of my remarks, Your Honor, that we be  
11 given some time to assess the situation.

12 But, you know, to address the point about what the  
13 Government is doing in this case, you know, the indictment  
14 charged four different counts. There was an attack made  
15 pretrial by motion to dismiss on the willful failure to file  
16 counts. The Court agreed and dismissed those counts. So  
17 pretrial, this was a tax evasion case for two counts. When we  
18 had the pretrial conference, the Court said: Defense, put in  
19 some new requested jury instructions, which I did. And that  
20 afternoon -- I think they were filed about 4:58 that afternoon,  
21 Friday, that Friday. And I was talking to Mr. Cryer on the  
22 phone, and we had, Mr. Campbell and I, had talked. You know,  
23 the pretrial order to submit a -- you know, requested to submit  
24 a suggested verdict form, which we did, which included those  
25 willful failure to file counts as kind of a lesser included

1 theory.

2 THE COURT: It's not a "kind of a lesser included  
3 theory." That was in fact my ruling, was it not?

4 MR. BECRAFT: Yes, Your Honor.

5 THE COURT: Just to make sure you understand what I  
6 ruled. It's there.

7 MR. BECRAFT: I understand, Your Honor.

8 THE COURT: And we're eventually, I hope, going to  
9 get to Federal Rule of Criminal Procedure 7C about whether your  
10 client was misled and thereby became prejudiced. Now, that's  
11 where I want to end up with, and I'm hearing a lot of hooey  
12 getting to it. So let's move it.

13 MR. BECRAFT: Our posture last week, even last  
14 Friday, was that Mr. Cryer no longer -- that's the reason why I  
15 submitted requested jury instructions that no longer included  
16 the lesser included offense. So we were going to ask that the  
17 Court not. We were going to oppose submission of this case on  
18 anything other than a tax evasion case. Now let me tell you  
19 the reasons why that would be the case.

20 The Government argues that there's no prejudice to  
21 us. Well, Mr. Cryer was preparing for trial on an evasion  
22 count. The evasion count requires an affirmative act of  
23 evasion. Our trial posture in reference to an evasion case was  
24 going to be an attack upon that affirmative act. The  
25 affirmative act in this particular indictment is this creation

1 of this trust and purported concealment of income from the  
2 trust. Well, first and foremost, Your Honor, on that  
3 affirmative act, the trust in question predated by more than a  
4 year, you know, any tax problems for Mr. Cryer.

5 THE COURT: Whoa. Let me cut you off right there.  
6 In ruling, I granted your motion to dismiss for duplicity but  
7 found that the 7203 failure to file and pay taxes was a lesser  
8 included offense within the evasion charges. Correct?

9 MR. BECRAFT: I understand that, Your Honor.

10 THE COURT: All right. Now, the Government comes in  
11 and says: We're not doing 7201, we're now agreeing to do 7203  
12 only. How does that prejudice you when you knew what the  
13 lesser included offense was going to be and it was going to be  
14 precisely the same proof?

15 MR. BECRAFT: First, Your Honor, we were going to  
16 oppose submission of the case going --

17 THE COURT: I'm not talking about the jury. I'm  
18 talking about going to trial, Mr. Becraft. I ruled that it was  
19 a lesser included offense and would be going to the  
20 instructions. You can object all you want to, but the ruling  
21 was going to stand. Okay?

22 MR. BECRAFT: I understand that, Your Honor.

23 THE COURT: Let's get to today. Tell me how when  
24 7203 on your motion became a lesser included offense pursuant  
25 to my ruling, how your client is somehow misled and then

1 prejudiced thereby with the Government removing the felony  
2 count and simply going with the lesser included misdemeanor  
3 offenses? Real simple. Real straightforward. Let me hear it.

4 MR. BECRAFT: This is the answer. This is the -- in  
5 light of the last-minute hour for which this argument comes up,  
6 Your Honor, I can't cite any case authority. I can say this,  
7 though. I think that the prejudice would be: No. 1, the  
8 defense would during the course of the trial oppose submission  
9 to this jury of a lesser included --

10 THE COURT: Yawn. Yawn. Yawn. Tell me how in  
11 changing the indictment to go on 7203 only, the misdemeanor  
12 count, the lesser included offense type, which is within the  
13 7201 per my ruling, how is your client misled? How is the  
14 burden of proof any different? How is anything any different,  
15 except for the fact that your client no longer faces a felony?

16 MR. BECRAFT: Here's -- if I can, Your Honor --

17 THE COURT: I'm listening.

18 MR. BECRAFT: -- the prejudice --

19 THE COURT: I haven't heard it.

20 MR. BECRAFT: The prejudice is: No. 1, we would  
21 oppose submission of this case to a jury --

22 THE COURT: Whoa. Sir, I am not at the jury trial  
23 phase of this in terms of submission to the jury. I'm not  
24 interested in what you plan to do at which time. I'm at the  
25 here and now. Tell me how your client is misled and thereby

1 prejudiced under Federal Rule 7 by the Government's proposed  
2 dismissal of its felony counts and going to trial on the lesser  
3 included offense only of the misdemeanors under 7203?

4 MR. BECRAFT: And in response to that, Your Honor,  
5 here's --

6 THE COURT: I'm listening. This is the fifth time --

7 MR. BECRAFT: (Indiscernible due to speaker overlap.)

8 THE COURT: -- I've asked the question --

9 MR. BECRAFT: (Indiscernible due to speaker overlap.)

10 THE COURT: -- Mr. Becraft.

11 MR. BECRAFT: The prej --

12 THE COURT: Silence. Answer the question. Don't  
13 tell me what you're going to do about opposing something when  
14 it goes to the jury. I want to know how the prejudice exists  
15 now.

16 MR. BECRAFT: I will phrase it the best way I can,  
17 Your Honor.

18 THE COURT: And don't tell me about going to the  
19 jury.

20 MR. BECRAFT: Well, the prejudice in changing the  
21 nature of the charge would be this: That the defendants would  
22 be at a -- the defendant would be in a stronger position in  
23 submitting the case to the jury on the evasion counts --

24 THE COURT: Would you prefer that we leave it as the  
25 evasion and simply take the lesser included verdict with it?

1 MR. BECRAFT: I'm --

2 THE COURT: And risk a conviction on the felony  
3 counts?

4 MR. BECRAFT: Your Honor --

5 THE COURT: Is that what you're telling me?

6 MR. BECRAFT: One of the things that our trial  
7 posture was going to be, Your Honor, was to attack on the  
8 evasion count and deal with the one affirmative act, which we  
9 think that we have a strong chance of showing that there is no  
10 affirmative act that transforms this case into an evasion case.

11 THE COURT: Bull you still have the lesser included  
12 offenses that the jury could say: You know, we agree, so we're  
13 going to find him guilty of failing to file and failing to pay  
14 taxes.

15 MR. BECRAFT: Well, I've stated the case, Your Honor.

16 THE COURT: All we've done is just lop off a whole  
17 bunch of proof and instead go real simple, straightforward,  
18 seems to me, that certification of no taxes, no tax returns  
19 filed from '90 -- what was it? 2000 and 2001. Real easy  
20 certificate: Not filed, no taxes paid. Now we've taken all of  
21 the other overhang, overlay, and simply stripped it away to the  
22 misdemeanor counts. How does that prejudice you?

23 MR. BECRAFT: All I'm saying, Your Honor -- and I've  
24 said it, and that's the extent of what I can argue in reference  
25 to the prejudice. We believe that we'd have a better shot with

1 a jury with an evasion case because the affirmative act's so  
2 weak.

3 THE COURT: Well, the Government's moved to dismiss  
4 that. Now you're left with the lesser included offense. Tell  
5 me how you're misled.

6 MR. BECRAFT: Well, the argument I had just told the  
7 Court is how I think we're prejudiced, that alone.

8 THE COURT: That's it?

9 MR. BECRAFT: Yes, Your Honor.

10 THE COURT: I'm going to give you till 10:00,  
11 Mr. Becraft, to review the cases that were submitted this  
12 morning. We're going to reconvene at 10:00, and by that time,  
13 since you have Mr. Harp here -- and, of course, your client is  
14 also a licensed Louisiana attorney. You have a triumvirate, a  
15 trio of people, that I expect to do two things: First of all,  
16 review those cases, be prepared to discuss them. Second, you  
17 need to explain to me how removing the felony count and only  
18 going with the misdemeanor count legally prejudices your  
19 client. Because I can simply continue this today, allow a  
20 superseding indictment to be filed, stripping away all the  
21 other stuff with the misdemeanors, and here we go. But, you  
22 know, that's really not necessary since I've already ruled that  
23 the superseding indictment language is a lesser included  
24 offense and not a separate offense. You get my drift here?

25 MR. BECRAFT: I sure do, Your Honor, and we welcome



1 the opportunity.

2 THE COURT: All right. You have until 10:00 to  
3 prepare. I expect you back here.

4 Mr. Campbell, you have provided copies of those cases  
5 to --

6 MR. CAMPBELL: Yes, I have.

7 THE COURT: -- counsel?

8 Very well, gentlemen. I'll see you back at 10:00.

9 (Recess 9:02 - 10:03 a.m.)

10 THE COURT: Thank you. Please be seated.

11 Mr. Becraft, when we last met, I had given you time to look at  
12 the citations offered by the Government in support of its  
13 decision to proceed only on the lesser included offenses and  
14 not to proceed on the felony evasion charges contained in the  
15 indictment. Have you read those?

16 MR. BECRAFT: We have, Your Honor. We withdraw our  
17 objections.

18 THE COURT: All right. Are we then ready to proceed  
19 with trial today?

20 MR. BECRAFT: (Nods head.)

21 THE COURT: Do you see that there are any changes  
22 from either side in how -- except for the jury verdict form  
23 which is easily redacted -- insofar as it impacts the  
24 stipulations that I got an unsigned copy of this morning?

25 MR. BECRAFT: It should not. The way we're

1 proceeding should not -- the stipulations will apply in either  
2 case, Your Honor.

3 MR. CAMPBELL: Right.

4 THE COURT: All right. Joint neutral statement, same  
5 thing?

6 MR. CAMPBELL: You have to change it from evasion to  
7 failure to file.

8 THE COURT: And are you going to do that?

9 MR. CAMPBELL: Yes.

10 THE COURT: All right. And you'll present it when?

11 MR. CAMPBELL: I can present it before the jury, the  
12 petit jury, is seated.

13 THE COURT: All right. If you'll be here at 1:15,  
14 we'll take care of any last-minute housekeeping details. The  
15 jury will be called here at 1:30. My decision was to postpone  
16 their arrival because I wasn't sure what was going to happen in  
17 the a.m. today. I didn't know whether we would be fully  
18 resolved, and I do not wish to make people sit around together  
19 downstairs, fuming at why they're not being called up in short  
20 order.

21 Any other details that we need to consider at this  
22 time from the Government's viewpoint?

23 MR. CAMPBELL: No, sir.

24 THE COURT: Mr. Becraft?

25 MR. BECRAFT: So we're going to select the jury at

1 1:30, Your Honor?

2 THE COURT: We will begin jury selection at 1:30.  
3 They will be up here.

4 Just so that you will know, because we have 48 people  
5 called, there will only be one available bench after they're  
6 seated.

7 MR. BECRAFT: Your Honor, I've seen some people  
8 outside. My instructions to them have been -- I thought we  
9 were going to pick this morning. I will tell them again,  
10 probably come back at 4:00.

11 THE COURT: Perfectly fine. But we'll have minimal  
12 seating available for the public during jury selection because  
13 of the number of jurors.

14 MR. BECRAFT: Your Honor, my message to them has been  
15 we don't want any -- they don't need to be in the courtroom.

16 THE COURT: No cross pollination, as it were.

17 Mr. Campbell, you'll have a redacted indictment  
18 prepared as well?

19 MR. CAMPBELL: Yes, I will.

20 THE COURT: And submitted to the Court?

21 MR. CAMPBELL: Yes, I will.

22 THE COURT: With nothing further, then, I will see  
23 you gentlemen at 1:15 p.m. We are in recess until that time.

24 (Recess had 10:07 a.m. - 1:20 p.m.)

25

1 AFTERNOON SESSION

2 JULY 9, 2007

3 (Court called to order with Defendant present.)

4 THE COURT: Mr. Campbell, for the Government, you're  
5 ready to proceed?

6 MR. CAMPBELL: Yes, Your Honor.

7 THE COURT: Mr. Becraft?

8 MR. BECRAFT: Yes, Your Honor.

9 THE COURT: All right. Any last minute housekeeping  
10 details that we need to address before we get our prospective  
11 jurors up here and seated?

12 MR. CAMPBELL: Briefly, Your Honor, during the recess  
13 I submitted to chambers and to defense counsel a redrafted  
14 joint neutral statement to reflect the lesser included charges  
15 of 7203 and also a redacted indictment to reflect the lesser  
16 included charges as well.

17 THE COURT: And is it the pleasure of counsel for me,  
18 as preliminary remarks to prospective jurors, that I read the  
19 redacted indictment or the joint neutral statement?

20 MR. CAMPBELL: The joint neutral statement is fine.

21 MR. BECRAFT: That's fine with me, Your Honor.

22 THE COURT: All right. Any change to the stipulation  
23 that was provided to my office?

24 MR. CAMPBELL: Yes. I think I submitted to  
25 Mr. Becraft --

1           THE COURT: Do you want to submit that at the  
2 appropriate time --

3           MR. BECRAFT: At the appropriate --

4           THE COURT: -- at the evidentiary phase?

5           MR. BECRAFT: -- time, Your Honor.

6           MR. CAMPBELL: And if there are no objections, I  
7 would ask that the Court read the stipulations to the jury at  
8 the close of opening statements, right before the first witness  
9 testifies.

10          THE COURT: All right. Becky, if you'll help me to  
11 remember to do that at that time.

12          I appears to me that we stand a substantial  
13 likelihood of seating a jury not later than 4:00 to 4:30, at  
14 which time I would prefer to do opening statements before we  
15 dismiss the jury so that we begin tomorrow with the first  
16 witness for the government. Is that possible?

17          MR. BECRAFT: I'm prepared, Your Honor.

18          THE COURT: Mr. Campbell?

19          MR. CAMPBELL: I'm prepared, Your Honor.

20          THE COURT: All right. We'll see how it goes, but  
21 that's my preference at this point.

22          All right. In this instance, gentlemen, in preparing  
23 the voir dire questions to the entire venire, I'm going to read  
24 the complete superseding indictment; and once we get the jury  
25 actually seated, we'll read the joint neutral statement. And

1 we'll proceed along those lines.

2 Any objection or other thing that we need to take up  
3 before we get our group of prospective jurors in?

4 MR. BECRAFT: None, Your Honor.

5 MR. CAMPBELL: None from the Government.

6 THE COURT: All right. We have one juror that has  
7 not reported, so we'll hang loose for just a few more minutes.

8 Counsel, Mr. Borseth, who is on your seating chart as  
9 Juror Seat No. 27 is 30 minutes late. I am going to proceed in  
10 his absence and have him sit in the jury assembly room for the  
11 rest of the day. I'm not going to bring him up midstream.

12 MR. BECRAFT: No objection.

13 THE COURT: Mr. Campbell, any objection to that  
14 procedure?

15 MR. CAMPBELL: No, sir.

16 (Whereupon, the venire enters and voir  
17 dire is conducted on the record.)

18 THE COURT: Counsel, do we have any preliminary  
19 issues to cover before beginning opening statements this  
20 afternoon? Mr. Campbell?

21 MR. CAMPBELL: None from the Government, Your Honor.

22 THE COURT: Mr. Becraft?

23 MR. BECRAFT: Nothing from the defense.

24 THE COURT: Ladies and gentlemen, we will proceed  
25 with opening statements in this matter.

1           Mr. Campbell, you have a total of 15 minutes in order  
2 to make your opening statements.

3           After which time, ladies and gentlemen, the defendant  
4 will then follow with any opening statement to be made.

5 Mr. Becraft will be the one to do that, if he chooses to do  
6 that. After that, we will then adjourn for the day.

7           Mr. Campbell, you may begin when you're ready, sir.

8                           OPENING STATEMENT BY THE GOVERNMENT

9           MR. CAMPBELL: May it please the Court. Members of  
10 the defense table. Ladies and gentlemen of the jury.

11           Before I begin with the substance of my opening  
12 statement, first I'd like to apologize for the quality of my  
13 voice. It appears that I picked the wrong time of the year to  
14 catch a cold. And if anybody know, probably the worst cold to  
15 ever catch is a summer cold. So, again, I want to apologize  
16 for the hoarseness of my voice.

17           "But nothing in life is certainly but death and  
18 taxes." Benjamin Franklin. Taxes, nobody likes to talk about  
19 them, nobody likes to hear about them, nobody likes to think  
20 about them, especially if you owe and have to pay them. So I'm  
21 not going to spend my opening statement trying to give you some  
22 civic lecture about how it's a civic duty to pay taxes and how  
23 important it is to pay taxes, because I don't have to tell you  
24 something that you already know. And regardless of our  
25 attitudes about taxes, the fact that we don't like to pay taxes

1 and, of course, we like to keep our money in our pockets, the  
2 truth is that, under the law, if you meet certain requirements,  
3 you have to file a tax return and you have to pay taxes.  
4 That's the law. And regardless of how we may feel about that,  
5 it is our duty to follow the law.

6 Now, what you're going to hear today in this case is  
7 about the defendant, Tommy K. Cryer, and the Government will  
8 show beyond a reasonable doubt that in this case the defendant  
9 decided not to follow the law. He decided not to follow the  
10 law by not filing his tax returns and by not paying the taxes  
11 that are required of him. And that is basically the element --  
12 the essence of the charges in the indictment. There are two  
13 counts, failure to file taxes and failure to pay taxes, which  
14 are both similar and which both acts are pleaded in Count 1 and  
15 Count 2 of the indictment. Count 1 deals with the tax year  
16 2000. Count 2 deals with the tax year of 2001.

17 Now, let's talk about the defendant, Tommy Cryer.  
18 You're going to hear that Tommy Cryer is a 1973 graduate of LSU  
19 Law Center. You're going to hear that he's a practicing  
20 attorney here in Shreveport, Louisiana. He owns and operates  
21 his own law practice, Tommy K. Cryer, Attorney At Law, which is  
22 located here in Shreveport. He has one employee.

23 You will hear that from 1997 -- excuse me, from 1993  
24 to 2 -- to the present, he hasn't filed a tax return. You will  
25 hear that from 1993 to the present that he hasn't paid federal



1 taxes. Hasn't filed a federal tax return, hasn't paid federal  
2 taxes. You're also going to hear evidence to show that from  
3 1997 to 2001 the defendant earned a combined gross income from  
4 his law practice somewhere between \$766,000 to \$783,000,  
5 somewhere in that range, the high end and the low end, and he  
6 paid zero federal income taxes on the money that he earned.

7           Now, the law treats tax offenses different from other  
8 kinds of offenses when it comes to the state of mind that the  
9 government has to prove. For example, if someone is charged  
10 with, let's say, burglary, I do not have to prove that the  
11 defendant knew that it was against some state statute or  
12 against some federal statute or duty or obligation not to  
13 commit a burglary. Only thing I would have to prove is that  
14 the person intended to burglarize someone's home and prove it  
15 beyond a reasonable doubt. It doesn't work that way with tax  
16 cases. In tax cases, I have to show that the person was aware  
17 of some legal duty -- and in this case, he was aware of the  
18 legal duty to file a tax return and was aware of a legal duty  
19 to pay taxes -- and yet chose not to follow that legal duty.  
20 To sum up, that's what we call willfulness. It's a greater  
21 state of mind that I have to prove in this case than in your  
22 normal criminal cases.

23           Now, what evidence you're going to hear today to show  
24 that the defendant acted willfully, in other words, this is not  
25 some case where he mistakenly didn't file his taxes or it was

1    inadvertence or it was by accident, that it was willful?  
2    You're going to hear and see in some of the documents that  
3    you'll see that the IRS sent the defendant delinquency notices  
4    letting him know that you're behind, you haven't paid your  
5    taxes, putting him on notice. You're going to hear that up to  
6    1993, that prior to that the defendant did file federal income  
7    taxes and tax returns. So it's not a situation where he hadn't  
8    filed. He did file up till 1993.

9            You're also going to hear that in the years that we  
10    charged, 2000 and 2001, the defendant submitted the 941 returns  
11    for his legal assistant. And basically, these are quarterly  
12    returns that the law requires that employers submit to the IRS  
13    for your withholdings. So, for example, your FICA  
14    withholdings, every quarter your employer has to submit those  
15    withholdings to the IRS out of your check. And they do it four  
16    times a year, once for every quarter. You're going to hear the  
17    defendant in 2000 and 2001 did the quarterly withholdings for  
18    his employee; withheld her taxes out of her check and sent them  
19    to the IRS according to the law.

20           As I told you earlier, the defendant is a 1973  
21    graduate of LSU Law Center. Been practicing law for a long  
22    time. Certainly based on that education and knowledge and  
23    experience, it's going to show you that the defendant was well  
24    aware of his obligation to file taxes and to pay federal taxes.  
25    The date of April 15, everybody know what's special about

1 April 15. That's the day everybody's running around like  
2 chickens with their heads cut off trying to get everything  
3 together to pay those taxes, because that's a legal obligation,  
4 a legal duty that they have to fulfill. And the evidence will  
5 show that the defendant chose not to do that in this case.

6 Now, in what form are you going to hear and see this  
7 evidence? You're going to see various documents to show that  
8 defendant didn't file the tax returns, you're going to see  
9 various documents to show that he was given these delinquency  
10 notices, and you're going to see some of the 941 quarterly  
11 returns that he filed on behalf of his legal assistant, his  
12 secretary, that works for him.

13 You're also going to hear from George McGovern. He's  
14 a local CPA here and he did the defendant's accounting work as  
15 far as looking at his bank statements for his law firm to see  
16 how much money the firm took in, how many deductions were  
17 applicable and so forth, and came up with some calculations  
18 from 1997 to 20001 to show exactly what the defendant's tax  
19 liability was.

20 You're also going to hear from Gloria Worthey, who  
21 worked for the defendant. And she's going to tell you about  
22 the law firm and also tell you about her quarterly returns.

23 And then, finally, you're going to hear from Agent  
24 Jimmy Sandefur, who works for the IRS, and he's what we call a  
25 summary witness. He's going to sum all of this up for you.

1 And, also, he's going to show you what some of his calculations  
2 reveal as far as the defendant's tax liability and what he owes  
3 in federal income taxes.

4 So at the conclusion of this case, the Government  
5 will ask you to return verdicts of guilty as charged, because  
6 all of the evidence will show beyond a reasonable doubt that  
7 the defendant willfully for 2000 and 2001 failed to file  
8 federal tax returns as required by law and failed to pay his  
9 taxes, federal taxes, as required by law. Thank you.

10 THE COURT: Thank you. Mr. Becraft?

11 OPENING STATEMENT BY DEFENDANT

12 MR. BECRAFT: May it please the Court. Mr. Campbell.  
13 Ladies and gentlemen of the jury.

14 Let me reduce myself. I'm Larry Becraft. I'm a  
15 criminal defense attorney. And I'm going to be assisted by  
16 that man right there (indicating), George Harp. It is our job  
17 to come in here to defend Tommy Cryer. So what you have --  
18 when you look at us sitting over there on that side of the  
19 room, you've got two lawyers and in the center is the  
20 defendant, a lawyer. And you might think: How in the world  
21 would a lawyer get involved in something like this?

22 Mr. Cryer is charged with two counts of willful  
23 failure to file income tax returns. You're going to see in  
24 this case that -- as Mr. Campbell pointed out a minute ago,  
25 we're going to have George McGovern to get up here and he's

1 going to testify about what Mr. Cryer made. We're going to  
2 have Mr. Sandefur get up here; he's going to testify about what  
3 he made, deductions, and everything else. Ladies and  
4 gentlemen, let me be brutally frank and blunt: Most of this  
5 case is not about the government's proof. You know, I hate to  
6 sit there and say: Well, I'll probably be twiddling my thumbs.  
7 But a lot of it, probably most of it, of the government's case  
8 is not going to be contested. But that doesn't mean that this  
9 is not a disputed case. It is, ladies and gentlemen, a very  
10 disputed case.

11           One of the things that is going to be critically  
12 important for you, as Mr. Campbell was stating a moment ago, we  
13 have this element known as willfulness. He's got to show, you  
14 know, that things were done by Mr. Cryer willfully. Well,  
15 ladies and gentlemen, that's what I label the criminal state of  
16 mind, and that's what's at issue in this case: Did Tommy Cryer  
17 have that criminal state of mind in order to be convicted of  
18 these offenses, or did he not have that criminal state of mind?  
19 And the defense suggests to you, ladies and gentlemen, that the  
20 evidence in this case will be that Tommy Cryer did not act  
21 willfully; that Tommy Cryer did not act with the criminal state  
22 of mind in order to be found guilty of these offenses.

23           Now, let me quickly kind of summarize for you, if I  
24 can, what the facts of this case will be.

25           Tommy Cryer was born in 1949 in Lake Charles,

1 Louisiana. Sometime before he got out of grade school, his  
2 family, which included six other brothers and sisters and his  
3 parents, moved from Lake Charles about 25 miles out of town to  
4 a farm, and that's where Tommy Cryer grew up a farm boy. And  
5 we all know what farm boys can be. Got a lot of  
6 responsibility. And Tommy Cryer decided at an early age that  
7 he wanted to become a lawyer. Well, becoming a lawyer is not  
8 something that's easy, especially if you're in his  
9 circumstances, the son of a farmer. And by his bootstraps,  
10 Tommy Cryer went to a local college, paid his own way, and then  
11 he works his way through law school. And Tommy Cryer was so  
12 interested in learning, it's my recollection that he graduated  
13 with honors from undergraduate school and he also had a very  
14 high ranking -- it may have been cum laude -- from law school,  
15 and he was in a prestigious organization in law school known as  
16 the Order of the Coif. Now, that, ladies and gentlemen, is  
17 somebody that's extraordinary. And may I suggest to you that  
18 that's exactly what Tommy Cryer is. He's different, he's  
19 smart, and he worked hard.

20           After he got out of law school, he worked for a  
21 couple months for a Louisiana constitution commission. Then he  
22 got a job up here in Shreveport, took the bar exam, passed, and  
23 worked for a firm here in town that no longer exists, the  
24 Hargrove law firm. And after he got out -- after he spent  
25 about two years working for Hargrove, he went out on what we

1 call solo practice. He was on his own. And from that time  
2 forward, which would be about 1975 all the way up through last  
3 week, Tommy Cryer has been in solo practice of law.

4 As Mr. Campbell mentioned moments ago, Mr. Cryer, you  
5 know, when he gets up here and testifies, he's going to say:  
6 Hey, in law school, I didn't learn anything about taxes.  
7 There's an elective course you can take. I didn't take it.  
8 Wasn't interested in it. And like most everybody else in  
9 America, he just simply, with no training, a lawyer with no  
10 training in taxes, just simply did what everybody else did.  
11 But there came a day.

12 This is a couple of weeks after Mr. Cryer sends in a  
13 check for about almost \$4,000. I think the check is in June of  
14 '94, and sometime in late June or maybe July of '94 Mr. Cryer  
15 is going to lunch and one of the parties that's in his luncheon  
16 group is a man by the name of Jan Holland. And Jan Holland  
17 started some discussions, and he brought up the point: Well,  
18 Mr. Cryer, you are a lawyer. I'm not a lawyer, but I studied  
19 the tax laws. Gee, you know, is it possible that you may not  
20 owe the tax? Is it possible that you might not be required to  
21 file a return? And when this -- when this was told by Mr. Jan  
22 Holland --

23 THE COURT: Mr. Becraft, in your opening, restrict it  
24 to the evidence that will be presented without the shading.  
25 Second, you're into hearsay testimony and I haven't heard word

1 one from the defendant at all about introducing that witness  
2 that you just referred to, his testimony, and you will not.  
3 Proceed.

4 MR. BECRAFT: What Mr. Cryer learned from having  
5 conversations with Jan Holland is this: If there's a position,  
6 you've got to look at the tax law --

7 THE COURT: And that's still hearsay as a --

8 MR. CAMPBELL: Okay.

9 THE COURT: -- response and it's not going to come  
10 into evidence and cannot come into evidence, Mr. Becraft. Move  
11 on.

12 MR. BECRAFT: Having his interest piqued in a study  
13 of the tax laws, Mr. Cryer went to the law library and started  
14 looking around for a section of the Internal Revenue Code that  
15 made him liable. He hopped out of court one day sometime in  
16 July, maybe August of 1994, runs up to the law library, pulls  
17 out the Internal Revenue Code, starts flipping through there,  
18 wanting to try to find the statute that makes him liable, and  
19 doesn't find it on this occasion. And later on Mr. Cryer says:  
20 Well, I just -- I've got to find this. And he continues to  
21 look. And after a couple of weeks, Mr. Cryer says: I've got  
22 to get a copy of the Internal Revenue Code. He gets a copy of  
23 the Internal Revenue Code, and I think his testimony will be  
24 that, you know, maybe it might be August or September of 1994  
25 he has his, this Internal Revenue Code, he's been up at the law



1 library looking for the statute that makes him liable. He now  
2 has an Internal Revenue Code and he spends three or four nights  
3 combing through the Internal Revenue Code looking for what he  
4 thought was there. And what he thought was there was a statute  
5 that made him, a citizen living here in Louisiana, liable for  
6 the federal income tax. And Mr. Cryer concluded there is no  
7 such statute. Based on his training and understanding of the  
8 law, he believed that the absence of that statute, the logical  
9 consequence of that was that he wasn't required to file an  
10 income tax return.

11 That, ladies and gentlemen, is what this case is  
12 about. It's intent. It's beliefs. There's going to be a  
13 couple of other beliefs. We don't have the time this  
14 afternoon. I think I made a promise to the Court to try to  
15 shut down before 5:00. But Mr. Cryer has done more than just  
16 study the Internal Revenue Code. He has spent a great deal of  
17 time, he spent a great deal of time in '95 and again in 1999,  
18 doing what somebody like him, the Order of the Coif, you know,  
19 one of those guys from law school that had high grades, digging  
20 in and learning the law in a field that he had never looked at  
21 before, and he reached these conclusions: I'm not liable for  
22 the federal income tax. He reached this conclusion, this  
23 belief, ladies and gentlemen, that his money that he received,  
24 his fees from working as a lawyer, did not constitute income.

25 Now, ladies and gentlemen, when Mr. Cryer gets up on

1 the stand, I want -- I want to make this perfectly clear: The  
2 Court is going to be giving the jury the instructions on the  
3 law in this case, not Mr. Cryer. What Mr. Cryer will give to  
4 you is his testimony. And what he will give to you is his  
5 belief about what the law is. And that belief is, encompasses  
6 these beliefs: He believes sincerely that he is not required  
7 to file income tax returns because he's not liable for the  
8 federal income tax. He sincerely believes he's not required to  
9 file income tax returns because his fees do not constitute  
10 income. And there's going to be a couple of other arguments  
11 he's going to lay out in his testimony. But once you hear that  
12 testimony, it will be perfectly clear, crystal clear, ladies  
13 and gentlemen, that the missing element in this case, what the  
14 government cannot prove, is that Mr. Cryer acted with criminal  
15 state of mind essential for conviction. And in the absence of  
16 that, and in fact, with overwhelming proof that he acted in  
17 good faith, it'll be your duty to acquit Tommy Cryer on both  
18 counts of this indictment.

19 Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Becraft.

21 Ladies and gentlemen, it's shortly after 5:00 and  
22 we're going to adjourn at this particular point of the evening.  
23 Typically, I allow the juror living the farthest from the  
24 courthouse to pick our start and stop times each day. Is 9:00  
25 an agreeable time tomorrow to begin? Does anyone have any

1 difficulty or perceived difficulty in making it for 9:00?

2 (No audible response.)

3 THE COURT: I'd like you here for 8:45. In a moment  
4 we will dismiss and our court security officer will take you to  
5 the jury assembly room which is where you will report to in the  
6 morning not later than 8:45, and we will begin with testimony  
7 promptly at 9:00 in the morning. A couple of cautionary  
8 instructions:

9 Do not talk about this with anyone. You have not  
10 heard any evidence yet. You may think you know what the case  
11 is about. You have heard only the outline of what that party  
12 intends to prove. Whether it's proved or not will be totally  
13 up to you.

14 Do not listen to newscasts tonight. Don't listen to  
15 the radio tonight on a newscast. Don't pick up the newspaper  
16 and read through it. For tomorrow morning, just ignore those  
17 particular pieces of the media. We need you fair and  
18 impartial, with no one trying to shade any information or  
19 provide you with any information about anything having to do  
20 with this case.

21 So with that, we are going to adjourn, and I will  
22 hope to see everybody in the jury room by 8:45 in the morning  
23 to start promptly at 9:00.

24 All rise for the jury.

25 (Jury exits courtroom.)

1           THE COURT: All right. Before we adjourn today, any  
2 details, housekeeping that needs to be taken up this afternoon?

3           MR. BECRAFT: None, Your Honor.

4           MR. CAMPBELL: No, sir.

5           THE COURT: Very well. We will be here ready to  
6 proceed at 8:45 in the morning. We will address anything that  
7 may have popped up overnight. We're adjourned.

8           MR. BECRAFT: Have a good evening, Your Honor.

9                         (Proceedings adjourned at 5:05 p.m.)

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I N D E X

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I, Marie Moran Runyon, Official Court Reporter, do hereby certify that the foregoing pages numbered 1 through 36 do constitute a true and correct record of proceedings had in said trial to the best of my ability and understanding.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Subscribed and sworn to this 14th day of August, 2007.

---

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1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF LOUISIANA  
 3 SHREVEPORT DIVISION

4 UNITED STATES OF AMERICA \* Criminal Action  
 5 No. 06-50164  
 6 VERSUS \*  
 7 Shreveport, Louisiana  
 8 TOMMY K. CRYER \* July 10, 2007  
 9 Morning Session  
 \* \* \* \* \*

10 VOLUME II  
 11 TRANSCRIPT OF TRIAL  
 12 BEFORE THE HONORABLE S. MAURICE HICKS, JR.  
 UNITED STATES DISTRICT JUDGE, and a jury.

13 APPEARANCES:

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25 PROCEEDINGS PRODUCED BY MECHANICAL STENOGRAPHY AND TRANSCRIBED  
 BY COMPUTER.

1 MORNING SESSION

2 JULY 10, 2007

3 (Court called to order at 8:52 a.m. with  
4 defendant present, jury absent.)

5 THE COURT: Good morning. Please be seated.

6 Mr. Becraft, you had something you wanted to put on the record  
7 in the manner of housekeeping details before we get the jury  
8 in?

9 MR. BECRAFT: That's correct, Your Honor. Yesterday  
10 an issue came up that I think will probably come up during the  
11 examination of Mr. Cryer. I think the Government might have a  
12 hearsay objection to certain of his testimony, so last night  
13 all I did -- I don't have a brief. I printed out some cases  
14 and I've got a rule.

15 On the issue of conversations with third parties, I'm  
16 not going to offer that type of testimony for the truth of the  
17 matter asserted. It will be under hearsay exception 803(3).  
18 And in the defendant's trial brief that was submitted earlier  
19 in this case, I direct the Court's attention to page 8. There  
20 was a case called Miller v. The United States, 120 F.2d 968,  
21 which says whenever the belief of a person or the motive of his  
22 act or conduct is material, he may not only directly testify  
23 that he had no intent to defraud, but he may buttress such  
24 statements with testimony of relevant circumstances, including  
25 conversations had with third persons or statements made by the



1     them tending to support his statement that he had no intent to  
2     defraud.

3                     What I'd like to provide to the Court -- you know, I  
4     just got on the Loislaw last night and pulled up some cases. I  
5     have a copy of a Fifth Circuit case. It's from United States  
6     v. West, 22 F.3d 586. I've got a copy here. And what I did  
7     for the Court, I just have a blue tab here and then I've kind  
8     of highlighted or bracketed the excerpt where the Fifth Circuit  
9     agrees with this proposition, and I'd like to pass it up to the  
10    Court.

11                    THE COURT: All right.

12                    MR. BECRAFT: That's all, Your Honor.

13                    THE COURT: It's premature at this point.

14                    MR. BECRAFT: I just wanted to take it up now.

15                    THE COURT: I'm not going to rule on it.

16                    MR. BECRAFT: I understand that, Your Honor.

17                    THE COURT: Mr. Campbell, any comment?

18                    MR. CAMPBELL: Yes. I'm aware of the line of cases  
19     that deal with that situation where third-party conversation  
20     may be offered not for the truth but for, I guess state of mind  
21     exception is where I think Mr. Becraft is going with this, and  
22     if it's truly offered for that, that purpose, which I take  
23     Mr. Becraft at his word, the Government would not have no  
24     objection. But depending on the content of the third-party  
25     conversation, especially if it goes to views or opinions about

1 the law or the state of the law and so forth, the Government  
2 would ask the Court for a cautionary instruction to the jury so  
3 that they know that these views are not offered for the truth  
4 but are offered to show the defendant's state of mind and if  
5 there's an assertion about the law, that the judge give the  
6 correct law so that there's no confusion as to what the state  
7 of the law is, nor is there any confusion as to the purpose for  
8 which the statement is being offered.

9 THE COURT: All right. We'll look into this. I'm  
10 not going to rule on it. I have your filing this morning.  
11 Anything else?

12 MR. BECRAFT: No, Your Honor.

13 THE COURT: Mr. Campbell, I want to make sure that we  
14 have the stipulation on the record. The stipulation submitted  
15 to the Court yesterday has been changed by agreement of the  
16 counsel involved in this case. In this instance, paragraph 8  
17 of the signed Stipulation will be omitted. Paragraph 9 will in  
18 fact be read. Is that correct, Mr. Campbell?

19 MR. CAMPBELL: That's correct, Your Honor.

20 THE COURT: Mr. Becraft, is that likewise correct?

21 MR. BECRAFT: Yes, Your Honor. I believe we made a  
22 mistake when we were --

23 THE COURT: We just want to be sure we read the right  
24 thing to the jury.

25 MR. BECRAFT: Yes. It's correct.

1           THE COURT: All right. With nothing further, we're  
2 still missing -- do we have the jurors here?

3           THE CLERK: Yes, sir.

4           THE COURT: All right. Let's go ahead and get the  
5 jury.

6           All rise for the jury.

7                           (Jury enters courtroom.)

8           THE COURT: All right. Our jury has arrived. Please  
9 be seated.

10           Good morning, ladies and gentlemen. Before we  
11 present the evidence portion of the case, beginning with the  
12 Government, there are several stipulations that have been  
13 signed by the parties. The following facts, their foundation  
14 and admissibility of the following is to be accepted by you as  
15 proven without having anyone testify to them.

16           First, Tommy K. Cryer received a juris doctor law  
17 degree from the Louisiana State University Law Center in 1973.

18           Second, from 1993 to the present, Tommy K. Cryer  
19 resided in the Western District of Louisiana.

20           Third, Tommy K. Cryer is a licensed attorney under  
21 the laws of the State of Louisiana.

22           No. 4, Tommy K. Cryer is a sole practitioner  
23 practicing under the name of Tommy K. Cryer, Attorney at Law,  
24 which is located in Shreveport, Louisiana.

25           Five, as part of his legal and business practice,

1 Tommy K. Cryer charges a monetary fee in exchange for his legal  
2 services.

3 Six, Gloria Worthey is an employee of Tommy K. Cryer  
4 at the law firm of Tommy K. Cryer, Attorney at Law.

5 No. 7, Government Exhibit 36 is a true, accurate, and  
6 authentic copy of the Tommy K. Cryer trust instrument.

7 And finally, the employment identification number  
8 assigned to the Tommy K. Cryer law practice is 72-0765328.

9 All right, ladies and gentlemen. That concludes the  
10 stipulated portion of facts that require no further proof.

11 GOVERNMENT'S CASE IN CHIEF

12 THE COURT: Mr. Campbell, are you ready to present  
13 your first witness this morning?

14 MR. CAMPBELL: Yes, Your Honor. The Government calls  
15 Ms. Gloria Jackson.

16 (Witness called and sworn.)

17 MR. CAMPBELL: May I begin, Your Honor?

18 THE COURT: You may.

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Will you introduce yourself to the members of the jury.

22 A. My name is Gloria Jackson.

23 Q. And spell your first name.

24 A. G-L-O-R-I-A.

25 Q. And last name?

1 A. J-A-C-K-S-O-N.

2 Q. And Ms. Jackson, what do you do for a living?

3 A. I work for the Criminal Investigation Internal Revenue  
4 Service division.

5 Q. And how long have you been with the Criminal  
6 Investigation Division?

7 A. For 13 years; with Internal Revenue Service, 33 years.

8 Q. Let's talk for a moment about your background and your  
9 professional experiences. Let's start with what you did with  
10 the IRS before you started working with the Criminal  
11 Investigation Division.

12 A. When I initially applied for a job through Civil Service  
13 with Internal Revenue Service, I worked in Receipt and Control  
14 where we receive documents, process them, number them, batch  
15 them, and send them on their way so that other departments can  
16 process those documents and file them. After that, I worked in  
17 Collections where we sent out notices, we adjusted accounts.  
18 And then I worked with review groups, whichever they needed me;  
19 I was detailed in several positions. I went to Accounting and  
20 worked in Research to secure documents for different areas. I  
21 worked in the Examination Department in the same job as  
22 locating documents and sending them to the person that had  
23 requested that document.

24 Q. And when you say you worked with documents, are you  
25 talking about the typical kind of documents that persons would

1 file with the IRS pertaining to their tax returns?

2 A. Yes.

3 Q. And this would be, for example, a 1040, the personal  
4 income tax return?

5 A. Personal income tax returns, 1040s, 1040A's, 1040EZ's,  
6 business returns, 1120 corporation returns, 1065 partnership  
7 returns, 1041 trust companies -- I mean trust returns, 940's,  
8 which are annual employer's tax returns, or 941's, which are  
9 returns filed by the employer on a quarterly basis based on  
10 their employees.

11 Q. And now let's talk specifically about your duties with  
12 the Criminal Investigation Division. Is it part of your duties  
13 to research documents to determine if a person did or did not  
14 file a tax return?

15 A. Yes, it is.

16 Q. And is it also part of your duties to examine those  
17 documents to basically determine if they file a particular  
18 document, exactly the type of document they file and any  
19 attachments that may be a part of that document?

20 A. That is correct.

21 Q. And you've received training in that particular endeavor,  
22 haven't you?

23 A. Yes. Plus the knowledge that I have acquired over the  
24 years.

25 Q. Okay. And as part of this investigation, did

1 investigators ask you to research any filings made by Tommy K.  
2 Cryer as far as tax returns?

3 A. Yes.

4 Q. And did you in fact research that?

5 A. Yes, I did.

6 Q. And in preparation for court today, did you prepare  
7 certain certifications that basically was the result of your  
8 research?

9 A. I did.

10 Q. And let's talk about how these documents are maintained  
11 and stored. How are these documents, as far as tax filings and  
12 so forth, maintained with the IRS?

13 A. Basically, the information that is on a tax return is  
14 taken off of the tax return and indicated in our database that  
15 is stored basically forever, and we can retrieve that  
16 information and produce a certification based on that  
17 information. Also, tax returns are stored by a document  
18 locator number, and we can retrieve those documents and certify  
19 those also.

20 Q. And so, for example, if someone, let's say if I ask you  
21 to file a tax return for Person A for the tax year of 2000 and  
22 if that return is not in that particular -- if it's not there,  
23 would you file a Lack of Record Certification?

24 A. Yes. I would research it as far as any valid or invalid  
25 Social Security numbers or federal identification numbers, and

1 then I would indicate such by a Lack of Record.

2 Q. Now, let's talk about some of the exhibits that you  
3 prepared here today. At this time, I would like to show you  
4 what I've marked as Government Exhibit No. 1. And you just  
5 look on the screen right there in front of you. Do you  
6 recognize Government Exhibit 1?

7 A. Yes, I do.

8 Q. And what is it?

9 A. This is a certification of lack of record and it is for  
10 the form 1040, a U.S. Individual Income Tax Return.

11 Q. And who is the taxpayer or name of the individual there?

12 A. Tommy K. Cryer.

13 Q. Does it have a Social Security number there as well?

14 A. Yes, it does.

15 Q. And a business or residential address?

16 A. It has an address of 3415 Seminole Drive, Shreveport,  
17 Louisiana, 71107.

18 Q. And this is a form that is produced in the normal course  
19 and scope of your duties?

20 A. Yes, it is.

21 Q. And this is kind of a typical form that would produce or  
22 be maintained in the normal course of the IRS as far as  
23 maintaining records?

24 A. That is correct.

25 MR. CAMPBELL: At this time, Your Honor, I'd like to



1 move Government Exhibit 1 into evidence and ask that it be  
2 published to the jury.

3 MR. BECRAFT: No objections, Your Honor.

4 THE COURT: All right. That's entered in evidence.

5 BY MR. CAMPBELL:

6 Q. Right there, that identifies the name of the individual  
7 (indicating)?

8 A. That is the name that I researched, yes.

9 Q. Now let's talk about this line right here (indicating).

10 Now, what is the significance of what I just drew a circle  
11 around or attempted to draw a circle around?

12 A. That is the tax periods, the ending year, like  
13 December the 31st, 1993; December the 31st, 1994; '95; '96;  
14 '97; '98; '99; 2000; 2001; 2002; 2003; and 2004, and those are  
15 the tax periods that there were no 1040 U.S. Individual Income  
16 Tax Returns filed by Tommy K. Cryer.

17 MR. CAMPBELL: Thank you, Madam Clerk.

18 (Exhibit G-1 removed from display.)

19 BY MR. CAMPBELL:

20 Q. Now, you did additional research -- now, that first  
21 document was just sort of like a summary of the lack of records  
22 for those years from '93 to, I believe, '04, correct?

23 A. That is correct.

24 Q. And you did an individual transcript for each one of  
25 those years to show exactly what was filed for that year?

1 A. I did.

2 Q. And would that have been through Government's Exhibits 2  
3 through 14?

4 MR. CAMPBELL: It would probably be easier if I  
5 just . . .

6 (Counsel hands exhibit binder to witness.)

7 THE WITNESS: That would also include 2005.

8 BY MR. CAMPBELL:

9 Q. So, basically, you did an individual record for every  
10 year from 1993 to 2005?

11 A. That's correct.

12 MR. CAMPBELL: At this time, Your Honor, I would like  
13 to move Government exhibits 2 through 14 into evidence.

14 MR. BECRAFT: No objections, Your Honor.

15 THE COURT: All right. Those are received in  
16 evidence at this time.

17 BY MR. CAMPBELL:

18 Q. Now, we're not going to go over all of them, but I just  
19 want to kind of -- let's go over the first one so the jury can  
20 get an idea of what kind of information would be contained in  
21 these records.

22 MR. CAMPBELL: Madam Clerk, can you put up page 2 of  
23 Government Exhibit 2, and if you'd blow up the top half of that  
24 page, please.

25 BY MR. CAMPBELL:

1 Q. Now, let's talk about this line right here (indicating).

2 Now, would that indicate "Tommy K. Cryer and Carolyn Cryer"?

3 A. That is correct.

4 Q. Would that be sort of like a joint filing status, like a  
5 married couple, or something like that?

6 A. That is exactly right.

7 Q. And this (indicating) would indicate the form 1040?

8 A. That is correct.

9 Q. Now let's talk about -- now, is this form generally  
10 referred to as a transcript?

11 A. It is basically a certified transcript or certification  
12 of payments, assessments, and other specified matters.

13 Q. So, for example, if Tommy Cryer had filed a 1040 for this  
14 tax year 1993, there would be an entry somewhere around here  
15 (indicating) that would indicate 1040 filed?

16 A. That is correct.

17 Q. Now let's talk about some of the entries you have there.  
18 Now, it appears here the first entry, April 15, 1994, there was  
19 an extension filed?

20 A. That is correct.

21 Q. Or request for an extension?

22 A. Correct.

23 Q. And let's talk about the second line there. What's the  
24 significance of that?

25 A. The second line with the second date?

1 Q. Yes. The "November 23, 2004."

2 A. That indicates that we received a power of attorney that  
3 covered the 1993 tax period.

4 Q. And basically someone filed a letter acting on behalf of  
5 the particular taxpayer?

6 A. That's correct.

7 Q. And would that typically sometimes be an attorney?

8 A. It could be an attorney. It could be a bookkeeper,  
9 accountant, CPA, whoever that they indicate that they want to  
10 be in charge of signing their name in regards to that  
11 particular period or periods indicated on the power of  
12 attorney.

13 Q. Now let's go down farther. Let's talk about the next  
14 four lines as far as the July 10, '95 date, the September 4,  
15 '95 date, the October 16, '95 date, and the November 27, '95  
16 date. Are those Taxpayer Delinquency Notices?

17 A. Yes, they are.

18 Q. Would you please explain the significance of a Taxpayer  
19 Delinquency Notice.

20 A. Taxpayer Delinquency Notices are sent out when we do not  
21 receive a tax return for a tax period. We send out several.  
22 If we have no response, then we send out another one.

23 Q. And would the typical notice contain information that we  
24 have not received your return, we have not received payment of  
25 tax?

1 A. Well, the first type of notice is a delinquency on the  
2 exact tax return, asking you to file that return so that we can  
3 send out a balance due or you can send in the payment that is  
4 owed.

5 Q. And so for this tax year of '93, you sent out, or it  
6 indicates that four notices were sent out?

7 A. That's correct.

8 Q. Now, does examination of those exhibits we just moved  
9 into evidence, 2 to 14, reveal that there were multiple years  
10 where delinquency notice -- excuse me, that an extension to  
11 file was made?

12 A. Yes.

13 Q. Can we go to Government Exhibit 3, the second page. And  
14 the April 15, 1995 entry, does that show that an extension of  
15 time to file was submitted for this particular tax year?

16 A. Yes.

17 Q. And let's go to Exhibit 5, the 1996 tax year.

18 THE CLERK: Page 2?

19 MR. CAMPBELL: Page 2, yes, ma'am.

20 BY MR. CAMPBELL:

21 Q. And again, the April 15, 1997 entry, another extension to  
22 file, for time to file?

23 A. That's correct.

24 Q. Let's go to Exhibit 6, the 1997 tax year. And an  
25 April 15, 1998, entry there shows an extension of time to

1 file --

2 A. That's correct.

3 Q. -- for that tax year? And then, finally, Exhibit 7, the  
4 1998 tax year. And again, another extension or request for  
5 extension for time to file April 15, 1999?

6 A. That's correct.

7 MR. CAMPBELL: Thank you, Madam Clerk.

8 (Exhibit G-7 removed from display.)

9 BY MR. CAMPBELL:

10 Q. Now, in addition to research to determine whether Tommy  
11 Cryer filed a tax return, did you also research to determine  
12 whether or not Tommy Cryer's law practice submitted its  
13 quarterly 941 returns?

14 A. Yes, I did.

15 Q. Now, explain to the jury what is a quarterly 941 return.

16 A. Basically, a quarterly 941 is a form that is requested  
17 from an employer on his employees that he should file on a  
18 quarterly basis. He should send in payments based on the  
19 withholding or FICA that he has subtracted out of their checks,  
20 either weekly or monthly, so that we receive that payment.  
21 When the return is filed, any balance due should be filed or  
22 sent in with the return.

23 Q. And it's also fair to say that those quarterly  
24 withholdings are held by the IRS?

25 A. Yes.

1 Q. And then at the end of the year, does the employer issue  
2 a W-2 to the employee?

3 A. Yes.

4 Q. And the purpose of that W-2 is to basically itemize all  
5 of the withholdings that were withheld from the paycheck for  
6 that tax year?

7 A. That's correct.

8 Q. And then the employee would use that W-2 as a document to  
9 prepare their tax return?

10 A. That's correct.

11 Q. And if their tax liability -- excuse me. If their  
12 withholdings exceed their tax liability, then the IRS would  
13 issue a refund for that difference?

14 A. That's correct.

15 Q. And would it be fair to say it's important to submit  
16 these records so the accurate refunds can be issued to the  
17 particular taxpayer?

18 A. That's correct.

19 Q. Or to determine if there are more taxes, for example, if  
20 their tax liability exceeds the amount that was withheld by the  
21 employer?

22 A. That's correct.

23 Q. And the law poses a duty on employers to submit these  
24 quarterly filings?

25 A. Yes, they do.

1 Q. Now let's talk about Government Exhibit 15. Can you  
2 identify 15 for me, please.

3 A. Government Exhibit 15 is a certified copy of Form 941,  
4 Employer's Quarterly Federal Tax Return for Tommy K. Cryer,  
5 Federal --

6 Q. And -- excuse me. Go ahead, ma'am.

7 A. Federal Identification No. 72-0765328. This is for the  
8 taxable period or quarter ending March the 31st, 2000.

9 Q. And for each tax year, there are four quarters, correct?

10 A. That's correct.

11 Q. And the employer has to submit one return per quarter?

12 A. That's correct.

13 Q. And with that return, they submit whatever they're  
14 withholding from that particular employee's salary which is  
15 deposited with the IRS?

16 A. That's correct.

17 MR. CAMPBELL: Your Honor, I move Government Exhibit  
18 15 into evidence at this time.

19 MR. BECRAFT: No objections, Your Honor.

20 THE COURT: All right. That's received in evidence.

21 MR. CAMPBELL: I'd ask that page 2 be published to  
22 the jury.

23 THE COURT: All right.

24 MR. CAMPBELL: And can we just blow up the top half.  
25 Right there, that would be fine. Thank you.



1 BY MR. CAMPBELL:

2 Q. Now, this 941 was submitted for Tommy K. Cryer?

3 A. That is correct.

4 Q. And it's a 941, so typically this would be for some kind  
5 of business entity?

6 A. Yes.

7 Q. And let's start with this number here (indicating). What  
8 is the significance of the entry on line item No. 2?

9 A. On line item No. 2, that is the total wages paid for that  
10 quarter ending March the 31st, 2000.

11 Q. And this would be the total wages paid for that quarter  
12 to the employee?

13 A. To the employee or employees.

14 Q. And as a matter of fact, would it be fair to say that  
15 this particular, right here (indicating), provides the  
16 explanation for that line item?

17 A. It's basically a line-by-line, simple way to fill out  
18 this return. You have the figures and you just insert them in  
19 these line items.

20 Q. It says here, entry No. 2, "Total Wages and Tips, Plus  
21 Other Compensation," would that be correct?

22 A. That's correct.

23 Q. Now, the second entry, No. 3, would that be the amount of  
24 taxes withheld for wages -- from the wages, tips, and sick pay?

25 A. That's correct.

1 Q. Now let's talk about line item No. 5. That would be  
2 right here (indicating), the 414 number.

3 A. That's just the adjusted total of income tax withheld,  
4 and it's basically just a total from line 3 minus anything from  
5 line 4.

6 Q. Okay. And then the next line item would be No. 6, would  
7 be taxable Social Security wages?

8 A. That's correct.

9 Q. And there's no entry there for 6B, which would be tax for  
10 Social Security tips?

11 A. Correct.

12 Q. And the next line would be taxable Medicare wages and  
13 tips, and he made an entry there for 7B which would be \$160.95;  
14 would that be correct?

15 A. Correct.

16 Q. And then line 8 would be the total Social Security and  
17 Medicare taxes?

18 A. That's correct. And that's a total from 6B and 7B.

19 MR. CAMPBELL: Now if we could scroll down some,  
20 Madam Clerk.

21 BY MR. CAMPBELL:

22 Q. And what is the significance of line item No. 10?

23 A. 10 is just the adjusted total of Social Security and  
24 Medicare -- Medicaid taxes. It's adjusted from line 8 as  
25 adjusted by line 9.

1 Q. And 11 would be the total taxes when you add lines 5 and  
2 10?

3 A. Correct.

4 Q. And now let's talk about the significance of line 13.

5 A. Line 13 is the net taxes that would be due for the whole  
6 quarter.

7 Q. And then line 14?

8 A. And line 14 is the amount that has been paid in.

9 Basically, or normally, it is the federal tax deposits that  
10 have been made through the months prior to filing the tax  
11 return.

12 Q. And then line 15 would show what is due to be deposited  
13 for this particular quarter?

14 A. Right. That's what the balance due is, line 13 minus  
15 line 14, and that's what should be sent in at the end of the  
16 quarter with the Form 941.

17 Q. And this form is a form that either the employee or --  
18 excuse me, the employer or someone designated by the employer  
19 would fill out?

20 A. That's correct.

21 Q. And it's not the typical practice that the employee would  
22 fill out their own 941?

23 A. No. They never file it out -- fill it out.

24 Q. And right here, the entry there (indicating), "Tommy K.  
25 Cryer, Owner"?

1 A. That's correct.

2 Q. And right here (indicating) would be his signature? It's  
3 hard to read, but it purports to be his signature?

4 A. Yes.

5 Q. Now I want to show you Government Exhibit 17.

6 MR. CAMPBELL: Excuse me. I'm sorry, Madam Clerk.  
7 Government Exhibit 16.

8 THE CLERK: Okay. It's not in evidence.

9 MR. CAMPBELL: Excuse me?

10 THE CLERK: It's not in evidence.

11 MR. CAMPBELL: I just -- for identification purposes.

12 BY MR. CAMPBELL:

13 Q. Now, is Government Exhibit 16 a corresponding transcript  
14 for the exhibit that we just discussed, which would be  
15 Government Exhibit 15?

16 A. Yes, it is.

17 Q. And this is sort of like a computer-generated document by  
18 the IRS?

19 A. Yes, it is.

20 Q. And does it purport to summarize the deposits made for  
21 the quarter?

22 A. That is correct.

23 MR. CAMPBELL: I ask that Government Exhibit 16 be  
24 published to the jury.

25 MR. BECRAFT: No objections, Your Honor.

1 THE COURT: All right.

2 MR. BECRAFT: To its admission and publication.

3 MR. CAMPBELL: Admission and publication.

4 THE COURT: All right. It may be published to the  
5 jury.

6 MR. CAMPBELL: Madam Clerk, can we go to page 2 of  
7 that exhibit, and you can -- top half. Thank you very much.

8 BY MR. CAMPBELL:

9 Q. Again, here's the . . .

10 (Indicating), that is the employer there?

11 A. That is correct.

12 Q. And this (indicating) would be the EIN number assigned to  
13 that particular business?

14 A. That is the federal identification number, yes.

15 Q. Now, this would be for the period ending in March of  
16 2000, which would be the first quarter?

17 A. That is correct.

18 Q. Now let's talk, let's kind of go over these entries. The  
19 first entry, the April 30, 2000 entry, what is the significance  
20 of that entry?

21 A. That indicates that a return was received. And the  
22 number under that explanation "return filed" is a document  
23 locator number. If we need that document, that is how we  
24 retrieve it from the files, requesting that particular document  
25 locator number.

1 Q. And the dates entry here, let's go with July 20, 2000

2 (sic). Does that show a deposit?

3 A. Yes, it does.

4 Q. And April 31, 2000, another deposit?

5 A. Uh.

6 Q. April 21, 2000 -- excuse me, January 31, 2000.

7 A. Yes, January 31, 2000.

8 Q. That would be the second line entry?

9 A. Yes.

10 Q. And then February 18, 2000?

11 A. Yes.

12 Q. And then February 29, 2000?

13 A. Correct.

14 Q. And then you have here where a credit was issued for  
15 overpayment from a previous period?

16 A. That is correct.

17 Q. And that's issued on January 31, 2000?

18 A. Correct.

19 Q. And then you have here showing what was actually the  
20 payment or the deposit that was submitted with the return which  
21 would be May 1, 2000?

22 A. May 1, 2000, that's the date that the payment was  
23 credited to the account, yes.

24 Q. And the amount would be \$213.15?

25 A. Yes.

1 MR. CAMPBELL: Okay. Thank you, Madam Clerk.

2 (Exhibit G-16 removed from display.)

3 BY MR. CAMPBELL:

4 Q. And again, just based on your experiences, the typical  
5 situation would be that the employer or someone designated by  
6 the employer would fill out these forms as far as the actual  
7 return that is filed?

8 A. That is correct.

9 Q. Now, you did a -- you pulled a similar quarterly return  
10 for the second quarter, which would be Government Exhibit 17?

11 A. Yes.

12 Q. And a corresponding transcript, which would be Government  
13 Exhibit 18; is that correct?

14 A. That is correct.

15 Q. And for the third quarter for 2000, would that be  
16 Government Exhibit 19?

17 A. Yes.

18 Q. As far as the actual filing, the 940 filing.

19 A. 941.

20 Q. 941 filing. Correct?

21 A. Yes.

22 Q. And then the corresponding transcript, which would be  
23 Government Exhibit 20?

24 A. That's correct.

25 Q. And then for the final quarter of 2000 tax year, the

1 actual 941 filing, would that be Government Exhibit 21?

2 A. Yes, it is.

3 Q. And then the corresponding transcript would be Government  
4 Exhibit 22?

5 A. Correct.

6 MR. CAMPBELL: Your Honor, I ask that Government  
7 Exhibits 17 through 22 be admitted into evidence.

8 MR. BECRAFT: No objection, Your Honor.

9 THE COURT: All right. Those are admitted at this  
10 time.

11 BY MR. CAMPBELL:

12 Q. Now, for time, we're not going to go over each one of  
13 those exhibits, but would it be fair to say that those exhibits  
14 pretty much model the same information, similar information we  
15 just discussed as far as the actual filing and then the  
16 corresponding transcript?

17 A. Exactly.

18 Q. Now, let's go to Government Exhibit 21.

19 MR. CAMPBELL: And it would be the last page of that  
20 exhibit, Madam Clerk.

21 BY MR. CAMPBELL:

22 Q. Now, what are we looking at here, Government Exhibit 21?

23 A. Basically, this was a letter or note that was attached to  
24 the fourth quarter tax return 941 that was sent in because  
25 Tommy K. Cryer, Attorney at Law, did not receive a Form 941 in



1 the mail. Whether it was just never opened or never sent out,  
2 I don't know. But he indicated that he did not receive one,  
3 and so he took a previous quarter and -- which was the  
4 September quarter, and circled it out and marked the  
5 December quarter over the September one and filled that form  
6 out and sent it in, which is attached as the first portion of  
7 this exhibit.

8 Q. So, basically, what you have here is a letter explaining  
9 that because he didn't receive a form, we're going to submit  
10 this letter to explain the circumstances and still we're going  
11 to submit the quarterly withholding for the last quarter,  
12 December 2000?

13 A. Correct.

14 MR. CAMPBELL: Thank you.

15 (Exhibit G-21 removed from display.)

16 BY MR. CAMPBELL:

17 Q. Now, at the end of each year, is there also a 940 annual  
18 federal employment tax return that is submitted by the  
19 employer?

20 A. Yes.

21 Q. Just explain to the jury, briefly, what is a 940 annual  
22 tax return.

23 A. Basically, a 940, an Employer's Annual Federal  
24 Employment -- Employer's Annual Federal Unemployment Tax Return  
25 is a consolidated form over the year for an employer or

1 employ -- employee or employer -- I'm sorry, employer or  
2 employee for that year for that company. So a person would  
3 indicate their total wages that they paid out for that company  
4 for that employee.

5 Q. And so, basically, it shows exactly how much money was  
6 withheld from that check for that tax year?

7 A. For that tax year. It's a consolidated form, basically,  
8 for that year.

9 MR. CAMPBELL: I would like to move into evidence  
10 Government Exhibit 23.

11 MR. BECRAFT: No objections, Your Honor.

12 MR. CAMPBELL: And ask that it be published to the  
13 jury.

14 THE COURT: All right.

15 MR. CAMPBELL: And Madam Clerk, can we go to page 2.

16 BY MR. CAMPBELL:

17 Q. And again, this 941 -- excuse me, 940, is for Tommy K.  
18 Cryer?

19 A. Yes, it is.

20 Q. And it would be for as far as for his business?

21 A. As far as the business.

22 Q. And let's talk about this number here (indicating), line  
23 item No. 1. Would that represent the gross income that was  
24 paid to that, to either that employee or those employees?

25 A. That is correct.

1 Q. And that's before any taxes or withholdings, anything  
2 taken out?

3 A. That is correct.

4 Q. So if this was for one employee, that would represent the  
5 total salary that that employee received for that year?

6 A. That is correct. For the period ending December the  
7 31st, 2000.

8 Q. Before taxes?

9 A. Before taxes.

10 Q. Now let's talk about line item No. 3 (indicating), what  
11 that represents.

12 A. This is basically an indication of payments that, or  
13 services, that were paid in the amount over \$7,000.

14 Q. Okay. So \$7,000 is sort of like a threshold?

15 A. Yes.

16 Q. And then it indicates what was paid over \$7,000?

17 A. Correct.

18 Q. And now let's go to line entry No. 4.

19 A. That is basically the difference between line 1, \$21,275,  
20 and line 3, \$14,275.

21 Q. And let's go to line 5 here, the \$7,000 figure.

22 A. Oh, I'm sorry, I went to line 5. That's the difference.  
23 But line 4 is just moving line 3 over to line 4.

24 Q. And then line 5 will represent?

25 A. The difference between line 1 and line 4.

1 Q. Let's go to the next page. Let's go to line 7 here.

2 What does that \$434 figure represent?

3 A. Basically, that is the amount of federal unemployment tax  
4 that was sent in based on this employee or employees.

5 Q. And what purports here to be the signature (indicating)?

6 A. Yes.

7 Q. And then the owner (indicating)?

8 A. Correct.

9 Q. Now, just like with the 941's, are there also  
10 corresponding transcripts that the IRS produced, computer-  
11 generated transcripts for the 940 annual returns as well?

12 A. Yes, there is.

13 Q. And Government Exhibit 3 would be y'all's computer-  
14 generated transcript for Government Exhibit 4? Excuse me,  
15 Government Exhibit 24.

16 A. That is correct.

17 MR. CAMPBELL: Ask that Government Exhibit 25 be  
18 admitted into evidence, Your Honor.

19 MR. BECRAFT: Was that twenty -- it's either 24 or  
20 25. I have no objection to either.

21 THE COURT: All right.

22 MR. CAMPBELL: Let me make sure. 23 is what we just  
23 got through discussing, so the exhibit that I'm moving into  
24 evidence would be 24.

25 THE COURT: All right. Without objection, it's

1 admitted.

2 THE CLERK: You want it to be published?

3 MR. CAMPBELL: Yes. And can we go to page 2 of  
4 Government Exhibit 24.

5 BY MR. CAMPBELL:

6 Q. And again, just for simplification, would this transcript  
7 be just a summary of the actual 940 that was submitted on  
8 behalf of the employer?

9 A. That is correct.

10 Q. And it shows where the -- the tax that was withheld for  
11 \$434?

12 A. That is correct.

13 MR. CAMPBELL: Thank you, Madam Clerk.

14 (Exhibit G-24 removed from display.)

15 BY MR. CAMPBELL:

16 Q. Now, the records that we just discussed as far as the  
17 941's and the 940 annual, did you do similar research for 2001?

18 A. Yes, I did.

19 Q. So the records we just discussed pertain to the 2000 tax  
20 year for the Tommy K. Cryer business?

21 A. That is correct.

22 Q. And you did similar research for the 2001, for that tax  
23 year?

24 A. That's correct.

25 Q. And did you pull all -- and were you able to find all of

1 the quarterlies that were submitted for 2001 on behalf of the  
2 Tommy K. Cryer business?

3 A. Yes, I was.

4 Q. And would Government Exhibit 26, would that represent the  
5 quarterly that was submitted for the first quarter of 2001?

6 A. That is the transcript for the quarter ending March 31,  
7 2001, which would be the first quarter, yes.

8 Q. So Government Exhibit 25 would be the actual 941 that was  
9 submitted?

10 A. Yes.

11 Q. Okay. Now, would Government Exhibit 27, would that be  
12 the actual 941 that was submitted for the second quarter of  
13 2001?

14 A. Yes, it would.

15 Q. Would Government Exhibit 28 be the corresponding  
16 transcript?

17 A. Yes.

18 Q. And would Government Exhibit 29 be the 941 quarterly that  
19 was submitted for the third quarter of 2001?

20 A. Yes.

21 Q. And would Government 30 be the corresponding transcript?

22 A. Yes.

23 Q. And would Government 31 be the quarterly, the 941  
24 quarterly for the final quarter of 2001?

25 A. Yes, for the fourth quarter.

1 Q. And would Government 32 be the corresponding transcript?

2 A. That's correct.

3 Q. Government 33 would be the 940, which would be the annual  
4 federal unemployment tax return that would be submitted to  
5 summarize those withholdings for the tax year 2001?

6 A. That's correct.

7 Q. Would Government 34 be the corresponding transcript that  
8 would be generated by the IRS?

9 A. Yes.

10 MR. CAMPBELL: Your Honor, I ask that Government  
11 Exhibits 25 through 34 be admitted into evidence.

12 MR. BECRAFT: No objection, Your Honor.

13 THE COURT: All right. Those are admitted.

14 BY MR. CAMPBELL:

15 Q. Now, Ms. Jackson, we're not going to talk about those  
16 exhibits like we just did the previous ones, but would those  
17 exhibits show the same or similar information that follow the  
18 same pattern?

19 A. Absolutely.

20 Q. And they were submitted by the employer or someone  
21 designated to submit them on behalf of the employer as far as  
22 the actual 941 filings for 2001?

23 A. That's correct.

24 Q. And it shows the actual taxes that were withheld from  
25 that employee's paycheck?

1 A. That is correct.

2 Q. Now let's talk about Government Exhibit 35. What is  
3 Government Exhibit 35?

4 A. Government Exhibit 35 is a Lack of Record for Tommy K.  
5 Cryer. This is for form 1041. It is a U.S. Fiduciary Income  
6 Tax Return. This is for trusts and estates.

7 Q. Now, this particular exhibit would also be something,  
8 like the EIN number, would that also correspond with a  
9 business, the EIN number there?

10 A. Yes.

11 Q. Okay. Now, for tax years -- does it show that there were  
12 no tax returns filed for that corresponding EIN number from  
13 1993 to 2005?

14 A. That is correct.

15 MR. CAMPBELL: I ask that Government Exhibit 35 be  
16 admitted into evidence.

17 MR. BECRAFT: No objection, Your Honor.

18 THE COURT: All right. That's in evidence.

19 BY MR. CAMPBELL:

20 Q. And if that EIN number matched the EIN number for the  
21 Tommy K. Cryer law practice, would this document basically show  
22 that there was no tax returns filed on behalf of the Tommy K.  
23 Cryer law practice?

24 A. Yes.

25 MR. CAMPBELL: Okay. I ask that it be published for



1 the jury.

2 THE COURT: All right.

3 MR. CAMPBELL: And can you just highlight the tax  
4 period entries there, or just blow it up.

5 BY MR. CAMPBELL:

6 Q. So no tax return filed for that business for these years?

7 A. That is correct.

8 MR. CAMPBELL: Thank you, Madam Clerk.

9 (Exhibit G-34 removed from display.)

10 MR. CAMPBELL: The Court's brief indulgence?

11 I have no further questions.

12 MR. BECRAFT: Briefly, Your Honor.

13 THE COURT: All right.

14 CROSS-EXAMINATION

15 BY MR. BECRAFT:

16 Q. Good morning, Ms. Jackson.

17 A. Good morning.

18 Q. The service center that you work for is the Memphis  
19 service center; is that correct?

20 A. No. I'm at the Atlanta service center.

21 Q. Okay. And so you've worked for the IRS at the Atlanta  
22 service center, you told us on direct, for 33 years?

23 A. That is correct.

24 Q. Okay. And for the last 13 years, you have worked for  
25 Criminal Investigation Division, right?

1 A. That is correct.

2 Q. Now, for documents that we have in this case that relate  
3 to the Memphis service center, you're familiar with those?

4 A. Yes, I am.

5 Q. Okay. When information flows in to the Internal Revenue  
6 Service, such as a tax return, I believe on direct you  
7 testified that you have worked in such a place where returns  
8 come in; is that right?

9 A. That's correct.

10 Q. And when returns come in, a stamp is put across the top  
11 of the page, and that stamp containing a number constitutes a  
12 thing known as a document locator number, right?

13 A. That is correct.

14 Q. All right. So that document locator number gets pulled  
15 off and inserted into a computer program, right?

16 A. That is correct.

17 Q. And throughout the whole nation, all this computer  
18 information that relates to returns and other types of  
19 documents, information from those documents get pulled off of  
20 them and stuck on the computer, correct?

21 A. That's correct.

22 Q. And so to find things, the computer record is used by the  
23 IRS and employees such as yourself?

24 A. That's correct.

25 Q. And the document that you would use to do that is known

1 as an Individual Master File, right?

2 A. We use that. That's one of the tools.

3 Q. Okay. An Individual Master File is a computer record  
4 maintained by the IRS?

5 A. We maintain those records, yes.

6 Q. And if you pull up that computer record, it can be  
7 printed out; is that correct?

8 A. Yes.

9 Q. And when you go looking for any type of document, that  
10 computer record that you would print out would have a document  
11 locator number there so you could find the document that  
12 relates to that transaction; is that a fair description?

13 A. If there is a document there, we could locate it, yes.

14 Q. So document locator numbers are put on documents that  
15 flow into the service center, such as 1040 forms?

16 A. Yes.

17 Q. 1041's, trust returns?

18 A. Absolutely.

19 Q. 940's and 941's?

20 A. Yes.

21 Q. And, obviously, there was some way that -- there was a  
22 letter that Mr. Cryer wrote that was attached to I think either  
23 his 940 or 941. You were able to locate it, right?

24 A. Yes.

25 Q. Now, in this case, you were able to locate the 940's and

1 941's to find and bring to court by using some type of computer  
2 record; is that correct?

3 A. Yes.

4 Q. And would that computer record be the Individual Master  
5 File?

6 A. That is one of our tools, yes.

7 Q. So to look for either the presence or absence of a  
8 return, the first thing that is done is to pull up the computer  
9 record and look at it, at least on the screen?

10 A. That is a tool that we use, yes.

11 Q. If a return is filed, if you're -- let me give a  
12 hypothetical example, if I may. Let's say that the year in  
13 question is 2000 and you want to locate a tax return for the  
14 particular party in question. The way that you would do that  
15 is take his Social Security number, ask the computer to pull up  
16 his Individual Master File for that year, right?

17 A. I guess you could go at it that way.

18 Q. And once you saw the screen, that document locator  
19 number, then whoever is looking for that document could put in  
20 a request for the records center, I guess, to provide that  
21 document to you; is that the way it works?

22 A. You could do it that way.

23 Q. Well, are there other ways?

24 A. Well, yes.

25 Q. Can you tell us?

1 A. Well, it depends on what it is you're looking for, you  
2 know.

3 Q. In this case, you have testified that you looked for  
4 returns, 1040's, filed by Tommy K. Cryer for the years '93  
5 forward?

6 A. That is correct.

7 Q. Now, did you do that in this case? Did you look for  
8 returns?

9 A. Yes, we did.

10 Q. Can you tell the jury how you did that?

11 A. You go on the computer and you request the information by  
12 Social Security number. If you cannot locate it by Social  
13 Security number, you order information by that Social Security  
14 number and see if anything comes back. You go online, you look  
15 for the name. You try different versions of the spelling of  
16 the name. Just, you know, there's different ways of doing  
17 things that, you know, unless I'm actually doing it -- it would  
18 be hard to explain everything that you have to do or can do  
19 unless you're at a computer doing it.

20 Q. In this case, did you look at least into the computer  
21 records of the IRS for tax returns for Tommy K. Cryer? You,  
22 yourself.

23 A. Yes.

24 Q. Okay. And what you were looking for to determine whether  
25 or not he had filed a return -- let's say like for the year

1 '97, to pull a year out of the hat. You have computer  
2 information on the screen, and if a return had been filed,  
3 there would at least be a document locator number there, right?

4 A. Yes.

5 Q. And if I ask the same question for all these years, that  
6 would be the same answer, right?

7 A. If there was a return filed, then there would be  
8 information that showed up on the database, yes.

9 Q. Now, in order to make a determination that someone has  
10 not filed an income tax return, a party that's looking for that  
11 would pull up a module, so to speak, or a computer record for a  
12 particular year, and merely look at the screen to determine  
13 whether or not there's some computer record indicating the  
14 return had been filed; is that the way it works?

15 A. You could do that, yes.

16 Q. So in this case, you pulled up the computer information  
17 for Tommy Cryer for '93 through 2004, 2005, and what you saw  
18 was there was no indication in the computer records the returns  
19 had been filed, right?

20 A. I checked '93 and forward.

21 Q. But my question is: When you pulled up the computer  
22 record, what you were looking for is either the presence of a  
23 document locator number that would indicate a 1040 form had  
24 been filed or basically a blank screen, there's nothing there?

25 A. That's basically what you look for, information.

1 Q. Now, when somebody files an extension of time, does this  
2 computer record that you look at contain any information as to  
3 such an event?

4 A. It indicates an extension of time filed.

5 Q. Now, an extension of time would have a relationship to a  
6 tax return itself, right?

7 A. It has a relationship to it knowing that a person knows  
8 they're supposed to file a return if they request an extension.

9 Q. Now, let's take the year '96. When you looked at -- you  
10 pulled up for the year '96 the computer record for Tommy K.  
11 Cryer to look, see what was there, right?

12 A. That's correct.

13 Q. And you failed to see a document locator number that  
14 would indicate the filing of a 1040 form, right?

15 A. Yes.

16 Q. And would there be some type of notation on the computer  
17 screen that would indicate the filing of an extension of time  
18 for filing a return?

19 A. There would be a request for an extension, yes.

20 Q. Now, when those requests for extension of time flow in to  
21 the service center, is there a different process for treating  
22 them, or is there some reason for treating them differently  
23 from 1040 forms in that you either do or do not file or put on  
24 those extensions of time a document locator number?

25 Okay. Let me withdraw that. That's complicated.

1 Extensions of time, when they flow in to the service  
2 center, the people in the mail room are sitting there, opening  
3 them up, looking at the document; is that basically the way it  
4 happens?

5 A. Extensions go to a different area.

6 Q. Okay. Have you ever worked in that area?

7 A. No.

8 Q. Are you familiar with the process that would occur over  
9 in that area?

10 A. Not exactly.

11 Q. Okay. In your experience in working for the IRS, you've  
12 been using these computer records of the IRS for at least 13  
13 years, right?

14 A. Yes.

15 Q. Looking at Individual Master Files, which is the computer  
16 record for a taxpayer for one or more years, right?

17 A. Yes.

18 Q. Have you seen document locator numbers that are posted to  
19 an Individual Master File that would relate to a document  
20 that's been filed that's labeled extension of time to file a  
21 return?

22 A. I'm sorry, I didn't understand the question.

23 Q. Do you know or do you not know whether or not document  
24 locator numbers appear on the extensions of times that are  
25 filed by various people that are submitted to the IRS?



1 A. Yes.

2 Q. They are put on there?

3 A. Yes.

4 Q. Now, when you -- so if somebody asks for an extension of  
5 time to file a return, the Individual Master File would say:  
6 Hey, you know, you can find this particular document by this  
7 number. Right?

8 A. Yes.

9 Q. And that's a unique number, correct?

10 A. Yes.

11 Q. With that number, you can file -- if you have the  
12 computer record that indicates this is the number that is  
13 stamped on a document, with that number you can submit a  
14 request to whoever keeps all these paper documents, you can  
15 submit it to them and they can provide a copy of the document,  
16 right?

17 A. If I requested that document, then they would send me  
18 that original document.

19 Q. Okay. And according to your testimony, what you've said  
20 thus far is document locator numbers are put on extensions of  
21 time when they are received by the IRS at the service center?

22 A. They are.

23 Q. Okay. And so you could actually find if somebody  
24 submitted an extension to file a return --

25 MR. CAMPBELL: Your Honor, I've been withholding

1 objections. I'm straining to see the relevance of this line of  
2 questioning, so at this time I would like to object.

3 THE COURT: Can you demonstrate the relevance of  
4 where you're going with this, Mr. Becraft?

5 MR. BECRAFT: Yes, Your Honor. The documents that  
6 have been offered into evidence, specific numbers -- well,  
7 we've been at -- I'm just asking a general question. The  
8 documents indicate an absence of a document locator number.  
9 The ones that the witness testified on direct that relate to  
10 specific exhibits have been admitted into evidence, there's no  
11 document locator number up there on the extensions of time.  
12 And she testified based on the documents that for I think '97  
13 or '98 the extensions of time were filed for Tommy K. Cryer. I  
14 think that's a fair cross that relates to both her testimony  
15 and the document itself that was offered into evidence.

16 THE COURT: You have some leeway here. You may  
17 continue. Overruled.

18 BY MR. BECRAFT:

19 Q. Is it true that if we pulled up and looked on the screen,  
20 there is no document locator number there for these extensions  
21 of time that were, you claim was filed by Tommy K. Cryer?

22 A. Yes, they are.

23 Q. They are there?

24 A. They are there.

25 Q. Did you look for those extensions of time?

1 A. I was not asked to look for the extensions of time. I  
2 was asked to do certifications of the periods '93 through 2004  
3 or '5, whichever the year is, and I was asked to get tax  
4 returns.

5 Q. Okay. If we go back and take a look at Government  
6 Exhibit No. 1 -- we don't need to pull it up. But there's an  
7 address, you testified on direct. You read off an address on  
8 Seminole Drive here in Shreveport. And the period of time that  
9 you covered is '93 through, I think, 2004 or '5. You remember  
10 that?

11 A. Yes.

12 Q. What would indicate -- is that an indication to you that  
13 in 1993 and 1994 Tommy K. Cryer was living on Seminole Drive  
14 here in Shreveport?

15 A. That is the address that our computer showed, and since  
16 no returns were filed after that date, then we would not have a  
17 new date (sic) for him as an individual.

18 Q. Okay. How would -- how would that address get put into  
19 the computer records of the IRS?

20 A. Filing a tax return.

21 Q. So some tax return would have been filed by Tommy K.  
22 Cryer that bore an address, that address on Seminole Drive?

23 A. At some point there was a tax return filed that had an  
24 address or he requested information and gave that address. I'm  
25 not sure which.

1 Q. For somebody that lives in Louisiana, what service center  
2 of the IRS would they file the return at?

3 A. The Memphis service center.

4 Q. Have you ever worked at the Memphis service center?

5 A. No, I have not.

6 Q. All of the documents that have been generated in this  
7 case, were they produced by somebody at the Memphis service  
8 center?

9 A. Some of the documents were, yes.

10 Q. Okay. And some of them were prepared, the ones we've  
11 gone over in your direct testimony, some of them were prepared  
12 by you?

13 A. That is correct.

14 Q. Okay. Can you just briefly or generally describe for us  
15 which ones of those, which of those documents those would be.

16 A. As far as which ones I generated?

17 Q. Yes, ma'am.

18 A. Okay. Exhibit 1, I did not. Exhibit 2, 3, 4, 5, 6, 7,  
19 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23,  
20 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 --

21 Q. I believe we stopped at 35.

22 A. Oh, okay.

23 Q. Now, you just read off -- as I was listening to your  
24 answer to that question, it seems like you listed all the  
25 documents 1 through 35, right?

1 A. I listed all of them. The first one I did not certify.  
2 Nos. 2 through 35 I certified.

3 Q. What do you mean by you certified?

4 A. I researched and I certified these documents by  
5 requesting information on our database, retrieving the  
6 information from our database and having the original documents  
7 to certify.

8 Q. Okay. So that answer applies to Government Exhibits 2  
9 through 35, right?

10 A. That is correct.

11 Q. And 2 through 35 were, if you actually look at the  
12 certification, they were prepared by someone else?

13 A. No.

14 Q. Prepared by you?

15 A. I prepared them. The resident agent in charge, my boss,  
16 signs them.

17 Q. Okay. On the 940's and 941's, is there any indication as  
18 to who the employee was that worked for Mr. Cryer? Can you  
19 recall?

20 A. No, it doesn't indicate an employee or employer --  
21 employee or employees that worked for a company.

22 Q. Is there anything on those documents that would indicate  
23 that employee's Social Security number or any other number that  
24 might identify that employee?

25 A. It does not identify them by name, Social Security

1 number, or address.

2 MR. BECRAFT: One moment, Your Honor.

3 Nothing further, Your Honor.

4 THE COURT: All right. Any redirect?

5 MR. CAMPBELL: Yes.

6 REDIRECT EXAMINATION

7 BY MR. CAMPBELL:

8 Q. Ms. Jackson, you had testified that you are familiar with  
9 the methods and the procedures that records are maintained at  
10 the IRS, correct?

11 A. That is correct.

12 Q. Now, based on your experience, if a tax return was filed,  
13 a 1040 was filed by or on behalf of Mr. Tommy K. Cryer for  
14 those years that you indicated, 1993 to 2005, would you have  
15 been able to find that tax record?

16 A. Absolutely.

17 Q. Now let's talk about the extensions. The extensions,  
18 there are certain transcripts that show that a request for an  
19 extension to file was made, correct?

20 A. That is correct.

21 Q. If there was a corresponding grant of extension of time  
22 to file, would that also be indicated on the transcript?

23 A. Yes, it would.

24 Q. But there is no grant of extensions of time to file on  
25 those transcripts that you saw; is that correct?

1 A. No.

2 Q. Now, you mentioned something -- Mr. Becraft had asked you  
3 about the extensions to file and you mentioned something that  
4 if an extension of time to file is submitted, that you would  
5 expect also to see at some later date the actual file document  
6 that was requested for the extension, correct?

7 A. Absolutely.

8 Q. Now, did you -- now, after these extensions to file that  
9 were indicated, were there any tax returns filed that  
10 corresponded with those requested extensions to file?

11 A. No.

12 Q. Now, as far as Government Exhibit No. 1, you didn't  
13 prepare it, correct?

14 A. I did not prepare it, no.

15 Q. But based on your knowledge of procedures and so forth,  
16 was Government Exhibit 1 also certified by someone in IRS who  
17 performs similar duties as yourself?

18 A. Yes.

19 MR. CAMPBELL: No further questions, Your Honor.

20 THE COURT: All right. You may step down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Your next witness, Mr. Campbell?

24 MR. CAMPBELL: The Government calls Ms. Gloria  
25 Worthey.

1                   THE COURT: All right. How long do you estimate her  
2 direct will last?

3                   MR. CAMPBELL: Ten minutes.

4                   THE COURT: All right. We're working towards a  
5 mid-morning break, ladies and gentlemen, about 10:30, give or  
6 take. You can hear the pounding of the people laying the  
7 carpet in the hall, which is a bit annoying. It hasn't quite  
8 gotten to the point that I'll either stop them or we'll take a  
9 break yet, but it's getting there.

10   (Witness called and sworn.)

11   DIRECT EXAMINATION

12 BY MR. CAMPBELL:

13 Q. Good morning.

14 A. Good morning.

15 Q. Will you introduce yourself to the members of the jury.

16 A. Yes. My name is Gloria Worthey.

17 Q. Will you spell your last name.

18 A. W-O-R-T-H-E-Y.

19 Q. And where do you work?

20 A. I'm Tommy Cryer's secretary.

21 Q. How long have you worked for Mr. Cryer?

22 A. It will be 30 years on October 10.

23 Q. When did you start?

24 A. October 10, 1977.

25 Q. I'm sorry.



1 A. That's okay.

2 Q. That's one of those questions you'll probably see on the  
3 internet somewhere about stupid lawyer questions.

4 Let me ask you this: So you worked continuously for  
5 Mr. Cryer from October up until this point?

6 A. Yes.

7 Q. So that would include the years of 2000 and 2001?

8 A. Yes.

9 Q. Okay. Now, how are you paid? Are you paid monthly,  
10 weekly, or biweekly?

11 A. On the 15th and the 31st.

12 Q. So roughly twice a month?

13 A. Uh-huh.

14 Q. Are you paid by paycheck?

15 A. Yes, sir.

16 Q. Are you issued a stub?

17 A. No, sir.

18 Q. Let me ask you this: Are you the only employee for  
19 Mr. Cryer?

20 A. Yes, sir.

21 Q. And how -- are deductions made from your paycheck as far  
22 as the FICA deductions and --

23 A. Yes, sir.

24 Q. -- so forth? Is there some kind of document issued with  
25 your paycheck to show what deductions are made?

- 1 A. No, sir.
- 2 Q. So you don't see those?
- 3 A. No.
- 4 Q. So you don't prepare the quarterly filings?
- 5 A. Yes.
- 6 Q. You prepare them?
- 7 A. Uh-huh.
- 8 Q. But does Mr. Cryer look at them?
- 9 A. He signs them.
- 10 Q. So you prepare them and he looks at them and signs them?
- 11 A. (Nods head.)
- 12 Q. That's where you put all these deductions and so forth?
- 13 A. Uh-huh.
- 14 Q. Okay. Now, also, at the end of each year, are you issued
- 15 a W-2?
- 16 A. Yes, sir.
- 17 Q. And does the W-2 show all of the taxes and FICA and so
- 18 forth that's withheld from your paycheck?
- 19 A. Yes, sir.
- 20 Q. Do you use that W-2 to prepare your tax returns for that
- 21 year?
- 22 A. Yes, sir.
- 23 Q. And is that W-2 issued by Mr. Cryer?
- 24 A. Yes, sir.
- 25 Q. Now, as far as W-2's, do you prepare the W-2?

1 A. Yes, sir.

2 Q. So you prepare the W-2 and you put all your deductions  
3 there and so forth?

4 A. Yes, sir.

5 Q. And then you give it to Mr. Cryer?

6 A. He never sees the W-2. He signs the W-3 transmittal.

7 Q. But is he aware of the fact that W-2's are submitted on  
8 behalf of this business?

9 A. Sure.

10 Q. Okay. So you're not doing anything behind his back as  
11 far as the W-2 or anything like that?

12 A. No.

13 Q. So he knows about it?

14 A. Yes, sir.

15 Q. And he knows that basically the W-2 shows all of these  
16 different monies being withheld from your check?

17 A. Yes, sir.

18 MR. CAMPBELL: No further questions, Your Honor.

19 THE COURT: Mr. Becraft, you have a witness that's  
20 obviously identified with your client. Are you intending to do  
21 direct examination or cross-examination limited to direct by  
22 Mr. Campbell?

23 MR. BECRAFT: It's going to be related to this  
24 testimony, Your Honor.

25 THE COURT: All right.

## 1 CROSS-EXAMINATION

2 BY MR. BECRAFT:

3 Q. So you've worked for him from October of 1977 through  
4 now?

5 A. Yes, sir.

6 Q. And at some stage in the '90s -- '91, '92, '93, '94,  
7 '95 -- these employment taxes were still being withheld from  
8 you, right?

9 A. Yes, sir.

10 Q. And through the end of the '90s, employment taxes were  
11 withheld?

12 A. Yes, sir.

13 Q. For the years 2000, 2001, 2002, 2003, 2004, 2005?

14 A. Yes, sir.

15 Q. Even now?

16 A. Yes, sir.

17 Q. Taxes are withheld?

18 A. Yes, sir.

19 Q. Now, let's go back to, say, late '90s. Would you be the  
20 party that would actually generate all the documents?

21 A. Yes.

22 Q. That relate to withholding?

23 A. Yes, sir.

24 Q. Did that continue into this century?

25 A. Yes.

1 Q. 2000 through 2007? Do you have control of or do you keep  
2 up with his checking account?

3 A. The business checking account, yes. I'm in --

4 Q. So you're the one that sits down, and you know what your  
5 salary is, and you write out a check from the business account  
6 and you slide it to him and say, "Pay me," right?

7 A. I even sign my own check.

8 Q. Okay. Now, in reference to withholding, there you sit in  
9 the office and you're doing legal work for him and you cut your  
10 own checks to yourself. Is it fair to say that you also do  
11 everything that's related to the employment taxes?

12 A. Yes, I do.

13 Q. So in the late '90s you were doing the filing of the  
14 forms for employment taxes?

15 A. Yes.

16 Q. So you would prepare on a quarterly basis -- would you  
17 keep up in the late '90s, and even now, and even within the  
18 last seven years, would you keep up with the amounts that  
19 should be withheld and submitted quarterly to the IRS?

20 A. I do. I keep up with that. I mean, even after he came  
21 to me and offered to take me off the payroll -- when he  
22 discovered we were not legally obligated to pay income tax, he  
23 offered --

24 MR. CAMPBELL: Objection.

25 THE COURT: Sustained. You're leading your witness.

1 MR. BECRAFT: I'll withdraw it, Your Honor.

2 THE COURT: And I'll allow some of that simply  
3 because it's cross-examination, but she is clearly identified  
4 with Mr. Cryer.

5 MR. BECRAFT: Okay.

6 THE COURT: And you need to exercise a better sense  
7 of control on your questions, so start using direct examination  
8 techniques.

9 MR. BECRAFT: Will do, Your Honor.

10 BY MR. BECRAFT:

11 Q. In the late '90s were 940's, 941's submitted by  
12 Mr. Cryer?

13 A. Yes, sir.

14 Q. Were 940's, 941's submitted by Mr. Cryer's office 2000  
15 through even the first quarter of this year?

16 A. Yes, sir.

17 Q. Who would prepare those documents?

18 A. I prepared them.

19 Q. Okay. Who was in charge of actually keeping up with the  
20 funds that related to withholding on your pay?

21 A. Me.

22 Q. So you would set aside some money for that?

23 A. Yes, sir.

24 Q. Come time to file a quarterly, who would prepare the  
25 document itself?

1 A. Me.

2 Q. Who would prepare the check to pay the quarterly  
3 payments?

4 A. I do that.

5 Q. Who would drop it in the mail?

6 A. I take it to the bank.

7 Q. Is it fair to say that in the late '90s the only thing  
8 that Mr. Cryer was doing in reference to this matter was either  
9 signing the checks or signing the forms?

10 A. Signing the form.

11 Q. If I ask the same questions, that series of questions for  
12 2000 through 2007, is there anything different?

13 A. No, sir.

14 Q. At the end of the year, you'd send -- who would prepare  
15 the W-2 statements?

16 A. I do my W-2 and W-3.

17 Q. So you would prepare the W-2 for yourself and you'd mail  
18 it to yourself, or you'd probably keep it, right?

19 A. Just put it in my purse.

20 Q. And the document that related to, that had to be sent to  
21 the IRS, you would just drop it in the mail --

22 A. The W-3.

23 Q. -- to the IRS?

24 A. He would sign the W-3 transmittal and I would mail that  
25 to the . . .

1 Q. So would it be fair to say, then, Mr. Cryer has delegated  
2 virtually all of the responsibilities, outside of signing --

3 A. Correct.

4 Q. -- regarding withholding on you?

5 A. Correct.

6 Q. Were there -- from, say, like '93 forward, has anybody  
7 else worked in the office?

8 A. No, sir.

9 MR. BECRAFT: One moment, Your Honor.

10 Pass the witness, Your Honor.

11 THE COURT: Your redirect.

12 REDIRECT EXAMINATION

13 BY MR. CAMPBELL:

14 Q. Ms. Worthey, you stated that Mr. Cryer would sign the  
15 941's, correct?

16 A. Yes, sir.

17 MR. CAMPBELL: Can you show Government Exhibit 15,  
18 second page, and just highlight the signature.

19 BY MR. CAMPBELL:

20 Q. Is that Mr. Cryer's signature?

21 A. Yes, sir.

22 MR. CAMPBELL: Okay, thank you.

23 (Exhibit G-15 removed from display.)

24 MR. CAMPBELL: Thank you. Nothing further. I mean,  
25 no further as far as this exhibit.



1 BY MR. CAMPBELL:

2 Q. And so like Mr. Becraft just asked you a couple of  
3 seconds ago, you actually fill out the form?

4 A. Yes, sir.

5 Q. And then you give it to Mr. Cryer and he will sign it?

6 A. Yes, sir.

7 Q. You've worked for Mr. Cryer for a long time, correct?

8 A. Yes, sir.

9 Q. Would it be fair to say that Mr. Cryer knew this form was  
10 being submitted to take, to withhold taxes out of your salary?

11 A. Yes, at my request.

12 Q. But out of your salary?

13 A. Yes, sir.

14 Q. Now, Mr. Becraft used the term employment taxes. I just  
15 want to make sure we understand what we're talking about.

16 We're not talking about taxes that are being withheld out of  
17 the business income, we're talking about taxes that are being  
18 withheld out of your salary?

19 A. Yes.

20 Q. Okay. And this was your practice for pretty much the  
21 entire time that you worked for Mr. Cryer, correct?

22 A. Yes, sir.

23 Q. And the same thing with the W-2's, you prepared them and  
24 everything, correct?

25 A. Yes, sir.

1 Q. But based on your relationship and your, the time you  
2 worked with him, would it be fair to say that Mr. Cryer knew  
3 that the W-2's were being used so you could file your tax  
4 returns?

5 A. Yes, sir.

6 Q. And the W-2's show basically all of the monies for that  
7 tax year that were withheld out of your salary?

8 A. Yes, sir.

9 MR. CAMPBELL: No further questions, Your Honor.

10 THE COURT: All right. You may step down. Thank  
11 you.

12 THE WITNESS: Thanks.

13 THE COURT: Ladies and gentlemen, we're at a good  
14 breaking point for our morning break.

15 And you have another witness ready to testify after  
16 our break is over this morning?

17 MR. CAMPBELL: Yes, I do, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, we'll  
19 be in recess for about 15 minutes. We'll plan to resume at 20  
20 minutes to 11:00.

21 All stand for the jury.

22 (Jury exits courtroom.)

23 THE COURT: Court is in recess.

24 (Recess had 10:27 - 10:43 a.m. )

25 THE COURT: Thank you. Please be seated. Ready to

1 get the jury, Mr. Campbell?

2 MR. CAMPBELL: Yes. Before I begin, Your Honor, I  
3 conferred with Mr. Becraft; I do not foresee any need to recall  
4 Ms. Worthey or Ms. Jackson, and so unless there's an objection,  
5 I ask that they be released from their subpoenas.

6 MR. BECRAFT: No objection, Your Honor.

7 THE COURT: All right. They are released from their  
8 subpoenas.

9 All right. Let's get the jury.

10 (Witness called.)

11 THE COURT: All rise for the jury.

12 (Jury enters courtroom.)

13 THE COURT: Our jury has returned. Please be seated.

14 (Witness sworn.)

15 MR. CAMPBELL: May I begin, Your Honor?

16 THE COURT: You may.

17 DIRECT EXAMINATION

18 BY MR. CAMPBELL:

19 Q. Good morning.

20 A. Good morning.

21 Q. Will you please introduce yourself to the members of the  
22 jury.

23 A. My name is George McGovern, III.

24 Q. Will you spell your last name.

25 A. M-C-G-O-V-E-R-N.

1 Q. Mr. McGovern, do you live in Shreveport or the  
2 Shreveport-Bossier area?

3 A. Yes, I do.

4 Q. And what do you do for a living?

5 A. I'm a certified public accountant.

6 Q. How long have -- do you own your own practice?

7 A. Yes, I do.

8 Q. How long have you owned your own practice?

9 A. Twenty-two years.

10 Q. What are some of the typical services you perform or  
11 render in your practice?

12 A. Preparation of income tax returns, counseling, financial  
13 statements preparation. That's pretty much it.

14 Q. And let's talk about your educational background.

15 A. I have a bachelor's degree from LSU, and I still go to  
16 their football games. And I have a master's degree from  
17 Mississippi State University. I do not go to their football  
18 games.

19 Q. Now, what did you receive your master's degree in?

20 A. It's an MBA, which just means in business. Yes.

21 Q. Now, as far as -- let's talk specifically about your CPA  
22 training and certification and so forth. What kind of training  
23 did you have as far as preparing to receive, to become a  
24 certified public accountant?

25 A. Well, after I got out of college, I went in the military.

1 Got out of the military, I went to work for a national CPA firm  
2 in Houston. At the time it was called Touche Ross. They used  
3 to have something called the Big 8 firms. You're probably  
4 familiar with Arthur Andersen; they were one of the Big 8's.  
5 Now there's the Big 4, and this firm is still out there, and  
6 they're called Deloitte Touche. I worked for them and passed  
7 the CPA exam while working for them, and became a CPA in 1974  
8 or '76.

9 Q. Now, are you a member of any related professional  
10 organizations?

11 A. Yes. State of Louisiana has a society called the  
12 Louisiana State Society of CPA's; I'm a member of that, and I'm  
13 a member of the American Institute Society of CPA's.

14 Q. Do you teach?

15 A. I used to teach. I taught full-time at Centenary College  
16 from '78 through '85.

17 Q. And would it be fair to say that in order to do your job  
18 effectively, that you have to have some comfort level, if  
19 that's possible, of familiarity with the tax code?

20 A. I would hope so. Yes, sir.

21 Q. Okay. Now, in connection with this case, do you know  
22 Mr. Tommy Cryer?

23 A. Yes, sir, I do.

24 Q. How do you know Mr. Tommy Cryer?

25 A. Tommy and I have been acquaintances for probably 15 years

1 or so. We have some mutual clients, and I believe we actually  
2 got to know each other pretty well with a client that owned a  
3 pizza establishment in a mall, is where we first became  
4 friends.

5 Q. Now, would you describe your relationship as a business  
6 relationship?

7 A. My relationship with Tommy has always been a business  
8 relationship. I would consider him to be a friend, but it's  
9 been always business.

10 Q. So I guess there's also a personal aspect to it as well?

11 A. Yes, sir.

12 Q. Now, at some point did Tommy Cryer come to you and ask  
13 you to do some work for him as far as his business accounts?

14 A. Yes, sir, he did.

15 Q. Okay. And what was the nature of that request?

16 A. I believe when Tommy first came to see me, he asked me to  
17 help him to assemble some data -- I believe that's where we  
18 started -- assemble some data regarding the amount of income  
19 that he had made off of his business.

20 Q. And was that the term he used, income?

21 A. I don't remember the exact term, but that's the way I  
22 understood it, that he wanted to know what he had made in his  
23 business.

24 Q. Okay. And so as you understood it, what was some of the  
25 things that you did in order to comply with that request?

1 A. I asked Tommy to furnish me his documentation that he  
2 had, and he furnished me all of his bank statements and all of  
3 the records that he had available. And then I met with Tommy  
4 periodically in regards to items that may or may not have been  
5 taxable. And I worked up some spreadsheets that Mr. Cryer and  
6 I went over to determine if Mr. Cryer agreed with the numbers  
7 that I had obtained or not.

8 Q. Now, when you said you met with him periodically to  
9 determine what was taxable, would it be fair to say that the  
10 purpose of you doing this work was to determine what his tax  
11 liability may be?

12 A. Well, I would have inferred that. I don't know that  
13 Tommy ever asked me that. Tommy had asked me to assist him in  
14 determining the amount of money he had made in his business.

15 Q. Okay. So you said you had access to his bank records and  
16 so forth?

17 A. He furnished me all of his bank statements, and I believe  
18 his check stubs, and anything else that I would have asked for.

19 Q. And this would be going back to 1997?

20 A. I believe that's the first year we started with, yes.

21 Q. The years that you covered would have been from 1997 till  
22 2001?

23 A. I believe I actually went to 2003.

24 Q. 2003, okay. Now, let's talk about -- well, can you just  
25 kind of describe what you did as far as actually going through

1 these bank records to determine how much money he made?

2 A. Well, I -- when I first met Mr. Cryer, he had told me  
3 that anything in question, to treat it as income. So I started  
4 out with the approach --

5 Q. Let me stop right there. Now, what is the significance  
6 of that to you, anything in question, treat it as income?

7 A. Well, one of the first things we had -- that I have to do  
8 as an accountant is to determine if something he's received is  
9 taxable or not.

10 Q. And where is the source of making that determination?

11 A. The Internal Revenue Code.

12 Q. Okay.

13 A. So one of the first things I had to do was determine what  
14 was taxable, and Mr. Cryer had said that in the event of doubt,  
15 treat it as being taxable -- well, I don't know if he used the  
16 word taxable income. I may be using my words versus his. But  
17 treat it as income he had made in his business. And then I  
18 analyzed the expenses that he had in the bank accounts to  
19 determine the expenses that I thought would be deductible  
20 expenses, once again in accordance with the Internal Revenue  
21 Code. And when I say we met periodically, we probably met two  
22 or three times during this period of time to go over what I had  
23 so that Mr. Cryer was comfortable that what I had were numbers  
24 that he was comfortable with.

25 Q. Now, when you said that, you know, as far as you checking



1 with the Internal Revenue Code just to make sure that what you  
2 were doing complied, did you have these discussions with  
3 Mr. Cryer about the Internal Revenue Code?

4 A. No, I did not.

5 Q. Okay. Now, at some point you was able to basically put  
6 together a spreadsheet to show Mr. Cryer basically how much  
7 money he made in his business?

8 A. That's correct.

9 Q. Okay. And also what were the applicable deductions and  
10 so forth?

11 A. That is correct.

12 Q. And also, you also indicated to him what his tax  
13 liability would have been based on your calculations?

14 A. Not at our first meetings. Our first meetings were  
15 geared at me determining the income from the business.  
16 Mr. Cryer in the first -- in all fairness to the court, I'm not  
17 sure how many meetings we had. I would say more than two and  
18 less than five. But our first few meetings were just geared at  
19 how much money did I make in the business, not so much as what  
20 was the tax liability.

21 Q. But at some point in your work you did determine what  
22 this tax liability would be based on the figures that you --

23 A. I did. Yes, I did.

24 Q. And you showed that information to Mr. Cryer?

25 A. Yes, I did.

1 Q. And also in the course of your work, did you prepare tax  
2 returns for those years?

3 A. I did.

4 Q. But he did not ask you to do that?

5 A. That is correct.

6 Q. But I guess -- would it be fair to say that as part of  
7 your work as far as trying to figure out his tax liability,  
8 that that would be something normal that you would do, actually  
9 prepare a return?

10 A. At some point in what I was doing for Tommy, it became  
11 obvious that we were going to be dealing with what the tax  
12 liability might be, and since the simplest way for any  
13 accountant to do it is to input the data into your software  
14 system, that's what I did to see where we were.

15 Q. Now, as far as the bank records that you relied upon, did  
16 you have any reason to question their authenticity or  
17 reliability?

18 A. No, sir, I did not.

19 Q. As far as the checks and information that he provided  
20 you, did you have any reason to question those checks'  
21 authenticity or reliability?

22 A. No, sir. I had every reason to believe it was the real  
23 thing.

24 Q. Okay. Now, at some point were you interviewed by agents  
25 from the IRS?

1 A. Yes.

2 Q. Were you interviewed, for example, by that man sitting at  
3 the Government's table, Mr. Jimmy Sandefur?

4 A. Yes.

5 Q. And did, pursuant to subpoenas from the government, did  
6 you produce the bank documents that Mr. Cryer had submitted to  
7 you?

8 A. I think they got those from Mr. Cryer. I think at that  
9 point I had given those back to Mr. Cryer. I don't recall.

10 But I did meet with Mr. Sandefur.

11 Q. But they did get some documents from you?

12 A. They got some documents from me, which primarily  
13 consisted of the tax returns I had prepared and those  
14 spreadsheets I was referring to.

15 Q. At some point was you presented a chart that basically  
16 summarized the tax returns that you prepared?

17 A. Yes. Recently, I received that chart, yes.

18 Q. And did you look at that chart to make sure that it was  
19 accurate as far as the actual numbers and figures that you were  
20 able to come up with?

21 A. It was the same numbers that I had derived when I did my  
22 calculations.

23 Q. All right. At this time, I would like to show you what  
24 has been marked as Government Exhibit 40. Do you see  
25 Government Exhibit 40 on your screen in front of you?

1 A. Yes, I do.

2 Q. Is that the chart that was presented to you to compare to  
3 the work that you did?

4 A. Yes, it is.

5 Q. And is it accurate based on what was actually presented  
6 to you?

7 A. Yes, sir. That's the same numbers I arrived at.

8 Q. Now, you did not prepare the chart, but it is accurate  
9 based on what you'd done?

10 A. Yes, sir. I prepared tax returns and income numbers that  
11 would -- that are the same numbers as you see here.

12 MR. CAMPBELL: I ask that Government Exhibit 40 be  
13 admitted into evidence and published to the jury at this time.

14 MR. BECRAFT: No objection, Your Honor.

15 THE COURT: All right. That's in evidence.

16 BY MR. CAMPBELL:

17 Q. Now, let's start with the first column on the left as it  
18 pertains to the year. So the first column starting on the  
19 left, would that be 1997 (indicating)?

20 A. Yes, sir.

21 Q. And the second column going towards my right, that would  
22 be 1998 (indicating)?

23 A. Yes, sir.

24 Q. '99 (indicating)?

25 A. Yes, sir.

1 Q. 2000 (indicating)?

2 A. (No verbal response.)

3 Q. And then 2001 (indicating)?

4 A. Yes, sir.

5 Q. In each column are basically the figures that were taken  
6 from the tax returns you prepared for that respective year?

7 A. That is correct.

8 Q. Now, we're not going to go over each year, but just to  
9 kind of show the work that you did, let's just go over one  
10 column. Okay?

11 A. Okay.

12 Q. Let's go with column 2000.

13 A. Okay.

14 Q. The top figure here (indicating), would that represent  
15 the gross income?

16 A. Yes, sir.

17 Q. Now, explain to the jury what is gross income.

18 A. Well, gross income is all of the income that Mr. Cryer  
19 received during this calendar year that was -- that would be  
20 taxable. Mr. Cryer's a cash basis taxpayer, so it would be all  
21 of the income that came into his various accounts for this  
22 calendar year.

23 Q. So now let's go to the second entry on the 2000 column.  
24 Would that be -- well, explain that as far as the \$48,442  
25 figure.

1 A. When you have a business and you're a sole proprietor,  
2 which is what Mr. Cryer was, you complete a form called a  
3 Schedule C. And the Schedule C consists of your gross income,  
4 which is the first item we talked about, and you subtract from  
5 that business expenses that are allowable in accordance with  
6 the Internal Revenue Code. So the \$48,442 represents the  
7 amount of expenses that Mr. Cryer incurred in regards to making  
8 this gross income.

9 Q. Now let's go to the third figure there, the \$6,778.

10 A. The federal government, the Internal Revenue Service, is  
11 allowed to charge self-employment tax to people that have their  
12 own business, and that rate changes depending on what year  
13 we're looking at. But, also, in addition to being able to  
14 charge it, the taxpayer is allowed to deduct one-half of what  
15 they charged. So if you look down to the self-employment tax  
16 number, which is \$13,555 -- towards the bottom.

17 Q. Right here (indicating)?

18 A. Yes, sir. That number should be one-half of that number,  
19 and that's a deduction to arrive at a term we call adjusted  
20 gross income.

21 Q. And that would be the fourth entry there?

22 A. Yes, sir.

23 Q. That would be the \$146,527?

24 A. Yes, sir.

25 Q. Now let's talk about the significance of less standard

1 deduction, which would be the fifth entry, the \$4,400 figure.

2 A. The federal government allows taxpayers the right to take  
3 itemized deductions, which we normally consider to be our  
4 interest on our house, taxes, or charitable contributions, the  
5 three big items, or we get a standard deduction, whichever is  
6 larger. This particular year, and most of the years we're  
7 looking at, Mr. Cryer took the standard deduction in my method  
8 of calculating it because we didn't have any itemized  
9 deductions.

10 Q. And let's go to the sixth, which would be the exemptions,  
11 \$2,352.

12 A. This is the deduction you get for yourself. You also get  
13 a deduction for any children or dependents that you have. I  
14 tried to get Mr. Cryer to take some of my children, but he  
15 wouldn't do it. But anyhow, this is a -- this is a deduction  
16 you get and the federal government tells us how much it is for  
17 each person. The interesting thing about the year that we're  
18 looking at is that you'll notice that it's less than 1999. It  
19 was -- actually, the amount that was available for this year  
20 was more than what I deducted, but this type of deduction is  
21 limited based upon your income. So Mr. Cryer's deduction, once  
22 you go through the calculation for the exemption, is \$2,352.

23 Q. Now let's talk about the taxable income, which would be  
24 the \$139,775.

25 A. That's a number that we did everything else to get to.

1 That's a number that we go to the IRS tables or the U.S.

2 Treasury tables to see what kind of income tax we have.

3 Q. You say the incomes tax table?

4 A. Yes, sir.

5 Q. That's a reference that you used to come up with this

6 figure?

7 A. Yes, sir. The next figure, the income tax number.

8 Q. And that would be the --

9 A. \$38,370.

10 Q. -- \$38,370?

11 A. Yes, sir.

12 Q. Now let's go to -- and you reference earlier the

13 self-employment tax, which would be the \$13,555?

14 A. Yes, sir. That tax is the tax -- that tax is computed on

15 the business net, net income, which would have been the

16 business gross income less the business expenses.

17 Q. Okay. And so what -- so when you add the income tax to

18 the self-employment tax, you come up with a figure of \$51,925?

19 A. Yes, sir.

20 Q. And that would be right here (indicating)?

21 A. Yes, sir.

22 Q. So what that represents is the total tax that Mr. Cryer

23 owes at this time before withholdings?

24 A. Total federal tax.

25 Q. Total federal tax, correct.



1 A. Yes. Yes, sir.

2 Q. And if there are any withholdings applicable, that would  
3 be right here (indicating)?

4 A. Yes. And that would be the case if you had a W-2 or you  
5 would have had deductions. If you had paid in estimated tax  
6 payments, that would have been something you would have  
7 subtracted there.

8 Q. So, basically, after all of these figures and entries are  
9 made, the total taxes that you calculated that Mr. Cryer owes  
10 for 2000 is reflected right here (indicating)?

11 A. Yes, sir. \$51,925.

12 Q. So that we're clear on this, the total taxes for each  
13 respective year is reflected on the bottom line for each  
14 column?

15 A. Yes, sir.

16 Q. And that comes to a figure here of \$169,494?

17 A. I'm going to assume y'all are right there. I didn't  
18 check that.

19 MR. CAMPBELL: You can take it down.

20 (Exhibit G-40 removed from display.)

21 BY MR. CAMPBELL:

22 Q. Now, did you -- was this service you rendered Mr. Cryer,  
23 did he pay you for that?

24 A. He paid me some. He paid me some money. It's better  
25 than a lot of my clients, so.

1 Q. Well, I'm not going to touch that. Okay. Let me ask you  
2 this: Afterwards, did he complain about the work you  
3 performed?

4 A. No. Tommy was completely agreeable, and I don't believe  
5 he questioned what we did. As a matter of fact, at one point  
6 he told me I had missed some income in a year, and we went back  
7 and changed it.

8 Q. So as far as the figures you worked up that show what his  
9 tax liability was, he didn't express any objections to you  
10 about that?

11 A. None at all.

12 MR. CAMPBELL: No further questions, Your Honor.

13 THE COURT: Your cross-examination, Mr. Becraft?

14 MR. BECRAFT: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BECRAFT:

17 Q. Good morning, Mr. McGovern.

18 A. Yes, sir.

19 Q. You've been a CPA for 22 years?

20 A. No. I've been a sole proprietor for 22 years. I think  
21 I've been a CPA for --

22 Q. Well, let's back up a little bit.

23 A. All right.

24 Q. When did you graduate from LSU?

25 A. '71.

1 Q. And the degree was?

2 A. Accounting.

3 Q. Okay. And you went to -- you got your master's from  
4 Mississippi State is what you said on direct, right?

5 A. That's correct.

6 Q. And when was that?

7 A. '74.

8 Q. And so you got a doctorate?

9 A. No.

10 Q. Okay. The degree you got from Mississippi State is  
11 actually what?

12 A. An MBA, Master's in Business Administration.

13 Q. When you were at LSU as an undergraduate, did you receive  
14 courses in taxation?

15 A. Yes, sir.

16 Q. When you went to Mississippi State to get your master's,  
17 were there courses in taxation?

18 A. I believe there were, but I don't believe I took any.

19 Q. After you got out of LSU in '71, I think you said you  
20 went to the Houston office of Touche Ross?

21 A. Yes.

22 Q. Which later changed its name to Deloitte Touche, right?

23 A. Yes.

24 Q. That was two years?

25 A. Almost three.

1 Q. So that would lead you up to -- you moved from Houston to  
2 Shreveport about that time?

3 A. Came back to Shreveport in about '78, so. Something like  
4 that.

5 Q. So you got your master's before you came back to  
6 Shreveport?

7 A. Oh, I was -- yeah. I was in the military during this  
8 period of time, stationed in Starkville, Mississippi, and I got  
9 my master's degree while in the military.

10 Q. Okay, good enough.

11 A. So, yeah.

12 Q. If you've been here in Shreveport for 22 years, that  
13 means about '85 is when you established your office?

14 A. Well, let's back up, if I could, Counselor. I came back  
15 to Shreveport in '78. Okay? That's when I started teaching at  
16 Centenary, and I went through various partnerships. I became a  
17 sole proprietor in about '87 or '85. Okay? But I've been here  
18 since '78.

19 Q. Okay. Good enough. What did you teach at school?

20 A. Centenary College. I taught probably everything during  
21 the period of eight years.

22 Q. Would that include tax accounting methods?

23 A. Yes, sir.

24 Q. Would that include courses on the Internal Revenue Code?

25 A. Well, we only had one or two courses in income tax. It

1 would have been all encompassing. So I didn't have a separate  
2 course called that.

3 Q. So any tax topics would be covered in a course that's not  
4 specifically --

5 A. That's right --

6 Q. -- devoted to that?

7 A. -- all I taught in regard to taxation were undergraduate  
8 tax courses, the first and second.

9 Q. Can you tell the jury the substance of those courses that  
10 you taught.

11 A. The primary subject included -- the first course was  
12 individual income taxation. The second course was partnerships  
13 and corporations, and you had a little smattering of getting  
14 into the Internal Revenue Code, but not that much.

15 Q. Well, in your practice -- well, in your undergraduate  
16 courses as well as at Mississippi State, did you specifically  
17 study specific provisions of the Internal Revenue Code?

18 A. Well, by its nature, when you take the income tax  
19 courses, I mean, you are learning the Internal Revenue Code in  
20 that the textbooks refer back to the code and you do tax  
21 research. So indirectly, I was.

22 Q. So when you say you do tax research, is that reference to  
23 the Internal Revenue Code?

24 A. The Internal Revenue Code and other things, such as the  
25 regulations, such as court cases, and so forth.

1 Q. Now, when you and I talk about the Internal Revenue Code,  
2 I can just merely hold this up (indicating) and you recognize  
3 it, right?

4 A. Two books, yes, sir.

5 Q. Basically, if you order a copy of the Internal Revenue  
6 Code, depending on the publisher, you'll get books about this  
7 thick (indicating)?

8 A. I've got two books, different cover, in my briefcase,  
9 same thing.

10 Q. Okay. And regulations, if we had regulations, the income  
11 tax regulations or all the tax regulations here in the  
12 courtroom, we'd have --

13 A. About seven books.

14 Q. Okay, seven books. So it's a lot of material?

15 A. Yes, sir.

16 Q. Is it complex?

17 A. Yes, sir.

18 Q. Incredibly complex?

19 A. Yes, sir.

20 Q. Most accountants, do they consult the Internal Revenue  
21 Code and the regulations when they do tax work?

22 A. Well, we end up thinking after a while we probably know  
23 it or think we have a good understanding of it. I would hope  
24 most CPA's know what they don't know.

25 Q. Okay. You first met Tommy Cryer, according to your

1 direct testimony, about 15 years ago, which would be about '92,  
2 right?

3 A. I think that's right. I don't really recall, but  
4 sometime about then.

5 Q. So sometime in the early '90s?

6 A. I think so.

7 Q. And that would be in reference to some business matter.  
8 Might it have involved a mutual client?

9 A. Oh, it was a mutual client.

10 Q. And y'all worked together on that mutual client's  
11 problems that involved an accountant, you, right?

12 A. I'm not sure I understand the question.

13 Q. Okay, let me -- okay. The client -- you had a mutual  
14 client that caused the two of y'all to come together, right?

15 A. Yes, sir.

16 Q. And it involved legal matters and accounting matters;  
17 that's the reason why the two of y'all teamed up, so to speak,  
18 to work on your client's problems?

19 A. I guess so. Yes, sir.

20 Q. Fair characterization?

21 A. Fair.

22 Q. You had frequent contact from whenever that happened over  
23 the years?

24 A. With Mr. Cryer?

25 Q. Yes.

1 A. Yes, I have.

2 Q. You've had other mutual client problems that you've  
3 worked with, right?

4 A. Yes, I have.

5 Q. Okay. He's even used you, called you, as the case might  
6 be, to work with him on some of his clients?

7 A. Yes, he has.

8 Q. So you had a real good business relationship with him and  
9 you knew him to be a lawyer here in Shreveport?

10 A. Yes, sir.

11 Q. All right. When was it that he came to you to first talk  
12 about these years '97 through 2003?

13 A. I think it was the latter part of '03 or '04. I get my  
14 years mixed up. But it was one of those.

15 Q. So did he just pick up the phone, set up an appointment,  
16 and come by to see you and talk about it?

17 A. Tommy and I go back, and Tommy called and he said: "I'd  
18 like to come by and see you about something I got. Can I see  
19 you one afternoon?" And I believe it was a Friday Tommy came  
20 by and we visited about it.

21 Q. And you understood from what he told you that he wanted  
22 to do some profit and loss statements for the years '97 through  
23 2003?

24 A. Yes. I mean, yeah, that was what I was told he wanted me  
25 to do, was create the amount of profit and loss that he had



1 made in the business.

2 Q. Now, in order to generate profit and loss statements for  
3 each individual year, which I guess in this case was '97  
4 through 2003?

5 A. Yes, sir.

6 Q. You'd have to have access to his bank records?

7 A. Yes, sir.

8 Q. You'd have to have access to his checks?

9 A. Yes, sir.

10 Q. You'd have access to other accounting documents that he  
11 might maintain, correct?

12 A. Yes, sir.

13 Q. Now, when he requested you to prepare these profit and  
14 loss statements, did you request that he provide to you those  
15 items that I've just mentioned?

16 A. Yes, sir.

17 Q. Were there other items that you also wanted?

18 A. Yes, sir.

19 Q. Can you describe for the jury what those might be.

20 A. I think one of the things I asked Tommy was, I wanted him  
21 to tell me other things that may not be coming through the bank  
22 statements that I might not have known about. I also asked  
23 Tommy as I got into the bank statements about transactions that  
24 might appear not to be income. I might have a large deposit  
25 that came in and a check going out to, say, a client of Tommy

1 's, I wanted to make sure I was picking things up correctly. I  
2 wanted to make sure there weren't any notes coming into the  
3 bank accounts that I would call income not knowing any more,  
4 because, as I recollect, all the deposits may not have been  
5 itemized as to what they were for and so I had to get with  
6 Tommy to help me determine that.

7 Q. So as a case arose, you would confer with him?

8 A. Yes, sir.

9 Q. If you had a question, is this -- you mentioned notes.  
10 Did he have some notes receivable?

11 A. No. I think I was talk -- in my world, I was looking  
12 more at notes payable that Tommy may have borrowed money for a  
13 big case and may have had to pay it back, or may have gotten an  
14 inheritance. You know, I knew his wife had died. And so I was  
15 more interested in what's coming into this account that might  
16 not be income, plus what may -- not -- what may be income  
17 that's not coming through these accounts.

18 Q. You mentioned his wife died. Does that -- does his  
19 wife's death have a tax consequence?

20 A. No. But I was concerned that some of the in -- some of  
21 the things he may be, I might be looking at could be inherited  
22 items that maybe shouldn't be taxable.

23 Q. You have a judgment of recollection as to when his wife  
24 died?

25 A. No, I don't.

1 Q. Would '99 be about right?

2 A. I don't remember.

3 Q. Okay. Good. Did he openly and candidly provide to you  
4 everything that you needed?

5 A. Yes, sir.

6 Q. And you totalled up all the receipts that had been  
7 received by his law practice, correct?

8 A. Yes, sir.

9 Q. And you did it for all these years, '97 through 2003?

10 A. I went further than that. I prepared detailed  
11 statements. It wasn't just a total. I actually made a  
12 detailed spreadsheet by item so that we could have something to  
13 fall back on, as opposed to just getting a total.

14 Q. Okay. But you did it for '97 through 2003, everything  
15 that came in the business, right?

16 A. Everything that came in the business, I attempted to  
17 determine whether it should be taxable or not.

18 Q. And you went through all of his records that would relate  
19 to deductions --

20 A. Yes, sir.

21 Q. -- correct? And you ended up with a bottom line; is that  
22 about right?

23 A. Yes, sir.

24 Q. On a profit and loss statement?

25 A. Yes.

1 Q. So, in essence, what you -- if we had here in the  
2 courtroom your profit and loss statements, that would just  
3 simply say, basically, the net that he made from his law  
4 practice?

5 A. Yes, sir. Which would have been the same thing we just  
6 looked at earlier.

7 Q. Now, the profit and loss statements that you prepared at  
8 his request did not disclose any amount of tax that would be  
9 due; is that right?

10 A. That's correct.

11 Q. And that's all he wanted?

12 A. It's all he wanted at that time, from what I recall.

13 Q. Now, about how long, how much time did you spend on  
14 generating these profit and loss statements? A couple weeks?  
15 A couple months?

16 A. No more than -- no more than a couple weeks.

17 Q. So within two or three weeks after him coming in, you had  
18 completed the work?

19 A. No. Originally, Tommy needed it for -- I forget why, but  
20 he wanted it fairly quick. So I worked on it, and then I think  
21 Tommy was out of town or something, from what I recall, and we  
22 didn't get back together for two to three months after I  
23 started, and then I believe I completed it. But most of the  
24 work was done by me during that initial period of time.

25 Q. So within a couple of weeks --

- 1 A. I had done most of --
- 2 Q. -- you did most of the work?
- 3 A. Yes, sir.
- 4 Q. And then he contacted you again saying, "Mr. McGovern,
- 5 please finish it," and that's what you did?
- 6 A. Yes, sir.
- 7 Q. And it might have been two or three months later?
- 8 A. Yes, sir.
- 9 Q. Okay. Good enough. And you thought that those profit
- 10 and loss statements were accurate?
- 11 A. Yes, sir.
- 12 Q. Based on his records that he freely provided to you?
- 13 A. Yes, sir.
- 14 Q. Did he ever make a statement to you or request that you
- 15 should calculate what his taxes were for these years?
- 16 A. I thought he did.
- 17 Q. Okay. You specifically recall?
- 18 A. No, I don't.
- 19 Q. At whose request were these returns prepared?
- 20 A. Well, if he didn't --
- 21 Q. Let me withdraw -- let me refer back to a question.
- 22 A. All right.
- 23 Q. When you were developing these profit and loss
- 24 statements, I think you said on direct, well, to do that, you
- 25 basically used your tax computer program, right?

1 A. No. I may have said that. I didn't mean to say that.  
2 When I -- when I developed these profit and loss spreadsheets,  
3 I used an Excel spreadsheet program. Once we had determined  
4 that what net income number was, then I -- which was later -- I  
5 calculated the tax.

6 Q. So you had a meeting where the two of y'all sat down and  
7 you showed him what the profit and loss statements disclosed?

8 A. If I recall, Mr. Cryer actually took what I had with him  
9 and reviewed it and then we got back together.

10 Q. Okay.

11 A. Yes.

12 Q. Did he ever request you prepare returns for him?

13 A. I would have thought he would have or wanted to know what  
14 the liability was, because I don't know why I would have done  
15 it otherwise.

16 Q. But as you sit here in this courtroom right now, you  
17 don't have any specific recollection or even a general  
18 recollection that he requested you to prepare returns?

19 A. I don't know why I would have had he not asked, but I  
20 don't have any recollection sitting in this courtroom.

21 Q. Okay. But in any event, for whatever reason, returns  
22 were made by you?

23 A. By me.

24 Q. Okay. At some stage, Mr. Sandefur came by your office,  
25 right?

1 A. That's correct.

2 Q. You have a judgment or recollection as to when that  
3 happened?

4 A. No, I don't. It's --

5 Q. Just how about --

6 A. -- 2006, two thousand-something, yeah.

7 Q. And on that occasion, was Mr. Cryer aware that you were  
8 meeting with Mr. Sandefur?

9 A. I called Mr. Cryer after Mr. Sandefur left, because, you  
10 know, I'm not too familiar with these type of situations, and I  
11 told Mr. Sandefur that, and I told Mr. Cryer that they had  
12 visited with me.

13 Q. Did he make any objections to you about turning over  
14 records?

15 A. No, he did not.

16 Q. Did he tell you to go ahead and turn them over?

17 A. Yes, he did.

18 Q. So you turned over to Mr. Sandefur the profit and loss  
19 statements, correct?

20 A. Yes. I don't know I did that the initial meeting, but I  
21 did later on. Yes, I did.

22 Q. And did you turn over to him the tax returns you had  
23 prepared?

24 A. Yes, I did.

25 Q. Did Mr. Cryer know that you were giving the profit and

1 loss statements and the tax returns to Mr. Sandefur?

2 A. Yes, he did.

3 MR. BECRAFT: One moment, Your Honor.

4 BY MR. BECRAFT:

5 Q. On the topic of the returns that you prepared, you first  
6 prepared the profit and losses statements and then later you  
7 prepared the returns?

8 A. That is correct.

9 Q. Did you have a conversation with Mr. Cryer about those  
10 returns?

11 A. I'm sure I did, yes, sir.

12 Q. Okay. Did you deliver copies or the originals of those  
13 returns to him?

14 A. I believe I did.

15 Q. Did you have conversations with him about those returns?

16 A. I believe I did.

17 Q. And what was the general nature of the conversation?

18 A. Was that I had prepared these returns based upon the  
19 profit and loss that we had calculated for the business.

20 Q. And did you ever know that Mr. Cryer had or had not filed  
21 returns for these years?

22 A. Oh, I knew that. I had had conversations, I believe,  
23 during this period of time with the lady that was the federal  
24 prosecutor working for the government and I had had  
25 conversations with her to let her know I was working on the



1 profit and loss statements. So I was aware that the returns  
2 had not been filed.

3 Q. So the returns would have been delivered by you to  
4 Mr. Cryer, let's say sometime in 2006?

5 A. The date escapes me, but it was before I gave them to  
6 Mr. Sandefur.

7 Q. Whatever date that is?

8 A. That's correct.

9 Q. And so you gave him copies of those returns?

10 A. Yes, sir.

11 Q. Do you know what happened to them after that?

12 A. No, sir.

13 Q. You said that Mr. Cryer had a tax liability for these  
14 years '97 to 2003, right?

15 A. I calculated one. Yes, sir.

16 Q. Now, is that based upon your conclusion about what a tax  
17 liability is, is that based upon manuals of the IRS, or is that  
18 based on the Internal Revenue Code?

19 MR. CAMPBELL: Objection. Compound question.

20 MR. BECRAFT: I'll --

21 THE COURT: Rephrase that. Sustained.

22 BY MR. BECRAFT:

23 Q. The -- your statement there that he had a tax liability  
24 for this year, is it based upon your understanding of what's  
25 provided in manuals by the IRS?

1 A. No.

2 Q. Is it provided based upon the Internal Revenue Code?

3 A. Yes.

4 Q. And that conclusion that he had a tax liability, does it  
5 arise from your sitting down and preparing the return and  
6 ultimately seeing that there's taxes due pursuant to the  
7 return?

8 A. (No audible response.)

9 Q. If you don't understand my question, let me know. I need  
10 to make them clear.

11 A. I think I need to try that one again.

12 Q. You reached the conclusion he had a tax liability by  
13 using the form itself, right?

14 A. The form?

15 Q. The form.

16 A. The tax forms?

17 Q. Yes.

18 A. Correct.

19 Q. The 1040 form.

20 A. Correct. Right.

21 Q. What you prepared was a 1040 form, right?

22 A. Correct. Correct.

23 Q. Now, an accountant like you doesn't -- I guess you have a  
24 program where you --

25 A. I do.

1 Q. -- just insert numbers, right?

2 A. Yeah.

3 Q. And once you insert the numbers and you hit the key for  
4 the printer, it will print out the form?

5 A. It's not that easy. I've got to charge a fee, remember.

6 Q. Oh, yeah. But, I mean, the computer --

7 A. You're right. The computer calculates the tax based upon  
8 what I put in.

9 Q. And the form is printed out, right?

10 A. The form is printed out.

11 Q. So both -- the insertion of the numbers happens on the  
12 screen, and the form itself, when you hit the Print button, it  
13 will print out the form, right?

14 A. Right.

15 Q. The calculation or the amount of tax, is that determined  
16 by the computer itself?

17 A. Yes. Or the software program.

18 Q. Okay. Well, do you ever consult, to determine the amount  
19 of tax, do you ever consult anything like the Internal Revenue  
20 Code?

21 A. Do I ever go to look, see if the calculation would agree  
22 with the Code?

23 Q. Correct.

24 A. No, I don't.

25 Q. So in this situation, when you saw the computer printout,

1 gee, this amount of taxes -- if we had the forms here in court,  
2 which are similar to Government Exhibit No. 40, correct?

3 A. Correct.

4 Q. If we had the forms here in court with us, the bottom  
5 line would say whatever the Government Exhibit 40 says for 2000  
6 or 2001; that's what was on that form?

7 A. Yes, sir.

8 Q. Which was generated by the computer program itself?

9 A. Yes, sir.

10 Q. And you didn't compare that to the Internal Revenue Code?

11 A. No.

12 Q. That figure?

13 A. No, I didn't.

14 Q. Okay. What part of your business is devoted to preparing  
15 tax returns?

16 A. Probably 60 to 70 percent.

17 MR. BECRAFT: One moment, Your Honor.

18 THE COURT: All right.

19 MR. BECRAFT: Nothing further, Your Honor.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. CAMPBELL:

23 Q. Mr. McGovern, so we get a clear picture of the work you  
24 perform, you did -- did you do more as far as working with  
25 Mr. Cryer's records than just punching numbers in the computer?

1 A. Well, yeah. I mean, the actual work from the standpoint  
2 that to get at the data was all done in the spreadsheet that we  
3 discussed earlier. When you get the spreadsheet data and you  
4 input the data, the tax, based upon the software I use, should  
5 be an automatic.

6 Q. In order to get to that stage, you had to sit down, would  
7 it be fair to say, you had to sit down and look at the bank  
8 records?

9 A. Oh, yeah. I had already gone through that with the  
10 preparation of the spreadsheets.

11 Q. And did you analyze the transactions to determine, based  
12 on your understanding of the Code, whether this would be  
13 income?

14 A. Yes, sir.

15 Q. Okay. And I believe that you stated with Mr. Becraft's  
16 questions that there were times when you consulted with  
17 Mr. Cryer to determine, if there were any questionable items,  
18 to determine whether it was income or not?

19 A. That's correct.

20 Q. So not only did you work on it, but Mr. Cryer  
21 participated to some extent?

22 A. I asked him to, and I believe -- yes, sir.

23 Q. Now, let's talk about this term profit and loss  
24 statement. Did your work just merely include, you know,  
25 totalling up profits and comparing the losses -- excuse me,

1 totalling up what's gross and then doing the losses to see what  
2 the profits are?

3 A. Well, the profits are what's left over after you've done  
4 everything else. I mean, it's a -- you know, we are  
5 simplifying it. It ends up being income less expense. But the  
6 work was performed in analyzing every transaction for this  
7 period of time, analyzing every deposit and looking at every  
8 expense to determine if it should be taxable as an income item  
9 or should it be deductible as an expense. The net of all that  
10 is this profit and loss that we're talking about.

11 Q. And part of the profit and loss calculations would  
12 necessarily include inputting tax liability? Would that be  
13 included in the profit and loss?

14 A. Well, we're talking about profit and loss for tax returns  
15 and we could be talking about profit and loss for financial  
16 statements. But the tax liability, if you're talking about the  
17 number itself, would not have been something when I did the  
18 profit and loss that I would have calculated.

19 Q. Now, it's your understanding, based on your conversations  
20 with Mr. Cryer, that this work that you was doing was just for  
21 a financial statement, for example, one that would be attached  
22 to a loan application to a bank or something?

23 A. No. I believe when I started I knew that Mr. Cryer was  
24 in conversations with the IRS as to what we were -- what was  
25 going to happen and that this was something that was needed.

1 Q. Now, you stated during Mr. Becraft's testimony that they  
2 were -- that you couldn't recall exactly the scope of what  
3 Mr. Cryer asked you to do. Remember that?

4 A. Okay.

5 Q. I want to show you what I'm just going to mark for  
6 identification purposes only as Government Exhibit 43. Will  
7 you identify Government Exhibit 43.

8 A. This is a -- on my letterhead. It's dated February the  
9 4th, 2005, and it's entitled "Memo of Work Performed for Tommy  
10 Cryer."

11 Q. I'm just going to put it here (indicating) so the Court  
12 can see it as well.

13 A. Okay. All right.

14 MR. CAMPBELL: Can the Court see that?

15 THE COURT: Yes.

16 BY MR. CAMPBELL:

17 Q. Can you see it on your screen?

18 A. I'm glad they can; it's a little blurry for me.

19 Q. I'll get a copy, another copy. (Hands document to  
20 witness.)

21 Now, what I want you to do is read the first paragraph to  
22 yourself.

23 A. Okay, "Mr. . . ." --

24 Q. Just read it to yourself.

25 A. All right.

1 Q. Now, after reading that first paragraph, is your memory  
2 more refreshed as to the scope of the work that Mr. Cryer asked  
3 you to do?

4 A. Yes. I mean, I --

5 Q. Just tell the jury what that would be.

6 A. Well, the first paragraph says that --

7 Q. Without reading the paragraph, just tell them based on  
8 what you now recall, after reading that, what was the scope of  
9 the work that Mr. Cryer asked you to do.

10 A. Mr. Cryer in November '04 contacted me about compiling  
11 some data for the years 1997 through 2003.

12 Q. And what was the purpose of that data?

13 A. The purpose of the data?

14 Q. Yes. And read the first sentence.

15 A. Preparation of his tax returns, per my memo.

16 Q. Thank you.

17 MR. CAMPBELL: No further questions, Your Honor.

18 THE COURT: All right. You may step down.

19 May Mr. McGovern be released from his subpoena?

20 MR. BECRAFT: No objection, Your Honor.

21 THE COURT: Mr. McGovern, you may return to your  
22 office. You're released. Thank you.

23 Mr. Campbell, you're ready with your next witness?

24 MR. CAMPBELL: Yes, Your Honor. The Government calls  
25 Agent Jimmy Sandefur.



1 (Witness sworn.)

2 DIRECT EXAMINATION

3 BY MR. CAMPBELL:

4 Q. Good morning.

5 A. Good morning, Mr. --

6 Q. Will you please introduce yourself to the members of the  
7 jury.

8 A. My name is Jimmy H. Sandefur. I'm a supervisory special  
9 agent with IRS, Criminal Investigation, here in Shreveport.

10 Q. And how long have you been a supervisor?

11 A. I've been a supervisor during two phases, Mr. Campbell.  
12 The first time was February 2003 through August 2004. That was  
13 in Jackson, Mississippi. And then I've been the supervisor in  
14 Shreveport since August 2004. Excuse me, August 2006.

15 Q. What are some of your general duties and  
16 responsibilities?

17 A. As a supervisor, I am the manager for a group of special  
18 agents. The special agents, our duties are to investigate  
19 criminal violations of the Internal Revenue Code and related  
20 statutes.

21 Q. Let's talk about your background. How long have you been  
22 with the IRS?

23 A. I've been with the IRS since 1988. I began that job as a  
24 revenue officer in the Collection Division. And basically what  
25 revenue officers do are work with taxpayers, deal with

1 taxpayers who are delinquent on filing or paying. But that's  
2 in a civil capacity; it's not a criminal capacity. And I  
3 transferred to Criminal Investigation Division in 1994.

4 Q. And as part of your training, would it include becoming,  
5 having some level of comfort and familiarity with the Internal  
6 Revenue Code, IRC?

7 A. I'm familiar with it. I'll be honest: I'm not an  
8 accountant. That's not our job as criminal investigators. Our  
9 primary job is to investigate criminal violations. Now,  
10 because of the nature of the work, working for IRS, of course,  
11 I am familiar with the Code somewhat. I'm not an expert, but  
12 I'm familiar with general basics of the Code.

13 Q. Yes. Part of criminal investigation, would that include  
14 investigating crimes regarding persons who have either failed  
15 to file a return and/or pay taxes?

16 A. Yes, sir.

17 Q. Now, were you involved in the investigation of Tommy  
18 Cryer?

19 A. Yes.

20 Q. Now, did the case start out as yours?

21 A. No, sir. This case was referred to Criminal  
22 Investigation from our Examination Division. It originated, I  
23 believe, in early 2001. There was a revenue agent in the  
24 Shreveport office by the name of Clair Bullock, and Ms. Bullock  
25 initiated an examination, what most people refer to as an

1 audit, of Mr. Cryer. The case was referred to Criminal  
2 Investigation I believe in May 2002, and we initiated a  
3 criminal investigation on Mr. Cryer for failure to file  
4 personal income tax returns.

5 Q. And during the course -- let's talk about some of the  
6 things you did during the course of your investigation. Did  
7 you talk to particular witnesses?

8 A. Yes. The first thing I did, we -- and there was also,  
9 let me clarify, another agent. I went to Mississippi during  
10 this time frame, as I explained. And when I left, another  
11 agent was assigned to the investigation. He moved on to  
12 Houston. So when I came back in 2006, I re-inherited this  
13 investigation. So when I say we, I'm referring to either  
14 myself or the other agent.

15 Q. Now, without telling the jury what witnesses may have  
16 told you, can you describe the kind of witnesses that you spoke  
17 with.

18 A. Well, I spoke to Mr. McGovern, per his testimony just a  
19 few minutes ago, and basically I acquired from Mr. McGovern the  
20 spreadsheets that he prepared based on his analysis of the bank  
21 statements and other items he obtained from Mr. Cryer.  
22 Furthermore, we subpoenaed those bank records. And as I  
23 recall, there were four bank accounts that we looked at  
24 specifically. We looked at a personal account named "Tommy  
25 Cryer"; a business operating account, "Tommy Cryer, Attorney at

1 Law," and that was at Regions Bank; another one, "Tommy Cryer,  
2 Attorney at Law." I believe that one was at First Louisiana  
3 Bank. And also a trust account. That's an account attorneys  
4 have to put money in escrow for their clients while they're  
5 performing legal services for the client.

6 Q. Now, did you examine the records from all those accounts?

7 A. Yes.

8 Q. Did you also talk to -- from those records, did you get  
9 names of clients who wrote checks to Mr. Cryer?

10 A. Right. As part of my corroboration of the work that  
11 Mr. McGovern had done, I prepared a spreadsheet very similar to  
12 what he did and listed out the checks, the deposit items to  
13 Mr. Cryer's bank account, and identified those by name; for  
14 example, John Doe, a check to Tommy Cryer for \$1,000. And me  
15 and other agents interviewed a sampling of those clients to  
16 determine the purpose of the check. And when I say  
17 interviewed, we would basically approach the witness, identify  
18 ourselves and say: I'm here to ask you about this check, can  
19 you please tell me the purpose of this check. It was either  
20 for legal services or not. And that's how I determined what --  
21 I corroborated Mr. McGovern's spreadsheets and my spreadsheets  
22 that most of the deposits to the account, not all, but a  
23 majority of the deposits to the bank accounts were legal  
24 income.

25 Q. Now, what's the relevance of talking to clients to

1 determine whether the check that they wrote -- I mean  
2 relevance, relevance to your investigation -- to determine  
3 whether the check that they wrote was for legal services?

4 A. The scope of my investigation was to determine if  
5 Mr. Cryer had a filing requirement, in other words, a legal  
6 obligation to file a tax return for 2000 and 2001. And  
7 Internal Revenue Code Section 61 says gross income includes  
8 income derived from business. Mr. Cryer's an attorney, he  
9 practices, has a business, and so I needed to determine to see  
10 if he had the requirement to file a tax return; therefore, I  
11 needed to know if there were legal services. Let me give you  
12 one example. One check I recall was from Porter's Cleaners in  
13 2001. We contacted them and it was for reimbursement for  
14 damaged dry-cleaning. That would not be considered income.  
15 That's a reimbursement.

16 Q. So after you talked to various clients to confirm whether  
17 or not they wrote checks in exchange for legal services, did  
18 you start to put together your own spreadsheet to determine  
19 some tax liability?

20 A. Yes. Much in the same way that Mr. McGovern had  
21 testified today, I looked at the bank statements, I prepared a  
22 spreadsheet with the deposits to the account by check, by  
23 deposit. I analyzed that and I came up with a gross income  
24 figure for Mr. Cryer for 2000 and 2001, specifically.

25 Q. Now, I want to show you what's been marked as Government

1 Exhibit 42, and is that the, I guess the chart that you  
2 prepared after examining Mr. Cryer's bank records and talking  
3 to some of his clients?

4 A. Yes. This is a summary of the gross income earned by  
5 Mr. Cryer from 1997 through 2001.

6 Q. And would it be fair to say you did similar work that  
7 Mr. McGovern did?

8 A. It was very similar, yes, sir.

9 Q. And used some of the same documents, as a matter of fact?

10 A. Matter of fact, we used pretty much basically the same  
11 documents, the bank statements that we mentioned previously,  
12 and I referred to Mr. McGovern's work papers as a starting  
13 point for my work.

14 MR. CAMPBELL: I move Government Exhibit 42 in  
15 evidence, Your Honor.

16 MR. BECRAFT: No objection, Your Honor. Is that 42?

17 MR. CAMPBELL: 42. I'm going to get to 44.

18 THE COURT: 42 is received in evidence.

19 BY MR. CAMPBELL:

20 Q. Now, I don't want to start with --

21 MR. CAMPBELL: Publish to the jury, Madam Clerk.

22 BY MR. CAMPBELL:

23 Q. Now, would it be fair to say that this spreadsheet is  
24 structured the same way as Government Exhibit 40, the one for  
25 Mr. McGovern?

1 A. Yes. We start out with the top line, gross income. We  
2 deduct business expenses and one-half of self-employment taxes  
3 the same way as described by Mr. McGovern. From that, we  
4 determined an adjusted gross income. Then we have a standard  
5 deduction and exemptions. We get down to taxable income, tax  
6 due, income tax, self-employment tax, for a total tax less  
7 withholdings, and that's -- the bottom line is the tax.

8 Q. I'm not going to go through each one like we did for  
9 Mr. McGovern, but would it be fair to say that your total tax  
10 liability for '97 to 2000 is less than the figure that  
11 Mr. McGovern came up with?

12 A. Yes. Um --

13 Q. Let me stop you right there. And can -- is it  
14 possible -- I don't know if it would be possible to do a side  
15 by side of the total figure. It would be Government Exhibit 40  
16 for Mr. McGovern.

17 THE CLERK: I don't think you're going to be able to  
18 see it. You're not going to be able to see it.

19 MR. CAMPBELL: Can you just pull up Government  
20 Exhibit 40 briefly.

21 BY MR. CAMPBELL:

22 Q. Now, Mr. McGovern on tax liability was roughly \$169,000.  
23 \$169,494?

24 A. Yes, sir.

25 Q. Now pull up yours, which would be 42. Your tax liability

1 is \$137,314.19?

2 A. 91 cents.

3 Q. 91 cents.

4 A. Yes.

5 Q. So, roughly, it's about a \$30,000 difference between  
6 yours and Mr. McGovern's?

7 A. There's a couple of reasons for that. If I could  
8 explain?

9 Q. Sure.

10 A. One of the most basic reasons is Mr. McGovern used the  
11 single filing status. When you're unmarried and single and you  
12 claim that status, that's a higher tax rate. I used a married  
13 filing jointly for Mr. Cryer for the entire period '97 through  
14 2001. Also, if you'll -- there are some differences, if you  
15 look at the top line, gross income, between Mr. McGovern's  
16 figures and my figures. And my figures are generally less than  
17 his figures, and the reason for that is, as I said, I used  
18 Mr. McGovern's work papers as a starting point, but going  
19 through his work papers, I identified some items that were not  
20 taxable; for example, the check from Porter's Cleaners. There  
21 were also some minor errors in Mr. Cryer's calculations; for  
22 example, there were transfers between accounts, a \$1,000 check  
23 in this account and it was transferred to another account and  
24 it was picked up twice, so I backed that out. And then there  
25 were some items that I just didn't feel were taxable. As I



1 said, my starting point for this analysis was, I wanted to  
2 determine what Mr. Cryer's income was from his law practice and  
3 legal services for 2000 and 2001.

4 Q. So you took a more conservative approach as far as coming  
5 up with these calculations?

6 A. Yes.

7 Q. Now, you stated earlier that, as part of your work, you  
8 do have a, sort of like a basic working understanding of the  
9 Internal Revenue Code?

10 A. A basic understanding.

11 Q. And you stated earlier that income based on Section 61 is  
12 income received or gross receipts from a business?

13 A. Right.

14 Q. That definition guided you to determine what was income  
15 for Mr. Cryer?

16 A. Right. The law says under Internal Revenue Code  
17 Section 61 that gross income is income from any source, and  
18 included in that definition is income derived from a business.  
19 And as I've explained before, Mr. Cryer is an attorney in  
20 business. Our Internal Revenue Code Section 6012 says you must  
21 file a return if -- and each year the figures change, but  
22 basically Internal Revenue Code Section 6012 says that if you  
23 have gross income exceeding the amount of your personal  
24 exemptions and standard deductions, you must file an income tax  
25 return. So, for example, in 2000, a single person, if they

1 earned over \$7,200, they were required to make an income tax  
2 return. Gross income, regardless of taxable income. I could  
3 have gross income of \$7200 and have no tax due and owing, but I  
4 still have to make a tax return. A married person filing  
5 jointly with their spouse for that year 2000, that figure jumps  
6 up to \$12,950, I believe. And again, that's because of you're  
7 getting an extra exemption for your spouse. Now, for 2001,  
8 those figures would increase. Every year they generally  
9 increase. And the figure would be \$7,450 for a single person  
10 and \$13,400 for a person who's married filing with their  
11 spouse.

12 Q. And so based on that, the gross income that Mr. Cryer had  
13 made in this business far exceeded the threshold for filing?

14 A. Yes, sir.

15 Q. And what is your understanding as far as the date that  
16 filings are to be made?

17 A. Again, I would refer to the code. I'm no expert, but  
18 Internal Revenue Code Section, I believe it's 6072 -- as  
19 Mr. Becraft pointed out, it's a voluminous book. It's a big,  
20 thick book. But Internal Revenue Code Section 6072 defines  
21 when a tax return is due, and for an individual that's April 15  
22 following the calendar year that you've earned the money. For  
23 example, in 2001 -- excuse me, 2000, it would be April 15 of  
24 2001, unless that date falls on a Saturday or Sunday, a  
25 weekend, and then you go to the following Monday.

1 Q. And that would explain why in one of the, I believe  
2 Count 1 of the indictment you have an April 17 date as opposed  
3 to an April 15 date?

4 A. April 17, yes. And, actually, I think I made an error,  
5 Mr. Campbell. I think, actually, the due date was April the  
6 16th, but -- a day.

7 Q. So you get one more day. And then the same is true for  
8 the following year, April 15?

9 A. April -- the 2001 return for an individual who earned  
10 personal income per the guidelines I previously stated, that  
11 would be due on April the 15th, 2002.

12 Q. Because we have 2000 and 2001 charged in the indictment,  
13 is that correct?

14 A. Right.

15 Q. So you have one due date; that would have been for  
16 April 15, 2002, for 2001?

17 A. Yes, sir.

18 MR. CAMPBELL: No further questions, Your Honor.

19 THE COURT: All right. Mr. Becraft, your cross-  
20 examination.

21 CROSS-EXAMINATION

22 BY MR. BECRAFT:

23 Q. Mr. Sandefur, I believe you said you've been a special  
24 agent with the CID, but you became a CID agent in 1993, right?

25 A. 1994.

1 Q. Okay. What is your educational background?

2 A. I have a bachelor's of arts degree from Northwestern  
3 State University in Natchitoches.

4 Q. And when did you graduate?

5 A. 1986.

6 Q. And what did you do after that?

7 A. I went to graduate school for about a year, and then in  
8 1988 I started working for Internal Revenue Service.

9 Q. And that was as a revenue agent, right?

10 A. A revenue officer.

11 Q. Okay. What background did you have in college in  
12 reference to accounting and matters like that?

13 A. I had a minor in business administration, and as I  
14 recall, I had approximately 15 hours in accounting.

15 Q. Okay. So by the time you graduated from college, you  
16 had, you know, an accounting background that enables you to do  
17 basically what you do today?

18 A. Well, actually, no, Mr. Becraft. As I said, I was a  
19 revenue officer and that job is completely different than a  
20 special agent. Basically, a revenue officer deals with  
21 delinquent taxpayers with their delinquent filings or payments,  
22 and frankly, there's not a lot of accounting involved in that.

23 Q. Okay. So you were a revenue officer from '88 to '93,  
24 right?

25 A. 1994.

1 Q. '94, okay. And then you became the special agent?

2 A. Yes, sir.

3 Q. Okay. But in that period of time before you became a  
4 special agent and you were a revenue officer, did you have to  
5 take courses that were offered by the IRS, like further  
6 educational courses?

7 A. We had what we call CPE, continued professional  
8 education, occasionally, yeah.

9 Q. When you were in college, did you study the Internal  
10 Revenue Code?

11 A. No, sir.

12 Q. Okay. When you became a revenue officer and were working  
13 with the IRS, did you take courses in the Internal Revenue  
14 Code?

15 A. No. As I said, Mr. Becraft, I had a basic understanding.  
16 One of my jobs as a revenue officer was to solicit and obtain  
17 delinquent returns. Therefore, I needed a basic understanding  
18 of how much money required a return to be filed, so.

19 Q. So prior to you becoming a special agent in '94, you were  
20 working with the IRS at a particular office where?

21 A. Shreveport.

22 Q. Okay. So you became a special agent in '94 and you  
23 worked in Shreveport as a special agent till you moved to  
24 Mississippi, as you mentioned during your direct testimony?

25 A. Yes, sir. In February 2003.

1 Q. And from 2003 until you came back was when?

2 A. August 2004 I came back to Shreveport.

3 Q. So less than a year?

4 A. 18 months.

5 Q. Okay, 18 months. When you became a special agent, did  
6 you take courses in investigative techniques?

7 A. Yes.

8 Q. Did you take courses in the Internal Revenue Code?

9 A. Again, we had an introduction to the Code and a basic  
10 understanding and introduction to the Code.

11 Q. Did you have -- you had courses in how to do like what  
12 you've done in this case, during the course of your testimony,  
13 prepare in essence a profit and loss statement?

14 A. Well, it was more than that, but yes. The method of  
15 proof, we had courses on what's called the method of proof, and  
16 part of, one of those was called the specific items method of  
17 proof. In other words, I looked at each check in the bank  
18 account.

19 Q. This case got its start when I think you said the lady by  
20 the name of Clair Bullet?

21 A. Ms. Bullock. Yes, sir.

22 Q. Okay. She was engaged in an audit in, sometime before --  
23 in 2001?

24 A. I believe it initiated, that audit initiated in  
25 January of 2001, or thereabouts. Yes, sir.

1 Q. And as a result of whatever she did, she ultimately said:  
2 Hey, I'm going to refer this to CID, Criminal Investigation  
3 Division, right?

4 A. Correct.

5 Q. And that happened in May of 2002?

6 A. Yes, sir.

7 Q. So when you received this case, it was in direct response  
8 to a referral by Clair Bullock, this IRS lady?

9 A. Yes, sir.

10 Q. Here in Shreveport?

11 A. Yes, sir.

12 Q. Okay. One of the first things that you do is you -- your  
13 ultimate goal is to get the, whatever documents you can to  
14 demonstrate what somebody made, right?

15 A. Yes, sir.

16 Q. And, ultimately, that was -- George McGovern is a party  
17 that basically provided that information to you?

18 A. Well, he provided part of it. As I mentioned in my  
19 direct testimony, we also obtained Mr. Cryer's bank records  
20 through subpoena and I analyzed those. But, yes, I did obtain  
21 a portion of my information from Mr. McGovern's work papers.

22 Q. So you were working up this case and you got bank records  
23 which would include the monthly statements, checks, things of  
24 that nature, correct?

25 A. Yes, sir.

1 Q. And would that be somewhere in like the end of 2004?

2 A. As I recall, Mr. Becraft, I got back to Shreveport, as I  
3 said, August 2004 and I was the only agent in Shreveport for a  
4 time.

5 Q. Okay.

6 A. This wasn't my only investigation.

7 Q. All right.

8 A. So it wasn't like I walked in the door and said:

9 Mr. Cryer's case, I'm going to start working on that today.

10 But it is a fair statement to say after I got back in 2004, the  
11 bank records were available to me and I began looking at them,  
12 yes, sir.

13 Q. Okay, good enough. Good enough. And, ultimately --  
14 you've heard the testimony from Mr. McGovern that he got the  
15 records I think sometime in November 2004 from Mr. Cryer,  
16 right?

17 A. Yes, sir.

18 Q. And as time went by, did you ultimately learn that  
19 Mr. McGovern had that material; right?

20 A. Yes.

21 Q. And you established contact with Mr. McGovern?

22 A. I did.

23 Q. Would that be, you know, sometime during the first half  
24 of 2005?

25 A. Actually, I think it was later than that, Mr. Becraft. I



1 want to say that I reached out and talked to Mr. McGovern in  
2 August 2005, summer of 2005.

3 Q. All right. Now, to your knowledge, Mr. McGovern was a  
4 CPA that had been hired to work on behalf of Mr. Cryer for  
5 these years '97 through 2003, correct?

6 A. Yes, sir.

7 Q. And once you learned that, you had some conversations  
8 wherein you obtained from Mr. McGovern whatever you needed,  
9 right?

10 A. His work papers, I did.

11 Q. Okay. What you've done in your testimony here today,  
12 you've had an opportunity to go through and probably spend a  
13 considerable amount of time with Mr. McGovern about his  
14 calculation that has ultimately led to the preparation of  
15 Government Exhibit 40, right?

16 A. Actually, I met with Mr. McGovern at his office one day  
17 for an hour, maybe a little bit longer than that, went back to  
18 my office, began analyzing his work, and then there were a  
19 series of fax transmissions back and forth, phone calls. Those  
20 totalled probably six, seven.

21 Q. I didn't hear the last part.

22 A. I'm sorry, sir. Those, the fax transmissions, the phone  
23 calls between totalled six or seven, you know, conversations.

24 Q. Okay. But Government Exhibit No. 40 which was offered  
25 through the testimony of Mr. McGovern -- he said that that's a

1 summary of his underlying profit and loss statements, right?

2 He delivered those to you, right?

3 A. He didn't deliver the, the spreadsheet, but he gave me  
4 the work papers that were used to come to the conclusion that  
5 is the spreadsheet.

6 Q. Okay. And what -- in order to generate Government  
7 Exhibit No. 40 which was offered during Mr. McGovern's  
8 testimony -- he looked at the screen. We all saw it up here.  
9 He said, "Yeah, this is highly accurate," or I guess it was a  
10 hundred percent accurate. But that document had been prepared  
11 by you based upon the materials that had been provided to you  
12 by Mr. McGovern?

13 A. Yes, sir, that's correct. What I did was analyze his  
14 spreadsheet, as I said, and the tax returns that he testified  
15 that he prepared, and based on those documents, the spreadsheet  
16 that was introduced as Exhibit 40, that was prepared.

17 Q. Okay. Now, so you had the information -- I'm presuming  
18 that Government Exhibits 40 and 42 were probably prepared about  
19 the same time, right?

20 A. As I recall, yes.

21 Q. Okay. But in any event, you used Government Exhibit 40  
22 as to kind of summarize the work of Mr. McGovern?

23 A. Yes.

24 Q. And then based upon the same type of documentation, you  
25 prepared Government Exhibit No. 42, which is your summary,

1 right?

2 A. Yes. Based on my earlier testimony, I looked at  
3 Mr. McGovern's work papers and threw out, for lack of a better  
4 term, items that I thought were not taxable, duplications,  
5 those type things.

6 Q. So, in essence, what -- you were uncomfortable with maybe  
7 some assumptions that Mr. McGovern had made and so you just  
8 said: I'm going to throw out and not consider this. And in  
9 essence, we end up with a summary on your part that's basically  
10 a fair characterization, be it less than Mr. McGovern's in  
11 reference to gross income and tax?

12 A. The figures generally are less, yes, sir.

13 Q. Okay. You had this case before you went to Mississippi,  
14 right?

15 A. That's correct.

16 Q. And you went out and talked to clients of Mr. Cryer?

17 A. Before I went to Mississippi, no, sir, I did not. As --  
18 before I went to Mississippi, this was an administrative tax  
19 case. And not to bore the jury, but an administrative case is  
20 one that is within the purview of IRS. It has not been  
21 referred to the United States Attorney's Office as a grand jury  
22 investigation. And during my initial stages of my  
23 investigation, I summonsed bank records, an administrative IRS  
24 summons. Mr. Cryer quashed those summons -- filed documents to  
25 quash, I should more accurately say. So between the time I

1 started my investigation and I left for Mississippi, I did not  
2 look at any bank records nor talk to any clients.

3 Q. Okay. And that only happened when you came back?

4 A. Yes.

5 Q. August 2004?

6 A. Yes.

7 Q. All right. The courses that you've taken regarding the  
8 Internal Revenue Code have been sponsored by the Internal  
9 Revenue Service, right?

10 A. Yes, sir.

11 Q. Have you been taught specific provisions of the Internal  
12 Revenue Code?

13 A. Yes. I've been exposed to them, made aware of them, yes,  
14 sir.

15 Q. Well, does that mean that you're basically sitting down  
16 and reading manuals and studying manuals that kind of summarize  
17 the Internal Revenue Code?

18 A. Actually, the Internal Revenue Code is law.

19 Q. My question is: Are you studying explanations of the  
20 Internal Revenue Code or are you actually studying the Internal  
21 Revenue Code itself?

22 A. Both. I've looked at explanations or course books, for  
23 lack of a better term, and I've also referred to the code.

24 Q. Okay. Now, you mentioned during the course of your  
25 direct testimony you're aware of Section 61 of the Internal

1 Revenue Code, right?

2 A. Yes, sir.

3 Q. And that would have been brought -- you didn't have any  
4 courses about the Code when you were in college?

5 A. No, I did not.

6 Q. You didn't have any courses about the Code when you were  
7 a revenue officer?

8 A. Well, I was exposed to it and referenced to it as I had  
9 to be aware of it to determine someone's filing requirement.

10 Q. But basically what you've learned about the Code has been  
11 while you've been a special agent?

12 A. I had some exposure prior to that, but --

13 Q. Okay. But in any event, as a special agent, they want  
14 you to sit down and at least take a look at some provisions of  
15 the Code?

16 A. Yes, sir.

17 Q. Now, you mentioned during the course of your direct  
18 testimony Section 61.

19 A. Yes.

20 Q. Doesn't it begin with the words except as otherwise  
21 provided?

22 A. It does.

23 Q. Okay. Do you know what is otherwise provided?

24 A. As I mentioned, Mr. Becraft, the Code is voluminous, but  
25 I also know that there are certain deductions and exemptions

1 you can take, but gross income as defined in Section 61 is  
2 identified, is characterized. One of the characteristics of  
3 that is income derived from a business.

4 Q. Well, let me kind of read it for you: "(A) General  
5 Definition. Except as otherwise provided" -- and this  
6 subtitle, Gross Income, means all income, right? You're  
7 familiar with that?

8 A. Uh-huh.

9 Q. ". . . from whatever source derived, including the  
10 following items," one of which is compensation for services.  
11 In fact, that's number 1.

12 A. Yes.

13 Q. Okay. So you're familiar with that?

14 A. Yes.

15 Q. But you can't tell us what the meaning of the first  
16 phrase is, "except as otherwise provided"?

17 A. No, I think I did attempt to explain that, Mr. Becraft.  
18 There are certain sections of the Code that give you  
19 exemptions. As we said, you can have nontaxable items that  
20 isn't included in your income.

21 MR. BECRAFT: One moment, Your Honor.

22 BY MR. BECRAFT:

23 Q. Have you ever had any conversations with Tommy Cryer  
24 himself?

25 A. I only met Mr. Cryer once in the investigative stage, and

1 that was in June of 2002, shortly after we initiated the  
2 investigation. And I met Mr. Cryer, along with Mr. Harp, at  
3 the, as I recall, the Broadmoor library in Shreveport at  
4 Mr. Harp's request, that location, not the meeting.

5 Q. Is it two times? The purpose was to engage in  
6 conversations with him?

7 A. One time I met with him during the investigative stage,  
8 and the purpose of that was -- prior to that, two weeks before,  
9 Mr. Harp had a valid power of attorney on file. I wrote  
10 Mr. Harp a letter and said: Mr. Harp, I'm an agent with  
11 Criminal Investigation, I understand you represent Mr. Cryer,  
12 Mr. Cryer is now the subject of a criminal investigation for  
13 these years, and I would like to meet with you to discuss that.

14 At that meeting, I met with Mr. Cryer and Mr. Harp. As I  
15 recall, Mr. Harp was the one who -- he and I had most of the  
16 interchange. Per our agency guidelines, I did advise Mr. Cryer  
17 of his Fifth Amendment rights to self-incrimination and asked  
18 him if he understood them, and he said yes.

19 Q. You knew that he was a lawyer at that time, right?

20 A. Yes.

21 Q. Did you know whether or not he did either civil or  
22 criminal work?

23 A. I knew he had a law practice on Youree Drive in  
24 Shreveport and, as I recall from the paper that was  
25 transferred, the case that was transferred from Ms. Bullock,

1 that he did general practice type of work.

2 Q. Okay. Did Mr. -- during the time that you met with him  
3 on this occasion that you just described, did Mr. Cryer make  
4 any statements?

5 A. No, sir.

6 Q. Okay. After -- that was the first meeting?

7 A. Yes.

8 Q. And you specifically recall he said nothing?

9 A. Well, I advised him of his rights and he said yes. But I  
10 do not recall, Mr. Becraft, him making any statements. As I  
11 said, the dialogue that day was primarily between me and  
12 Mr. Harp.

13 Q. Okay. Now, on the second occasion, that meeting would  
14 have lasted a short period of time, right?

15 A. As I said, during the investigative stage of the case,  
16 before the case was referred to the Department of Justice, I  
17 met with Mr. Cryer once.

18 Q. Okay. Was Mr. Harp present?

19 A. As I just said, yes.

20 Q. Okay. I thought your testimony is that you met with him  
21 twice?

22 A. During the investigative stage, I met with Mr. Cryer  
23 once. Mr. Harp was present.

24 Q. Okay. All right. And there's no other time?

25 A. Correct.



1 MR. BECRAFT: One moment, Your Honor.

2 BY MR. BECRAFT:

3 Q. Has Mr. Cryer ever made a statement to you that he would  
4 comply if you would provide him a section of the Internal  
5 Revenue Code that made him liable?

6 A. He sent a letter to Ms. Bullock, as I recall,  
7 January 2001, shortly after she contacted him, Mr. Becraft, and  
8 said: Please provide any evidence or items that you have that  
9 I earned gross income. I'm paraphrasing.

10 Q. Yes.

11 A. When I met with Mr. Cryer and Mr. Harp on -- in June of  
12 2002, I told Mr. Cryer that I reviewed this letter and other  
13 letters that he had provided through Mr. Harp which I  
14 characterized as frivolous. For example, one letter requested,  
15 said that an IRS letter --

16 Q. My question is different from that. Okay? My question  
17 that is pending right now is did Mr. Cryer make or ask such  
18 question of you on that occasion?

19 A. No, sir. Of me that day, no, sir.

20 Q. All right.

21 MR. BECRAFT: Nothing further, Your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. CAMPBELL:

25 Q. Kind of finish up on that meeting you had with Mr. Cryer,

1 you had started to answer a question about a letter that  
2 Mr. Cryer had sent that caught your attention?

3 A. During the course of the civil examination such as  
4 Ms. Bullock conducted, she requested certain records from  
5 Mr. Cryer. Again, at this point, this is not a criminal  
6 investigation. She's trying to get records to determine what  
7 his income was. She sent some letters and in response, through  
8 Mr. Harp, she got back letters that I would characterize as  
9 frivolous. Through my experience as a special agent, we get  
10 many letters from people who do not agree with the income tax  
11 laws, for whatever reason. One letter in particular I remember  
12 said this letter is invalid because it doesn't have an OMB  
13 number, an Office of Management and Budget number. It's  
14 frivolous. I mean, you don't need that. But this is delaying  
15 tactics that many people who espouse these beliefs try with the  
16 IRS.

17 So when I met with Mr. Cryer and with Mr. Harp in June of  
18 2002, I explained to them that Mr. Cryer was an attorney, to my  
19 understanding, at that time he had not filed a personal income  
20 tax return since 1992, and the arguments that he had been  
21 espousing to Ms. Bullock -- this was our first meeting, not to  
22 me -- were frivolous and that income had been defined by the  
23 Code, and he's an attorney, you earn money, you have to file,  
24 that's the law.

25 Q. So you just put it to him that bluntly?

1 A. I prepared a contemporaneous memo, Mr. Campbell, and I  
2 wrote the word "frivolous" in there.

3 MR. CAMPBELL: No further questions.

4 THE COURT: All right, sir. You may step down.

5 Mr. Campbell, we're now almost ten minutes after the  
6 noon hour. Do you have another witness for this afternoon?

7 MR. CAMPBELL: Subject to the Government's exhibits  
8 being properly admitted, I rest at this time.

9 GOVERNMENT RESTS

10 THE COURT: All right, ladies and gentlemen. The  
11 Government has rested its case. We're going to take a lunch  
12 break today till 1:30. Once again, if you need assistance in  
13 looking for a place to eat here in the downtown area, our court  
14 security officers will be glad to help you with ideas and give  
15 you directions. We will resume then at 1:30.

16 Mr. Campbell, if you would use a few minutes to be  
17 sure that your exhibits are in order and properly introduced.

18 Very well. We are in recess till 1:30. All rise for  
19 the jury.

20 (Jury exits courtroom.)

21 THE COURT: Court is in recess.

22 (Lunch recess had at 12:10 p.m.)

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## I N D E X

## WITNESSES FOR THE GOVERNMENT:

	Dir	Cross	Re- Dir	Re- Cross
Gloria Jackson.....	43	72	85	-
Gloria Worthey.....	87	91	95	-
George McGovern, III.....	98	113	131	-
Agent Jimmy Sandefur.....	136	146	160	-

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Government Exhibit No. 2 - 14.....	49	49
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C E R T I F I C A T E

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I, Marie Moran Runyon, Official Court Reporter, do hereby certify that the foregoing pages numbered 38 through 162 do constitute a true and correct record of proceedings had in said trial to the best of my ability and understanding.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Subscribed and sworn to this 14th day of August, 2007.

---

Marie Moran Runyon, RMR, CRR  
Federal Official Court Reporter  
300 Fannin Street, Room 4212  
Shreveport, Louisiana 71101  
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1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF LOUISIANA  
 3 SHREVEPORT DIVISION

4 UNITED STATES OF AMERICA \* Criminal Action  
 5 No. 06-50164  
 6 VERSUS \*  
 7 Shreveport, Louisiana  
 8 TOMMY K. CRYER \* July 10, 2007  
 9 Afternoon Session  
 \* \* \* \* \*

10 VOLUME III  
 11 TRANSCRIPT OF TRIAL  
 12 BEFORE THE HONORABLE S. MAURICE HICKS, JR.  
 UNITED STATES DISTRICT JUDGE, and a jury.

13 APPEARANCES:

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25 PROCEEDINGS PRODUCED BY MECHANICAL STENOGRAPHY AND TRANSCRIBED  
 BY COMPUTER.

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AFTERNOON SESSION

JULY 10, 2007

(Court called to order with defendant  
present at 1:45 p.m.)

THE COURT: Thank you. You may be seated. Anything  
to review before we get the jury in, for me to sign?

MR. BECRAFT: I don't know if this is the right  
posture, but I'm not going to make a Rule 29 at this time, Your  
Honor.

THE COURT: That's okay. It's up to you.

Mr. Campbell?

MR. CAMPBELL: We submitted the stipulations, and  
when you read them, I realized that there was one provision  
that referenced the trust. And so I redrafted it and omitted  
that reference, and we all signed it, and I believe you should  
have it right there.

THE COURT: It does not need to be reread, then?

MR. CAMPBELL: No, sir.

THE COURT: Mr. Becraft, do you concur with that?

MR. BECRAFT: Yes, we do, Your Honor.

THE COURT: All right. If the jury remembers that  
one paragraph, so be it. We'll see when they ask a jury  
question and they write it out and submit it.

All right. I apologize for being late. I was on the  
phone with our circuit chief justice or chief judge. When she

1 calls, you call back. All right. Let's get the jury.

2 And Mr. Becraft, you are ready for your side of the  
3 case?

4 MR. BECRAFT: We are, Your Honor.

5 THE COURT: You do intend to present a defense?

6 MR. BECRAFT: I'm sorry?

7 THE COURT: You do intend to present witnesses?

8 MR. BECRAFT: The first, and probably only witness,  
9 is going to be the defendant, Your Honor.

10 THE COURT: All right. Just trying to stay heads up.

11 It looks to me as if we might have a jury charge conference

12 tonight. We'll see how this afternoon goes.

13 All rise for the jury.

14 (Jury enters courtroom.)

15 THE COURT: Our jury has returned. Please be seated.

16 Ladies and gentlemen, we had had Mr. Campbell announce that

17 subject to a review of some evidence that was supposed to have

18 been admitted timely, which I think you've done Mr. Campbell?

19 MR. CAMPBELL: Yes, sir.

20 THE COURT: The Government in fact rests?

21 MR. CAMPBELL: That's correct.

22 THE COURT: All right. Ladies and gentlemen, at this

23 time -- Mr. Becraft, that will be a call for you to present

24 your case.

25



1 DEFENDANT'S CASE

2 MR. BECRAFT: May it please the Court. The defense  
3 will call the defendant himself.

4 MR. CAMPBELL: Your Honor, may we approach the bench?

5 THE COURT: You may.

6 (At sidebar.)

7 MR. CAMPBELL: I just want to make sure I understand  
8 how we're proceeding. Earlier, I think you indicated you were  
9 contemplating doing sort of like a proffer before Mr. -- and I  
10 have a problem if he decide to --

11 THE COURT: I think under the circumstances, with  
12 your comment this morning that under 803(3) third-party  
13 conversations are admissible under some limitations to prove  
14 the defendant's state of mind, under that set of circumstances,  
15 it seems that the mini trial within a trial does not appear to  
16 be necessary.

17 MR. CAMPBELL: I don't think so, Your Honor, and I  
18 have no problem with that. I just want to make sure we're on  
19 the same page.

20 MR. BECRAFT: Right.

21 THE COURT: That's how it appears to me based on what  
22 I can divine and read in the interim. There are some  
23 limitations on that case or set of cases that were cited on  
24 Graber and Miller and West under the Fifth Circuit on the use  
25 of that kind of testimony. I do want to point out that in

1 those cases they each had the accountant and the lawyer who had  
2 consulted with the defendant, and my understanding is that that  
3 will not happen in this case and it simply relies on testimony  
4 by the defendant as to what he did and who he consulted --

5 MR. BECRAFT: Right.

6 THE COURT: -- in those conversations.

7 MR. BECRAFT: None of which is an accountant or  
8 lawyer.

9 THE COURT: And prior to the rule -- upon appropriate  
10 objection, if there is any, then I will provide a jury  
11 instruction explaining it's not offered for the truth of the  
12 substance of the conversation but for the fact that it occurred  
13 and that it is admissible to prove, to tend to prove what the  
14 defendant's state of mind was at that time.

15 MR. BECRAFT: Sounds good to me, Judge.

16 THE COURT: So that's the way I look at it. We don't  
17 need a mini trial now.

18 MR. CAMPBELL: I'm fine with that. I just wanted to  
19 make sure I was on the same page with that.

20 THE COURT: All right. You may proceed.

21 (End of sidebar.)

22 MR. BECRAFT: The defense calls the defendant  
23 himself, Your Honor.

24 (Witness sworn.)

25 DIRECT EXAMINATION

1 BY MR. BECRAFT:

2 Q. Will you state your name --

3 MR. BECRAFT: May I proceed, Your Honor?

4 THE COURT: You may.

5 BY MR. BECRAFT:

6 Q. Will you state your name, please.

7 A. Tommy K. Cryer.

8 Q. C-R-Y- --

9 A. E-R. Yes, sir.

10 Q. You're the defendant in this case, correct?

11 A. Yes, I am.

12 Q. Familiar with the charges?

13 A. Yes, I am.

14 Q. What's your understanding of what you're on trial for?

15 A. My understanding is I am on trial for failure to file  
16 income taxes due while I was under a known legal duty to do so  
17 and they were required.

18 Q. And you know the years?

19 A. For 2000 and 2001?

20 Q. Are you guilty?

21 A. No, I am not.

22 Q. Mr. Cryer, can you tell the jury where it is that you  
23 were born?

24 A. I was born in Lake Charles, Louisiana.

25 Q. When?

1 A. On September 11, 1949. I didn't pick that date.

2 Q. Can you tell us about your upbringing and where you went  
3 to school, where you graduated.

4 A. I grew up on a farm north of Lake Charles, a small farm.  
5 There were seven of us, and plus the folks. Dad was an  
6 electrician. Mother was a wife and mother. And we, we got by  
7 and managed to at least make an education available to all the  
8 young ones. We did that by, you know, of course, producing our  
9 own milk and butter, our own eggs, our own beef, fowl, and  
10 pork. We grew our own vegetable. We did what we had to do in  
11 order to get by.

12 Q. Did you attend high school?

13 A. Yes, I did.

14 Q. When did you graduate?

15 A. I graduated from -- in 1957.

16 Q. And the name of the high school?

17 A. Sam Houston High School in Moss Bluff, Louisiana, about  
18 15 miles away from my hometown Topsy.

19 Q. What, if anything, did you do after that?

20 A. I went to college at McNeese State, "University" now. It  
21 was "College" when I started. And in the meantime, too, I  
22 worked at various jobs and did different things to raise money.  
23 I also got through on scholarships.

24 Q. When did you first enroll at McNeese?

25 A. I first enrolled at McNeese I think the month following

1 my graduation. It was for the summer session of 1967.

2 Q. Can you generally describe for us the course of study  
3 that you pursued.

4 A. I entered officially a pre-law major and pursued, though,  
5 I think a little bit -- you know, beyond that, I also pursued  
6 interests in psychology, sociology, and political science. I  
7 ended up -- three years later I graduated with a Bachelor of  
8 Arts with a listed major of pre-law and also had a major in  
9 military science.

10 Q. Were there any distinctions to your graduation?

11 A. I graduated in the -- in -- in the top, say, one-fourth  
12 or one-tenth or so of the class. I was not designated as cum  
13 laude or summa cum laude, but I was in the upper portions of  
14 the class.

15 Q. When was it that you graduated from McNeese?

16 A. I graduated from McNeese in, if I remember correctly,  
17 August of 1970.

18 Q. What, if anything, did you do after that?

19 A. I immediately enrolled in law school at LSU law school  
20 and went to law school for the next three years.

21 Q. How long do you have to attend law school at LSU?

22 A. It's a three-year program, although it does require,  
23 because of the material and limitations on the number of hours  
24 that you can take -- in college, I can take 22 hours a  
25 semester, but -- and that's how I got out in three years. But

1 in law school you're limited to the 15-hour limit and so  
2 you're -- it requires three years or six semesters, plus a  
3 summer session. And one of those summers I went to my basic  
4 training at Fort Riley, Kansas, where I was commissioned in the  
5 United States Army. The other summer I spent at law school.  
6 So the whole time through that three years I was engaged in  
7 one, one fashion or another.

8 Q. Can you tell the jury what it is you generally studied in  
9 law school.

10 A. I studied, of course, all of the code courses, all of the  
11 particular areas. I had particular interest in constitutional  
12 law. I had particular interest in criminal law, administration  
13 of criminal justice, procedural aspects of that. I was also  
14 heavy in Civil Code, though. I just -- I wanted all of it, I  
15 guess. I was -- I was in hog's heaven.

16 Q. Okay. Your college expenses, how were they paid?

17 A. My college expenses were primarily paid by scholarships.  
18 I lived at home. Dad had four more behind me at that time that  
19 he was going to have to educate, and I was able to gain enough  
20 scholarships or earn enough scholarships or win them, whatever  
21 you want to call it, to pay for my school and tuition and  
22 books. I rode in to town with Dad, rode back out with Dad when  
23 we -- you know, I commuted from home. So I didn't have an  
24 expensive automobile, so I was able to pay for all of my  
25 college, you know, tuition, books, and the other expenses like

1 that, myself, saving up those resources to be applied to my  
2 brothers.

3 Q. Would the same thing apply to the expenses involved in  
4 attending law school?

5 A. The same considerations applied, but the same thing  
6 didn't apply because there were not scholarships available at  
7 law school, and so I took out student loans in order to pay for  
8 my law school, because by that time I did have brothers that  
9 Dad was trying to pay for going to McNeese.

10 Q. What was the month and year in which you graduated from  
11 LSU Law Center?

12 A. I graduated May or June of 1973.

13 Q. You mentioned previously in your testimony something  
14 about military. At the same time were you involved -- the  
15 Vietnam War was going on then?

16 A. Yes, sir, it was.

17 Q. What was -- explain to us what you said about your  
18 military duties at the time.

19 A. Well, you know, we all had a two-year active duty  
20 commitment at that time, an eight-year total, and I enlisted in  
21 the middle of my second year of college as a cadet through the  
22 ROTC program there, primarily because at the time I could not  
23 get deferments to complete my legal education. I would have  
24 had to have probably left in the middle of law school. The  
25 Army had a particular program that allowed me to enlist as a

1 cadet, which was equivalent to an E-3, complete the advanced  
2 ROTC program, which we had to, because of my compressed college  
3 schedule, we had to fold it in on top of everything, and then I  
4 would pay back three years for the delay of active duty for me  
5 to go to law school because they needed lawyers, more lawyers  
6 in the Army at the time.

7 Q. To conclude this, you were, in essence, deferred for your  
8 service for a period of time, right?

9 A. My active duty. I was still in the service, but my  
10 active duty was delayed. That was their term.

11 Q. Explain to us how you ended your military service.

12 A. By the time I got out of law school and was to go and put  
13 in my three years, which, you know, I was in the Adjutant  
14 General's corps but would have been attached to JAG, Judge  
15 Advocate General. By that time, the war in Vietnam had  
16 concluded or had -- they were no longer sending people over  
17 there. I don't remember whether we had ripped everybody out by  
18 '73, but I believe we had. And -- but at that time they only  
19 needed 1,000 new officers and we had 3,000 officers  
20 commissioned that year. They had a computer spit out at random  
21 two-thirds of the names, and it was a no exceptions deal. I  
22 mean, there was no option; if the computer said you were  
23 surplus, you were surplus. And I was surplus. I'm government  
24 surplus officially. And then you -- if you were drawn as that,  
25 they called it ADT, Active Duty For Training.



1 I was ordered to Fort Harrison, Indiana, where I went  
2 through my officer's Adjutant General Corps officer's basic  
3 course. I completed that, finished 90 days' active duty, and  
4 then I was sent home and placed in a control group, where I  
5 remained until in nineteen seventy -- no. It would have been  
6 nineteen eighty-something. I was discharged honorably as a  
7 captain in the United States Army.

8 Q. Now, you graduated from LSU Law Center in, did you say  
9 May of '73?

10 A. May or June.

11 Q. Okay. Did you take the bar exam?

12 A. Yes, I did.

13 Q. And the results of the bar exam was what?

14 A. I passed the bar and was admitted in October of 1973.

15 Q. Did you work at any time while you were in law school?

16 A. Yes, sir. I worked at a lot of things. Whenever there  
17 was a break, I worked on road gangs, I worked as a roofer. I  
18 worked on virtually everything. Whenever it got down to no job  
19 and no money, I'd pick up a pool cue and make \$20 or \$30 to get  
20 to the next check or the next job. I also sold fireworks,  
21 because that, fireworks season coincided with breaks in the  
22 semester in the school. And I also brought my brothers into  
23 that and that helped with their college. And so that's --  
24 that's basically -- but I stayed at it. But by the time I was,  
25 I left law school -- I was also a law clerk. When I left law

1 school, I was employed by the Louisiana Constitutional  
2 Convention of 1973 as a special advisor and draftsman.

3 Q. When did you start and end working at that job?

4 A. I don't recall the exact starting or ending point. I  
5 mean, this was a long time ago. And -- but it was -- I believe  
6 I worked through my last semester in law school and probably  
7 two or three months full-time after graduation for the  
8 Constitutional Convention.

9 Q. What did you do in that capacity?

10 A. I answered inquiries where the delegates, many of whom  
11 weren't attorneys or weren't legal scholars, would ask, you  
12 know, what would be the legal ramifications of making a  
13 provision doing this or doing that, and what is the law  
14 concerning this issue or that issue, and would it conflict  
15 with, or what impact? In other words, they're looking for some  
16 guidance and for some input. And I would research for them,  
17 write memorandums, or memoranda, to them on their particular  
18 inquiries. I would also assist them in drafting provisions  
19 that they wanted to submit to the Convention. This was -- you  
20 know, each of the delegates would send.

21 Now, my area of responsibility was primarily the  
22 Article I of the Constitution, declaration of rights, which  
23 mostly equate to the, on the U.S. Constitution, the Bill of  
24 Rights. It just -- it -- I think when I finished with it -- I  
25 managed to finish that, too, before I left, and I was very

1 proud of that. It actually is more expansive and more  
2 protective than the Bill of Rights is.

3 Q. Now, did you seek employment after you left  
4 Constitutional Convention?

5 A. I had in the meantime sought employment. At that time  
6 employment was kind of seeking me. I was in fairly high  
7 demand. I was an honor graduate of LSU Law School, I was  
8 inducted in the Order of the Coif, and I had favorable  
9 recommendations and letters recommending from a number of the  
10 professors at the law school that were responding to inquiries  
11 from firms, and so I interviewed with probably half a dozen,  
12 dozen firms that were seeking me out at that time. And I ended  
13 up going with a firm here in Shreveport called Hargrove,  
14 Guyton, Ramey and Barlow.

15 Q. And what did that firm do and how long did you work  
16 there?

17 A. I was with Hargrove, Guyton, Ramey and Barlow for roughly  
18 two years. And at that particular point, I was doing some what  
19 I think was, most guys would consider fun or good stuff. We  
20 were -- I was handling heavy projects. I was handling heavy  
21 clients: Ralston Purina, Texas Eastern Pipeline, United Gas  
22 Pipeline, or Texas Eastern Transmission Company, TETCO, doing a  
23 lot of expropriation. We were doing heavy corporate  
24 litigation, major estate work. But it wasn't what I wanted --  
25 it wasn't the kind of work I, I went to law school to become a

1 lawyer to do.

2 Q. So you were employed with them for about, that firm here  
3 in Shreveport, for two years?

4 A. Yes, sir, until about latter part of 1975, I would  
5 suppose.

6 Q. What did you do in the latter part of '75 after you left  
7 the Hargrove law firm?

8 A. I left the Hargrove law firm in order to go into private  
9 practice.

10 Q. And where was that?

11 A. I set up in a little house across from Murrell's Grill on  
12 Kings Highway. I guess it would have been October-November.

13 Q. By yourself?

14 A. Yeah, by myself. It was a solo practice. And set up an  
15 office in the front part of that, that house.

16 Q. So what have you done since then?

17 A. Since then I have been, with the exception of a period of  
18 time when I had a partner, I have been engaged in solo practice  
19 ever since.

20 Q. How long were you at that office you just mentioned?

21 A. You mean the one on Kings Highway?

22 Q. Yes.

23 A. I was on Kings Highway until around 1981, '80 or early  
24 '80s. And I moved my offices then to Line Avenue, 2600 block  
25 of Line Avenue.

1 Q. How long were you in that office?

2 A. I stayed in those offices until around 1990, '89 or '90.

3 Q. And you moved to another office?

4 A. I moved to where my offices are now on Youree Drive.

5 Q. You're still there?

6 A. Yes, sir, I'm still there.

7 Q. So since you've been in -- can you describe for the  
8 benefit of the jury the nature of your law practice since  
9 you've been out on your own in '75 all the way, you know,  
10 through now.

11 A. The nature has, I guess has fluctuated. It started out I  
12 was doing quite a bit of personal injury work, but then things  
13 changed and they started allowing lawyers to advertise and that  
14 completely changed up the personal injury side of my practice,  
15 because I refused to advertise. I thought it was undignified.  
16 I didn't think it was professional. Still don't. And -- but I  
17 have probably handled virtually every kind of case you can  
18 imagine because of the scope of the people that I take care of  
19 is so wide; I mean everybody from laborers to corporate  
20 presidents, contractors, businessmen, restauranters. It  
21 presents a wide variety of subjects that I get to deal with.  
22 And so I've had an extremely broad spectrum of experience with  
23 my practice. And then I've been able to handle everything from  
24 criminal, civil, large, small.

25 You can't -- some of my clients are third generation.

1 Some of my clients I first saw in a nursery in a hospital. You  
2 can't tell her dad that you don't like to do divorces. You  
3 can't tell, you know, her, her grandpa or his grandpa that you  
4 don't do DWI's. So you take whatever problems your people have  
5 and you do what lawyers do, you solve your client's problem.

6 Q. So would it be fair to say you've done criminal defense?

7 A. Yes, sir.

8 Q. Have you done working for people that are doing the suing  
9 in a civil case?

10 A. Yes, sir.

11 Q. Have you represented people who have been sued in civil  
12 cases?

13 A. Yes, sir.

14 Q. Okay. You drafted wills, formed corporations, did  
15 divorces, things of that nature?

16 A. Corporations, successions, adoptions, to litigation on  
17 contract issues, real estate issues, personal injury issues,  
18 appellate litigation. I've been very fortunate in that regard  
19 that I've had an opportunity to change the law, actually, or at  
20 least play my part in that process on more than a few  
21 occasions. And a lot of lawyers don't get an opportunity to do  
22 that, and I've been very fortunate.

23 Q. The first time that you had had a secretary would be  
24 when?

25 A. The first time I had a secretary would have been in 1973

1 whenever I --

2 Q. Okay. Let me withdraw that. Gloria is your secretary.  
3 She's coming -- she testified in this case this morning?

4 A. Yes, sir.

5 Q. When was it that you hired her?

6 A. Oh, I hired her probably in '77 I think it was. Within a  
7 couple years after I went into private practice.

8 Q. And she has been with you ever since?

9 A. Yes, sir. Yes, sir. Now, prior to that my wife,  
10 Carolyn, doubled as my secretary.

11 Q. So she's been with you some 30 years?

12 A. Yeah.

13 Q. Followed you from various office to various office to  
14 where you are now?

15 A. Yes, sir. At one --

16 Q. Let me ask you this: When was the first time that you  
17 filed federal income tax returns?

18 A. I don't remember whether it was my first year of college  
19 or my last year of high school, but it was when I was a  
20 youngster. I mean, I started filing as soon as I started  
21 earning money.

22 Q. So you filed returns, and was that based on any study of  
23 the law?

24 A. Oh, no, sir. That was based on the fact that everybody  
25 knew that you've got to pay taxes, you've got to file your tax

1 returns.

2 Q. You didn't -- did you take any tax courses in college?

3 A. No, sir.

4 Q. Any accounting courses?

5 A. None.

6 Q. Did you take any tax courses in law school?

7 A. I believe they offered a course in taxation, but I never  
8 took it. My interest wasn't in taxation.

9 Q. When you got out in practice, did you have any type of  
10 work, say like in this late '70s or the early '80s, all the way  
11 up through the '90s, was any of your work tax-related?

12 A. Some of it was. You know, relative to successions. One  
13 of the tasks that you have is to work up a tax return for an  
14 inheritance tax return for the State or possibly with an estate  
15 tax return. I've run into a couple of estates that have  
16 required those. The -- I've also done, in conjunction with  
17 various accountants, you know, as a team, some trust work  
18 involving the creation of trusts that would qualify as a  
19 separate taxable entity.

20 Q. Has your practice involved income tax work?

21 A. No.

22 Q. Mr. Cryer, you've heard the -- oh. Let me back up before  
23 I ask that.

24 Being a lawyer, you're familiar with the fact that a  
25 judge in a courtroom is the source of the law, right?



1 A. That's correct.

2 Q. And here in this case, you acknowledge that the judge is  
3 the source of the law that applies to this case, correct?

4 A. Yes, sir.

5 Q. In the course of your testimony today, are you -- you  
6 understand it's your function and purpose to testify about your  
7 beliefs about the law, right?

8 A. About my beliefs about the law and what it requires of  
9 me.

10 Q. And are you going to be saying to this jury that what you  
11 say is the law, or are you going to be saying to this jury that  
12 what you tell them is your beliefs about the law?

13 A. I'm going -- I can only testify as to what my beliefs  
14 about the law are. I'm not authorized to make law.

15 Q. Okay. Now, if either I slip up or even you slip up, if  
16 we say something, "Oh, this is the law," is the jury going to  
17 understand that that's your belief?

18 A. Yes, sir.

19 Q. Okay. Good enough. Mr. Cryer, you told us at the start  
20 of your testimony that you understood this case involves  
21 failure to file, willful failure to file returns for 2000 and  
22 2001, right?

23 A. Yes, sir.

24 Q. Let me just ask a brutally honest question: In 2000,  
25 2001, did you or did you not file federal income tax returns?

- 1 A. I -- I did not.
- 2 Q. Well, let me work back. We covered 2000. How about '99?
- 3 A. No, sir.
- 4 Q. '98?
- 5 A. No, sir.
- 6 Q. '97?
- 7 A. No, sir.
- 8 Q. '96?
- 9 A. No, sir.
- 10 Q. '95?
- 11 A. No, sir.
- 12 Q. '94?
- 13 A. No, sir.
- 14 Q. '93?
- 15 A. No, sir.
- 16 Q. '92?
- 17 A. Yes, sir.
- 18 Q. So you filed a '92 return?
- 19 A. Yes, sir.
- 20 Q. Did you pay the taxes due?
- 21 A. Yes, sir.
- 22 Q. You have a judgment or recollection as to when it was the
- 23 last time you paid anything on your taxes for 1992?
- 24 A. I finished paying for my taxes through 1992 in about
- 25 June of 1994.

1 Q. Why did you not file that 1993 return?

2 A. Because the law does not require me to.

3 Q. How did you develop this belief?

4 A. Well, that's a long, long story. It's not going to be a  
5 one, one answer. As of June of 1993 or '4 --

6 Q. Well --

7 A. I'm sorry. June of 1994 --

8 Q. Let me back up. In May of 1994 did you have this belief  
9 that you weren't required to file returns?

10 A. No, sir.

11 Q. In June of 1994 did you have this belief that you weren't  
12 required to file --

13 A. No, sir.

14 Q. -- income tax? So when after those two months did this  
15 belief start gelling in your mind?

16 A. Well, I believe the problem started probably shortly  
17 after June of 1994 but didn't gel into a belief until probably  
18 around the end of the year, because I refused to believe it.

19 Q. Did you, in '93, December 31, '93, the end of the year  
20 for '93, did you or did you not file any type of document that  
21 related to 1993 by April 15 of '94?

22 A. Yes, sir. I filed an automatic extension on time within  
23 which to file.

24 Q. And when would you be required to file, pursuant to that  
25 extension, a return for 1993?

1 A. If I recall correctly, I think it would have been in  
2 August of 1994. That was a common pattern, was filing  
3 extensions, because of the circumstances at the time.

4 Q. Now, did you file by August, mid-August of 1994, your '93  
5 return?

6 A. No, sir.

7 Q. Well, why is that?

8 A. Because by August I had concluded that there were  
9 serious, serious doubts about whether or not I was required to  
10 file and I was determined to make absolutely certain. But at  
11 that time, frankly, it wasn't uncommon, because just like the  
12 year before, I had filed '92 at the end, in October of 1994,  
13 even though I was -- or '3, rather, because I was -- and I was  
14 past that extension. But I did, I did pay it, though, when I  
15 filed it. I kept up.

16 Q. Your testimony is that you'd seek your extensions and  
17 then file your returns later. But that didn't happen for '93,  
18 right?

19 A. No, sir, it didn't.

20 Q. So what happened between late June of '94 and, say, like  
21 the end of August of 1994?

22 A. That started with a lunch that I attended with a friend.  
23 I met a friend for lunch and he brought a client with him. And  
24 this client's name was Holland, Jan Holland. I'd never met  
25 Mr. Holland before. I didn't know him. And during the course

1 of the lunch when, you know, guys are talking, having lunch and  
2 you're telling jokes or you're telling local news or what have  
3 you, Mr. Holland announced to me that -- you know, he kept  
4 talking about taxes and suddenly he just real, you know,  
5 self-assured, real smug, commented that, well -- said that if  
6 you're filing taxes, you know, you're a fool because the law  
7 doesn't require you to file. And I told him it was absurd. As  
8 a matter of fact, I prob -- he, you know, he defended it, said  
9 that there was no liability provision, nothing making him or me  
10 or most Americans liable for an income tax. And I told him  
11 that that was -- that was absolute cockamamie. I mean,  
12 everybody knew, I'd known since I was 16, you know, of course,  
13 that you had to file your tax return, you had to pay the taxes.  
14 It went against everything I'd ever heard or believed, because  
15 everybody just assumed those things.

16 Q. Was this the first time you had ever heard this?

17 A. Yeah. It was the first time I'd ever heard it. I'd  
18 never -- I had no idea there was any problem.

19 Q. What was your reaction to these statements made by  
20 Mr. Holland?

21 A. Well, basically as I described. As a matter of fact, I  
22 think I ridiculed him. I think I laughed at him. And, you  
23 know, here he is, he's telling me these things, there's no  
24 liability provision, that in order to have to file, you have to  
25 have a liability, and this, that and the other. And we left it

1 at that. And I didn't give that another thought until the next  
2 time that I saw the gentleman a week or two later.

3 Had lunch again with the same friend and he -- and  
4 Holland came with him, I think for the express purpose of  
5 responding to my initial reaction to his news. He brought with  
6 him an armload of material, bursting, that he wanted me to see.  
7 He wanted to show me that he was right about this, that he  
8 wasn't, you know, just spouting off some bad dream or having a  
9 flashback to a previous LSD trip or something. He -- he came  
10 forward with a book that he gave me that was called Your  
11 Constitutional Federal Income Tax by Jan Holland. And he was  
12 very proud of this book, and he was -- he said that would tell  
13 me everything I should know.

14 The -- I -- you know, I wasn't going to tell him, no, I'm  
15 not going to take your book. He had written it himself. He  
16 apparently was self-publishing. But I didn't take him  
17 seriously.

18 He also gave me some other material. He showed me a  
19 string of correspondence, a chain of correspondence that he had  
20 engaged in with different offices of the Internal Revenue  
21 Service in which he was calling on them to identify what law  
22 made him liable for the income tax and what law would require  
23 him, unless he was liable, to pay an income tax or to file. He  
24 showed me also their responses. And I probably saw about a  
25 dozen, maybe more, letters of this type, and the responses were

1 totally inadequate. The responses, none of them responded to  
2 the, to the request. Some of them said, Well, they said,  
3 everybody knows. Some of them cited things that didn't really,  
4 you know, apply, saying that you're under an obligation to pay  
5 because you're a citizen. Others just -- but the responses  
6 weren't conclusive and they didn't, they didn't respond to his  
7 inquiry, which was, you know, give me a statute, give me a law  
8 that puts me under a lawful obligation to pay. And they  
9 couldn't respond to that.

10 Now, that was interesting, but it wasn't dispositive of  
11 the issue with me, because at that particular point, I mean, he  
12 was corresponding with people who wouldn't necessarily be in a  
13 position to know all of the law. I mean, they're told, you  
14 know, you take the paper -- just like the lady described this  
15 morning, you are trained to take the paper. If it's got this  
16 number, it goes in that hole. If it's got this number, you  
17 stamp it. And that doesn't mean that the fact that these  
18 employees didn't know the law that made people liable didn't  
19 mean there wasn't one. And -- yes, sir.

20 Q. What was your reaction to what Mr. Holland told you and  
21 showed you as a result of the second meeting with him?

22 A. Well, my initial reaction was that this guy's really  
23 serious about this. But I still wasn't giving him any  
24 credibility. And he also -- he gave me some other materials,  
25 too, a couple of cases and some paper and copies and whatnot

1 that he wanted me to have. But -- so my reaction at this  
2 particular point was: This guy really believes this. This guy  
3 is going to get himself hurt. He's serious. He wasn't  
4 kidding. I thought -- I didn't take him serious at all the  
5 first go round, but the second go round I did. And I said:  
6 This guy is going to hurt himself. He's going to get himself  
7 hurt.

8 Q. Now, with this -- these two meeting you had with  
9 Mr. Holland, would it have happened sometime before, say, like  
10 July 31 of '94?

11 A. Yes, sir. Yes, sir. It would have -- this would have  
12 been probably in June and -- or late June of 1994.

13 Q. What did you do after that in response to the information  
14 that had been imparted to you by Mr. Holland?

15 A. Well, I did the same thing with it that you do with any  
16 other uninvited literature material. I threw it on the back  
17 seat of my truck and forgot about it for a while.

18 Q. Well, did you pick it up sometime after that?

19 A. Yeah. A week or so later I had to go downtown to be in  
20 court, and when I picked up my file after I parked right in the  
21 parking garage next to the library at the old federal court  
22 building, when I picked up my file off the back seat, I noticed  
23 the red book. Caught my eye. It was still laying there,  
24 untouched. And it reminded me about Mr. Holland and his, you  
25 know, being so certain of himself, this, that, and the other,



1 and I said: Well, you know, I need to look that up.

2 Well, that day I just happened to get out of court about  
3 an hour or two earlier than I expected to. Got bumped or -- in  
4 other words, it -- another case shoved us off the docket, or we  
5 finished up early, or we settled; I don't know. But I had some  
6 time to kill, and I had to walk right past the library, and I  
7 just thought about Holland's book, and I said: This is as good  
8 a time as any. I don't have a USCA, or didn't have then, at  
9 my, in my law library. I just have the bare basics, you know,  
10 the Reporters and stuff. But they have a USCA upstairs in the  
11 Caddo Parish library.

12 Q. Well, tell the jury what a USCA is.

13 A. Oh, I'm sorry. A United States Code Annotated. The  
14 United States Code Annotated is a set of volumes that contains  
15 all of the titles which you would -- it kind of look like, I  
16 guess, like big chapters or sets of laws about different  
17 topics, and -- and all the statutes of the United States Code.  
18 And "annotated" means that at the end of each statute, it lists  
19 out headnotes of all the cases involving that particular  
20 section. So I went up there and pulled that, the USCA, went to  
21 Title 26, Taxation, and I pulled out Title 26, Volume 1,  
22 because he had showed me a copy --

23 Q. Let me ask you this: What was it -- Mr. Holland has  
24 prompted you to go up into the library and pull out Title 26,  
25 United States Code. What was it that you were trying to find?

1 A. I was -- find the liability provision. I mean, that  
2 would have put an end to the whole discussion. And it had to  
3 be there. Every --

4 Q. So what did you do in the way of research?

5 A. Well, I opened up Volume I which, you know, starts out  
6 with, or the first volume of Title 26. And I went to  
7 Section 1. I had seen Section 1 among some of the materials  
8 that he had showed me saying, "You see, there's no liability  
9 provision there." Well, it doesn't have to be in the first  
10 section. Well, I looked at 1 as my starting point, and I  
11 did -- I verified it. It looked exactly like and it was the  
12 same as the copy he had given me or shown me. And it did, like  
13 he said, that one didn't have a liability provision.

14 Every tax law has -- clearly and distinctly identifies  
15 three things. Every tax law I've ever seen, every tax law ever  
16 written, clearly identifies what is being taxed, who is liable  
17 for the tax, and the amount of the tax or how the amount is to  
18 be determined. And Section 1 clearly identified what is being  
19 taxed, taxable income, didn't identify anybody as liable, and  
20 then it gave the rates that would apply. And so I went to  
21 Section 2, and then to 3, and 4. Then I went back to the  
22 back -- because it should have been right there in the first  
23 few sections, but it doesn't have to be.

24 So I went back to the back, got the index, and I started  
25 digging through the index for as far as liability. And I was

1 going to run down to Income Tax -- that would tell me the  
2 section -- and I'd jump over and I'd get a copy of that, and  
3 end of discussion. So after I went to the index, pulled up  
4 liability, they had a few entries in there, but not one of them  
5 said income tax. So I went over to income tax, went down -- I  
6 said, well, I'll get it the other way, I'll go income tax,  
7 liability. I went down, liability. There wasn't anything  
8 there for liability. So -- the indices with the USCA are  
9 notoriously incomplete, so I still wasn't -- I was not  
10 convinced. Just because it wasn't indexed that way didn't mean  
11 it wasn't there.

12 So at that point, I went back to the front and I started  
13 going through the table of contents, which in these books is  
14 fairly detailed, and I started looking for any heading in which  
15 I might expect to find a provision telling us who's liable for  
16 the income tax. And I found a couple of suspicious-looking  
17 headings here and there that looked like it might be like, you  
18 know, determination of liability or determination of the tax or  
19 something like that. And I'd go there. No liability  
20 provision.

21 Well, I ran out of time at that point. I didn't have  
22 time to find it. But I did have time to see that finding it  
23 wasn't going to be a quick snap. It had to be buried in there.  
24 It had to be in there somewhere.

25 Q. What did you do next?

1 A. Next thing I did, by this time, because -- I don't know;  
2 this may just be a personal trait of mine, but when I run into  
3 something I don't know, it torments me. It bugs me. The  
4 United States Code annotated has all of these case notes  
5 between the sections. It takes forever to go anywhere in it.  
6 You know, you've got to thumb through -- some of them are 50  
7 pages apart. Some of them are 100. And they're in these  
8 multiple volumes. So I obtained a copy of the Internal Revenue  
9 Code and a paperback copy of it all together without cases, you  
10 know, sandwiched in between them.

11 Q. You have a judgment of recollection as to when it was  
12 that you got this Internal Revenue Code?

13 A. It would have been shortly after. This would have  
14 occurred probably first part of July, by now. So it was  
15 shortly after that, that I obtained that Internal Revenue Code.

16 Q. Mr. Cryer, you have some blue books sitting next to your  
17 left arm.

18 A. Yes, sir.

19 Q. Can you describe that for us, please.

20 A. That is the Internal Revenue Code, two volumes. But it  
21 contains the entirely Internal Revenue Code, all 8,000 or so  
22 sections of it.

23 Q. So it's a pretty thick work?

24 A. Yes, sir.

25 Q. Once you obtained the Internal Revenue Code, what did you

1 do and what were you looking for?

2 A. Well, basically, I repeated the first process, you know,  
3 because it's a different indexer, it's a different -- you know,  
4 it may be organized differently in the index. And I -- I  
5 repeated that process and I repeated that result. And I went  
6 back and again started looking through headings. And now I'm  
7 looking through anything that even remotely could contain a  
8 liability provision, and I'm still not finding anything making  
9 anyone liable for the tax. At that particular point, I went  
10 back --

11 THE COURT: Hold up just a minute. Sidebar.

12 (At sidebar.)

13 THE COURT: He just crossed the line.

14 MR. BECRAFT: Okay.

15 THE COURT: His opinion says anyone is liable. Now  
16 he's taking it out of this and now gotten on the soapbox.  
17 Motion in limine addressed this: If so, it opens the door for  
18 a whole lot of instruction on the constitutionality and  
19 everything else that he has in his 104-page memorandum.

20 MR. BECRAFT: Right.

21 THE COURT: And you told me you weren't going to get  
22 into that.

23 MR. BECRAFT: No, I'm not getting into that. The  
24 only thing he's talking about right now, Your Honor, is  
25 research on the liability argument.



1 A. Yes, sir. And if I implied otherwise, it wasn't my  
2 intention.

3 Q. Okay. Now let me back up. You were going -- you had by,  
4 let's say the end of August of '94?

5 A. Yes, sir.

6 Q. By the end of August of '94, you had this Internal  
7 Revenue Code?

8 A. Oh, probably by the end of July.

9 Q. And you started studying it, and the purpose of studying  
10 it was to locate what?

11 A. A liability provision that applied to me.

12 Q. And can you briefly describe what it is that you did in  
13 your request to look for this liability provision?

14 A. Well, basically the same thing I just described, but I  
15 found no liability provision going through the headings or  
16 going through the index or going through the table of contents.  
17 I went back and I started taking a closer look at Jan Holland's  
18 book, because now I'm getting worried. And he refers in here  
19 to a 1461. I went to 1461, and that is a liability provision.  
20 And under 1461, the persons who are required to withhold taxes  
21 on nonresident aliens and foreign corporations are liable for  
22 payment of the tax. So there is a liability provision and it  
23 covers persons who are required -- that's what 1461 says. So I  
24 went back to the Code and I -- and, yeah, it's there. But I --  
25 I'm just certain that there would have to be other liability

1 provisions in there.

2           And finally, out of frustration, I took subchapter A,  
3 which is the entire income tax law, and I sat down -- took me  
4 two evenings to do it, but I sat down and I went through each  
5 and every paragraph, each and every section, each and every  
6 page of that subtitle. And I could find some provisions that  
7 talked about liability, such as saying that a partner is liable  
8 for the income tax of the partnership, but only in his  
9 individual capacity or separate. But I haven't found any  
10 individuals, other than 1461, withholding agents on nonresident  
11 aliens and foreign corporations, yet that are exempt -- I mean  
12 are liable.

13           MR. CAMPBELL: Objection. And I would like a limited  
14 instruction at this time.

15           THE COURT: Ladies and gentlemen, I'm going to  
16 sustain the objection. We have an issue and a ruling by the  
17 court that occurred prior to this particular time of trial.  
18 Let me do it this way: A defendant's views about the validity  
19 of the tax statutes are not relevant to the issue of  
20 willfulness which you will have to wrestle with during your  
21 deliberation. Therefore, I am going to instruct you to  
22 disregard any testimony by the defendant as to his beliefs or  
23 opinions, whether before, after, or during research, as to the  
24 validity or applicability of the tax code to anybody but him.

25           You may continue, Mr. Becraft.



1 MR. BECRAFT: Thank you, Your Honor.

2 BY MR. BECRAFT:

3 Q. You found a provision in the Internal Revenue Code that  
4 dealt with liability?

5 A. I found that one provision. I did not find any, not one  
6 single provision in the entire -- I ended up -- I ended up  
7 going past Subtitle A. I ended up going through the entire  
8 Code. And I found liability provisions for other taxes and  
9 whatnot, but I did not find one single liability provision in  
10 Subtitle A --

11 Q. That related to you?

12 A. -- that related to me, that made me liable for an income  
13 tax. And I can tell you that it's not there. I've been  
14 through every line of it. It is not there. There's nothing  
15 here that makes me, identifies me or any set of persons in  
16 which I'm included as liable for the payment of an income tax.

17 Q. You mentioned you studied other provisions of the  
18 Internal Revenue Code. Was this important in reference to your  
19 beliefs?

20 A. Well, yes, sir. Yes, sir. At that particular point, I  
21 became terribly interested in what -- you know, this is -- this  
22 is a major problem and I need to understand it.

23 Q. What did you find in reference to other provisions?

24 A. Well, in reference to other provisions, I -- you're  
25 talking about other liability provisions?

1 Q. Yes.

2 A. All right. I found a provision that dealt with the  
3 partnerships that I just referred to, found another provision  
4 that stated that -- and this is in Subtitle A, which is what I  
5 found it initially on -- that foreign corporations shall be  
6 liable and that -- it also pointed out that the tax for that  
7 was imposed on a foreign corporation. But that was a foreign  
8 corporation's branch act, so, you know, that didn't apply to  
9 me. I'm also not a partner. That doesn't apply to me. Then,  
10 of course, I found 1461. That didn't apply to me, because 1461  
11 is people required to withhold on nonresident aliens and  
12 foreign corporations. The only other -- now, when I went  
13 outside Subtitle A, the only other provision I was able to find  
14 relating to any liability for an income tax is in Subtitle C,  
15 Employment Taxes, Chapter 24, Collection of Income Tax at  
16 Source on Wages, and I found 3403 that said an employer shall  
17 be liable for the payment of tax required to be deducted and  
18 withheld under this chapter. Well, that doesn't apply to me.  
19 And I'm not an em -- you know, that's --

20 Q. Let me ask this question: You said you studied other  
21 taxes in the Code. Can you tell us what it was, quickly, and  
22 the conclusions you drew.

23 A. Yes, sir. I actually then, at that particular time, then  
24 went back and did a survey. I thought perhaps I'm being too  
25 strict, because tax laws, my belief is that tax laws are

1 strictly construed. That's just my view. That's the way I  
2 understood it. And strict construction means that you add or  
3 take away nothing. I mean, it's literally translated into  
4 exactly what it is. You cannot infer or imply anything from a  
5 strictly construed law.

6       So I thought maybe I'm being too strict, so I went to,  
7 back to the Code and I checked each and every tax. And there  
8 are a lot of other taxes in here besides the income tax. I  
9 checked each and every tax, and each and every tax specifically  
10 stated who was liable for the tax. They also specifically  
11 stated what the subject of the tax was, what was being taxed,  
12 and they all specifically stated how much it was.

13 Q.     What were some of these other taxes you looked at? Just  
14 quickly.

15 A.     Well, estate tax, the railroad retirement tax, employment  
16 taxes in general, luxury passenger automobile tax, tire  
17 manufacturer tax, manufacturer's excise tax, tax on wages, tax  
18 on wagering, occupational tax, vehicle use tax, even a tax on  
19 failure to satisfy continuation coverage requirements of group  
20 health plans. There's tax on wines, liquors, beer, taxes on  
21 tobacco products. Every single one specifically states who is  
22 liable. And there's -- and in many cases, it even states who  
23 is secondarily liable; that if the primarily liable party does  
24 not pay the tax, then somebody else -- you're liable if they  
25 don't pay. So the -- that told me -- and -- that, no, this

1 isn't typical, which takes me back to the question of, again,  
2 am I being too strict, are they -- because they seem to want to  
3 infer that a tax imposed on taxable income of individuals means  
4 the same thing as tax on taxable income and on individuals,  
5 which isn't what it mean -- what it says.

6 So I went back and I started doing some research at that  
7 point to see if I'm being overly strict in my construction.

8 Q. Now, let me stop you there. That's the next step, but.  
9 Would it be fair to say that sometime in the fall of '94 you  
10 had completed this study of the Internal Revenue Code?

11 A. Yes, sir. In early fall. I had -- I had gotten to the  
12 point to where I, I knew there was not one single law in here  
13 that imposed liability on me.

14 Q. Okay. Now, by December 31 of '94, you had studied the  
15 Internal Revenue Code, as you just described, correct?

16 A. Yes, sir.

17 Q. What, if anything else, did you do during that time frame  
18 in the way of studying and relating to taxes?

19 A. Well, at that time I also started reading materials. I  
20 went back -- I'd read Jan Holland's book now and I thought that  
21 he had skipped a few dots of some of the dots he was  
22 connecting, but I'm tight when it comes to legal research. In  
23 other words, by tight, I mean I don't skip steps. I make every  
24 step documented. I want to document every single logical  
25 progression. I don't, you know, skip those, and he did. So I

1 started going back in and doing my own research. I also don't  
2 rely on secondary research. I don't borrow briefs. I do my  
3 own. It has to come straight from primary resources.

4 Q. Tell the jury what you did.

5 A. I looked up cases on taxes and construction,  
6 interpretation --

7 Q. Let me stop you right there. I want to clear up  
8 something. During the course of your testimony, you're going  
9 to be talking about cases, correct?

10 A. Yes, sir.

11 Q. I want to just -- all of these cases that will be -- that  
12 you've talked about right now and that you will talk about in  
13 the course of the rest of your testimony, they came from where?

14 A. Well, these cases came from various sources: my library,  
15 from the library downtown at, at the courthouse, from -- but  
16 all, virtually all the cases that I reviewed were Supreme Court  
17 cases, United States Supreme Court cases. And the reason that  
18 I confined my, my research to that is that by that time,  
19 through another case or through part of this, I don't recall,  
20 but I had become aware that it was Internal Revenue Service  
21 manual policy that Supreme Court cases must be followed by  
22 the --

23 MR. CAMPBELL: Objection.

24 THE COURT: Sustained. Mr. Becraft, you've been  
25 cautioned.

1 MR. BECRAFT: I understand, Your Honor.

2 BY MR. BECRAFT:

3 Q. These cases were --

4 THE COURT: Go ahead. I've already ruled on this.  
5 His beliefs.

6 MR. BECRAFT: I understand that, Your Honor. This is  
7 his source materials and where he got them, that's all.

8 THE COURT: All right.

9 BY MR. BECRAFT:

10 Q. The source materials, when you talk about this, would it  
11 be from some source, either the law library or your office, and  
12 that's where it would be obtained?

13 A. Yes, sir.

14 Q. Okay. Now, what is it that you did in this research on  
15 these cases?

16 A. Well, I read cases, I looked at cases cited in those  
17 cases, and I Shepardized cases, Shepardizing meaning you take a  
18 book and it tells you the citations of other cases that have  
19 cited that case, you know, followed it. And I read those cases  
20 and determined from the reading of these cases that my strict  
21 interpretation or my strict construction that I applied to the  
22 income tax law is not too strict.

23 Q. Okay. Now, this happened in -- you studied the Internal  
24 Revenue Code, then you studied some cases either at the law  
25 library or at your office on this issue of how to construe tax

1 laws?

2 A. Yes, sir.

3 Q. All right. Can you tell us how many cases you studied?

4 A. Oh, I wouldn't hazard a guess of how many. For every  
5 case that you finally pull and say this is, this is a good  
6 description of the, of the state of the law, you probably read  
7 a dozen, maybe more, maybe less. But there's several  
8 particularly, you know, that are particularly applicable.

9 Q. So you're reading these cases, trying to determine a  
10 principle of law that you believe --

11 A. Yes, sir.

12 Q. -- and you learn something from those cases. What is it  
13 that you ultimately learn?

14 A. I learned from these cases, and from reading the cases,  
15 that they -- the rule of construction on tax laws --

16 MR. CAMPBELL: Objection.

17 MR. BECRAFT: Let me withdraw.

18 THE COURT: Sustained.

19 BY MR. BECRAFT:

20 Q. Give us your belief in that respect.

21 A. All right. I'm trying to be careful, but I'm not sure  
22 exactly where I'm going wrong here, but.

23 It is my belief that the applicable rule of statutory  
24 construction for tax laws is that: (A), the burden is on the  
25 tax collector to establish that the tax has been clearly and

1 plainly laid on the subject, the thing that's being taxed, and  
2 that the person who is liable for that tax must be plainly and  
3 clearly identified. In other words, the tax on that person, as  
4 I understand it and I believe the law to be, has to be spelled  
5 out to the letter. I also believe that if a person cannot be  
6 brought within the letter of the law, that no matter what it  
7 appears was intended, he is free of that law when it comes to  
8 taxes. And I determined from that, that I am not within the  
9 letter of the law or even within the word of the law liable,  
10 made liable by any law for any United States federal income  
11 tax.

12 Q. What specific law are you -- what is your belief about  
13 the specific law that deals with liability and the Internal  
14 Revenue Code in reference to the income tax?

15 A. I believe that it's the -- I believe that the liability  
16 for the income tax rests upon all persons who are responsible  
17 for withholding taxes on nonresident aliens and foreign  
18 corporations.

19 Q. And your belief is that those are the people that are  
20 liable for the tax?

21 A. Yes, sir.

22 Q. What is your belief, if any, as to whether or not you're  
23 within the scope of that statute?

24 A. I am -- my belief is that I am not within the scope of  
25 those made liable for the income tax.



1 Q. When was it that you reached this conclusion?

2 A. This conclusion would have been in 1994, latter part of  
3 '94. I don't want to guess as to when, but it would have been  
4 probably late fall of '94.

5 Q. Previously, you told us that in April of '94 you had  
6 filed for an extension for '93, correct?

7 A. Yes, sir.

8 Q. Your understanding as to the length of that extension  
9 would be till when?

10 A. Till August 15.

11 Q. And did you file a '93 return by August 15?

12 A. No, sir, I did not.

13 Q. If you had studied, say, like, through December of '94  
14 the Internal Revenue Code and had your answers, the answers  
15 that you were seeking, if they had been reached, would you have  
16 filed a '93 return?

17 A. I'm sorry. I didn't understand the question.

18 Q. You were looking for, through the Internal Revenue Code,  
19 a provision making you liable, correct?

20 A. Yes, sir.

21 Q. If you had found one in black and white that you saw,  
22 what, if any, impact would that have had on you filing your '93  
23 return?

24 A. I would have filed it.

25 Q. But as a result of not finding it, what, if anything, did

1 you do?

2 A. I did not file it. But if I had found one, I probably  
3 would have done just like the year before, the year before, the  
4 year before, when I thought it was there, when I believed just  
5 because I had been told, just like all -- you know.

6 Q. What went through your mind as you -- as this conclusion  
7 dawned on you?

8 A. What went through my mind was that at that particular  
9 point --

10 Q. In reference to your beliefs about taxes.

11 A. In reference to my beliefs, what went through my mind, I  
12 was in a state of torment at that time. I was fully aware and  
13 keenly aware that I was between the horns of a dilemma that I  
14 didn't feel I'd done anything to deserve. I was not a little  
15 bit sorry that I had met Mr. Holland, because now I have got to  
16 choose between cutting across the grain or going back and  
17 violating in my mind and in my heart the oath that I took to  
18 support the law and the Constitution. It wasn't a tough choice  
19 for me, but it was tough to know that I'm having to make that  
20 choice, or I'm at the point where I'm having -- it -- that  
21 oath, that commitment, has now come home to roost and I've got  
22 to pay the piper. And if I hadn't found out about this, I  
23 would have been fat, dumb, and happy, and not aware. I  
24 wouldn't have had to worry about it; I would have had the  
25 excuse of ignorance.

1 Q. Now, did you stop studying the income tax after you had  
2 reached this conclusion sometime in the fall of '94?

3 A. No, sir. It was -- that was the beginning. That was  
4 only the beginning.

5 Q. Can you describe for us what it is that you did, say,  
6 like the rest of '94 and all the way through '95.

7 A. Through '95 and then -- I think it continued even into  
8 '96. I was interrupted in my studies, I recall that, by the  
9 heart attack that I had in December of '95. So that had to  
10 have extended it into '96 a little bit. But at least through  
11 '95, and I believe into '96, I probably read hundreds of  
12 Supreme Court cases and I probably read thousands of pages of  
13 Internal Revenue manuals, Internal Revenue codes, regulations,  
14 other manuals, and in an effort to understand. I had to make  
15 sense of it.

16 Q. So what was it that you were seeking to make sense about?

17 A. Well, the first thing that I had to make sense out of  
18 was, you know, who the players are in this. Who is this? Who  
19 are the parties? And who am I? Where -- where do I find  
20 myself in the Internal Revenue Code?

21 Q. In that respect, can you tell us what, if anything, you  
22 did?

23 A. Yes, sir. I went back to Section 1 again and I noticed  
24 what appeared to me to be unusual, and that was the employment  
25 of the term individual as opposed to the term that I'm used to,

1 you know, drafting, both drafting laws and applying them, of  
2 person or entity. And so I started to dig for a definition of  
3 individual. And, of course, I found --

4 Q. Can you tell us what you did?

5 A. Yes, sir. There were a couple of references in Section 1  
6 saying that, you know, talking about a married individual, for  
7 example. It would say "as defined in," and I would chase that  
8 definition. But come to find out, the definition was only  
9 married or not married. Same thing with surviving spouse, you  
10 know, what exactly is the definition of a surviving spouse.

11 I also went back to Section 7701 in the, the Code, which  
12 is the listing of many of the definitions, you know, that are  
13 used in the Code of what the word means when it's used in the  
14 Code. And the first thing you've got to do when you -- if  
15 you've got to understand something, the first thing you've got  
16 to do is understand the terms. And, you know, one word may  
17 mean something for one statute and mean something entirely  
18 different for another because it's defined differently. So I  
19 went to 7701. I started looking for individual. And I found  
20 no definition for individual in 7701.

21 At this point, I don't recall exactly how I found it. It  
22 may have been through my -- I was on Westlaw back then and  
23 could do searches. It may have been through looking, you know,  
24 for -- trying to run down this 1461 issue and looking at  
25 parallel regs. But -- parallel regulations, I'm sorry. But

1 I -- I did run across, finally, a definition of an individual.

2 Q. Okay. Where was it that you found that?

3 A. I found that in the code of federal regulations, Title  
4 26, which is the taxing regulations, you know, tax regulations  
5 in connection with the tax code, in Section 1.1441-1.

6 Q. So you found there a definition of individual?

7 A. Yes, sir.

8 Q. Okay. Did you read it?

9 A. Yes, sir.

10 Q. Okay. And after reading it, what conclusions did you  
11 draw?

12 A. I concluded that an individual is an alien individual or  
13 a nonresident alien individual and that for most purposes an  
14 alien individual is to be treated as though he is a nonresident  
15 alien.

16 Q. Now, you found this definition. What, if any,  
17 relationship did that have, in your view and belief, with the  
18 income tax law and the Internal Revenue Code?

19 A. From that, I concluded and formulated the belief that I  
20 am not, for the purposes of the Internal Revenue Code, an  
21 individual; I'm something else.

22 Q. What is that something else?

23 A. Well, I went back in search of myself, so to speak, and  
24 went back to 7701. And I started going down definitions, and I  
25 was going to find myself in those definitions, I hoped. And I

1 found person, and person is defined right up in the beginning  
2 of 7701, even though the, you know, the tax is expressed in  
3 terms of individual. But it's described as an individual. I  
4 already determined I'm not an individual. I rolled down a  
5 little farther and I found a definition for a United States  
6 person, and that's where I found myself.

7 Q. Okay. Tell us how.

8 A. A United States person, according to 7701-30, is defined  
9 as: (A) a citizen or resident of the United States. And it  
10 goes on to say "a domestic partnership or corporation," et  
11 cetera. But I'm a citizen of the United States. That makes me  
12 a United States person. But I'm not an individual. That means  
13 I'm not a person.

14 Q. Now, when were you studying this particular point?

15 A. Early on. That would have been shortly after I had, I  
16 had finally come to the conclusion and I -- I had to go to  
17 lunch with this guy and eat crow. I had to tell him he was  
18 right. It would have been after that, which probably I think  
19 happened late of 1994 or early-early 1995 that I got down to  
20 eating crow and having to tell this fellow he had put one up on  
21 me. And that's whenever I started digging in. And it became  
22 almost a nightly and weekend hobby of digging. A hobby might  
23 seem a little light, because I wasn't taking it lightly at this  
24 point.

25 Q. Now, you had at that period of time just a regular law

1 practice going on, right?

2 A. Yes, sir.

3 Q. Can you tell us when it was that you engaged in these  
4 studies?

5 A. Well, the studies that I did, I did primarily at home.  
6 So I, I worked on that. I had people to take care of in the  
7 daytime and I worked on my stuff after I got done with theirs,  
8 and so that usually put me working at home at night or reading  
9 at home at night.

10 Now, for the cases that I did, those were dug up on an  
11 opportunity basis. If I was at the courthouse, I'd, you know,  
12 stop in because they had U.S. Reports. If I was at the federal  
13 courthouse here, I'd -- you know, they, of course, had U.S.  
14 Reports. You know, just wherever was opportune for the time  
15 for me to do some more Shepardizing, of tracing down cases that  
16 have been cited, or, you know, getting hold of materials and  
17 digging up and looking.

18 Q. Was there some other topic at or about that time that you  
19 started studying that related to income tax?

20 A. Topic within the income tax, is that what you mean?

21 Q. Related to the income tax, yes.

22 A. Yes. At that particular point, basically, I wanted to,  
23 you know, dig in and identify the parties. Is that what you  
24 mean? I'm not --

25 Q. You mentioned identifying the parties. Did you engage in

1 any studies in reference to constitutional powers of taxation?

2 A. Absolutely. Absolutely.

3 Q. When was this?

4 A. That was -- that would have been in the first part of  
5 1995, because one of the things that I had noted about  
6 Section 1 was that the tax was imposed on taxable income. I  
7 had also noted when I was looking at definitions that there was  
8 no definition of taxable, there was no definition of income.  
9 There was a hybrid definition of taxable income, but neither of  
10 those two terms were defined in the Code, either at 7701 or any  
11 other place I could find. Now, I did not go back and do a  
12 word-for-word scan then, but later on, in redoing it, re --  
13 running back through the same research just to make absolutely  
14 positive in 1999, I did do word searches then for a definition  
15 of income or a definition of taxable and I could find none.

16 Q. Now, did -- does the study of the constitutional  
17 provisions regarding income taxes, did it have any impact upon  
18 your beliefs about whether or not you were required to file  
19 incomes tax returns?

20 A. Yes, sir. It explained to me why I was not made liable,  
21 to my understanding, and it explained to me --

22 MR. CAMPBELL: Objection. Characterization.

23 THE COURT: Sustained.

24 Mr. Becraft?

25 MR. BECRAFT: Yes, Your Honor?



1           THE COURT: Ladies and gentlemen, we're going to take  
2 a 15-minute break. We're close enough to the mid-afternoon  
3 break. We have some business to attend to out of your  
4 presence. We'll be in recess for 15 minutes. The jury can  
5 take a break.

6                                 (Jury exits courtroom.)

7           THE COURT: Court's back in session. Everybody be  
8 seated.

9           Mr. Campbell, come up to the podium. Your objection  
10 now has to do with characterization of constitutionality and  
11 interpretation of the U.S. Constitution as it applies to tax  
12 law?

13           MR. CAMPBELL: Yes. And specifically when the  
14 witness started referring to what it explained to him as  
15 opposed to what the judge had ruled earlier as far as being  
16 able to testify what his beliefs are.

17           THE COURT: Mr. Becraft, we've got a problem. Come  
18 on up to the podium. The problem is this: As we discussed in  
19 pretrial conference, you were not going to adduce testimony  
20 about this client's, your client's opinion as to the  
21 unconstitutionality of the tax law whether it applied to him or  
22 anybody else.

23           MR. BECRAFT: That's correct, Your Honor. That's  
24 what I expect the testimony to be, that --

25           THE COURT: You're going to have to enlighten me,

1 because I hear you going down the wrong road with the question  
2 and the response just elicited from the witness which drew the  
3 objection by defense counsel (sic). Where are you headed with  
4 this?

5 MR. BECRAFT: Where I'm headed with it is -- Your  
6 Honor, all he's going to -- this is the way I expect the  
7 testimony to play, if my statements can be considered kind of  
8 an offer of proof: He studied the important cases that related  
9 to the income tax. For example, there's this 1894 case called  
10 the Pollock case. That had a -- you know, he studied it, and  
11 in essence, the Pollock case dealt with the 1894 federal income  
12 tax, and the court concluded that that was a direct tax and  
13 since that tax wasn't apportioned, you know, they found it  
14 unconstitutional. That required then the Sixteenth Amendment.  
15 This is his view. Then, in this case called the Brushaber v.  
16 Pacific Union case, which is something that he read, you know,  
17 the -- he concludes that that case says that the federal income  
18 tax in a constitutional sense is an excise tax. Then, from  
19 there, he moved on to this case --

20 THE COURT: Does he have a court that holds this  
21 anywhere, or is this just a plucked-out-of-the-air --

22 MR. BECRAFT: No. These are --

23 THE COURT: -- without-substance opinion?

24 MR. BECRAFT: No. These cases are the -- you know,  
25 the Pollock case and the Brushaber case are two of the most

1 fundamental cases that relate to the federal income tax. And,  
2 you know, he studied those.

3 THE COURT: Tell me about any modern case in the last  
4 100 years that has held the income tax unconstitutional or the  
5 Sixteenth Amendment improperly ratified.

6 MR. BECRAFT: Your Honor, they haven't said that it's  
7 unconstitutional, and he's not going to say that it's  
8 unconstitutional. What he will say -- this is where it's  
9 headed: He studied these cases. He read the Brushaber case,  
10 concluded that, determined that the federal income tax was an  
11 excise tax in a constitutional sense. Then he goes over to  
12 this Flint v. Stone Tracy case -- I think it's 1911 -- sits  
13 down and reads that, and then the court provides a definition  
14 of what an excise tax is. And he reads the definition of the  
15 Supreme Court and concludes: Well, this is a -- this is  
16 what -- an excise tax, it doesn't apply to me. And, you know,  
17 so that process does not involve any testimony that the tax  
18 laws are unconstitutional. What it's talking about, this is  
19 testimony that explains how and why he believed it didn't apply  
20 to him.

21 And on that point, Your Honor, on page 9 of the  
22 pretrial brief that was submitted back in March, you know,  
23 there's a case that's cited, United States v. Powell, that  
24 deals with the issue of what -- it's a Ninth Circuit case that  
25 deals with the question of, you know, what can people testify

1 about during the course of a trial. And, you know, in my view,  
2 what Powell has to say, you know, addresses what he can talk  
3 about.

4 THE COURT: That's a Ninth Circuit case?

5 MR. BECRAFT: Yes, Your Honor.

6 THE COURT: Adopted by the Fifth Circuit in this  
7 geographic region?

8 MR. BECRAFT: No, Your Honor. But I don't think that  
9 there's anything that the Fifth Circuit has said that would  
10 conflict with Powell.

11 THE COURT: But it doesn't mean that it's binding  
12 authority in this jurisdiction, does it?

13 MR. BECRAFT: No. I understand that, Your Honor. I  
14 know what persuasive and binding authority is.

15 THE COURT: I don't believe it's even persuasive,  
16 much less binding. In this instance, I understand the narrow  
17 path that you are attempting to tread in this. The  
18 constitutionality regarding the ratification of the Sixteenth  
19 Amendment, that's over with, done, not even an issue, and will  
20 not be testified to by your client while he's on the stand  
21 under oath in this trial.

22 MR. BECRAFT: That doesn't have anything -- all he's  
23 going to say is, is that the Pollock case said thus and such,  
24 the Sixteenth Amendment was ratified. That's just simply  
25 historical facts that are evident features of the federal

1 income tax. He's not making an argument. And I think that the  
2 statements of the Court which is the Simkanin case about  
3 ratification of the Sixteenth Amendment relates to an entirely  
4 different issue, the issue of, you know, whether or not the  
5 Sixteenth Amendment was ratified by looking at it on a state-  
6 by-state basis, something that's entirely different from  
7 merely, you know, including a correct historical recollection  
8 that the Sixteenth Amendment was proposed and ratified. And  
9 it's not that -- making that statement doesn't say or make even  
10 a comment about it being unconstitutional or dealing with that  
11 issue of the ratification of the Sixteenth Amendment. What the  
12 court was saying in Simkanin about ratification of the  
13 Sixteenth Amendment are for those people that are making  
14 arguments -- and let me just tell you, Your Honor, I defended  
15 that guy. Bill Benson, he wrote a book on that. You know, you  
16 can look in the Seventh Circuit. The Second Benson -- Benson  
17 was tried by Jeff Dickstein, a friend of mine. Got a reversal.  
18 I tried it again, I think I remember in '92 or thereabouts.  
19 And -- but, you know, but Mr. Benson is the man who wrote this  
20 book about, you know, an analysis, state-by-state analysis, of  
21 the ratification of the Sixteenth Amendment, and that is what  
22 the Simkanin court is talking about, that particular argument.

23 THE COURT: With respect to any argument over the  
24 failure to properly ratify the Sixteenth Amendment is now  
25 foreclosed.

1           MR. BECRAFT:  What I'm telling the Court is, is that  
2 that isn't what the defendant's testimony is.

3           THE COURT:  All right.

4           MR. BECRAFT:  And I'm telling you this just to make a  
5 distinction so that clearly the Court understands what the, I  
6 think the Simkanin case is and to distinguish that from what  
7 his testimony is.  He doesn't have anything to do with, you  
8 know, the argument that the Sixteenth Amendment wasn't  
9 ratified.  His testimony is that it was ratified and, as a  
10 consequence, it came under review and the, or the meaning of it  
11 in the Brushaber case is something that he relies on, along  
12 with a couple of other cases.

13          THE COURT:  All right.  We shall see.  The objection,  
14 though, as to the characterization is sustained with  
15 Mr. Campbell.  You are cautioned about where this idea about  
16 the constitution is heading, since we've had this discussion on  
17 numerous occasions and -- and you still have some leeway in  
18 this which I will accord you.

19          MR. BECRAFT:  Thank you, Your Honor.

20          THE COURT:  I want to be sure, though, that we're not  
21 getting into this idea of invalidity again, because I think the  
22 more I hear the defendant testify, he keeps bumping up and  
23 exceeding that edge with the instruction that his beliefs as to  
24 the validity of the tax can be disregarded by the jury or  
25 should be disregarded by the jury.

1           MR. BECRAFT: In response, Your Honor, it's our  
2 position that a defendant testifying that the Internal Revenue  
3 Code does not apply to him for the reasons he would explain  
4 does not constitute a contention that the income tax laws are  
5 invalid.

6           THE COURT: They are invalid as to him, that's the  
7 problem, and that's what I'm hearing in the way of testimony.  
8 You can dress up a wolf in any kind of clothing you want to,  
9 but it's still a wolf. And that's what I'm hearing in this  
10 testimony. We will have a jury charge conference tonight at  
11 which we will discuss some of these finer points. I'm  
12 according you leeway in this, but it sounds to me as a matter  
13 of law that he is simply dressing up an argument in alternate  
14 clothing, but it doesn't change the nature of the  
15 characterization of the tax laws as being invalid, whether to  
16 him or to anybody else. And we'll wrestle with that later, but  
17 I wanted to tell you that's what I'm hearing and that's a  
18 concern that I have as to how we will handle that with the  
19 jury.

20           MR. BECRAFT: Okay.

21           THE COURT: And I just wanted the colloquy to be  
22 fully explored, because we're on that narrow path right now.  
23 All right. We're --

24           MR. BECRAFT: Thank you, Your Honor.

25           THE COURT: -- in recess for 15 minutes.

1 (Recess had 3:20 - 3:38 p.m.)

2 THE COURT: Thank you. You may be seated.

3 Mr. Becraft, you're ready to resume questioning?

4 MR. BECRAFT: Yes, Your Honor.

5 THE COURT: Can you estimate for the court how long  
6 you have on direct?

7 MR. BECRAFT: I was thinking I was -- judge, I had a  
8 shot for this afternoon before 5:00. It may -- depending on --  
9 I'd like to get Direct done.

10 THE COURT: By 6:00? I'll announce to the jury that  
11 you're going to be done by 6:00 and they will anticipate that  
12 being a true statement.

13 MR. BECRAFT: Okay, Your Honor. Is the Court  
14 entertaining completing Direct tonight?

15 THE COURT: You betcha.

16 MR. BECRAFT: Okay, with that in mind, let me pull  
17 out all stops, and I will consider it a reward if we conclude  
18 before 6:00. Can I do that?

19 THE COURT: You can. We may have to take one  
20 additional break between now and then, depending on how sleepy,  
21 drowsy, restless the jury gets, but I think that's probably the  
22 best idea.

23 MR. BECRAFT: We'll do that.

24 THE COURT: All right. Let's get the jury please.

25 All rise for the jury.



1 (Jury enters courtroom.)

2 THE COURT: Our jury has returned. Please be seated.  
3 Ladies and gentlemen, we discussed time scheduling today, and  
4 the lawyers, at my request, have agreed to work until 6:00.  
5 Does that pose a particular problem? We will then finish the  
6 direct examination testimony of Mr. Cryer today and then begin  
7 tomorrow morning with cross-examination by the Government.  
8 Does that pose a problem for any of you? Does anyone need to  
9 make a telephone call to make arrangements? We're hoping we're  
10 going to finish before that, but I've kind of set that as a  
11 stop time.

12 (No audible response.)

13 THE COURT: All right, I don't see a problem.  
14 Continue, Mr. Becraft.

15 MR. BECRAFT: May it please the Court.

16 BY MR. BECRAFT:

17 Q. Mr. Cryer, let's move forward into time. Did you have  
18 beliefs about filing income tax returns on December 31 of 1999?

19 A. Yes, sir, I did.

20 Q. Okay. Did any of those beliefs fall into the category of  
21 a belief that the tax laws are unconstitutional?

22 A. No, sir. It is not my belief that Internal Revenue Code  
23 is unconstitutional.

24 Q. At that time did you have any belief that would  
25 constitute a disagreement with the income tax laws?

1 A. No, sir. I -- it's not for me to agree or disagree with  
2 the law. The law is what I find it to be, what I find from  
3 either books, you know, statutes, regulations, or the Supreme  
4 Court, and I believe the law to be the way that they tell me.

5 Q. Do you have a belief that the tax laws, the income tax  
6 laws, are invalid in any way?

7 A. No, sir. I do not believe that the income tax laws are  
8 invalid.

9 Q. On December 31 of 1999 -- let's move forward -- can you  
10 describe for us in the way of a name the various beliefs that  
11 you held regarding the income tax laws and their applicability  
12 to you?

13 A. Well, with respect to liability on my part for the income  
14 tax law, as I already indicated, I believe there is no  
15 statutory authority for anyone to claim that I am liable for an  
16 income tax under the current Internal Revenue Code or the code  
17 as it was in 1993.

18 Q. What other beliefs did you have?

19 A. With respect to whether or not my earnings constitute 100  
20 percent earnings or even a profit or gain or income, it is my  
21 belief that my income, which is generally regarded as whatever  
22 comes in, is not income; that income is not the same as what  
23 comes in. And based upon my beliefs of what the law is as  
24 given to me by the Code, the regulations, and the Supreme  
25 Court, my revenues, my gross receipts I'm given in exchange for

1 my services, that are given to me in exchange for my services,  
2 are not income and cannot, therefore, be included within the  
3 definition of gross income in the Code.

4 Q. Was there -- that's two. Was there a third belief that  
5 you held?

6 A. Yes, sir. My third belief is because of -- basically,  
7 two sub-beliefs to it. My third belief is that under the law,  
8 just as Mr. Sandefur pointed out, that anything that comes in  
9 that is not taxable should be excluded from gross income, and  
10 it is my belief that, under the law, the revenues that I  
11 receive in exchange for the services that I've rendered for my  
12 clients is not taxable both because it is outside of the taxing  
13 authority, rendering it exempt, or -- and, actually, that it is  
14 the result of an activity that is not a privileged activity but  
15 an activity of exercising a fundamental right that I have not  
16 from the government, not from the Constitution, but from my  
17 creator to earn a living for myself and my family through any  
18 lawful occupation. And it is my belief that the law is, not  
19 what it should or shouldn't, but what the law is that the  
20 exercise of a fundamental right is also exempt from taxation.

21 Q. Now, I asked you that -- those -- that's a fair  
22 description of the categories of your beliefs on December 31 of  
23 '99, correct?

24 A. Yes, sir.

25 Q. Now let me just kind of ask a whole bunch of years. Same

1 date, 2000, 2001, 2002?

2 A. Same belief, only stronger.

3 Q. How about after that?

4 A. Even stronger.

5 Q. So the beliefs that you're going to testify about this  
6 afternoon are applicable to, surely, 2000 and 2001?

7 A. Yes, sir.

8 Q. You mentioned that on December 31 of '99, and also  
9 through December 31 of 2001, that your belief is that you're  
10 not liable. Is that any different from the testimony that you  
11 gave previously today?

12 A. No, sir. It is because I know or believe that I would  
13 have found any statute making me liable, no matter where it  
14 was, for the income tax, and it isn't there.

15 Q. What's important about being liable, in your view, in  
16 your opinion and your belief, being liable for the federal  
17 income tax in reference to being required to file income tax  
18 returns?

19 A. Well, it's my belief that -- well, they were mentioned  
20 earlier -- Sections 6001, 6011, and 6012 dealt with the  
21 responsibility or a duty to file a return. 6001, which deals  
22 with all tax returns, not only the income tax returns but all  
23 those as well as the income tax return, states that any person  
24 made liable is required to file a return as set out in the  
25 regulations, and I do not believe myself to be among any person

1 made liable for the income tax and so that section doesn't  
2 apply to me.

3 Q. So your belief is the requirement to file an income tax  
4 return is fundamentally premised upon being liable for tax and  
5 you're not liable for the income tax?

6 A. That is correct.

7 Q. You mentioned just a moment ago a second belief that you  
8 held, and I would like to explore that. That second belief  
9 would be held throughout all the relevant periods, too, right?

10 A. Yes, sir.

11 Q. And what is it that you -- how did you reach that  
12 conclusion? Take us step by step.

13 A. If I recall, the second step that we're talking about was  
14 liability and income, what is and is not income. I noted, in  
15 trying to follow, well, how to determine taxable income, I  
16 noted that the Code refers me to regulations that are  
17 promulgated by the Secretary of the Treasury. Then I referred  
18 to those, went there, and the first that I encountered was  
19 1.861-1. And that particular provision provides that these  
20 sections, 1.861 --

21 MR. CAMPBELL: Objection as to the characterization.

22 MR. BECRAFT: Let me rephrase that.

23 THE COURT: Rephrase.

24 THE WITNESS: Maybe provides was a bad word. Can I  
25 rephrase that --

1           THE COURT:  Silence.  When there's an objection, sir,  
2 you stop talking.

3           THE WITNESS:  I'm sorry.

4           THE COURT:  Mr. Becraft, rephrase your question.

5           MR. BECRAFT:  Will do, Your Honor.

6 BY MR. BECRAFT:

7 Q.       What is your belief in that respect?  Tell us what you  
8 believe that regulation to provide for.

9 A.       I believe that that regulation says that in order to  
10 determine taxable income, you must first deduct from gross  
11 income all deductions provided for in the Code and that then,  
12 after doing that, you must then deduct any item that cannot be  
13 included in gross income.  This reminded me of the language you  
14 referred to earlier today, "except as otherwise provided" on  
15 the definition of gross income to start with.  That caused me  
16 to explore what can and what cannot be included within the term  
17 income which was not defined in the Code.

18 Q.       What did you do?

19 A.       The first thing that I did was that I attempted to obtain  
20 a general understanding of the laws underpinning taxation.  I  
21 started out with a general review of -- to determine the  
22 general rules about what the taxing authority is, what a  
23 government can and cannot tax and what, if any, limitations  
24 there are on how it may or may not go about taxing, and I found  
25 that, you know, not -- I really didn't have an understanding of

1 that before.

2 Q. So what did you do?

3 A. I started out by looking at the cases that had been given  
4 to me. The two cases that had been given to me were Pollock v.  
5 Farmers Trust and Loan, I believe it was called -- but Pollock  
6 in 1895, a Supreme Court case, very lengthy, and there are two  
7 sections in it, a rehearing where they supplemented their  
8 initial ruling, and in that particular case, the Supreme  
9 Court --

10 Q. Well, what did you understand from reading that case?

11 A. From reading that case, I gained an understanding of the  
12 history of taxes in the United States and the history of  
13 taxation and of the general constitutional provisions dealing  
14 with taxation. I learned from reading that case and then going  
15 back and checking authorities and cases cited in that, and  
16 referring back to my Constitution, my copy of the Constitution,  
17 that there are basically two classes of taxes; that the first  
18 class of tax is indirect tax and that the indirect taxation is  
19 authorized in Article I, Section 8, Clause 1. The first power  
20 given to Congress was to tax. And that that section allows  
21 Congress to issue taxes, duties, imposts and excises, provided  
22 that they are uniform. In other words, I found out later or  
23 learned later, came to believe later, that in order for an  
24 excise tax to issue, it has to be the -- uniform between the  
25 states. It can be graduated, it can be different, but as long

1 as it's graduated and different in all the states the same way.  
2 That that was a limitation on the means of indirect tax or  
3 excise.

4 I also learned from a reading of that that the tax issue  
5 started out right away in constitutional in United States  
6 history, you know, starting with a case called Hylton v. U.S.,  
7 H-Y-L-T-O-N versus U.S., and that was in about 1786 or so,  
8 1790, somewhere early on. It had to do with the first tax that  
9 was issued by Congress, which was a tax on the use of  
10 carriages. And that was what helped me to understand that it  
11 sounds like a tax on carriages, so it's a property tax. But  
12 they found it really was a tax on the use of carriages for the  
13 conveyance of persons. So if somebody parked their carriage,  
14 they wouldn't have to pay a tax on it. And they held then that  
15 it was indirect, and that's what I learned from reading Hylton  
16 and coming back to Pollock, that one of the distinguishing  
17 factors in deciding whether a tax falls into the class of  
18 indirect taxes, like excises, or in direct taxes, like a  
19 property tax or per capita tax, is that it is avoidable by  
20 deciding not to engage in whatever the activity is that's being  
21 taxed. So if somebody didn't want to pay the carriage tax,  
22 they had the last word. They could avoid that by not riding in  
23 carriages, not, you know, using the carriage.

24 I also learned that on the direct tax side, and came to  
25 believe, that with direct taxes you have a different, and that



1 would be in Article -- I don't want to misquote here, but  
2 the -- in Article I, Section 9, which contains prohibitions  
3 against what Congress can and can't do. There's a prohibition  
4 against any direct tax or capitation or other direct tax unless  
5 it's in proportion to the census which through reading these  
6 cases I determined meant that it had to be apportioned among  
7 the states. Now, the important, and what that meant was, to  
8 me, and that I believed, was that when they wanted to tax  
9 something directly, they could, but in order to do so, they  
10 would have to first arrive at how much the tax is and then  
11 divide it up among the states according to their populations,  
12 which is one of the reasons they took census, according to the  
13 same way that we divide up Congressmen: the more people, the  
14 bigger piece. And then the bill or assessment went to the  
15 states, the state government.

16 So that dovetailed with my understanding. I've been  
17 studying the Constitution for 40 years. I'm a groupie, a  
18 junkie. And it dovetailed with everything I ever believed  
19 about the Constitution, and that is that it was the intent of  
20 the framers to keep at least an arm's length between the  
21 federal government and the people and the state would be  
22 imposed. So if you're going to tax them directly, you had to  
23 go to the state and say: You go get the money from them. But  
24 they couldn't reach in and grab it out of their pocket, you  
25 know, tax them directly and send the bill directly to a

1 citizen.

2           So I -- those two classes of taxes is what the big issue  
3 was in Pollock, and Pollock held that the income tax of 1894 --  
4 which was a bit of a surprise, because I thought that the  
5 Sixteenth Amendment authorized the income tax. I didn't know  
6 we had them before that. But we did, one even back in 1861, '1  
7 or '2, an income tax on tax derived from property. And I  
8 didn't know they had that power, but they did.

9           But Pollock held that this income tax of 1894 was a  
10 direct tax, and the reason they held it was direct, the reason  
11 I understood, is that they said it was a burden on the  
12 ownership of property, which meant to them it was a tax on the  
13 property, not on the use. Remember the carriage that they're  
14 talking about. You had -- the using the carriage would create  
15 a tax; not using the carriage wouldn't. And, really, the same  
16 thing I thought would apply, because using the property  
17 would --

18           MR. CAMPBELL: Objection.

19 A.       -- generate prop -- you know, revenue. But --

20           MR. BECRAFT: Let me -- let me --

21           THE COURT: Your objection?

22           MR. CAMPBELL: It's narrative; no question pending.

23           MR. BECRAFT: Okay. Will do, Your Honor.

24           THE COURT: Sustained. Question and answer. No  
25 long-winded narrative.

1 BY MR. BECRAFT:

2 Q. You read that case and reached certain conclusions by  
3 this application to the income tax and requirement to file  
4 income tax; is that right?

5 A. Yes, sir. And that gave me a better understanding of the  
6 lay of the land, so to speak.

7 Q. Did you study cases beyond that?

8 A. Yes, sir. I --

9 Q. And can you identify the case?

10 A. Well, the first case I looked at beyond that was  
11 Brushaber, Brushaber v. Union Pacific, which dealt with another  
12 income tax after the Sixteenth Amendment. And I would -- I had  
13 a couple of surprises that -- from that case that I didn't  
14 know, and --

15 Q. Okay. What was it you learned from reading that case?

16 A. I learned two things. One, I learned that an income tax  
17 is, according to the Supreme Court in Brushaber, an excise tax.

18 MR. CAMPBELL: Objection.

19 BY MR. BECRAFT:

20 Q. State your belief.

21 THE COURT: You may proceed.

22 BY MR. BECRAFT:

23 Q. Let me ask you: Can you, when you discuss these cases,  
24 tell us what your belief is that you learned from them?

25 A. Yes, sir, just -- I'm trying to do that and I'm doing my

1 best. If I slip, just correct me and I'll try to restate.

2 Q. What did you believe as a result of reading that case  
3 that you just mentioned, this *Brushaber v. Union Pacific*?

4 A. I believe that an income tax is by its nature an excise,  
5 an indirect tax, and that -- I also believe that the Sixteenth  
6 Amendment, after reading *Brushaber* and seeing what the Supreme  
7 Court said, did not really authorize the income tax because  
8 Congress already had the power to tax incomes.

9 Q. Now --

10 A. Only thing that -- and I believe the only thing it did  
11 was to prevent the burden analysis from being applied to  
12 convert an income tax to direct unless it was actually doing --

13 MR. CAMPBELL: Your Honor, based on that statement as  
14 far as the Sixteenth Amendment not authorizing Congress to  
15 impose taxes on income, I ask that the Court give a limited  
16 instruction as to the correct status of the law on that point.

17 MR. BECRAFT: But he also said at the same time, Your  
18 Honor, he said he believed Congress possessed the power from  
19 the beginning, which is different.

20 MR. CAMPBELL: But he also gave his opinion as to  
21 what he thought the Sixteenth Amendment actually authorized  
22 Congress to do.

23 THE COURT: We get back again on the issue of whether  
24 this is an invalidity argument dressed up in other clothing.  
25 This is a very difficult line to follow caused by the *Cheek*

1 decision.

2 Ladies and gentlemen, I'm going to instruct you that  
3 the defendant is limited in his testimony to his beliefs as the  
4 tax laws apply to him only. Any comments that he may make and  
5 which he has made, either intentionally or inadvertently,  
6 regarding the validity of the taxes is to be disregarded by  
7 you. A defendant's views about the validity of the tax  
8 statutes are irrelevant as to the issue of willfulness and they  
9 are not set for consideration. I will give you the law as it  
10 stands during the final instructions before you will begin your  
11 deliberations.

12 You may continue, Mr. Becraft. You and your  
13 client --

14 MR. BECRAFT: Yes, Your Honor.

15 THE COURT: -- need to be reminded that I don't like  
16 the way this is heading into these areas that we've discussed.

17 BY MR. BECRAFT:

18 Q. You reached the conclusion that -- what was important in  
19 your belief about a conclusion that this was an excise tax?

20 A. Well, the important thing in my understanding of it being  
21 an excise tax is that being an excise, it was, first off, going  
22 to have to pass, you know, a uniformity limitation, which, as  
23 far as I know, it does. And the second thing that I noted  
24 about the income tax being indirect is that it was a tax on the  
25 activity instead of the property as I understood that

1 difference to make, the use of property for the activity rather  
2 than taxing person or property, which would put it under a  
3 direct tax.

4 Q. Now, did you read or study any Supreme Court cases that  
5 related to the definition of an excise tax?

6 A. Yes, sir, I did.

7 Q. Can you identify that for me, please.

8 A. Well, I read Flint v. Stone Michigan (sic), which I noted  
9 in Shepardizing is still being cited, Flint v. Stone Tracy was  
10 a 1911 Supreme Court case and it defined --

11 Q. You sat down and read it and you drew certain  
12 conclusions, correct?

13 A. I concluded that the definition of an excise tax --

14 Q. Was what?

15 A. -- was a tax on the manufacture, sale, or consumption of  
16 commodities, or on the licensing of certain occupations, or on  
17 the exercise of corporate privileges.

18 Q. Now, what does that have to do with you being required to  
19 file income tax returns?

20 A. An excise tax being -- believing that an excise tax was  
21 that, a tax on those particular, that was the scope of a excise  
22 tax, that led me to believe that my activities, consisting of  
23 the practice of law, are not manufacture, sale, or consumption  
24 of commodities, nor, from a federal standpoint, is it a  
25 licensing of an occupation, nor am I exercising any corporate

1 privileges. As a result, I concluded, and I believe, that my  
2 activities are outside the excise taxing powers; and,  
3 therefore, any income from, or revenues from, that activity are  
4 not taxable income and should be excluded from gross revenue,  
5 just like the Code in the regs tell me to exclude them.

6 Q. You mentioned that one of your beliefs is -- in that  
7 respect, you've said that it's not income, but in reference to  
8 Section 61 definition of income, in reference to other  
9 provisions of the Code that relate to taxable income, what, if  
10 any, study did you engage in regarding that topic?

11 A. Well, that started, of course, with a search of the Code  
12 for a definition of income, and -- which it isn't there. And  
13 so I went -- naturally, the first place I go to look for the  
14 meaning of terms is Black's Law Dictionary, and I --

15 Q. What did you find there?

16 A. -- looked at cases -- do what?

17 Q. What did you find there when you consulted Black's Law  
18 Dictionary?

19 A. Let me look at it, make sure, because --

20 Q. You looked up in Black's Law Dictionary a definition?

21 A. Yes, sir.

22 Q. And what was the definition you were look looking for?

23 MR. CAMPBELL: Objection --

24 THE COURT: Sustained. Irrelevant. Move on,

25 Counsel. We're not talking about Black's Law Dictionary here.

1 THE WITNESS: All right, sir.

2 BY MR. BECRAFT:

3 Q. In reference to --

4 THE WITNESS: I'm sorry I responded, Your Honor.  
5 It's habit. It's hard --

6 THE COURT: Do not address your remarks to the Court.  
7 Mr. Becraft, continue.

8 THE WITNESS: Yes, sir.

9 BY MR. BECRAFT:

10 Q. Mr. Cryer, did you study the Internal Revenue Code in  
11 reference to the issue of whether or not you had taxable  
12 income?

13 A. Yes, sir.

14 Q. What was it that you did?

15 A. Well, the first thing I did was I tried to find out  
16 whether or not I had income, what was income, and I was able to  
17 determine by looking at 61 that was referred to earlier that  
18 the definition of gross income, as I see it here, is not that  
19 compensation for services equals gross income. I read the  
20 statute; it says except as otherwise provided, gross income  
21 means all income from whatever source derived, including  
22 compensation for services, fees. Now -- so my question at that  
23 particular point is: How do I derive income? In other words,  
24 I start with fees; where do I go to determine what income was  
25 derived from that? That doesn't tell me that they're equal.



1 It tells me that the income that derives from those fees would  
2 be part of gross income under that definition. So I started  
3 looking for the -- other definitions, and all I could find --

4 Q. Okay. What other definitions?

5 A. Well, I -- I looked at Section 64 which defines ordinary  
6 income. Again, a hybrid term, but -- I'm not sure what the  
7 ordinary significance is. But it defines ordinary income as  
8 any gain from the sale or exchange of property. Then, at that  
9 particular point, I went -- this is my understanding. But I  
10 went to Supreme Court cases again.

11 Q. Why would you do that?

12 A. Well, it's my understanding that the proper procedure in  
13 Internal Revenue matters is to look to Supreme Court cases as  
14 equivalent to the code and -- now, lower court cases they do  
15 not consider that way, but they consider, as I understand it,  
16 and my belief is from my understanding, their proper  
17 procedures. So that's why I went back to the Supreme Court.  
18 And it was then that I realized that it wasn't fair to expect  
19 the definition of income in there, because as I found out  
20 and -- that -- learned or came to believe, that only the  
21 Supreme Court can define constitutional terms. And since the  
22 word income is the scope of the Sixteenth Amendment and the --  
23 and, you know, the only way that you can find out what income  
24 is would have to come from the Supreme Court --

25 MR. CAMPBELL: Objection.

1 THE COURT: State your basis, Mr. Campbell.

2 MR. CAMPBELL: As far as interpretation on the canons  
3 of the Constitution or interpretation of what the Supreme Court  
4 can and can't do and whether that's within the exclusive realm  
5 of the Supreme Court and so forth.

6 MR. BECRAFT: My reply to that, Your Honor, is I  
7 think this defendant can testify that he read cases and reached  
8 certain conclusions and beliefs, and those conclusions and  
9 beliefs are certainly admissible.

10 THE COURT: He's not testifying as an expert witness.  
11 I have accorded him substantial leeway in testifying as to the  
12 methodology behind how he reached his personal beliefs whether  
13 they match up with law or not. I'm going to overrule the  
14 objection. Counsel, I need not caution you any further.

15 MR. BECRAFT: You said overruled, right, Your Honor?

16 THE COURT: You may.

17 BY MR. BECRAFT:

18 Q. Identify -- so you wanted to find out what income meant?

19 A. Yes, sir.

20 Q. Now, can you right here just kind of list for us what  
21 things that you consulted that you could study that would  
22 educate you about and result in some beliefs as to what income  
23 was?

24 A. I read the Supreme Court case of Doyle v. Mitchell --

25 Q. Just identify them.

1 A. Doyle v. Mitchell Brothers, a 1918 case. I read the case  
2 of Town v. Eisner, another Supreme Court case. I read the case  
3 of Eisner v. Macomber, a Supreme Court case. And I read the  
4 case of Commissioner v. Glennshaw Glass.

5 Q. Now, that would be during your studies of these tax laws  
6 that relate to your beliefs, correct?

7 A. Yes, sir.

8 Q. Now, after you read that collection of cases, did they  
9 have some relationship to your beliefs as to what was income  
10 and what was taxable income; and if so, can you tell us what  
11 that was?

12 A. After reading these cases, I formed a belief as to what  
13 is income. I did not yet explore into taxable, that which can  
14 be taxed or not taxed, but whether what is income.

15 Q. With that caveat, as a result of reading those cases  
16 you've just identified, what belief did you reach?

17 A. I reached the belief that income is not what is received,  
18 that not only comes in as income, that not -- that it's not  
19 what is received, it's the gain that is realized, the profit or  
20 gain that is the income, that what is totally -- the total  
21 received is your gross receipts, or is gross receipts.

22 I also believed as a result of reading these Supreme  
23 Court cases that in order to be income, the income -- you first  
24 must determine whether there was a gain by deducting the  
25 capital or what was exchanged back out of the price or what was

1 received, and that only then could you determine if there was a  
2 gain; and if there was a gain, then that difference would be  
3 the gross income.

4 I also formulated a belief from reading these cases that  
5 it is -- in order for there to be income from a conversion, or  
6 a receipt, that the portion that is income must be  
7 distinguishable, severable, identifiable from, and separate and  
8 apart from, so that it could be expended without diminishing  
9 the capital that was deducted.

10 And I also formed a belief that in the absence of any of  
11 these particular conditions or qualifications as income, then  
12 the receipt is not income.

13 Q. Now, with that in mind, can I use just for illustration,  
14 let's say in some times -- you don't admit during the years  
15 2000 and 2001 -- you know, if we added up all your bank  
16 deposits and we looked at Government Exhibit 40 or 42 in this  
17 case, that top line for 2000 and 2001 gross deposits was what  
18 you took in those years, correct?

19 A. Yes, sir.

20 Q. Okay. Now let's take a situation during, like, 2000 and  
21 you had a client that came in and paid you \$1,000 for services  
22 that you provided. Is that something that happened during that  
23 year?

24 A. I imagine it did, yes, sir.

25 Q. Okay. Now, based on what is your definition of what is

1 income, can you explain to this jury about what you, when you  
2 received a \$1,000 check, why and how you would believe or reach  
3 the conclusion that was not income?

4 A. Well, to begin with, it's my belief and was my conclusion  
5 that that fee was gross receipts in exchange for which I had  
6 given services that were received by the client and delivered,  
7 that those services were at the cost of my human capital, I  
8 call it, were at the cost of my time out of my lifespan, time  
9 out of my working lifespan, my knowledge, my skill, my  
10 experience, and my labor, all of which I consider to be my  
11 property. I have exchanged my property or expended my property  
12 in order to provide services to another in exchange for that  
13 fee.

14 Now, I cannot evaluate my labor and how much of my life  
15 is worth. I don't even know how much of it I have left. So I  
16 don't know whether an hour is 10 percent, 1 millionth of a  
17 percent, or 50 percent of the rest of my life. But it's worth  
18 something, and it's mine. It's my property. And I cannot  
19 distinguish, I cannot separate, I cannot make a clear line  
20 defining what part of that \$1,000 is for the lifetime and the  
21 effort and the labor that belongs to me that should be deducted  
22 according to my belief on how we arrive at whether or not a  
23 gain or income was arrived, because only the gain, only the  
24 profit, is income. Not the \$1,000. That's gross receipts.  
25 The income is only the gain. And I cannot ascertain that. I

1 can't -- I have no way of determining the value of that. And  
2 based upon my belief regarding the rules of application on  
3 basis as well as my belief regarding the distinguishable nature  
4 of income, that where the amount or value of what is exchanged  
5 is uncertain, that there's a presumption that the exchange is  
6 for equal value. And so what I gave would have been worth  
7 whatever it was I was willing to take for what I gave.

8 Q. Now, let's imagine in our minds, put \$1,000 up here on  
9 kind of a screen. Okay?

10 A. Yes, sir.

11 Q. And you say that that's gross receipts?

12 A. Yes, sir.

13 Q. And you believe that income is a gain or a profit,  
14 correct?

15 A. Yes, sir.

16 Q. So there is something to be subtracted off from that  
17 \$1,000?

18 A. Yes, sir.

19 Q. Okay. Describe for us what you believe must be deducted  
20 off from that \$1,000.

21 A. What must be deducted off of that \$1,000 is the value of  
22 however many hours of my life it cost me to deliver that  
23 service. That's property, in my belief. I believe it's my  
24 life, and it's whatever the value of the labor, the energy that  
25 I expend. That's my property. And I've exchanged it for that.

1 So that should be backed off before we can arrive at  
2 determining whether or not any gain or income even existed.  
3 Since it's not clear and severable, I can't separate the two,  
4 then it's also my belief that if it's -- if it can't be  
5 separated, can't be severed, then it's not income, because it's  
6 my belief that that is one with distinguishing aspects of  
7 determining whether or not something is income and can be  
8 included in gross income or is not income and cannot, as the  
9 Code says and regs say, be included in gross income.

10 Q. Now, on our example of the \$1,000, you're saying that  
11 there should be subtracted off something from that to arrive at  
12 a gain or a profit?

13 A. Yes, sir.

14 Q. Okay. What is it that you would subtract off? If you  
15 took in \$1,000, what is it exactly that you would subtract off  
16 to determine what the gain or profit is?

17 A. I can't determine a number, but the name of the, what  
18 would be subtracted off would be the capital or the principal  
19 or the basis, depending upon which term you want to use.

20 Q. Would that be similar to labor?

21 A. That would be similar to labor. That would be -- labor  
22 would be a big component of that. And again, my labor is my  
23 property.

24 Q. So for 2000 and 2001 -- we don't need to pull up those  
25 exhibits. Let's call them -- you know, let's label \$1,000 --

1 \$100,000 for each year. You made -- gross deposits went in  
2 through your accounts for those two years, under my  
3 hypothetical example right now, at \$100,000 each, right?

4 A. Yes, sir.

5 Q. And we know that you had some expenses. You paid your  
6 secretary, rent, phone, stuff like that. Would that be  
7 deducted?

8 A. Yes.

9 Q. Okay. You end up with some figure after you've done  
10 that, right?

11 A. Right.

12 Q. Okay. What do you characterize that figure as being?

13 A. That would be my gross receipts. That would be my gross  
14 receipts less the deductions first talked about in, in 1861-1.  
15 And they say first deduct the expenses and whatnot in order to  
16 arrive at your gross. And then it says to deduct those things  
17 that cannot be included. And then that's my -- I've still not  
18 deducted everything that I spent for those fees. I've deducted  
19 only my out-of-pocket expenses. But I haven't -- I have not  
20 deducted the capital or property that I exchanged for those.

21 Q. Okay. So in my hypothetical, \$100,000 was received in  
22 2000, let's say you had \$25,000 in all these other expenses.  
23 That would leave the \$75,000 left over. And you contend that  
24 that must also be subtracted away in order to determine gain  
25 and profit?



1 A. I did not understand your question. I'm sorry.

2 Q. That \$70,000 in your -- \$75,000 here in my example, in  
3 your view, would not be taxable?

4 A. It would not be income. And it also would not be  
5 taxable, but for other reasons.

6 Q. It wouldn't be income because of what?

7 A. All right. It would not be income because it is not the  
8 gain only that is after deducting the value of my property that  
9 I exchanged for it and because, rule No. 2 as I believe it to  
10 be, it is not separate, severable, derived from the capital.  
11 It is mixed and mingled all in there and it can't be  
12 distinguished and separated out. To use another example, if I  
13 purchase something for \$100, sell it for \$110, I can separate  
14 that. I know the \$100 comes back. The \$10 would be gain, all  
15 things being equal. But in this case, I don't have the \$100 to  
16 go by. I don't know what its value. But I do know it's in  
17 there, and in that \$75,000, there's an awful lot of sweat for  
18 that, an awful lot of labor. And that labor, the value of it  
19 would have to be backed out before you could even determine if  
20 I had. And since you can't figure out what part is and what  
21 part isn't gain, if any, then none of it is, as my  
22 understanding, my belief of what the law is and the law that  
23 applies to me is.

24 Q. All right. Now, I want to use an illustration that you  
25 just used a minute ago. You said you had a widget. It cost

1 \$100. You're in the retail business. You sell it for \$110.

2 There is how much in that transaction is profit?

3 A. Would be \$10.

4 Q. Okay. The \$10, in your view, would be income?

5 A. Would be gross income.

6 Q. How would you, according to what you understand and  
7 believe about income, how would, from the exercise of labor,  
8 how from labor would one have income?

9 A. If I were to engage one person to go over, perform a  
10 service for another person and I were to -- let's just say I  
11 hired Joe to fix Bill's window. I pay Joe \$50 to do that, but  
12 I charge -- is it Bill I'm fixing the window? I'm charging  
13 Bill \$75. All right? I just realized \$25 in labor, in profit  
14 on labor. I can distinguish that \$50 from that. And it is  
15 capital. And the -- and I can distinguish the \$25 gain that I  
16 got. And I can take the \$50 and hire him or hire somebody else  
17 to do another chore. And I can use that \$50 because it's  
18 capital. It's just like property. I can use it over and over  
19 again. But in the case of Joe, the \$50 that he got, he gave up  
20 a day out of his life, or part of it. He gave up his labor.  
21 He gave up things that belong to him to get that \$50, and you  
22 can't say how much that was worth. So how much of that \$50  
23 would be profit? It's not distinguishable. It's not  
24 severable. It's not derived from the \$50. It's not out of  
25 there. And my understanding and my belief is that Joe's \$50

1 would not be income. My \$25 would be gross income that I had  
2 left over out of Bill's \$75. That's income.

3 Q. Now, that conclusion that you've reached was based upon,  
4 you've identified some Supreme Court cases, correct?

5 A. Yes, sir.

6 Q. Were there other items that you consulted and studied to  
7 reach the conclusion that you just expressed to us now?

8 A. Yes, sir.

9 Q. What were they?

10 A. I read a number of other cases in connection with the  
11 taxing, because that led me to say, you know: What about the  
12 taxes on gross receipts, gross revenue? And I found a number  
13 of Supreme Court cases, one starting with 1873 and going all  
14 the way up.

15 Q. Okay. Let me stop you. Okay. On that point, can you  
16 specify just by name of the case the cases that you studied?

17 A. State Tax on Railway Gross Receipts, Philadelphia Mail  
18 Steamship Company, Maine v. Grand Trunk Company, a railway  
19 company, Stratton's Independence v. Albert, and Stanton v.  
20 Baltic Mining. Particularly the first three, and by  
21 extrapolation to know that they were still in effect by the  
22 latter two.

23 Q. All right. Now, those cases that you have just  
24 identified for us, can you explain what it is that you learned  
25 and ultimately believed as the result of reading those cases?

1 A. As a result of reading those cases, I came to believe  
2 that a tax on gross receipts is not an income tax because it  
3 taxes not only the income or gain but taxes the basis or the  
4 capital of what was exchanged for it because gross receipts  
5 don't have that backed out. I also came to believe that the  
6 reason that that was significant is that a tax on gross  
7 receipts would be a property tax and would have to be -- it  
8 would have to comply with the constitutional requirements of  
9 the property tax, and that's my belief; and that, therefore, I  
10 concluded and I believe that a tax on gross receipts is not --

11 Q. Is different from an income tax?

12 A. Is different from an income tax, yes.

13 Q. Okay. So an income tax is different from gross receipts  
14 in what respect?

15 A. An income tax would only tax the income, the gain.

16 Q. Out of gross receipts?

17 A. Out of gross receipts. Gross receipts includes both the  
18 income and the capital or basis. The \$100 for the widget,  
19 that's the capital or basis. The \$50 to Joe, that's the basis  
20 or the capital. And I believe, based upon these cases and the  
21 other cases that I referred to a minute ago, that in order for  
22 there to be income, you must be able to identify and to derive  
23 what the gain was in order for there to be income at all.

24 Q. Now, you mentioned that -- that's your study that relates  
25 to income and why what you took in for these years is not

1 income?

2 A. Yes, sir.

3 Q. Did you have some other belief that related to taxable  
4 income that we were talking about earlier, since the break?

5 A. Yes, sir.

6 Q. What is that other one that relates to taxable income?

7 A. That is that income is either within or without the  
8 taxing authority of the federal government under the  
9 Constitution. In order to --

10 Q. Okay. Let me stop you right there. That was a little  
11 different, but on that point, what is it you mean by that  
12 answer?

13 A. Well, what I mean is, is that my belief as to the  
14 constitutional authority of the sovereignties involved here is  
15 that the states are sovereigns, they can do anything the  
16 Constitution or their constitution doesn't prohibit. The  
17 federal government is a limited government and can only do  
18 those things that is permitted. In addition, I found out or I  
19 explored case laws on taxing authority --

20 Q. Let me stop you right there.

21 A. Right.

22 Q. Can you identify the cases that relate to that point that  
23 you just mentioned?

24 A. Yes, sir.

25 Q. What are those cases? Just give us the names.

- 1 A. McCulloch v. Maryland.
- 2 Q. Okay.
- 3 A. Farrington v. Tennessee, Bailey v. Drexel Furniture, Hill  
4 v. Wallace.
- 5 Q. Hill, H-I-L-L?
- 6 A. Yes, sir.
- 7 Q. I'm sorry. Is there another one?
- 8 A. Yeah, Hill v. Wallace. Let me look at my notes. No,  
9 sir. Those are the ones on the particular understanding,  
10 general understanding of the taxing authority, yes, sir.
- 11 Q. On this issue of your general understanding of the nature  
12 of the taxing authority, would that have -- would that study,  
13 these cases you just mentioned, have occurred at some time  
14 prior to December 31 of '99?
- 15 A. Yes, sir.
- 16 Q. Okay. Can you just tell us what year?
- 17 A. Well, these particular cases, in review of McCulloch and  
18 on down to Hill v. Wallace, would have occurred in 1995 or  
19 early 1996. My best guess is early '95 or mid-part of '95.
- 20 Q. Now, you found those in doing your legal research, sat  
21 down and read them, correct?
- 22 A. Yes, sir.
- 23 Q. And the totality of all those cases results in some  
24 conclusion that you've reached regarding the income tax and its  
25 application to you, correct?

1 A. Yes, sir.

2 Q. What is that conclusion and belief that you ultimately  
3 reached as a result of reading the cases that you have just  
4 identified in your last answer?

5 A. My belief is that the taxing authority of a sovereignty  
6 is coextensive with the taxing -- with the regulatory  
7 authority. In other words, by coextensive, one goes as far as  
8 the other. If it's within the power of a government to govern  
9 and regulate an activity, then that activity, particularly  
10 since we're talking about an indirect tax, that activity is  
11 taxable by that sovereignty. If it can control it, it can tax  
12 it.

13 That's -- I believe, too, that that works to this end:  
14 That where two sovereignties are involved, that where one is  
15 sovereign, the other one cannot be. From reading these cases,  
16 I believe that. And from reading these cases, it matters not  
17 whether the subject is in the state category or it's in the  
18 federal category. Whichever one it's in, it's not in the  
19 other. And if it is not in their sovereignty, it is not within  
20 their power to tax it. That's what I believe from reading  
21 these cases.

22 I then conclude, and I do believe, that the definition of  
23 the extent of the sovereignty's regulatory authority is that it  
24 includes all things that are, that exist by virtue of its  
25 authority and includes all things, and particularly activities,

1 that are introduced only by its permission. And that is how I  
2 identify the limits of the sovereignty and the coextensive or  
3 equal limits of the taxing authority.

4 Q. Now, based upon that belief that you derive from reading  
5 these cases, how does that apply to federal income tax and your  
6 requirement to file a return and pay taxes?

7 A. Well, the way it applies is that in the Internal Revenue  
8 Code and in the code of regulations, there are provisions that  
9 state that there is exempt income, income that is exempt from  
10 taxation by the federal government. And that's in -- that's in  
11 1.861-8(T).

12 Q. Let me stop you right there. You keep throwing out these  
13 odd numbers.

14 A. I'm sorry.

15 Q. Can we back up?

16 A. Yes, sir.

17 Q. What is that number that you have just told us?

18 A. All right. The number I just gave you was the number of  
19 a regulation in the Code of Federal Regulations pertaining to  
20 the determination of taxable liability.

21 Q. And that is something that you studied and looked at?

22 A. Yes, sir.

23 Q. And based your conclusions upon what you saw and read by  
24 reading that regulation?

25 A. Yes, sir.



1 Q. Okay. Let me ask you this: What is your understanding  
2 as to what that regulation provides for?

3 A. My understanding of what that regulation provides is that  
4 some income and some property are exempt. From my readings of  
5 the cases I referred to just a minute ago, I concluded and  
6 believe that the meaning of exempt is beyond the taxing  
7 authority of the sovereignty, that anything outside that taxing  
8 authority is called exempt.

9 Q. Now, is that based on certain words that you've seen in a  
10 Supreme Court case?

11 A. It's based on very certain words that I've seen in a  
12 Supreme Court case, yes, sir.

13 Q. Okay. Continue.

14 A. And -- so I -- at that point, I found that provision  
15 referring to the, the exclusion, just as, as Mr. Sandefur said  
16 earlier, you exclude things that aren't taxable, and so I  
17 looked to the regulations to see what was exempt. And it was  
18 my understanding from reading that portion of the regulations  
19 that those items of what was exempt were not identified but,  
20 rather, only those items that -- there are four things that are  
21 described that are identified by the Code as, or I'm sorry, by  
22 the regulations, as not exempt.

23 Q. Okay. What is -- let me just stop you right there. I  
24 want to continue that thought, but what do you mean by not  
25 exempt?

1 A. Well, it would be things that they say, that the  
2 regulations would say are within, they are taxable income.

3 Q. All right. So what did you understand as that which is  
4 taxable income pursuant to that regulation that you're talking  
5 about?

6 A. Well, the four things that they have identified as being  
7 within the taxing, that are taxable because they are not tax  
8 exempt, are foreign sales corporation income, what they call  
9 international or foreign sales corporation DISC or FSC, also  
10 income of a possessions corporation, meaning within the  
11 territories or possessions of the United States, and foreign  
12 earned income, that those four are taxable according to this  
13 regulation.

14 Q. Now, you mentioned, you said that that's not exempt, that  
15 this regulation had something to do with exempt income?

16 A. Yes, sir.

17 Q. Okay. To your knowledge, did the regulations say  
18 anything about what exempt income is?

19 A. It states that exempt income means any income that is in  
20 whole or in part exempt, excluded, or eliminated from federal,  
21 for federal income tax purposes. But it doesn't identify any  
22 of those. It leaves that open for me to find, I guess.

23 Q. So you looked at a regulation that talked about exempt  
24 income and you couldn't see from anything that you looked at  
25 officially, the regulations or the Code, what that was?

1 A. No, sir. And it's the second time I ran across that.

2 Q. What, if anything, did you do to learn or determine what  
3 might be exempt income?

4 A. What I did was, after reading these cases and forming the  
5 belief that exempt income is income that's not within the  
6 taxing authority and this regulation that says that income, it  
7 should be excluded, that exempt income should be excluded but  
8 doesn't tell me what's exempt, I determined again to follow the  
9 Internal Revenue procedures and look to Supreme Court rulings  
10 on what is and is not exempt; i.e., within the taxing  
11 authority.

12 Q. All right. That happened during these years '95 and '96?

13 A. Yes, sir.

14 Q. Okay. Can you -- you've developed an opinion and belief  
15 you're going to explain in a minute on that respect, but before  
16 we get there, can you identify for us these cases that you  
17 read, studied and relied upon that have a bearing upon what you  
18 just said.

19 A. Well, primarily the cases that I relied upon or read in  
20 that regard were, to first start -- I read U.S. v. Bevans. I  
21 read New Orleans v. U.S. I read, in addition to the cases, an  
22 excellent, excellent congressional report from 1957 that gave a  
23 very detailed account, and I read a number of the cases that  
24 were cited in there of the extent of the federal jurisdiction.  
25 And I found and I came to believe that there were different

1 degrees of federal jurisdiction.

2 Q. Okay. Does this have a bearing upon whether or not  
3 you're required to file income tax returns?

4 A. Yes, sir.

5 Q. Okay. What is that?

6 A. Because what I was able to do was to conduct an  
7 inventory, so to speak, of the regulatory authority of the  
8 federal government, on the one hand, and then that would tell  
9 me again whether or not something came under their taxing  
10 authority. And so I concluded that, particularly because I  
11 formed a belief that where one is sovereign, the other one is  
12 not, and where you are not sovereign, you cannot tax, that none  
13 of my activities are within any of those taxable regulatory  
14 authority jurisdiction of the United States government.

15 Q. Okay. Let me stop you right there. Is this a fair  
16 characterization of your activities from, say, like '93 through  
17 2001, maybe 2002? You're a lawyer that's licensed in  
18 Louisiana, correct?

19 A. Yes, sir.

20 Q. Your office is located where?

21 A. Here in Shreveport, Youree Drive.

22 Q. Okay. And the type of work you have been doing is  
23 located in what jurisdiction?

24 A. Right here.

25 Q. Well, what's right here?

1 A. Well, I'm in Louisiana.

2 Q. Those facts have a bearing upon your views and beliefs as  
3 to whether or not you're required to file income tax returns?

4 A. Yes, sir.

5 Q. Okay. Are there other facts?

6 A. Yes, sir.

7 Q. What are those other facts?

8 A. The other facts -- well, to clarify the first, none of  
9 the authorities to regulate, none of the activity that the  
10 federal government is authorized to regulate outside of its  
11 exclusive jurisdiction, which would be maybe like this building  
12 right here, for example, may be exclusively under United States  
13 federal government control, but everything outside is strictly  
14 outside of it unless there's a named authority, like patents  
15 and copyrights. I don't exercise patent rights. I don't  
16 exercise copyrights. I don't exercise any of those things that  
17 are within the power, as I believe it to be, to cut excises,  
18 which would be the manufacture, sale, and consumption of goods.  
19 My activity is subject only to the government of the State of  
20 Louisiana and, therefore, is excluded from government by  
21 another sovereignty. And if another sovereignty cannot govern  
22 it, it cannot tax it. That tells me then that my income is  
23 under 1.861-8(T), that my revenues -- and I don't know that  
24 I've got it -- whatever comes in. We're -- we're geared to  
25 thinking what -- income is what comes in. And my revenues are

1 exempt. If there's any income, they're exempt under  
2 26:1.861-8(T) and should be excluded from my gross income, if  
3 any.

4 Q. Because of the fact that you're within the jurisdiction  
5 of Louisiana?

6 A. Yes, sir. In other words, if I'm under the jurisdiction  
7 of Louisiana, I'm under the jurisdiction of no one else unless  
8 I am engaging in a federally regulated activity.

9 Q. Okay.

10 A. Interstate commerce.

11 Q. And during these years, were you subject to -- I mean  
12 from '93 all the way up to 2002, 2003, 2004. Were you subject  
13 to federal regulation? Your activities.

14 A. No, sir, I haven't -- I haven't been regulated by the  
15 federal government since I was discharged.

16 Q. From the Army?

17 A. From the Army.

18 Q. So it's because -- that is one of your beliefs about why  
19 you weren't required to file returns and you weren't subject to  
20 tax?

21 A. Yes, sir. That's one of them.

22 Q. Mr. Cryer, let's cover one final issue. You mentioned  
23 something about your labor being property. Do you remember  
24 that?

25 A. That's correct.

1 Q. Okay. Does that topic of your labor being property have  
2 any relationship to your beliefs about whether you're subject  
3 to filing income tax returns and paying income taxes?

4 A. Yes, it does.

5 Q. Okay. Tell us why. Give us --

6 A. Well, the --

7 Q. -- a summary first.

8 A. Give us what?

9 Q. A summary.

10 A. All right. The summary is that, No. 1, since my capital,  
11 what I call human capital, and the court recently adopted that,  
12 I call cap -- my human capital cannot be separated from, like  
13 milk and water, my revenues. So that the -- the income --  
14 cream maybe would be a good analogy of that. Since that can't  
15 be identified and separated like cream and milk can, that none  
16 of that qualifies under the definition of income. But if it  
17 were, if we were to assume, all right, let's say we're going to  
18 tax it, then if we taxed the gross receipts, which is what I  
19 ran into when I started talking about the taxes on gross  
20 receipts, the tax would extend not only to the cream, the  
21 income, but would tax the milk, the basis, the capital, my  
22 human capital, my life, my labor, my expertise, my knowledge,  
23 my property, and that would be a property tax, which is not  
24 taxable by excise. So that would be not taxable income and  
25 should be under this particular regulation and should be

1 excluded from gross income, should not be included in that.

2 And that's one.

3 Q. Okay, what's the next?

4 A. No. 2, it occurred to me that because of that, the  
5 question might come up that although it was my opinion and it's  
6 my belief that my labor belongs to me and not anybody else,  
7 that it's my property -- I wasn't willing to put my head on the  
8 block on a belief, on my opinion that my, just without any  
9 authority, that my labor is my property, so I went and looked  
10 again to Supreme Court cases. Because in the Code and in the  
11 regulations, I could not find anything that said that a hundred  
12 percent of earnings, what somebody earns with their labor, that  
13 a hundred percent of that is a profit and taxable. I couldn't  
14 find any law to justify that. I couldn't find any regulation  
15 to justify or to say that a hundred percent of what you trade  
16 for your labor is profit and, therefore, taxable. I couldn't  
17 find that. So I went back to the Supreme Court, because that's  
18 the proper procedure.

19 Q. All right. Now, when you say you went back to the  
20 Supreme Court, you're about ready to tell us about some cases  
21 that you read?

22 A. Yes, sir.

23 Q. Okay. Listen to my question. Can you identify those  
24 cases by name right now?

25 A. Yes, sir.



1 Q. Please tell us the names.

2 A. The two dealing primarily with the term -- my forming of  
3 my belief that under the law, according to my belief under the  
4 law, my labor is my property are Butcher's Union Company  
5 v. Crescent City Company and Yick Wo v. Hopkins. Those are the  
6 two primary ones. And after reading those two Supreme Court  
7 cases, I came to believe that, yes, under the law, the law  
8 sees, as I believe it to be, recognizes that my labor is my  
9 property. It belongs to me and nobody can take it away from  
10 me. Nobody can sell it to somebody else. And it's an  
11 inalienable property. And as a matter of fact, I came to  
12 believe from the reading of these cases that not only is my  
13 labor my property, but it's my most sacred and inviolate of  
14 properties because it is the property from which all wealth and  
15 all other property derives. So I felt that I had verified my  
16 belief, my opinion -- let me categorize that. It was my  
17 opinion it was my property. Now it's my belief that under the  
18 law it's my property.

19 Q. And of what consequence is that belief to taxes?

20 A. Because if my property is included in the fees, my gross  
21 receipts, and they tax the cream and the milk, my milk is the  
22 property and the cream is any profit and we can't separate  
23 them. So it's my belief that since we can't separate them,  
24 none of it's income. But if we tax all of it as income, then  
25 we're taxing my property, and property is not taxable by excise

1 or indirect tax and, therefore, is not taxable income under the  
2 Code.

3 Q. Now, you mentioned -- my recollection is that you made  
4 some statement earlier in the course of your testimony about  
5 property and rights.

6 A. Yes, sir.

7 Q. Is that something, rights, fundamental rights, is that  
8 something that has a bearing upon your beliefs about being  
9 subject to tax and filing of returns?

10 A. Yes, sir.

11 Q. Okay. Summarize for us, if you will, what that belief  
12 is.

13 A. Well, based upon a reading of cases from the Supreme  
14 Court, I formulated the belief that I have a fundamental  
15 God-given right, not a right that is given to me by the  
16 Constitution but one that is protected by the Constitution, to  
17 earn a living for myself and my family through any occupation  
18 of my own choosing that is lawful and that that fundamental  
19 right cannot be abridged. It's my belief that that right has  
20 to be protected by the federal government under the Fifth  
21 Amendment.

22 Q. How does having rights play some role in your view of  
23 having this tax imposed upon you?

24 A. In a reading of the cases that I previously mentioned --

25 Q. Oh, let me stop you right here, if I can. Let me

1 withdraw that question. On this point of fundamental rights,  
2 can you identify any cases that you read --

3 A. Yes, sir.

4 Q. -- on that point?

5 A. Yes, sir.

6 Q. By name?

7 A. Yes, sir. Butcher's Union v. Crescent City Company that  
8 I mentioned earlier, Yick Wo that I mentioned earlier, Truax  
9 v. Raich, Allgeyer v. Louisiana out of this particular  
10 jurisdiction here, Smith v. Texas was very, very important in  
11 the formulation of my belief, Meyer v. Nebraska, Terrace v.  
12 Thompson, and Massachusetts Board of Retirement v. Murgia. All  
13 of them contributed to my belief that -- and -- all of those  
14 and about 20 others that I can't list.

15 Q. When you sat down and read those cases, what conclusion  
16 did you draw?

17 A. I drew the conclusion that since this is a right -- now,  
18 this is my conclusion -- I guess that's what I had earlier, was  
19 a conclusion that my labor was my property. Now it's a belief.  
20 Okay? My conclusion was from reading these that this -- that  
21 my labor, my labor and my right to earn a living is a  
22 fundamental right. My conclusion, that means that it's not a  
23 privilege. If I am not engaging in privileged activity based  
24 upon my belief of what indirect taxes can tax, which is, I  
25 believe, privileged activities, when I'm engaging in an

1 activity as a matter of right, not by permission and not by  
2 authority of anybody else, then that is not a subject that's  
3 outside the excise taxing authority and outside the authority  
4 of an indirect tax. So if it's going to be taxed, it would  
5 have to be by direct tax. The income tax, I believe, is an  
6 indirect tax. And therefore, I believe or concluded, at least  
7 to that point, that anything that -- that my exercise of my  
8 fundamental God-given right, one that I sucked in with that  
9 first air, breath of air, back in 1949, that my exercise of  
10 that right is exempt from taxation because it's not a  
11 privilege, it's a right.

12 I also surmised and concluded at that time that working  
13 for a living is not exactly an avoidable activity and,  
14 therefore -- I mean, you can avoid working for a living, but I,  
15 I don't know that, you know, that would be acceptable to most.  
16 But nevertheless, that will take it outside of an indirect  
17 taxing, making it outside of the taxing authority of an income  
18 tax. So that would make it exempt and it should be excluded.

19 No matter which way I go, no matter which way researched,  
20 no matter which law, no matter how deep I dig, I keep coming to  
21 the same conclusion, and then I verify it while -- into a  
22 belief with the Supreme Court, and the Code, and the  
23 regulations, that all are telling me these things are the law,  
24 and I'm believing that.

25 Q. Okay.

1 A. The only question that I had was whether or not my  
2 conclusion that my God-given right is exempt from taxation is  
3 the law.

4 Q. And did you -- what's your belief in that respect?

5 A. From reading cases regarding the taxation of a  
6 fundamental right and from reviewing Fifth Amendment due  
7 process, reviewing *Flint v. Stone Tracy* which says that only --  
8 you know, it's a privileged activity, from all my  
9 understanding, and from cases such as *Grosjean v. American*  
10 *Press*, a case that came out of my hometown back in 1936 -- I  
11 wasn't around for that one -- but *Murdock v. Pennsylvania*,  
12 *Opelika*, and other cases, *Follet v. McCormick*, *Harper v.*  
13 *Virginia Board of Elections*, is that a fundamental right -- my  
14 belief is that a fundamental right is exempt from taxation  
15 because if you can tax -- I also believe that this has been,  
16 been incorporated into the body of law from our Supreme  
17 Court -- that the power to tax is a power to destroy, and you  
18 have no rights as long as I have the power to destroy that  
19 right. If I can destroy your right, you don't have one. And  
20 so -- and the courts have -- you have cases like *McCray* and  
21 *Veazey* that I've read that cause me to believe that if the  
22 government can tax something for 1 percent, then it's -- you  
23 know, it can tax it for a hundred. And that's okay. I mean,  
24 it's within their power to do that. And oftentimes, even where  
25 the cases have shown that the intent was to destroy the

1 conduct, that -- or that activity, or the subject of the tax,  
2 that that's okay, because the power to tax is indeed the power  
3 to destroy, or the right to destroy. And the courts have  
4 upheld those and --

5 MR. CAMPBELL: Objection.

6 THE WITNESS: Okay. Did I get out --

7 MR. BECRAFT: Let me -- let -- stop.

8 THE COURT: What's the basis of your objection?

9 MR. CAMPBELL: What the courts have upheld.

10 THE WITNESS: Well, those are --

11 THE COURT: I think this is a narrative, rambling,  
12 nonresponsive answer.

13 BY MR. BECRAFT:

14 Q. Listen to my questions, Mr. --

15 THE COURT: And if he is reading testimony as he is  
16 there instead of just testifying in response to a question, I  
17 have a problem with that, Mr. Becraft.

18 MR. BECRAFT: He read off a list of the cases.

19 THE COURT: And he keeps flipping pages. Now, if  
20 he's using it to refresh his recollection, that's one thing.  
21 But if he's reading off of it for testimony, that's a different  
22 issue. And I don't think that document has been provided to  
23 counsel during discovery, has it?

24 MR. BECRAFT: Not that document. No, Your Honor.

25 And --

1           THE COURT: Ladies and gentlemen, we're going to take  
2 a five-minute stretch break. Please remain here. Stand up,  
3 stretch.

4           I want to see the lawyers -- Marie, with you -- in  
5 the robing room.

6           (At sidebar in robing room, defendant  
7 absent, all counsel present.)

8           THE COURT: Mr. Becraft, we have had objections  
9 raised in the past to narrative, long answers. I don't mind  
10 responsive answers, but we are not, from the viewpoint of  
11 relevance, going back to the time of creation and running this  
12 forward. Legal relevance and the Federal Rules of Evidence are  
13 there because at some point this trial has to end, and this  
14 narrative stuff that we have been listening to is out of bounds  
15 with the rules of evidence and the way that trials are supposed  
16 to work. If he is reading information off of that and part of  
17 the tax protester agenda that may underlie, or may not, all of  
18 this stuff, I have a problem. He's on the stand. Let him  
19 testify, but not read.

20           MR. BECRAFT: Can I respond to that, Your Honor?

21           THE COURT: I'm listening.

22           MR. BECRAFT: Okay. When I got here, Mr. Cryer  
23 assembled all of the stuff that he read, studied, and relied  
24 upon and I went through it with him. And, you know, he was of  
25 the view from reading the cases that, talk about what you can

1 testify about, you know, he was under the impression that he  
2 could specifically say: I read this case and this is what I  
3 learned from it. That was his conclusion. Over the weekend,  
4 we have -- you know, he had a big thick book --

5 THE COURT: Oh, I have no doubt.

6 MR. BECRAFT: Yeah. And we -- I said: No way, Jose.  
7 And I said: He's going to have to be able to tell us what the  
8 substance of the case is.

9 THE COURT: And he's going to have to do this now.  
10 Okay?

11 MR. BECRAFT: Yeah. Your Honor --

12 THE COURT: And if we're flipping through 403 pages  
13 to make sure we've covered all the points, that's your job, not  
14 the witness's.

15 MR. BECRAFT: Let me tell you where we are, Judge.  
16 I'm ready to summarize and conclude everything, right now. His  
17 beliefs. My next --

18 THE COURT: You don't have an opportunity to  
19 summarize beliefs. It's cumulative testimony. It's been asked  
20 and answered. You can't underscore that. It becomes argument  
21 to the jury. I haven't seen a rule of evidence that allows  
22 that yet.

23 MR. BECRAFT: Here's -- I'm -- Your Honor, this line  
24 of testimony is ready to end, is what I'm saying. Next, you  
25 know, I'm going to ask some conclusory questions about a couple



1 of dates, and then I'm going to get into specific facts.

2 That's where we are.

3 THE COURT: Specific facts about what? What can  
4 there possibly be left?

5 MR. BECRAFT: Well, there's some government documents  
6 that I want to go over. We've got to address the -- you know,  
7 I want to quickly get into --

8 THE COURT: You have precisely 47 minutes to complete  
9 this direct examination.

10 MR. BECRAFT: I'm doing that, Your Honor.

11 THE COURT: I find that this is excessive, it is  
12 improper questioning and improper type of narrative responses.  
13 I have ruled on this before, and I will start cutting you and  
14 the witness off if this continues. Do I make myself perfectly  
15 clear?

16 MR. BECRAFT: Yes, Your Honor.

17 THE COURT: We are not sitting here ad nauseam on and  
18 on and on and on. This borders on total irrelevance. If he  
19 would get back into the playing field, at least inside the foul  
20 lines, it would sure help.

21 MR. BECRAFT: Okay. Your Honor, then the next point  
22 we have, I've got to address, you know, the secretary  
23 situation, there's some documents on the extensions of filing  
24 returns, conversations that he's had with some of these IRS  
25 agents, and then we're going to conclude.

1 THE COURT: You have 47 minutes within which to do  
2 that. 46 now.

3 MR. BECRAFT: Your Honor, I was gunning for about  
4 5:30.

5 THE COURT: Well, then you have 15 minutes if that's  
6 what you're gunning for, and the long, rambling narratives of  
7 your client are going to impair your ability to get the story  
8 out that you need to get to the jury. Now, however you need to  
9 communicate that, that's fine. But this is so far afield of  
10 ordinary testimony as to amount to nothing more than reading  
11 what amounts to be propaganda based on his own beliefs, end  
12 quote.

13 And I'm still of the opinion that the invalidity  
14 aspect of this is still there. You just haven't used the word  
15 invalidity. And we'll wrestle with that when we get to jury  
16 instructions.

17 But I'm not happy with the way this is going. This  
18 is an abuse of process. This is a court of law. It's not on  
19 and on and on and seeing how long we can drag this out.

20 MR. BECRAFT: I'm not trying to drag it out.

21 THE COURT: He's dragging it out. You don't have  
22 control over your witness. And if you don't get it, I will do  
23 it.

24 MR. BECRAFT: Okay. Will do, Your Honor.

25 THE COURT: Clear?

1           MR. BECRAFT:  Yes.

2           MR. CAMPBELL:  Your Honor, just very briefly, and I  
3 was not going to make this request until my appreciation of the  
4 rules say they would trigger it.  At first, I thought the paper  
5 was there because there were a lot of cases, that it was just  
6 like Mr. Becraft said, just refreshing his recollection on all  
7 these cases.  But as the testimony developed -- and I don't  
8 know because I haven't seen it, but -- and I'll take  
9 Mr. Becraft at his word for this.  If what he is using is a  
10 document that he used in order to prepare for his testimony  
11 today, to me that would be a statement, a material statement  
12 about his testimony that would trigger a reverse Jencks  
13 request.  And I cannot make that request until after the  
14 witness has been tendered, and so that's why I haven't made it.  
15 But once he's tendered, I would like -- and I'm going to take  
16 your -- you tell me it's not, then I take your word for it.  
17 But if it is a statement that was, is, material to his  
18 testimony, then I would like to have a copy of that.

19           MR. BECRAFT:  We'll take that up after we conclude,  
20 Your Honor.

21           THE COURT:  From -- Mr. Campbell, I'm in full  
22 agreement with you.  Fair is fair in this particular case, and  
23 we'll have an in camera review of what that document is  
24 following today's testimony and we will determine whether the  
25 prosecution gets to review it overnight in preparation for

1 cross-examination.

2 MR. BECRAFT: Your Honor, he's got an outline of his  
3 testimony I'll be glad to give him.

4 THE COURT: I'm talking about the document he's  
5 flipping page from up there.

6 MR. BECRAFT: All that is, Your Honor, is pages out  
7 of Supreme Court decisions, 100 percent.

8 THE COURT: We'll see.

9 MR. BECRAFT: Okay.

10 (Sidebar concludes and the following is  
11 had in open court with defendant  
12 present.)

13 THE COURT: All right, ladies and gentlemen. Court  
14 will come to order. Please be seated.

15 Mr. Becraft, you have 15 minutes. Use it wisely.

16 BY MR. BECRAFT:

17 Q. On April 15 of 2001, April 15 of 2002, you had no plans  
18 to file income tax returns, right?

19 A. No, sir.

20 Q. You didn't do it for the later years, right?

21 A. No, sir.

22 Q. And the reasons you haven't encompass everything that you  
23 have told us about this afternoon?

24 A. Yes, sir.

25 Q. It includes after the break this afternoon the specific

1 summaries that you gave, correct?

2 A. Yes, sir.

3 Q. And then everything else you've testified about through  
4 the rest of your testimony up until now, right?

5 A. That's correct.

6 Q. Did you act willfully?

7 A. I had no choice.

8 MR. CAMPBELL: Objection. That's a jury question.

9 THE COURT: Sustained.

10 BY MR. BECRAFT:

11 Q. Did you know that you were required to file income tax  
12 returns?

13 A. No, sir. I knew that I was not.

14 Q. Did you know that you had a duty to file income tax  
15 returns?

16 A. I knew I had no such duty under the law.

17 Q. That's your belief?

18 A. That's my firm belief.

19 Q. Now let's go back and let's deal with some government  
20 documents that have been introduced into evidence. You  
21 remember the documents that had been offered in evidence relate  
22 to you filing employment tax returns, 940's and 941's during  
23 these years, right?

24 A. Yes, sir.

25 Q. Okay. Say like in '92 and '93, were you doing 940's and

1 941's withholding for your secretary?

2 A. Yes, sir.

3 Q. After you reached these conclusions that you told us  
4 about today, what was your belief or view as to whether or not  
5 you were required to withhold?

6 A. I had come to the conclusion and I believed that her  
7 wages that were exchanged for her labor were not income and  
8 were not, you know, taxable income, and that I was under no  
9 requirement to withhold.

10 Q. When did you reach that conclusion?

11 A. That would have been in mid-995, latter part of '95.

12 Q. Did you broach that subject of withholding -- so you were  
13 withholding on her in '94 and '95 when you were doing this  
14 research?

15 A. Yes, sir.

16 Q. So by the end of '95, you had some ideas as to whether or  
17 not you should continue to withhold?

18 A. Well, I had doubts as to whether or not she was required  
19 to be withheld upon or whether I was required to withhold, yes,  
20 sir.

21 Q. Now, up to that point in time, you -- you heard her  
22 testimony. She said: Hey, look, I kept track of the  
23 checkbooks, I was filling out all the 940's and 941's and doing  
24 all my checks and doing all the withholding. Is that a fair  
25 description of her activities?

1 A. Yes, sir.

2 Q. That was what she was doing before you broached the  
3 subject with her?

4 A. Yes, sir.

5 Q. Is it what she continued to do after that?

6 A. Yes, it is.

7 Q. So if we flipped up on the screen the 940's and 941's for  
8 2000 and 2001 and showed them for the benefit of the jury, your  
9 signature lines on there, who prepared all that documentation?

10 A. She prepared it.

11 Q. Okay. And she did them, the 940's and 941's, in '97,  
12 '98, '99, 2000, 2001, right?

13 A. Yes.

14 Q. And she's continued since then, right?

15 A. She's continued to do so.

16 Q. And what she would do is, she would basically prepare  
17 those forms herself and slide them in front of you and you'd  
18 sign them; is that correct?

19 A. Yes, sir. And I, in addition to signing them, I paid the  
20 employer's portion of any Social Security that she had on  
21 there, too.

22 Q. Okay. But before that, before she would slide it in  
23 front of your nose, would you know the amount?

24 A. No, sir. I don't know the amount now.

25 Q. She determined how much to pay and how much to withhold

1 from herself?

2 A. That's correct.

3 Q. Did you have a conversation with her about whether or not  
4 you wanted to continue withholding?

5 A. Yes, I did.

6 Q. As a result of that conversation, was a decision made?

7 A. Yes.

8 Q. What was the decision that was made?

9 A. She elected to continue to withhold from her pay,  
10 although I did not require her to do so and although I told her  
11 in my opinion the law did not require her to do so. So -- but  
12 I wasn't going to make that decision for her. I wasn't going  
13 to compel her to get into a dispute. She had not sworn to  
14 uphold the law and the Constitution. I had. That was her  
15 election.

16 Q. All right. When you stopped filing for '93, you had that  
17 extension in that you testified previously would expire, what,  
18 August 15 of '94?

19 A. Yes.

20 Q. Are we on the same sheet of music?

21 A. The automatic extension, yes, sir.

22 Q. So from '93, you filed April 15 of '94 that automatic  
23 extension, and you told us in your previous testimony that you  
24 did not file a return for '93, correct?

25 A. That's correct.



1 Q. All right. Now, we've had some government documents that  
2 have been shown to the jury shows that you had continued to  
3 submit extensions for subsequent years, I think up through '97  
4 or '98. We'll let the documents say what they say. Did you  
5 file extensions for those years?

6 A. Yes, though they differed from extensions before.

7 Q. Now, do you have copies of those?

8 A. I'm sure I do.

9 Q. Well, tell us what it is that you stated to the IRS on  
10 those extensions.

11 MR. CAMPBELL: Objection. That would be hearsay,  
12 out-of-court statement.

13 MR. BECRAFT: One moment.

14 THE COURT: Sustained. You can try to rephrase it.

15 MR. BECRAFT: I'll do that, Your Honor.

16 BY MR. BECRAFT:

17 Q. Can we say that the government -- without pulling it up,  
18 that through '97 you submitted extensions?

19 A. Yes, sir.

20 Q. All right. Now, what was your purpose in filing those?  
21 I guess they would be filed April 15 or sometime before that of  
22 each year, right?

23 A. Yes, sir.

24 Q. Okay. Why would you submit those?

25 A. To inform the Internal Revenue Service that I had zero,

1 that I owed it zero taxes.

2 Q. So rather than using a form like a 1040 form, you used  
3 the extension to say that you had zero income?

4 A. I filed that to communicate the fact that I have no taxes  
5 and I have no -- I wasn't under a duty to file a 1040 and there  
6 isn't a -- I don't have a duty for them. So I just sent that  
7 in with zero on it, let them know.

8 Q. And, ultimately, you ceased doing that?

9 A. Yes, sir.

10 Q. When this case got started -- you heard the testimony  
11 from Mr. Sandefur about when he first had a meeting with you,  
12 correct?

13 A. Yes, sir.

14 Q. All right. And he mentioned George Harp, this fellow  
15 right here (indicating), was there representing you, right?

16 A. That's correct.

17 Q. And from that time forward, Mr. Harp has been  
18 representing you in regards to these matters?

19 A. Yes, sir.

20 Q. Okay. So Mr. Harp is notified about a meeting between  
21 you and Mr. Sandefur?

22 A. As I understand it, yes, sir.

23 Q. Okay. And at or about the time that he said in his  
24 testimony?

25 A. I can't dispute the time that he gave, no, sir.

1 Q. Okay. Now, was there some contact that you had with  
2 somebody, anyone, from the IRS before that time?

3 A. Yes, sir.

4 Q. Who was that?

5 A. In January of 2001, which was before either of these  
6 returns supposedly was due, I received a letter and request for  
7 information, request for documents from Mrs. Clair Bullock or  
8 Miss Clair Bullock; I don't know which.

9 Q. She contacted you about what?

10 A. She indicated that she had no record of my having filed a  
11 tax return for whatever period of time was expressed in the  
12 letter and asked me to complete a form that she had submitted  
13 to me that was enclosed with the letter and to send it back in.

14 Q. And did you reply to her?

15 A. Yes, sir, I did.

16 Q. And what did you say?

17 A. I said to her -- well, she had also asked -- wanted --  
18 gave me a time and a date for me to be at her office, and I  
19 told her, you know, I had a previous commitment for that time  
20 but was sorry I wasn't going to be able to meet with her then.  
21 But I also pointed out that her form, and I don't recall the  
22 name of the form or the number, but that the form didn't comply  
23 with the requirements of federal law --

24 MR. CAMPBELL: Objection. Relevance.

25 THE COURT: What's the relevance?

1           MR. BECRAFT: It was brought out on Direct, Your  
2 Honor, from Mr. Sandefur in his testimony, and this directly  
3 addresses a point made during the Direct Examination of  
4 Mr. Sandefur.

5           THE COURT: As to the form not complying with federal  
6 law?

7           MR. BECRAFT: No.

8           THE COURT: That's what his --

9           MR. BECRAFT: The issue.

10          THE COURT: I'm looking at the transcript here.

11          MR. BECRAFT: Okay. I understand, Your Honor. This  
12 relates to OMB, which is specifically what Mr. Sandefur said in  
13 his testimony. It's called Paperwork Reduction Act, Your  
14 Honor, OMB, and that's what he was talking about.

15          THE COURT: Overruled.

16 BY MR. BECRAFT:

17 Q. Is that something you had studied at that time?

18 A. That's something I was familiar with. I wouldn't say I  
19 studied it in depth. But it had nothing to do with the taxable  
20 or not taxable. It had to do with her request for information  
21 form. It really had nothing to do with the 1040 or anything  
22 like that.

23 Q. Let me just -- would you consider whatever argument you  
24 made to Clair Ford Bullock that related to whatever  
25 Mr. Sandefur was talking about, OMB, would you consider that to

1 be a frivolous argument?

2 A. No. For two reasons. First off, I never made an  
3 argument. I think what was referred to was that my claims  
4 concerning my tax liability was a frivolous argument, and I  
5 never advanced an argument. I merely stated that if they knew  
6 of any taxable income I had or any liability on my part for a  
7 tax, to please inform me, because I want to obey the law. But  
8 to, you know, let me know. Show me by what authority I owe,  
9 show me by what authority I'm taxed, and I'll file right away.

10 Q. And that's what you communicated to Ms. Bullock?

11 A. That's what I communicated to Ms. Bullock and that's what  
12 Mr. Harp reiterated, reminded Mr. Sandefur at our meeting, at  
13 which point he declared that to be a frivolous argument. To  
14 ask about what right was a frivolous argument. But I made no  
15 arguments. I didn't advance any of my beliefs or any of the  
16 law as I understood it and believe it to be.

17 Q. When you also met with Mr. Sandefur, did you raise any,  
18 with him, any, what would be considered to be frivolous  
19 arguments?

20 A. No, sir. I didn't -- his description of our conversation  
21 was very, very accurate. The only word I said throughout that  
22 entire conversation was yes.

23 Q. In response to a question?

24 A. In response to a question as to whether or not I  
25 understood my rights.

1 Q. Is that in essence all you've said to Mr. Sandefur?

2 A. Yes, sir.

3 Q. At all times in the past?

4 A. At all times in the past.

5 Q. Mr. Cryer --

6 A. No. I take that back. When we were in discovery and he  
7 brought some --

8 Q. Well, no. That's --

9 A. -- paper, I said thank you. That's it.

10 Q. Let me conclude with this, Mr. Cryer: Have you committed  
11 the crime of willfully failing to file federal income tax  
12 returns for the years --

13 MR. CAMPBELL: Objection. That is a question for the  
14 jury.

15 THE COURT: Agreed.

16 BY MR. BECRAFT:

17 Q. Are you guilty in this case?

18 MR. CAMPBELL: Objection.

19 THE COURT: It's argumentative, Mr. Becraft. You're  
20 attempting to summarize and it's argumentative in form. You've  
21 already covered this ground at the very outset.

22 MR. BECRAFT: One final question, Your Honor.

23 BY MR. BECRAFT:

24 Q. As a lawyer, you have to look up the law, correct?

25 A. Yes.

1 Q. And in this case, you looked up the law, right?

2 A. Right.

3 Q. Did you violate it?

4 MR. CAMPBELL: Objection.

5 BY MR. BECRAFT:

6 Q. In your opinion and belief --

7 MR. CAMPBELL: Objection.

8 THE COURT: He can testify in his opinion, his own  
9 personal belief.

10 A. My own personal --

11 THE WITNESS: Ready?

12 THE COURT: I'm not limiting how you answer,  
13 Mr. Cryer. Answer your lawyer's question.

14 BY MR. BECRAFT:

15 Q. Answer the question. In your opinion --

16 A. Okay. I wanted to make sure --

17 Q. -- did you violate the law?

18 A. -- I wasn't proceeding premature. It is my opinion and  
19 it is my belief, in my mind, my heart and my soul, that  
20 everything that I have done in connection with the income tax  
21 laws --

22 THE COURT: Mr. Becraft, I'm going to cut you off  
23 there. Simple question, yes or no. It didn't call for that  
24 kind of extemporaneous speech.

25 BY MR. BECRAFT:

1 Q. Answer the question yes or no.

2 A. I -- I have not violated any laws.

3 MR. BECRAFT: Other than some off the -- I mean,  
4 outside the presence of the jury argument, Your Honor, that  
5 concludes my direct.

6 THE COURT: Very well. Ladies and gentlemen, it's  
7 now 5:30. Rather than begin the cross-examination of Mr. Cryer  
8 today, we will instead begin that tomorrow morning at 9:00.  
9 Please be in place at a quarter of 9:00 so that we can begin  
10 promptly. I know it's a little difficult for some of you to  
11 get here. Please leave a little earlier tomorrow morning and  
12 we'll try to start promptly at 9:00 to minimize the  
13 inconvenience to you. This case will conclude tomorrow. I'm  
14 going to have the lawyers stay behind today. We have  
15 additional work to accomplish into the early evening hours.  
16 Rest assured they don't get to go home when you do. So at this  
17 time, we will be adjourned for the day.

18 All rise for the jury.

19 Excuse me. One additional thing. No talking about  
20 anything that you heard with anybody, including pets, spouses,  
21 children, anyone at all. Stay away from media accounts. Don't  
22 read the newspaper. Don't listen to the radio. And don't pay  
23 any attention to anybody that seeks information from you.  
24 Report that to the court security officer as soon as  
25 practicable. Very well. Thank you.



1 (Jury exits courtroom.)

2 THE COURT: You may be seated. Mr. Campbell, let's  
3 address the issue of the --

4 MR. BECRAFT: Oh, Your Honor, he can step down now,  
5 can't he?

6 THE COURT: No, he can't. Let's address the issue  
7 that you raised in the robing room of the reference material  
8 that the defendant was paging through during the course of his  
9 testimony.

10 MR. CAMPBELL: Yes, Your Honor. It's my  
11 understanding that under the Federal Rules of Criminal  
12 Procedure, that Jencks itself, and I believe it's 3500, 18 USC  
13 3500, does not provide reciprocal discovery when it comes to  
14 statements, material statements made by a witness, but that the  
15 Rules of Federal Procedure does provide such a provision for  
16 reciprocal, and I'm just going to, for lack of a better term,  
17 call it Jencks material.

18 Based on my observations of the defendant's  
19 testimony, that he had some materials up there that he  
20 referenced from time to time, and certainly those materials  
21 are -- what he had is material to his testimony and, therefore,  
22 in the Government's contention, would be a statement, would be  
23 a statement of the defendant's that's in the defendant's  
24 possession or witness's possession; and, therefore, I feel that  
25 I'm entitled to have a copy of that statement or materials at

1 the time that the defense tenders him as a witness to the  
2 government, and I believe that time is now.

3 THE COURT: All right. Mr. Becraft, come on up and  
4 characterize for the Court what information this witness has  
5 referred to page by page in flipping through it during the  
6 course of his testimony. I had the same observations.

7 MR. BECRAFT: Yes, Your Honor. He printed out for me  
8 an outline of his testimony for me to learn what his testimony  
9 was and to follow along with it. I have no problems with  
10 giving the Government -- I think we may have an extra copy of  
11 an outline of his testimony. You know, I'll give it to him in  
12 just moments. What he has up there is copies of the pages out  
13 of -- it may be Loislaw prints, but it's, you know, pages out  
14 of the Supreme Court Reporter constituted and, you know, a  
15 couple of other legal documents that form the foundation of his  
16 testimony. I have no problem with letting the Government look  
17 at it or make a copy of it.

18 THE COURT: The difficulty that I also have with it  
19 is that, from my observations, the witness appeared to be  
20 reading from those documents and it doesn't necessarily match  
21 up with holdings that are read from cases or anything else. At  
22 this time, I'm going to require the material used by the  
23 witness on the stand be submitted to me for an in camera  
24 review. If I find that it is a sort of flip side of Jencks Act  
25 material, I'm going to order that it be disclosed to the

1 counsel for the Government for review tonight.

2 We also have jury instructions that are in  
3 preliminary form which I'm going to provide a copy to each of  
4 you. And I'm not sure how this will proceed in the morning. I  
5 would envision a one- to two-hour, potentially longer,  
6 cross-examination, which would put us at the noon hour. And I  
7 think probably tomorrow counsel will need to be prepared to  
8 review the jury instructions that we've prepared and enter  
9 whatever objections that need to be entered from either side as  
10 to whether they should be given or not, each side having  
11 submitted specific jury instructions with oppositions in  
12 writing filed by each party. That will be done, more likely  
13 than not, over the lunch hour tomorrow, and it sounds like  
14 we'll have an extended lunch hour in order to accommodate the  
15 jury argument or jury instruction argument. So that's kind of  
16 where we are.

17 Mr. Becraft, let me ask you this question: You had  
18 indicated that there was no objection to Mr. Campbell looking  
19 at the material that he has up on the witness stand with him;  
20 am I correct?

21 MR. BECRAFT: Well, Judge, we've got two things.  
22 Somehow, some way I've lost mine, but I thought we had an extra  
23 copy. Got an extra copy of an outline of the testimony that he  
24 worked up. And I have absolutely no objections to letting the  
25 prosecution have that notebook -- you know, I mean, there's a

1 couple of other books up there. I don't think he's interested  
2 in it. But the three-ring spiral bound notebook which contains  
3 Supreme Court pages, I have no problem with the Government  
4 looking at it now.

5 THE COURT: Let me take a look at it first, because I  
6 think we probably --

7 MR. BECRAFT: May I approach?

8 THE COURT: -- have them broken down now into two  
9 types of material, one an outline of the testimony which could  
10 be considered work product privilege. And I don't think he was  
11 reading from that outline. The other ring binder looks like  
12 the one that he was flipping through at the time. So I need to  
13 see them both. I'll need to decide how they should be  
14 characterized and whether they should be turned over.

15 MR. CAMPBELL: And, Your Honor, the authority for it  
16 is Rule 26.2, and it's titled or captioned "Producing the  
17 Witness's Statement." And the duty applies to both the  
18 government and defense witnesses, and the pertinent part says  
19 any statement of the witness that is in their possession and  
20 that relates to the subject matter of the witness's testimony.

21 THE COURT: Oh, I agree that if it falls into the  
22 that category, that it's reviewable by counsel, and that's what  
23 we're going to decide here in just a moment.

24 Mr. Becraft, are you looking at the outline of that  
25 testimony?

1 MR. BECRAFT: I have a copy right here, Your Honor.

2 THE COURT: Let me see what's in the three-ring  
3 binder, please.

4 MR. BECRAFT: Mr. Cryer, could you hand it to her.

5 (Witness hands binder up to the Court.)

6 THE COURT: While I'm reviewing this, we're going to  
7 give you the jury instructions.

8 (Brief pause.)

9 THE COURT: Mr. Campbell, the information in this  
10 three-ring binder appears largely to be a compendium of  
11 authorities with highlighted information that matches up with  
12 testimony that was read essentially by the defendant on the  
13 stand today. It's close to Jencks Act type material if the  
14 prosecution had it. I'm going to hold that it's discoverable  
15 and reviewable by the Government under Federal Rule of Criminal  
16 Procedure Rule 26.

17 Now, as to the outline of the case, what was that,  
18 Mr. Becraft? That was only one --

19 MR. BECRAFT: It's for me to have an outline -- you  
20 want me to --

21 THE COURT: Well, let me ask you this: Did he have  
22 that same outline?

23 MR. BECRAFT: I don't think -- did -- well, it's  
24 sitting up there, but I don't think he even looked at it,  
25 because he didn't flip pages.

1           THE COURT: I'm going to rule it's attorney-client  
2 product. If you want to provide it voluntarily, Mr. Becraft,  
3 that's up to you. It need not be under the Rules.

4           MR. BECRAFT: He won't get anything out of it, Your  
5 Honor.

6           THE COURT: And it may just absorb Mr. Campbell's  
7 time that could be spent on better things. That's up to him.  
8 But if you wish to provide that voluntarily, that's up to you,  
9 but I'm not going to order its disclosure.

10           All right. Mr. Becraft, do you have a copy of the  
11 jury instructions?

12           MR. BECRAFT: Have them, Your Honor. I've spent a  
13 couple moments quickly looking through them.

14           THE COURT: Mr. Campbell, you also have them?

15           MR. CAMPBELL: Yes, I do, Your Honor.

16           THE COURT: All right. Please be prepared to have a  
17 jury charge conference. I'm not going to hear additional  
18 argument because everything was so well-briefed in advance.  
19 I'm going to enter my rulings tomorrow as to each one that  
20 comes in or stays out as numbered by the respective parties,  
21 and then we will have them printed and prepared for the jury to  
22 read along as I read them out loud.

23           You are to be prepared for your closing arguments  
24 tomorrow. Estimate of time necessary on closing, Mr. Campbell?  
25 Trial's not taken more than a day, so.

1 MR. CAMPBELL: I would say 30 minutes.

2 THE COURT: Mr. Becraft?

3 MR. BECRAFT: Can I have 45? Two counts. It's an  
4 important case for the defendant.

5 MR. CAMPBELL: I reserve 10 for rebuttal.

6 THE COURT: I'll give you each 45 minutes. You may,  
7 of course, not find it necessary, Mr. Campbell.

8 You have 45 minutes, Mr. Becraft.

9 Anything further to come before the Court this  
10 afternoon before adjournment?

11 MR. BECRAFT: Just a clarification on my part. We're  
12 going to have the charge conference tomorrow, right? So you're  
13 not expecting --

14 THE COURT: Tomorrow.

15 MR. BECRAFT: You're not expecting us to hang around  
16 and come back at 7:00?

17 THE COURT: No. Not tonight.

18 MR. CAMPBELL: Charge conference tomorrow morning  
19 before testimony?

20 THE COURT: Correct.

21 MR. BECRAFT: 8:30?

22 THE COURT: Yes, sir. I'd like to see you here at  
23 8:30. If we don't finish it, it will slough over to the noon  
24 hour. But I think this is pretty direct and easy tomorrow.

25 Now let's talk about one final item. Mr. Campbell,

1 since -- and Mr. Becraft, since we have a witness and we're  
2 breaking the witness up overnight, typically we do not permit  
3 attorney-client, back in the old days we called it  
4 woodshedding, to occur. In this instance, since it is the  
5 defendant on the stand, I'm not sure that that rule is equally  
6 enforceable as it would be for an ordinary lay witness.

7 MR. CAMPBELL: Your Honor, I have no objection to  
8 continued communications.

9 MR. BECRAFT: I'm going to work on jury instructions  
10 tonight, Judge.

11 THE COURT: Well, Mr. Harp and Mr. Cryer are free to  
12 chat and do additional things. He is not sequestered from his  
13 attorneys. He may in fact discuss with them this case and do  
14 whatever preparation is necessary for cross-examination by  
15 Mr. Campbell and redirect by Mr. Becraft tomorrow.

16 Any other details or items, Mr. Campbell?

17 MR. CAMPBELL: No, sir.

18 THE COURT: Mr. Becraft?

19 MR. BECRAFT: None, Your Honor. Have a good evening.

20 THE COURT: We are adjourned. I'll see the lawyers  
21 tomorrow morning at 8:30.

22 (Proceedings adjourned at 5:49 p.m.)

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I N D E X

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I, Marie Moran Runyon, Official Court Reporter, do hereby certify that the foregoing pages numbered 164 through 294 do constitute a true and correct record of proceedings had in said trial to the best of my ability and understanding.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Subscribed and sworn to this 14th day of August, 2007.

---

Marie Moran Runyon, RMR, CRR  
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1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF LOUISIANA  
3 SHREVEPORT DIVISION

4 UNITED STATES OF AMERICA \* Criminal Action  
5 No. 06-50164  
6 VERSUS \*  
7 Shreveport, Louisiana  
8 TOMMY K. CRYER \* July 11, 2007

9 \* \* \* \* \*  
10

11 VOLUME IV  
12 TRANSCRIPT OF TRIAL  
13 BEFORE THE HONORABLE S. MAURICE HICKS, JR.  
14 UNITED STATES DISTRICT JUDGE, and a jury.

15 APPEARANCES:

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PROCEEDINGS PRODUCED BY MECHANICAL STENOGRAPHY AND TRANSCRIBED  
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MORNING SESSION

JULY 11, 2007

(Court called to order at 8:35 a.m. with  
defendant present, jury absent.)

FIRST CHARGE CONFERENCE

THE COURT: All right. We are convening before the  
9:00 a.m. start time of the trial for the purpose now of  
looking at jury instructions. Each counsel was provided a set  
of the so-called working copy of these instructions.  
Mr. Campbell, you've had an opportunity to review them  
overnight?

MR. CAMPBELL: Yes, your honor.

THE COURT: And Mr. Becraft, likewise?

MR. BECRAFT: Yes, Your Honor. I think we've got a  
few things that we're in agreement on.

THE COURT: Okay. Who wants to voice the agreement  
this morning, Mr. Campbell or Mr. Becraft? Go ahead  
Mr. Becraft.

MR. BECRAFT: Your Honor, all we did is we both  
noticed that pages 9 and 11, Jury Instruction 14 has the  
dates -- first -- on the second paragraph in No. 14, this draft  
has "Counts 3 and 4." "3" should be changed to "1" and --

MR. CAMPBELL: Correct.

MR. BECRAFT: -- "Count 4" should be changed to  
"Count 2."

1           MR. CAMPBELL: And we also talked about the  
2 October 15 filing date, since that date was not included in the  
3 redacted indictment and, really, it's not relevant.

4           MR. BECRAFT: It isn't.

5           MR. CAMPBELL: So we both agreed that any reference  
6 to the October 15 date should be --

7           THE COURT: So the entire paragraph beginning with  
8 "3" needs to be eliminated on Jury Instruction No. 14?

9           MR. CAMPBELL: No.

10          MR. BECRAFT: No.

11          THE COURT: Just the dates removed from it?

12          MR. CAMPBELL: Just the dates, and then the correct  
13 as far as the counts --

14          MR. BECRAFT: I thought we would put in "April 15"  
15 for "October."

16          MR. CAMPBELL: Paragraph?

17          MR. BECRAFT: The third paragraph in 14.

18          MR. CAMPBELL: Instruction 14. Yes. "Three, the  
19 defendant willfully failed to file a tax return on or before  
20 April" -- right here -- "16, 2001," period.

21          MR. BECRAFT: Yeah. That would be good.

22          THE LAW CLERK: Should it still say "for Count 1"?

23          MR. CAMPBELL: Yeah. "For Count 1," yes.

24          MR. BECRAFT: Right.

25          MR. CAMPBELL: And then period "for Count" -- scratch

1 "4" and then put "Count 2," and then "you must," then it goes  
2 towards the end of the sentence, "return, file the required tax  
3 return on or before April 15, 2002," period.

4 THE COURT: Period. All right.

5 MR. CAMPBELL: And if you go to page 11, the first  
6 paragraph, a period after "April 16, 2001." And then the same  
7 under paragraph 2, a period, after "April 15, 2002."

8 THE COURT: All right. Easily made. What's next?

9 MR. BECRAFT: Your Honor, on this draft as corrected,  
10 I have no objections. The only objections I have that I'd like  
11 to bring up at the charge conference is something I've been  
12 requesting in the way of defense instructions.

13 THE COURT: In that instance, the defense  
14 instructions -- Becky, do you have that packet, or did we take  
15 it upstairs after yesterday?

16 THE LAW CLERK: Hang on. I took it up. I can  
17 reprint it for you.

18 THE COURT: Willfully, which was the big instruction,  
19 we have taken the instructions that you had suggested.

20 MR. BECRAFT: Understood.

21 THE COURT: Are there additional jury charges that  
22 you propose that I don't have a copy of yet?

23 MR. BECRAFT: No. This is out of the, from the set,  
24 the revised set that was filed on Friday, June 29. And I've  
25 just got about five or six of them that I think may be issues

1 in the case that I'd like to make a record on.

2 THE COURT: All right.

3 MR. BECRAFT: I can kind of summarize it for the  
4 Court. I don't think the Court needs to --

5 THE COURT: That'll be fine. After the jury goes to  
6 deliberation, if you need to dictate more reasons into the  
7 record on those charges, that's fine. But I've now considered  
8 those and am not giving those, but you need to make your  
9 objections on the record today.

10 MR. BECRAFT: That's what I was going to do, Your  
11 Honor. The Court probably doesn't need to have a copy.

12 THE COURT: All right.

13 MR. BECRAFT: Defense requested three -- requested  
14 instruction on when the evidence is evenly balanced, the jury  
15 can't acquit, that doesn't rise to the level of reasonable  
16 doubt, I would think that that's an instruction that needs to  
17 be given.

18 No. 10 -- you know, 10 might be something that will  
19 probably, as it -- on the record right now, I don't think that  
20 we have much of a basis for asking for 10. But 10 dealt with  
21 guilt by association, and I have no idea what might come out  
22 during cross-examination. There may become a need for an  
23 instruction on guilt by association.

24 No. 16, it hasn't been brought up yet. It might come  
25 out during cross. It was a request on the instruction on what



1 the Anti-Injunction Act is and who can sue in federal court  
2 regarding taxes. I would say probably right now there is no  
3 need for that instruction, but it might come up during cross.

4 One of the things that has come up during direct is  
5 what I requested on No. 17, reliance on Supreme Court cases.  
6 The Supreme Court -- and this is an issue that was covered in  
7 the trial brief. The Supreme Court in the Fisher case said you  
8 can rely upon Supreme Court cases, and there's evidence in this  
9 case about reliance on Supreme Court cases.

10 20, Your Honor, is an effort to define -- you know,  
11 we've got two issues in this case, you know, what is the belief  
12 about unconstitutional under the law, what is the belief about  
13 disagreement with the law, and 20 simply attempts to define  
14 both of those terms, what constitutes a belief that laws are  
15 unconstitutional, what constitutes a disagreement with the law.

16 And 21 is a theory of defense in this case, you know,  
17 just comes right to the front. You know, if you find these  
18 certain facts, you know, you should find the defendant not  
19 guilty. And it simply states that, you know, for both counts,  
20 if the defendant believed that he wasn't required -- it says --  
21 it was structured for both an evasion count and willful failure  
22 to file. It says, you know, if he didn't have any tax. I  
23 would like to suggest an amendment to that one that would  
24 include language to the effect, you know: "If you find that  
25 the defendant believed in good faith that for the year 2000 his

1 income was not taxable or he was not required to file returns,  
2 it should be your duty to acquit him for Count 1." Same thing  
3 for Count 2. You know, I think that's a theory of defense jury  
4 instruction that kind of hits the nail on the head without any  
5 further explanation.

6           Then, lastly, this -- again, this may not come up.  
7 There hasn't been much evidence on that point, but if during  
8 cross there's some effort, evidence elicited regarding speech  
9 activities, I would think that Requested Instruction No. 22  
10 should be given. But again, that's dependent upon cross.

11           That's all I have, Your Honor.

12           THE COURT: And that basically tracks the information  
13 that you provided in those instructions. Mr. Campbell has  
14 filed objections to those. To the extent that I have not  
15 integrated into the working set of charges your instructions,  
16 they are rejected or overruled, take your pick. I will,  
17 however, hold a couple of those open depending upon cross-  
18 examination and/or potential redirect. I'm not going to be  
19 trying to predict what the crystal ball says about those two  
20 instructions. I will agree with you, Mr. Becraft, at this time  
21 it does not appear that they are relevant at all to anything  
22 that's been brought out in testimony. But we will -- once the  
23 testimony is finished, we will have a brief conference in order  
24 to review these. We will then, or I guess I'll issue a final  
25 ruling of what's in and what's out on the requested

1 instructions. You will then begin your closing arguments while  
2 we print the copies for the jury so that they can read along as  
3 I read them out loud.

4 MR. BECRAFT: So the Court is going to give the jury  
5 copies so they can read along?

6 THE COURT: Yes. They will be permitted to take them  
7 in to the deliberations with them.

8 MR. BECRAFT: Can we use the instructions in closing?

9 THE COURT: No.

10 MR. BECRAFT: We can mention them?

11 THE COURT: Yes. And you can say what you think I  
12 might do.

13 MR. BECRAFT: Okay, good enough.

14 THE COURT: But not what I'm going to give.

15 MR. BECRAFT: I gotcha.

16 THE COURT: And if you pick it up and read it and  
17 drop it, beware.

18 MR. BECRAFT: I'll summarize, Judge.

19 THE COURT: As always, Mr. Becraft.

20 Are there any other housekeeping matters we need to  
21 address before -- we are still short jurors. It's still only a  
22 quarter till 9:00 this morning. But are there any other  
23 details we need to address before we commence?

24 MR. BECRAFT: I think we're ready for cross, closing,  
25 and instructions, Judge.

1 MR. CAMPBELL: Same here.

2 THE COURT: All right. We will then be in recess  
3 till 9:00 or until we get a full complement of jurors so we can  
4 begin today's proceedings. We're in recess.

5 (Recess 8:46 - 9:01 a.m.)

6 THE COURT: Good morning. You may be seated. We in  
7 fact have all of our jurors. Let's go ahead and get the jury  
8 in at this time.

9 Mr. Cryer, if you'd come back up and place yourself  
10 on the stand.

11 Mr. Campbell, you are prepared at the podium.

12 Mr. Becraft, you had asked a couple of questions  
13 about procedure during closing, and we have the podium leash  
14 law in effect here.

15 MR. BECRAFT: I understand, Your Honor.

16 THE COURT: Within an arm's length can touch it,  
17 can't cross in front of it.

18 MR. BECRAFT: Okay.

19 THE COURT: It's not a "Matlock" kind of situation.

20 All rise for the jury.

21 (Jury enters courtroom.)

22 THE COURT: Our jury has returned. Please be seated.

23 Mr. Campbell, your cross-examination of Mr. Cryer.  
24 You may proceed when ready.

25 CROSS-EXAMINATION

1 BY MR. CAMPBELL:

2 Q. Mr. Cryer, yesterday you told the jury during questioning  
3 from Mr. Becraft that you didn't feel that the Internal Revenue  
4 Code was unconstitutional?

5 A. That's correct. I don't believe it's unconstitutional.

6 Q. You don't believe it's unconstitutional?

7 A. Well, it certainly -- there's been no declaration that  
8 it's unconstitutional.

9 Q. I'm asking as far as what you believe.

10 A. I do not believe the Internal Revenue Code to be  
11 unconstitutional.

12 Q. Now, let me ask you this before we delve into the  
13 substance of your testimony from yesterday. What you told the  
14 jury yesterday as far as your views of what is income and that  
15 income is not what you take in, but it's your gain when you  
16 minus the work that you put in and so forth, do you still  
17 believe that?

18 A. Yes, sir.

19 Q. So do you believe that your belief's a mistake?

20 A. No, sir.

21 Q. It's not a misunderstanding?

22 A. No, sir.

23 Q. That's what you believe?

24 A. This is what I believe.

25 Q. Okay. Now, the IRS been coming after you for a while as

1 far as for your failure to file taxes, correct?

2 A. I understand, yes.

3 Q. They have been sending you delinquency notices, correct?

4 Delinquency notice, they sent you a delinquency notice?

5 A. No, sir.

6 Q. You saw in the file where it indicated that a delinquency  
7 notice was sent based on the testimony from Ms. Jackson?

8 A. I do not recall ever having received a delinquency  
9 notice.

10 Q. Let me ask you: Would it be fair to say that you know  
11 that the IRS has been coming after you because you have failed  
12 to file your income tax returns?

13 A. Since January of 2001.

14 Q. Right. And they have been coming after you because you  
15 have failed to file federal taxes, correct?

16 A. I don't know what you mean by "coming after me" --

17 Q. Well, they've been --

18 A. -- but we've been --

19 Q. Well, they've been inquiring into you and your law  
20 practice regarding your failure to file income taxes, correct?

21 A. They've been inquiring into me and my law practice, yes,  
22 sir.

23 Q. And at some point the U.S. Attorney's Office got  
24 involved, correct?

25 A. That's correct, sir.

1 Q. All right. Now, you know -- so when George McGovern did  
2 his calculations as far as income, he didn't use your theory to  
3 calculate what income was, correct?

4 A. That's correct, he didn't.

5 Q. Matter of fact, he said that he referred to the Code,  
6 correct?

7 A. That's what he said.

8 Q. And matter of fact, when Agent Sandefur did his  
9 calculation as far as what is income, you remember him saying  
10 that he referred to the code, correct?

11 A. He made a reference to the Code, one or two sections of  
12 it, yes.

13 Q. So Agent Sandefur and Mr. McGovern's sort of theory of  
14 what is income is not consistent with yours, correct?

15 A. I believe something different from what they believe.

16 Q. Okay. Now, you stated that income is not what you take  
17 in but it's the gain that you realize once you subtract all of  
18 the work and effort that you put into it, correct?

19 A. That's correct. That's according to what I found when I  
20 researched the law.

21 Q. Now, the IRS, would it be fair to say that the IRS is not  
22 coming after you just for what you gain after your work and  
23 effort has been put in, correct?

24 A. That's -- my understanding is that they --

25 Q. They want the whole thing; basically, whatever your firm

1 took in, that's what they're coming after, correct?

2 A. Whatever I took in.

3 Q. Took in, correct. Sorry. And would it be fair to say  
4 that based on your beliefs, for the IRS to tax as gross income  
5 everything your firm took in for what -- let me put it this  
6 way: Let's say you charge a client \$2,000 to do some legal  
7 work. Okay?

8 A. All right, sir.

9 Q. And the IRS says: Well, that \$2,000 -- subject to  
10 deductions, but that \$2,000 is subject to taxation. Would that  
11 be consistent with the IRS position?

12 A. Say that last again? I couldn't understand you.

13 Q. The \$2,000 that you took in --

14 A. Yes, sir.

15 Q. -- from performing the work on that client, that \$2,000,  
16 based on the IRS view, is subject to taxation?

17 A. I think that's their -- but you --

18 Q. That's all. That's their view. Okay.

19 Now, so, under your theory, wouldn't that be  
20 unconstitutional for the IRS to go after the full \$2,000 if the  
21 full \$2,000 is not considered to be income as you defined it?

22 A. Well, now, I haven't mentioned any theories.

23 Q. No, I'm asking you.

24 A. But you're asking me under my theory and this isn't a  
25 theory on my part. Now, what you're describing here is that I



1 have -- I understand what the IRS is telling me, and then, on  
2 the other hand, I've got what I have seen in the statutes, the  
3 regulations, and the Supreme Court --

4 Q. I'm just --

5 A. Let me -- may I finish?

6 Q. I'm just --

7 A. They're not --

8 Q. It's going outside the framework of my question.

9 A. These two -- if I can finish my answer?

10 Q. You're a lawyer; you know how this works. I ask --

11 A. No, but I also --

12 Q. -- the questions, you answer?

13 A. -- need to tell you that --

14 Q. Let me stop you right there?

15 THE COURT: Gentlemen, hang on.

16 Mr. Cryer, I want you to confine your responses to  
17 the questions that are asked. You will have an opportunity  
18 with your lawyer on redirect. You may deliver a narrative  
19 explanation, if necessary, but not beyond that. Clear?

20 THE WITNESS: Yes, sir.

21 THE COURT: Mr. Campbell?

22 BY MR. CAMPBELL:

23 Q. Let me ask you --

24 THE COURT: You're both having a tendency to talk  
25 over one another and Ms. Runyon has an impossible task of

1 taking down on the same line two different people talking at  
2 the same time.

3 THE WITNESS: Would you restate your question?

4 BY MR. CAMPBELL:

5 Q. Let me put it to you this way -- let me ask another  
6 question. You stated that you have a fundamental right to  
7 pursue a profession and make a living?

8 A. Yes, sir.

9 Q. Okay. And that it is not consistent with the  
10 Constitution to tax that?

11 A. No. What I'm saying is, is that based upon the Code, the  
12 regulations, and then Supreme Court, when the Code and  
13 regulations tell me to exclude, exempt any exempt property or  
14 income from that property, then I've done that, I've followed  
15 your procedure.

16 Q. Okay. Now, so you're saying that basically the \$2,000  
17 that you took in is property derived from your fundamental  
18 right to pursue a profession?

19 A. It's my gross receipts, yes.

20 Q. And that's not taxable?

21 A. No, sir. And that's taxes only imposed on taxable  
22 income.

23 Q. Now, before the trial date, you wrote a memorandum. You  
24 remember the memorandum?

25 A. Yes, sir.

1 Q. And that memorandum has been published on the internet?

2 A. Yes, sir.

3 Q. And it says this is the memorandum of Tommy Cryer --

4 A. That's correct.

5 Q. -- you're familiar with it?

6 Now, I'm referring to page 87 of your memorandum, and I'm  
7 just going to paraphrase, and tell me if you agree what you --  
8 this is what you read, what you wrote: It is respectfully  
9 submitted that the income tax, as applied, to wages or fees  
10 personally earned, without exercise of corporation privileges,  
11 without manufacture and sale of commodities and without the  
12 lawful jurisdiction of the federal government is clearly in  
13 violation of the Fifth Amendment in that it deprives and  
14 abridges an inviolable, fundamental right, and a violation of  
15 Article I, Section 9, Clause 4 of the constitution?

16 A. Can I see that?

17 Q. Sure. (Hands document to witness.)

18 A. Here we go.

19 Yes, sir. And the key words in that phrase or in that  
20 sentence is "as applied." In other words, as the IRS contends  
21 the law to be. If they do not -- under the law, I'm entitled  
22 to exclude exempt income, and if the IRS contends and taxes  
23 that, then they're taxing something they're not allowed to tax  
24 and that the law doesn't allow them to --

25 Q. That's un --

1 A. -- tax, in my opinion --

2 Q. In your opinion --

3 A. -- my belief.

4 Q. -- that's unconstitutional?

5 A. As applied. But as you well know, there's a big  
6 difference between unconstitutional as written and  
7 unconstitutional as applied.

8 Q. I understand that --

9 A. As the law stands I believe it to be constitutional.

10 Q. Okay. But based on what you just -- but the IRS, they're  
11 coming after you for what your firm took in, right?

12 A. Yes, sir. They're saying one --

13 Q. And they're not going to apply the theory that you  
14 espouse as to what income is, correct?

15 A. They obviously have a different belief of what the law  
16 says, or a different version of it.

17 Q. So basically what the IRS is doing is unconstitutional  
18 based on your beliefs?

19 A. If I permit them to do it, it would be, yes.

20 Q. Okay. Now let's move on.

21 Now, you did not file a petition in tax court to  
22 challenge the IRS's position as far as them wanting you to file  
23 income tax returns. You did not go file a petition in tax  
24 court, correct?

25 A. No, sir.

1 Q. And the Code provide that forum, tax court, where you  
2 could file a petition to challenge the IRS as far as them  
3 coming after your taxes, correct?

4 A. I could have put one in, I suppose, but --

5 Q. That's all right. That's -- but you didn't do it?  
6 That's all I want to know.

7 A. No.

8 Q. Now, also, in federal court, isn't it true that you could  
9 pay the tax and if you feel that the tax is unjust, that you  
10 could file a suit in federal court against the federal  
11 government for refund of the tax that you feel was collected  
12 unjustly, correct?

13 A. In which case I would not be trying the case before a  
14 jury.

15 Q. No, but that forum is available, correct?

16 A. That is available, yes, sir.

17 Q. But you did not pursue that forum?

18 A. No, sir. I had to take my choices and my options, and I  
19 knew that you had your options --

20 Q. No, all I asked is --

21 A. -- you could've come sued me as well.

22 Q. -- did you pursue the forum. And the answer is no?

23 A. The answer is no.

24 Q. And you chose to fail to file the tax return?

25 A. I chose to refuse to waive my constitutional rights by

1 filing a return that called exempt income gross income.

2 Q. And you didn't pay federal taxes, correct? You didn't  
3 pay federal taxes since nineteen ninety --

4 A. I didn't owe any federal taxes.

5 Q. Okay. Let's talk about your theory about income and that  
6 it has to be a gain.

7 A. I don't have a theory on what is income.

8 Q. Well, in your opinion, your opinion.

9 A. My belief.

10 Q. Your opinion, your belief, whatever you want to call it,  
11 that basically if, the \$2,000 example, you charge \$2,000 to  
12 perform a legal service and there is no gain because the value  
13 you put in that work to perform the legal service equal what  
14 you got, which is the \$2,000, correct?

15 A. That's the formula I believe that the law provides for me  
16 to apply.

17 Q. So, basically, that's sort of like a zero sum  
18 transaction?

19 A. I can't say zero sum, because -- and I disagree with  
20 those that argue the zero sum, although there is a basis for it  
21 in your basis regulations and statutes. But I do know that I  
22 cannot assign a particular value, but I know there is value  
23 there and that you cannot tax the whole without taxing the  
24 property that was exchanged for that fee.

25 Q. Now, you researched this area of law, correct?

1 A. Yes, sir.

2 Q. And you say you looked at Supreme Court cases?

3 A. I looked at Supreme Court cases because that was my  
4 understanding of what the, what your organization's procedure  
5 was in the event --

6 Q. Let me ask you this: But you're a lawyer -- you're a  
7 lawyer, obviously. And in your law practice, isn't it true  
8 that the Supreme Court does not address every issue out there  
9 known to man?

10 A. No. But they've addressed this one.

11 Q. No. Okay. And there are some issues that Supreme Court  
12 do not address that circuit courts address, correct?

13 A. Circuit courts can address those. They can --

14 Q. Okay, that's --

15 A. -- render opinions on cases that are before them, yes.

16 Q. Right. And circuit court law is binding based if you  
17 live in that particular circuit, correct?

18 A. No, sir. I think that the federal law, whatever the law  
19 is, is the same no matter what circuit you're in, and if --

20 Q. Okay. Let me ask you this. Let me ask you this. Isn't  
21 it true that in the -- we live in the Fifth Circuit, correct?

22 A. Yes, sir.

23 Q. And as long as there's no Supreme Court law that conflict  
24 with Fifth Circuit law, the Fifth Circuit law would be binding;  
25 wouldn't that be a correct statement?

1 A. Only on the parties to that case, and only in that  
2 instance. That's merely a decision of one case. But the Fifth  
3 Circuit --

4 Q. Whoa, whoa, whoa, whoa, whoa.

5 A. We have eleven circuits. We don't have eleven federal  
6 laws.

7 Q. Okay. Let's -- I would ask for a limited instruction,  
8 but I'm not going to go there.

9 Now, let's just say -- now, isn't it true that there have  
10 been some courts that have -- let me go back. This theory or  
11 your opinion, that's not your original, correct?

12 A. I didn't -- nothing originated from me.

13 Q. Okay, and --

14 A. I merely --

15 Q. You answered --

16 A. -- found the law --

17 Q. You answered my question.

18 And isn't it true that others espouse the same or similar  
19 opinion that you have espoused?

20 A. Not that I know of exactly the -- you know, because I, I  
21 didn't get what I got from others. I got it from the statutes,  
22 from the regulations, and from the Supreme Court.

23 Q. Well, did you read cases?

24 A. Yes, sir.

25 Q. Now, in your research of cases, did you come across the



1 case of Lonsdale v. Commissioner of Internal Revenue?

2 A. I ran across Lonsdale --

3 Q. I just want to ask you did --

4 A. Yes.

5 Q. And in that case --

6 A. May I refer to my notes?

7 Q. I'll put it up so you can see it. No, I just want you to  
8 look at it right here. You don't need your notes right now.

9 Close that. You don't need your notes.

10 A. All right.

11 MR. CAMPBELL: Can you pop this up for the witness to  
12 see this?

13 (Document displayed to witness only.)

14 BY MR. CAMPBELL:

15 Q. I'm going to read this and I want you to read along with  
16 me. I'm going to read the highlighted portions.

17 A. All right, sir.

18 Q. "This is so, appellate's first argument, because the  
19 exchange of services for money is a zero sum transaction, the  
20 value of wages being exactly that of the labor exchanged for  
21 them, and hence, containing no element of profit." That's  
22 their argument. The court's response: "This contention is  
23 meritless. The Constitution grants Congress full power to tax  
24 incomes from whatever source derived." Do you agree that  
25 that's what the court said there?

1 A. I agree that's what the court said, yes, sir.

2 Q. All right. And that's Fifth Circuit. This is a Fifth  
3 Circuit opinion?

4 A. Yes, sir, it is.

5 Q. And it's a 1981 opinion?

6 A. Yes, sir it is.

7 Q. And that opinion was out there, obviously, in 1993 and  
8 1994 when you was forming your views about what income is,  
9 correct?

10 A. That's correct.

11 Q. All right. Now, the Fifth Circuit is not the only  
12 circuit that chimed in on this, correct?

13 A. There are others, yes, sir.

14 Q. Okay. Matter of fact, I know -- I'll withdraw that.

15 Are you familiar with the case of United States v.

16 Koliboski?

17 A. Yes, sir.

18 Q. And that is an opinion from the Seventh Circuit?

19 A. That's correct.

20 Q. And are you familiar the infamous footnote No. 1?

21 A. Yes, sir. I'm familiar with the footnote.

22 Q. I want to read that: "Although not raised in his brief  
23 on appeal, the defendant's entire case at trial rests on the  
24 claim that he in good faith believes that wages are not income  
25 for taxation purposes. Whatever his mental state, he, of

1 course, was wrong, as all of us already are aware.  
2 Nonetheless, the defendant still insists that no case holds  
3 that wages are income. Let us now put that to rest: WAGES ARE  
4 INCOME. Any reading of tax cases by would-be tax protesters  
5 now should preclude a claim of good faith belief that wages or  
6 salaries are not taxable." Now, you are familiar with that,  
7 correct?

8 A. Yes, sir, I am.

9 Q. And this is a 1984 opinion?

10 A. Yes, sir.

11 Q. And that opinion was around during the time that you was  
12 doing all your research and forming your views about what, your  
13 opinions as to what income is?

14 A. Yes, sir. That opinion was there. I read it.

15 Q. Now let's move on. Let's talk a moment about your visit  
16 to George McGovern. During this time, the IRS was looking at  
17 your business to determine whether or not you owed taxes,  
18 correct?

19 A. That's correct.

20 Q. And during this time, the U.S. Attorney's Office was  
21 investigating you as well?

22 A. Yes, sir, the U.S. Attorney's Office was becoming  
23 involved at this particular point.

24 Q. And during this time, you go to George McGovern, correct?

25 A. Yes, sir.

1 Q. And so this is not a visit that out of the blue I'm just  
2 going to go to George McGovern just to see what my losses and  
3 profits are, correct? That's not -- it wasn't in that context?

4 A. No. It was directly as a result of a conversation with  
5 the U.S. Attorney's Office.

6 Q. And so it was -- so it had to do with trying to figure  
7 out what your tax liability was, correct?

8 A. No, sir. They wanted to know what my financial records  
9 would disclose, and I told them they were welcome to have  
10 whatever information there was to be had. And they sent over a  
11 couple of folks to my office. We couldn't agree on how that  
12 was going to be, so I just took everything down to George and I  
13 said, "Here, you do P&L's the way however you do P&L's and  
14 disclose whatever; make a spreadsheet, give them the whole  
15 spreadsheet." But I would not give them my original  
16 documentation. I wasn't going to turn over all my check stubs  
17 and my bank records, the originals, to a third, you know, to  
18 somebody else and leave it in their care or whatever. So I  
19 picked a middleman to translate those into data that were then  
20 provided in my agreement to cooperate with disclosure of  
21 whatever information there was.

22 Q. And this was in the context of a tax investigation?

23 A. This is a conflict -- in the context of a dispute, yes.

24 Q. Okay. And Mr. McGovern worked up the figures for you,  
25 correct?

1 A. He worked up the numbers of what came in and what went  
2 out.

3 Q. And he worked up the numbers as far as what came in as  
4 far as taxable income. He did not apply -- you already  
5 testified he did not apply your theory, your belief as far as  
6 what is gain or --

7 A. He didn't, nor did I tell him to. Matter of fact, I told  
8 him just the opposite. I said, you know, just -- as a matter  
9 of fact, I said, "If there's a question in your mind as to what  
10 column it goes in, put it in what they call income."

11 Q. So you knew what they called income. You just said "what  
12 they call income."

13 A. I know what the IRS tells me over here --

14 Q. Okay, that's --

15 A. -- and I know what the law tells me over here, and I just  
16 have to decide which to believe.

17 Q. Okay. All right. But you know what the IRS call income,  
18 and you just said based -- and George McGovern did what the IRS  
19 call income, correct?

20 A. That's right.

21 Q. Okay.

22 A. We do differ on that.

23 Q. Okay, differ. I'm glad you say that, you differ. All  
24 right. Let's move on.

25 Now, let's just kind of get this out of the way. You're

1 aware that people file taxes on April 15, correct? Tax  
2 returns.

3 A. I'm aware. I did it for years and years.

4 Q. Did it for years. Matter of fact, you stated when you  
5 was growing up, it was just known that that's what you do  
6 April 15, you file taxes?

7 A. Yeah. That's correct.

8 Q. So there's no confusion about that?

9 A. There was no confusion. I didn't at the time know, sir.  
10 As a matter of fact, in 1993 I was just as ignorant as I was  
11 when I was 16 and filed my first one, 17, however old I was. I  
12 didn't know any more about the tax law at that time than I did  
13 when I was a child.

14 Q. Now, with Ms. Worthey, she's been employed by you for 30  
15 years?

16 A. Yes, sir.

17 Q. And you heard her when she said that your law office did  
18 submit the 941 quarterly returns?

19 A. Yes, sir.

20 Q. And matter of fact, you stated during direct you even  
21 still continue to do it till this day?

22 A. I do it to this day, at her request, yes, sir.

23 Q. Okay. All right. At her -- all right. Well, we'll get  
24 to that later.

25 Now, Ms. Worthey, she's not a lawyer, is she?

1 A. No. And that's why I did that, because she's not sworn

2 --

3 Q. I just want -- she's not what?

4 A. Sworn to uphold the law as I am and to fight for it.

5 Q. But hold on. Every citizen has a duty to follow the law,  
6 correct?

7 A. Every citizen has a duty to obey the law practice, me  
8 included.

9 Q. That's all I --

10 A. But in my case --

11 Q. That's all I asked, every citizen has a duty to obey the  
12 law.

13 Now, Ms. Worthey, she's not a lawyer -- you said that  
14 she's not -- and she's not a CPA?

15 A. No, sir. She isn't.

16 Q. When she did the quarterly filings and she -- she filled  
17 them in, correct? She's the one that did all the computations  
18 and everything, correct?

19 A. She does everything with respect to payroll: pays  
20 herself, withholds on herself, she -- she files and she makes  
21 deposits. Yes.

22 Q. But before she does that, she gives the 941 to you for  
23 you to sign, correct?

24 A. That's right. I sign whatever she puts in front of me.

25 Q. Do you look at them?

1 A. No.

2 Q. Do you even look at it to determine if it's accurate or  
3 correct or complete?

4 A. No. I trust her.

5 MR. CAMPBELL: Madam Clerk, can you pull up  
6 Government Exhibit 15 already been admitted in evidence.  
7 Page 2, please. And can you highlight the signature block or  
8 blow up the signature block.

9 Can you go a little lower than that? Just that  
10 whole, just say the bottom forth of the page. Thank you.

11 BY MR. CAMPBELL:

12 Q. Now, that's your signature there?

13 A. Yes, sir.

14 Q. What I want you to do is read that (indicating) to the  
15 jury.

16 A. It says, "Sign here. Under penalties of perjury, I  
17 declare I have examined the return, including accompanying  
18 schedules and statements, and to the best of my knowledge and  
19 belief, it is true, correct and complete."

20 Q. That would be false based on your testimony, correct?

21 A. I'm sorry?

22 Q. That would be false based on your testimony --

23 A. It would be false to the extent that I have examined the  
24 return --

25 Q. But wait a minute. Wait a minute. You just testified



1 you didn't examine it, you didn't look at it, didn't check the  
2 figures; you just signed it.

3 A. That's right.

4 Q. So basically, when you say I have a -- basically when you  
5 attest here that I have examined the return, including the  
6 accompanying schedules and statements, and to the best of my  
7 belief, it's true and accurate, you didn't look at it?

8 A. That's what I said.

9 Q. That part --

10 A. It was true to the extent --

11 Q. -- you didn't --

12 A. But it was, to the best of my knowledge, true, accurate  
13 and correct, because I -- I mean --

14 Q. Okay. So that's your practice that you sign stuff under  
15 penalties of perjury where you have to affirm that you examined  
16 it when in fact that you didn't examine it?

17 A. To the best of my knowledge, yes --

18 Q. But you --

19 A. -- it's true.

20 Q. -- didn't examine it. It says that you examined it, but  
21 you didn't examine it, did you?

22 A. Of course not. I believed --

23 Q. Okay.

24 A. -- everything she put down.

25 Q. All right. Let's move on.

1 MR. CAMPBELL: Thank you, Madam Clerk.

2 (Exhibit G-15 removed from display.)

3 BY MR. CAMPBELL:

4 Q. Now, in the 940 returns for 2000 and 2001, Ms. Worthey  
5 did those as well, correct? As far as the annual that you have  
6 to do that summarize everything that --

7 A. Yes, sir. She did the whole, whole thing.

8 Q. And in the 940 return, for example, for 2001, basically  
9 based on testimony that you indicated -- the entry there was  
10 that her gross salary was \$21,000, roughly \$21,000?

11 A. I don't even know what I paid her.

12 Q. Okay. Well, I tell you what --

13 A. So I'm taking that on faith.

14 Q. No, you don't have to take my word for it. Let's pull up  
15 Government Exhibit 23.

16 A. I do.

17 MR. CAMPBELL: And the second page.

18 BY MR. CAMPBELL:

19 Q. That figure right there is \$21,275, correct?

20 A. Yes, sir.

21 Q. That's the total gross income what you paid her for the  
22 tax year of 2000, correct?

23 A. I would accept that number because she put it there.

24 Q. And based on the figures that Mr. McGovern and  
25 Mr. Sandefur worked up, you made somewhere between, as far as

1 gross income, \$205,000 and \$210,000, somewhere around that  
2 ballpark, just as far as --

3 A. Gross receipts?

4 Q. Gross receipts, what your firm took in.

5 A. What I took in?

6 Q. Yeah. Based on -- based on --

7 A. See, I don't have a firm.

8 Q. Okay. Based on what you took in.

9 A. Yeah, what came in on fees generated or whatever.

10 Q. And taxes were withheld from Ms. Worthey's \$21,000,  
11 correct?

12 A. Yes, sir.

13 Q. But nothing was withheld as far as federal taxes from  
14 roughly your \$200,000?

15 A. No. No federal taxes were owed --

16 Q. Okay.

17 A. -- on them. And the \$200 is gross anyway.

18 Q. Okay. Now, okay. You answered my question.

19 And the same is true for 2001 where she made the same  
20 gross salary \$21,275, correct?

21 A. I would assume, yeah.

22 Q. And your firm or you took in gross roughly between \$155  
23 and \$173,000 based on what Mr. McGovern and Agent Sandefur  
24 worked up gross?

25 A. I don't argue with the facts. No, sir.

1 Q. And taxes were withheld on her \$21,000 for tax year 2001,  
2 correct?

3 A. Yes, sir. She said she did.

4 Q. But nothing was taken from yours?

5 A. Well, no.

6 Q. No, okay. Now --

7 MR. CAMPBELL: Thank you, Madam Clerk.

8 (Exhibit G-23 removed from display.)

9 BY MR. CAMPBELL:

10 Q. Now, you talked to Ms. Worthey -- well, when you were  
11 forming your views about your income and coming to the opinion  
12 that, as applied, the Code does not apply to you, did you  
13 express those views to Ms. Worthey?

14 A. Yes, I did, but --

15 Q. That's all I want to know, you expressed your views to  
16 Ms. Worthey. And did you express an opinion to her as far as  
17 your views or your belief to her that her salary, what you paid  
18 her, was not taxable?

19 A. Yes, because I certainly get something in exchange for  
20 what I pay her.

21 Q. So you expressed that to her, that her salary is not  
22 taxable?

23 A. Yes.

24 Q. And she's worked with you for a long time?

25 A. Yes, sir.

1 Q. And you state she's not a lawyer? I mean, she's not a  
2 lawyer; you stated that earlier, correct?

3 A. That's correct.

4 Q. And pretty much whatever she learned about the law to  
5 some extent probably comes from working in your firm on the  
6 different cases and so forth, correct?

7 A. That's correct.

8 Q. So after you told her that, in your opinion, her wages  
9 were not income, were not taxable income, she still continued  
10 to file those 941's, correct?

11 A. I gave her that option, yes.

12 Q. So yes, she --

13 A. And she --

14 Q. That's right. You gave her the option. You gave her the  
15 option --

16 A. That's correct.

17 Q. -- and she continued to file the 941 returns, right?

18 A. That's correct, and I honored that.

19 Q. And, also, she continued to get the W-2's from you, or  
20 she did them, but, nevertheless, she continued to do the W-2's,  
21 correct?

22 A. Whatever it was that, you know, that was involved in her  
23 withholding and sending in and depositing, yes.

24 Q. And she continued to file her federal income taxes,  
25 didn't she?

1 A. As far as I know, yes. I don't have knowledge of that.

2 Q. But you heard that she filed (inaudible), correct?

3 A. I'm sorry?

4 Q. You heard her yesterday when she said that she filed  
5 federal income taxes, right?

6 A. If she said she filed them, she filed them.

7 Q. This is after you explained to her that it's not taxable,  
8 correct?

9 A. This was after I told her that, yes, I made that  
10 discovery.

11 MR. CAMPBELL: No further questions.

12 THE COURT: Your redirect?

13 MR. BECRAFT: One moment, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BECRAFT:

16 Q. Mr. Cryer, you are aware of the position of the IRS, its  
17 consideration that what you make constitutes gross income,  
18 correct?

19 A. I'm aware of its -- yes, sir.

20 Q. And your view is opposite, your view and belief is  
21 opposite of that?

22 A. Yeah. My belief of what the law says is one thing and  
23 what they say is another. I've got to believe one or I've got  
24 to believe the other. I can't believe both, because they  
25 differ. And so I believe the law.

1 Q. Now, when you were doing your research, did it descend to  
2 this point --

3 MR. CAMPBELL: Objection. Leading.

4 THE COURT: Don't lead your witness. Sustained.

5 BY MR. BECRAFT:

6 Q. How do you account for or explain the difference between  
7 your belief and the position asserted by the IRS as to whether  
8 or not that might constitute a disagreement on your part about  
9 the tax laws?

10 A. Well, you have to remember, when I started this research,  
11 I wasn't researching to establish a difference. I was  
12 researching to establish that the IRS's understanding of the  
13 law was correct. I was trying to find that there was a  
14 liability provision that applied to me. I was trying to believe  
15 what the claim was that I had heard. I also applied the same  
16 approach to the issue on income as to establish whether or not  
17 the IRS's description of income and that personal earnings,  
18 gross receipts are all income, and, you know, what I ended up  
19 finding differed from the law. And that -- so I had --  
20 basically, I started then back over. But, originally, I set  
21 out to verify the IRS's version of the law, and I not only  
22 couldn't verify it, but I found out that the law tells me to  
23 believe something entirely different. At that particular  
24 point, I had to choose who to believe, whether to believe the  
25 IRS or whether to believe the Code, the regulations, and the

1 Supreme Court. And I followed that process exactly as the Code  
2 and exactly as Mr. Sandefur described in deducting, excluding  
3 those items that are not income and those items that are  
4 exempt, are outside the tax, not taxable, and the only  
5 conclusion that I could reach for me was that: (A) I wasn't  
6 liable for the tax; (B), what I brought in was not exchanged  
7 for nothing, I gave up something for that, and that it didn't  
8 meet the definition of, the constitutional definition of  
9 income; and (C), that if it were income, even if it were  
10 income, that it is not taxable income. And the income tax is  
11 imposed on taxable income, and I don't believe I have either,  
12 income nor -- that it would be taxable if it were income.

13 Q. Mr. Campbell brought up some cases. How long have you  
14 been doing legal research?

15 A. Counting law school, I'd say pretty close to 40 years, 37  
16 years.

17 Q. And statutes become part of a litigated case. Parties  
18 appeal.

19 MR. CAMPBELL: Your Honor, the question --

20 BY MR. BECRAFT:

21 Q. Mr. Campbell pulled out this case from the Fifth Circuit  
22 called the Lonsdale case. Do you remember that?

23 A. Yes, sir. Yes, sir.

24 Q. When was the first time that you would have encountered  
25 or run across any reference to the Lonsdale case?



1 A. In the Lonsdale case, that would've probably been in  
2 about 1995, latter, mid-part of '95 when I was working on the  
3 issues concerning what is income and what is not income, and I  
4 would have picked that case up in -- because each time that I  
5 would research them and read a case, I would always bring that  
6 case forward, either Shepardizing in the beginning or doing a  
7 global cite, I think is what I'm using now with the service  
8 that I've got, that lists out all the cases in which that case  
9 was cited and relied upon or in which it was overturned in  
10 order to make sure that each of those cases is still the  
11 controlling, last word, and law of the land from the Supreme  
12 Court.

13 Q. Now, so you read before -- I been using on Greg  
14 December 31 of '99. You read before that date this Lonsdale  
15 case?

16 A. Yes, sir.

17 Q. In fact, you read it a couple of years before the date I  
18 just gave you?

19 A. Yes, sir.

20 Q. What went through your mind when you -- you saw on that  
21 occasion the words Mr. Campbell pointed out to you on the  
22 screen, correct?

23 A. Yes, sir.

24 Q. What did you believe about what constituted income after  
25 you read the Lonsdale case?

1 A. I believed the Supreme Court.

2 Q. Was there a difference in your view or opinion or belief  
3 in what the Supreme Court said and what the court said in  
4 Lonsdale?

5 A. Yes, sir.

6 Q. Explain the inconsistency.

7 A. Well, the inconsistency in Lonsdale -- there are a couple  
8 of inconsistencies. In the first place, Lonsdale did not deal  
9 with what is income. It wasn't before the court. And that  
10 issue not being before the court, it wasn't ruled upon by the  
11 court. It was --

12 MR. CAMPBELL: Objection.

13 A. -- talked about.

14 MR. CAMPBELL: This is a lot of legal interpretation  
15 as far as what Lonsdale -- I just asked him to read Lonsdale,  
16 not to interpret it, not to embellish on it, and that's beyond  
17 the scope of my cross.

18 MR. BECRAFT: In reply, Your Honor, the case was  
19 brought up, and I think the defendant is entitled to testify  
20 about his belief and --

21 THE COURT: Then ask him what his belief is instead  
22 of the legal interpretation exercise you're putting all of us  
23 through.

24 BY MR. BECRAFT:

25 Q. Tell us your belief.

1 A. My belief regarding Lonsdale is that, first off, Lonsdale  
2 did not rule on that issue because it wasn't before it. The  
3 second is that Lonsdale is an appellate court case that applies  
4 to the parties and the case before it and none other. And  
5 third is that Lonsdale is an appellate court case and cannot  
6 overturn or countermand the formulas and the definitions, the  
7 constitutional formulas and definitions that the Supreme Court  
8 has given me that I have applied in formulating my belief.

9 Q. Okay. There was another case that Mr. Campbell brought  
10 out, the Koliboski case. Do you remember the year that that  
11 case was decided?

12 A. No, sir. I don't remember the year.

13 Q. Okay. Do you remember what circuit it was?

14 A. I think he said it was Seventh Circuit. I believed him.

15 Q. Okay. What's your opinion or belief about the Koliboski  
16 case?

17 A. Again, in Koliboski, it was my belief that -- well, as a  
18 matter of fact, if you look at that footnote, the first thing  
19 the footnote says, you know, is also not raised in brief. The  
20 issue wasn't before the court. It was a proclamation. It  
21 wasn't a decision. And it cited no authority, and all of the  
22 law I had before, it didn't countermand it or counteract or  
23 overturn anybody. You can't -- an appellate court can't  
24 overturn the Supreme Court. Only the Supreme Court can  
25 overturn a Supreme Court decision.

1 Q. Now, there was a -- when this case got started, there was  
2 a motion to dismiss you had prepared and filed in this case,  
3 correct?

4 A. That's correct.

5 Q. And that was pointed out to you by Mr. Campbell?

6 A. Yes, sir.

7 Q. You made a distinction in your cross-examination with him  
8 as to whether or not something is unconstitutional directly or  
9 unconstitutional as applied. What type of an argument were you  
10 asserting in that motion?

11 A. I was asserting an argument that the charges should be  
12 dismissed because to apply the Internal Revenue Service's  
13 interpretation of what is and is not income and what is and is  
14 not taxable, to apply -- their interpretation of that would be  
15 unconstitutional if it were applied that way. But it had  
16 nothing to do with how the law was written. I believed  
17 Internal, the Internal Revenue Code to be constitutional. It  
18 only is imposed on taxable income. It's only imposed on  
19 income, and then it's only imposed on that income that is  
20 taxable. I don't find an constitutional problem with that. I  
21 do find a constitutional problem with their version of it,  
22 which differs from what the law says to me, and then I  
23 formulated my belief on what the law is. And I had to choose  
24 between the two. I believed the law. I believe the Supreme  
25 Court, I believe the statutes, and I even believe the

1 regulations promulgated by the Secretary of the Treasury. And  
2 I applied that process right down the line. I started with  
3 their starting point and I ended with their ending point, and I  
4 have no income and I have no income -- and if it were, if  
5 there's any net in there, it's not taxable under the law,  
6 according to my belief, as to me.

7 Q. Mr. Campbell brought up tax court and refund suits. Let  
8 me ask some questions about that. Are you a student of the  
9 procedures? Have you studied the procedures for protesting  
10 taxes?

11 A. I know virtually nothing about administrative law. It's  
12 an area -- although my practice is pretty broad, administrative  
13 law is an area that I have succeeded in avoiding. I've never  
14 handled a Social Security claim. I've never handled a tax  
15 dispute claim until just recently I assisted with one. It was  
16 an area I didn't want to know about. Matter of fact, just like  
17 taxes, I didn't want to know about.

18 No, I don't know how you get a case before the tax court.  
19 I don't know how you establish or exhaust administrative  
20 remedies, whatever. I don't know the administrative process of  
21 the tax code. I was studying the tax code in its substance,  
22 and that -- at that point, when I reached my conclusions and I  
23 exhausted every single avenue where I could get that law to  
24 reach me, then I stopped. And the only thing I've done since  
25 then is to update and make sure that all of the cases, all of

1 the laws, all of the statutes and regulations are still  
2 substantively the same, and they are as far as I've been able  
3 to find.

4 Q. Did you ever receive from the IRS a 90-day letter  
5 regarding any year after 1993?

6 A. No, sir. I received -- the only thing -- they don't --  
7 they didn't even send me forms each year like they used to. I  
8 mean, they quit doing that some time ago. I had to get my own  
9 forms when I was still as ignorant as a 16-year-old. I  
10 received no notices from them until January of 2001.

11 Q. And that's when Ms. Bullock contacted you, right?

12 A. That's correct. Yes, sir.

13 Q. So to make perfectly clear, you never received any type  
14 of letter from the IRS that said: Well, we assert for this  
15 year, for example, 1997, that you owe so much in the way of  
16 taxes and you can go to tax court?

17 A. No. It was never, never even really considered. All --  
18 I know it now, because I've recently learned in assisting in  
19 another case that tax court is available to appeal an adverse  
20 finding by the IRS itself making its own rulings on deficiency  
21 or on taxes due. But that's still -- that's an internal  
22 process and kind of like asking the fox for a hen count.

23 Q. Were you aware of -- well, let me ask you this: When was  
24 the first time you've been aware of this legal proposition that  
25 you can file a refund lawsuit in federal court?

1 A. I became aware of that probably in the last few years,  
2 in -- well, maybe even last year, because in re-reading some of  
3 the cases, I came across cases that referred to that as far as  
4 the process that was concerned. But even then I determined  
5 that, you know, I wouldn't be able to obtain a jury trial. And  
6 again, that's, you know, that was a key element. But at that  
7 particular point, the die was cast; I had made my decision that  
8 I had to do something. As I pointed out, I'm not only  
9 obligated to obey the law, I've got -- that's only half the  
10 job. I'm obligated to fight for it.

11 Q. Were you aware of this proposition that you could pay  
12 your taxes and then institute a lawsuit to recover the money  
13 that had been paid in?

14 A. I'm aware now. I wasn't necessarily aware -- I don't  
15 think I was aware in 2000 and 2001 of that particular process,  
16 no, sir. Because, again, I wasn't looking in that vein.

17 Q. These -- you've had your secretary working for you for  
18 some 30 years, correct?

19 A. Yes, sir.

20 Q. And about 14 years ago was when you started digging in,  
21 or 13 years ago, you started digging into these tax topics?

22 A. Right.

23 Q. Before that time, you were withholding from your  
24 secretary, Gloria?

25 A. Yes, sir.

1 Q. And at some stage after you started doing your research,  
2 did the question come up between the two of y'all as to whether  
3 or not you would continue withholding?

4 A. Yes, sir.

5 Q. And after mutual discussions about withholding, what  
6 decision was made?

7 A. She decided that she did not want, and wasn't willing, to  
8 take on the government on this issue, that she wasn't in a  
9 position to mount that fight, and --

10 MR. CAMPBELL: Objection. Hearsay.

11 THE COURT: It is. Sustained.

12 THE WITNESS: The election --

13 MR. BECRAFT: I'll withdraw the question. Okay?

14 BY MR. BECRAFT:

15 Q. Now, you filed -- after a discussion with her about  
16 withholding, you continued to file the 940's and the 941's,  
17 right?

18 A. I continued to sign them, yes, sir.

19 Q. Okay. And it's under -- those signatures are under  
20 penalty of perjury, correct?

21 A. Yes, sir.

22 Q. Now, you reported on those forms that what you paid her  
23 as salary was income, correct?

24 A. I reported I paid her a salary.

25 Q. Okay. Now, George McGovern, he's testified in this case



1 that he put -- we've seen the charts, we don't need to pull  
2 them out -- that he put down, in essence, the net that you made  
3 as income, right?

4 A. He put it down that way, yes.

5 Q. All right. Under your view -- now, as to both your  
6 secretary and yourself, what is your view about whether or not  
7 there are further deductions that can be taken that would be  
8 asserted by a putative taxpayer?

9 MR. CAMPBELL: Objection. Beyond scope.

10 THE COURT: Sustained.

11 BY MR. BECRAFT:

12 Q. In reference to your signature on the 940's and 941's --  
13 remember, I think we had one exhibit up there, it might have  
14 been either 15 or 23, where the number was \$21,000, right? Do  
15 you remember that?

16 A. Right.

17 Q. In your view, would that entire \$21,000 be taxable?

18 MR. CAMPBELL: Objection. Beyond the scope.

19 MR. BECRAFT: Opinion then.

20 THE COURT: Sustained.

21 MR. BECRAFT: It was in -- Your Honor, it was . . .

22 THE COURT: You're now going into an area having him  
23 calculate gain, profit, all the subtractions that he testified  
24 to in Direct, not on Cross.

25 BY MR. BECRAFT:

1 Q. Mr. McGovern, remember the charts?

2 A. Yes, sir.

3 Q. Okay. Mr. Campbell made a, or posed a question to you as  
4 to whether or not you agreed or disagreed with the way that  
5 Mr. McGovern calculated that. Do you remember the questions on  
6 that?

7 A. I'm sorry, I'm --

8 Q. Okay, bad question. Mr. Campbell was asking you about  
9 Mr. McGovern and what he did for you.

10 A. Right.

11 Q. Mr. McGovern was requested by you to -- when you first  
12 approached him, did he -- was he directed by you to prepare tax  
13 returns?

14 A. No, sir.

15 Q. Was he directed by you to prepare profit and loss  
16 statements?

17 A. Yes, sir.

18 Q. Okay. Now, of that amount that he calculated in the way  
19 of profit, is it your understanding based upon either what he  
20 said on that occasion or even now that Mr. McGovern would  
21 believe that that would be some type of income?

22 A. I believe that Mr. McGovern believes that.

23 Q. Do you believe that?

24 A. No, sir. But --

25 Q. Why?

1 A. Because I've looked at what the law, the statutes, the  
2 regulations, and the Supreme Court tell me is the law, and  
3 Mr. McGovern is believing the Internal Revenue Service and, as  
4 far as I know, he hasn't looked at all that.

5 MR. CAMPBELL: Speculation.

6 THE WITNESS: I certainly haven't shown him.

7 MR. BECRAFT: That's correct, it's speculation.

8 THE COURT: It is speculation. Sustained.

9 MR. BECRAFT: Nothing further, Your Honor.

10 THE COURT: All right, sir. You may step down.

11 Call your next witness.

12 DEFENSE RESTS

13 MR. BECRAFT: The defense rests, Your Honor.

14 THE COURT: At this time, any rebuttal case to be  
15 presented by the Government?

16 MR. CAMPBELL: No, sir.

17 THE COURT: All right, ladies and gentlemen. This  
18 concludes the evidentiary portion of this particular trial. We  
19 have a few things to tune up. I had the lawyers in court at  
20 8:30 this morning working on your jury instructions, and we  
21 have a couple of details to complete in that regard. We're  
22 going to give you a 15-minute morning break, till about 10:15,  
23 we hope, if we can get this done as quickly as I think we can.  
24 And then we'll bring you back in. You will be given copies of  
25 the jury instructions to read along with me as I read them out

1 loud to you.

2 Would you prefer that this go in ordinary fashion,  
3 counsel, that is, that the closing arguments be given before  
4 the jury instructions?

5 MR. BECRAFT: Yes.

6 THE COURT: Mr. Campbell?

7 MR. CAMPBELL: Yes.

8 THE COURT: All right. You won't get to read those  
9 jury instructions until after they do their closing arguments.

10 All right. We'll be in recess. All rise for the  
11 jury.

12 (Jury exits courtroom.)

13 THE COURT: Thank you. Please be seated.

14 SECOND CHARGE CONFERENCE

15 THE COURT: Mr. Becraft, now having heard the rest of  
16 the testimony, do you want to address the, I guess the tail end  
17 of your jury instructions on the --

18 MR. BECRAFT: Yes, Your Honor.

19 THE COURT: -- Anti-Injunction Act?

20 MR. BECRAFT: On this occasion, in light of the  
21 cross-examination, the defense hereby withdraws No. 10, the  
22 requested defense instruction No. 10 covering the topic of  
23 guilt by association. We withdraw 16 that dealt with the  
24 substance of the Anti-Injunction Act; I don't think that's  
25 really important. And we would withdraw No. 22 on protected

1 speech. Those matters just simply didn't come up on cross.

2 THE COURT: All right. The rulings that the court  
3 entered earlier, Mr. Becraft, with respect to your submitted  
4 instructions remain as is and essentially for the reasons  
5 contained in the objections filed by the Government which I'm  
6 not going to restate in a separate opinion.

7 In this instance -- and we have the changes to the  
8 jury instructions made this morning, to Jury Instruction 14 and  
9 No. 15. There were no other changes to the instructions that  
10 we discussed. Are there any to be discussed or proposed now?  
11 Mr. Campbell?

12 MR. CAMPBELL: Outside of what we discussed earlier  
13 as far as the dates and the counts and so forth, no changes  
14 recommended by the Government.

15 THE COURT: Those were made by stipulation between  
16 the parties, with the Court's approval.

17 Mr. Becraft, any further changes to the instructions  
18 as submitted to you?

19 MR. BECRAFT: None, Your Honor.

20 THE COURT: All right. We're going to make the  
21 changes as discussed. Let's get to the verdict form. That has  
22 just been handed to you. It doesn't take a lot to review it.  
23 Mr. Campbell, any objections to the proposed verdict form?

24 MR. CAMPBELL: No, sir.

25 THE COURT: Mr. Becraft?

1 MR. BECRAFT: No, Your Honor.

2 THE COURT: That will then be adopted as the verdict  
3 form that will be given to the jury.

4 Gentlemen, you have until 10:15 in order to finish  
5 any preparation for closing arguments. To repeat,  
6 Mr. Campbell, you will have 45 minutes. You will apportion it  
7 between your argument and any rebuttal as you see fit. And  
8 Mr. Becraft, you have the full 45 minutes. Let me ask you,  
9 Mr. Campbell, do you want a two-minute warning?

10 MR. CAMPBELL: Yes.

11 THE COURT: Mr. Becraft?

12 MR. BECRAFT: I would like one, Your Honor.

13 THE COURT: All right. We'll give you a two-minute  
14 warning as you get close to your respective times.

15 Any other items to be considered before we recess  
16 this morning, either side?

17 MR. CAMPBELL: No, sir.

18 MR. BECRAFT: No, sir.

19 THE COURT: All right. We are in recess.

20 (Recess 10:02 - 10:18 a.m.)

21 THE COURT: Thank you. Please be seated. Gentlemen,  
22 you're ready with your closing arguments?

23 MR. CAMPBELL: Yes, Your Honor.

24 THE COURT: Let's get the jury, please.

25 (Jury enters courtroom.)

1 THE COURT: Our jury has returned. Please be seated.

2 All right. Mr. Campbell, are you prepared with your  
3 closing argument?

4 MR. CAMPBELL: Yes, I am, Your Honor. And may I  
5 request 15 minutes to reserve for rebuttal?

6 THE COURT: All right.

7 MR. CAMPBELL: May I begin?

8 THE COURT: You may begin when ready, sir.

9 CLOSING ARGUMENT BY THE GOVERNMENT

10 MR. CAMPBELL: Please the Court. Defense table.  
11 Ladies and gentlemen of the jury.

12 I'm going to get straight to the point as to what  
13 this case is about. As you are aware, we have to prove  
14 elements, and there are elements to every offense charged, a  
15 criminal offense. But the only element in dispute is whether  
16 the defendant acted willfully, so let's talk about that. In  
17 other words, was he aware of a duty that the law imposed on him  
18 and did he choose to disobey that duty?

19 Now, the defendant told you on the stand he's not  
20 mistaken, this is not some misunderstanding, this is not some  
21 misinterpretation. This is what it is. So it's not a  
22 situation where, "Oh, I made a mistake," or, you know, "I was  
23 looking at the Code and I misinterpreted it." That's not what  
24 he's saying, so let's not -- so that's not how we're going to  
25 look at this case in determining whether he was willful.

1           And the defendant's words kind of really put this  
2 case into context: "IRS versus the law, and I had to make a  
3 decision and I chose to go with the law." And I submit to you  
4 that the appropriate context is the IRS and the law versus the  
5 defendant's version of the law and the defendant made a  
6 decision, he made a decision to go with his version of the law.  
7 That way enures to his benefit, because under his version of  
8 the law, he gets to keep all of his money in his pocket as far  
9 as federal taxes are concerned.

10           Now, you have the defendant here on one side and on  
11 the other side you have the IRS, you have George McGovern, his  
12 tax accountant, you have the IRS as far as represented by Jimmy  
13 Sandefur, and even his own secretary. So you have the  
14 defendant: "It's not income. It's not taxable. I'm not  
15 liable on anything." Then you have the IRS: "Yeah, you've got  
16 to pay taxes." George McGovern: "You have to pay taxes."  
17 Jimmy Sandefur: "You have to pay taxes." And even his own  
18 secretary, she has to pay taxes on her wages.

19           Now, there's an important concept in this willfulness  
20 and it comes to trying to determine whether it is genuine,  
21 whether it's a sincere belief or misunderstanding, or whether  
22 it's just a disagreement. Because if you disagree with the  
23 law, that is not a basis for good faith. And you can't turn a  
24 blind eye to certain things. The way I look at it as far as  
25 for this particular case is that, let's say, for example,



1 someone says that the world is flat, and despite all of the  
2 scientific studies and all of the evidence to show that the  
3 world is round as far as the observations that were made by the  
4 Greeks and all of those astronomers from then and you go out in  
5 space and you take a photograph of the world and, look, it is  
6 round, despite all of that, someone still espouses that the  
7 earth is not round, it's flat. And let's say they, you know,  
8 they don't have -- they're not -- it's not bad faith as far as,  
9 you know, they have some evil intent or, you know, they're  
10 trying to do something bad; they believe the world is flat.  
11 But the question is: Despite all of this evidence saying that  
12 the world is round, you're still out there saying the world is  
13 flat. And that's what we have here. And so the question is:  
14 Are you going to excuse his conduct, let him off the hook  
15 because he's virtually telling you that the world is flat when  
16 everybody knows the world is round?

17 Now let's look at some of the things that the  
18 defendant was aware of when forming his views. He is aware of  
19 the fact that the IRS disagreed with his perception of what  
20 income is. He told you that. He knew the IRS disagreed with  
21 him on that, even while he was doing his research. He came  
22 across those cases that basically and flatly rejected his views  
23 about wages are not income and that, you know, what someone  
24 pays me is not income. He read those cases, and I've read some  
25 of those to him and he said yeah. And even during his Redirect

1 he said, "I was aware of those during '94 and '95." So this is  
2 not a situation where after he was indicted he came across  
3 these cases that challenged his views. He knew those cases  
4 exist, but he chose to dis -- he chose to ignore them and not  
5 pay his taxes.

6 All of his research, all of the cases, and yet he  
7 chose not to pay his taxes, not to file a return. Another way  
8 to look at it as far as good faith versus misunder -- mis --  
9 excuse me, versus disagreement, let's say there's a law out  
10 there that says that it shall be illegal to sell someone  
11 alcohol who is under the age of 21 and a bartender is charged  
12 because he sells alcohol to a minor. Okay? The bartender's  
13 defense is that: "Well, when the minor came in, the minor  
14 showed me an ID. It looked like a valid ID, it didn't look  
15 false, and based on the year of birth that was indicated on the  
16 ID, it said that, indicated to me this person was over 21. The  
17 picture looked like the person. There was nothing on that ID  
18 that suggested that it was false or that it was forged or  
19 anything like that. So, I mean, I thought the person was 21,  
20 over 21, so I served him alcohol." Now, assuming that there's  
21 no strict liability, anything like that, that's good faith.  
22 What is not good faith is: "Well, I looked at the statute and,  
23 first of all, the statute uses the term 'person under 21.'  
24 Now, what is a person? Well, let me just see if the statute  
25 defines a person. It doesn't define a person, so, hmm, is this

1 person a person?" Or I'll say individual. Statute doesn't  
2 define what it is to sell a, a individual, someone, alcohol, to  
3 21. So what is an individual? So he wants you to believe that  
4 when he read the Internal Revenue Code and it uses those terms  
5 individual, person, that it didn't apply to him? Who they  
6 apply to? A cat? A dog? A mouse? Everybody, come on, you  
7 read it. Common sense. It use individual. Unless there's a  
8 definition that defines it contrary, common sense, we're  
9 talking about you, a person. They use the term person. What  
10 do they mean? You're a person. But yet he wants you to buy  
11 that so that you can let him off the hook for not paying his  
12 taxes. That's not good faith. That's not good faith.

13 Now, when I asked him about other avenues that he  
14 could have pursued as far as tax court, as far as filing a  
15 refund claim in federal district court or federal claims court,  
16 what did he tell you? He said, "Well, as far as the federal  
17 district court, I wouldn't have a jury." So let's explain  
18 that. Why he want a jury? I have to convince 12 of you beyond  
19 a reasonable doubt that he's guilty. He only has to reach one  
20 of you to have a question about reasonable doubt. One. I have  
21 to convince all 12 of you. And that's a burden on the  
22 Government and we have to meet that burden. That dynamic  
23 doesn't exist there. He knows that. He's hoping that he can  
24 reach one of you, that maybe one of you will buy what he's  
25 saying, maybe one of you will let him off the hook for not

1 paying taxes on roughly \$200,000. Don't be that one person.  
2 Don't let him get away with it. That's why he wants this  
3 forum. Make no mistake about it. Those courts, those forums,  
4 tax court, that's what it's there for, to litigate those  
5 claims. Federal claims court. Like I say, you pay the refund,  
6 you sue to get it back. That's what it's there for. But, no,  
7 he want to reach that one person. Don't be that one person.  
8 Don't buy it.

9 I think, also, I submit to you what is very telling  
10 in this case, the actions of Ms. Worthey, his secretary. Now,  
11 here's a woman that's worked for the defendant for 30 years.  
12 Pretty much virtually everything she learned about the law or  
13 she know about the law is through her experience working for  
14 the defendant. She's not a lawyer. She's not a CPA. And the  
15 defendant during this time, '94-'95, did all of this research  
16 and came to these conclusions, and even, based on the  
17 testimony, expressed those opinions to her, his views that her  
18 wages are not taxable, his earnings are not taxable, you don't  
19 have to file those returns. He told her that.

20 Now, to Ms. Worthey, this is not just some guy off  
21 the street. Okay? This is not some kook on television. This  
22 is not some guy who's trying to sell, you know, sell you  
23 something off some info commercial. This is somebody she works  
24 for, someone she developed a working relationship with. And  
25 after that, what did she decide to do? Her choice? Her

1 choice. What did she decide to do? "Huh-uh, I'm going to keep  
2 filing my 941's. I'm going to keep filing those 940's.  
3 April 15, I'm going to file that tax return." She kept doing  
4 it. And like the defendant said, till this day, she keeps  
5 doing it. Even after all of that, she keeps doing it. She  
6 made a choice, and her choice was to follow the law.

7           The defendant made a choice. Now, he tries to dress  
8 it up: "Well, it's my interpretation, my beliefs, and I looked  
9 at the law, and I looked at the Supreme Court." And let me say  
10 something about that. Don't let him hide behind the Supreme  
11 Court. Don't give that to him. Don't let him try to, "Oh,  
12 I'll hide behind the Supreme Court, and the Supreme Court  
13 says . . . and I'll hide behind the Supreme Court." Don't let  
14 him get away with that. Don't let him try to hide behind the  
15 Supreme Court to excuse him not paying taxes on all the money  
16 he's earned.

17           It's about choices. We all make choices, and we have  
18 to be accountable to those choices. Ms. Worthey made a choice  
19 and her choice was to obey the law and file returns. The  
20 defendant also made a choice and he chose not to file his  
21 returns, he chose not to pay federal taxes. And his words:  
22 "I'm not misunderstanding this, I'm not making mistake." This  
23 is his choice. Hold him accountable for his choice. Do not  
24 excuse it. Do not excuse it. Again, don't be that one person.  
25 Thank you.

1           THE COURT: All right, sir. You may proceed,  
2 Mr. Becraft.

3                           CLOSING ARGUMENT BY DEFENDANT

4           MR. BECRAFT: May it please the Court.

5           Ladies and gentlemen of the jury, on Monday when you  
6 came in here, on Monday afternoon, and sat through a procedure  
7 called jury selection -- and there were a couple of people that  
8 were excused -- some of you could have probably thought on that  
9 moment -- and I think we've heard stories, y'all all want to  
10 get out of jury duty, but I noticed that each and every one of  
11 you did not assert any type of an excuse to get out of service.  
12 And the Court made a comment that if you get selected in this  
13 case, your purpose is to decide a dispute between the  
14 government and Tommy Cryer. And you swore on that occasion  
15 that that was your purpose and function and that you would do  
16 this duty. Let me just tell you, ladies and gentlemen,  
17 everybody on this side of the bar, the Court, the prosecution,  
18 and the defense, thanks you for your service.

19                   In a criminal case in America, we have a burden of  
20 proof that is different from other countries. You  
21 might think that some other countries -- we think we've had --  
22 you know, we had this situation involving some noteworthy  
23 individuals down in the Caribbean islands. I think we all  
24 heard a little bit about how justice is carried out down there.  
25 But here in America, when a criminal charge is brought against

1 somebody, and that includes Tommy Cryer, under our system the  
2 government must prove its case beyond a reasonable doubt. And  
3 that is different from a civil case. In a civil case -- you  
4 know, you've seen lady's scales of justice. She holds up those  
5 scales. And in a criminal -- in a civil case, the party that  
6 wins, the ones that get the verdict, is the one that has the  
7 more predominant weight of the case. But here in America, with  
8 the burden of proof on the government being reasonable doubt,  
9 what it has to do is, it has to tip the scales of justice in  
10 its favor. And, when you weigh each side, the  
11 weightier side, the scales are going to fall down and the  
12 lighter side is going to go all the way to the top. That is an  
13 example of the burden of proof that the government must  
14 demonstrate in order to find the defendant in this case guilty.

15 But the Court in a moment is going to be giving you  
16 some instructions on what reasonable doubt is. And let me kind  
17 of summarize for you, if I can, what I think is a real good  
18 example of what reasonable doubt is. The Court's going to tell  
19 you, I anticipate, that you've got to determine reasonable  
20 doubt and use a standard -- you can't take a decision  
21 like this in a criminal case for flighty reasons or  
22 insubstantial reasons. You've got to look at this  
23 case as you would in the most important affairs of your own  
24 life. Could I suggest to you what are some of those most  
25 important affairs in your own life? Let me give you an

1 example. What if you were a parent and had an 8- or 9-year-old  
2 child that got hit by a car when riding on a bike out in the  
3 middle of the street and you're called by the hospital. You  
4 rush down there to the hospital, and the decision that is  
5 confronted to you when you get down to the hospital is this.  
6 This is the most important affair in your life. Do you pull  
7 the plug on your child or not? And that, ladies and gentlemen,  
8 is what I suggest to you is how important this case is. And it  
9 is that important to Tommy Cryer. And having observed you  
10 throughout this trial and considering the fact you took an oath  
11 when you were sworn to sit on the jury in this case, I have  
12 full confidence that that is exactly what you will do in this  
13 case.

14 As the Court mentioned when we started this case, and  
15 as Mr. Campbell has said, we are looking at two  
16 simple charges. The charges here, what he's accused -- what  
17 you've got to decide in this case is whether or not for the  
18 years 2000 and 2001 Tommy Cryer violated the law, and this is  
19 the law in question: He didn't file federal income tax  
20 returns.

21 Now, in the law, we say -- well, we like to  
22 tell you what are elements or facts that have got to be shown  
23 in order to prove either the commission or noncommission of  
24 this offense. First, the government's got to show that Tommy  
25 Cryer -- this is the first fact. This is the first element:



1 Tommy Cryer was required to file income tax returns. The  
2 second fact that the government must show is that he didn't.  
3 And the third fact is that he acted willfully.

4 Now, let me kind of tell you what the dispute is in  
5 this case to a degree. One thing is crystal clear. When the  
6 government started this -- the lady that came from the Atlanta  
7 service center, she came in and offered these documents. I  
8 think it's Government Exhibit 1. Said Tommy Cryer hadn't filed  
9 a return from '93 through 2004, 2005; I forget which. Ladies  
10 and gentlemen, that wasn't disputed. The Government had a  
11 whole bunch of documents, 1 through, I think, 36, that were  
12 uncontested in this case. When Mr. Campbell offered them, "No  
13 objections, Your Honor." One of the facts in this case is not  
14 disputed. It's the second one I just mentioned a while ago:  
15 Tommy Cryer didn't file.

16 Now, a third -- a second point that is kind of in  
17 dispute in this case is the requirement to file. And that's  
18 the first element: Did Tommy Cryer make so much money that he  
19 had to be required to file a return? What we're dealing with  
20 in this case is a factual dispute, something that you've got to  
21 decide. And, of course, whether he's required to file a  
22 return, that is also related to the third element, which is, I  
23 think, the most important element in this case, as Mr. Campbell  
24 said moments ago. Really, what is at issue in this case is, as  
25 I told you when I gave my opening statement, that criminal

1 state of mind.

2           Now, I think that the Court will be giving you  
3 instructions on this point, kind of describing what is at  
4 issue. Mr. Campbell was talking about, you know,  
5 there are certain offenses like traffic offenses or some other  
6 types of offenses that you could analogize to, but this type of  
7 case is different from traffic offenses or something else, a  
8 drug case, or anything else. This case is different because  
9 that criminal state of mind is very, very particular. What is  
10 it? And the Court will tell you what that criminal state of  
11 mind is. You've got to look through the evidence and  
12 do you find, do you see evidence of acting willfully, or do you  
13 look through the evidence in this case and find that Tommy  
14 Cryer was not acting willfully. In order to find something in  
15 this case, I think you have to have something like a  
16 definition.

17           Now, this criminal state of mind, this element of  
18 willfulness, has these types of characteristics: First and  
19 foremost, it has to be a belief that Tommy Cryer has that he  
20 wasn't required to file income tax returns. And if you find in  
21 your deliberations that Tommy Cryer truly and sincerely  
22 believed, right or wrong, reasonable or unreasonable, if he  
23 believed what he told you on your stand -- on the stand, it  
24 will be your duty to acquit him. Now, this -- there's a  
25 corollary or subset of this principle. It's also a burden on

1 the part of the government that it's got to be shown and proven  
2 to you that he didn't believe this. And, of course, the  
3 evidence in this case, may I suggest on the part of the  
4 defense, is that Tommy Cryer simply did not act with the  
5 requisite intent. He did not act willfully. He did not have  
6 that criminal intent.

7 Let's examine the facts. Was Tommy Cryer acting in  
8 good faith or was Tommy Cryer acting in bad faith? Now, the  
9 Government's theory in this case, which you can find in the  
10 evidence, the Government's position is, now, look, since the  
11 '70s, all the way through the '80s, all the way into the '90s,  
12 all the way into this century, Tommy Cryer has been a lawyer.  
13 And up until 1992 or 1993, Tommy Cryer was filing federal  
14 income tax returns. But there came a point when  
15 Tommy Cryer is still doing legal work, still engaged in the  
16 practice of law, just like when he was filing returns, but lo  
17 and behold, starting in '94, things kind of changed. Tommy  
18 Cryer dropped off the screen in reference to filing income tax  
19 returns. Now, that, ladies and gentlemen, is the essence, the  
20 heart of the government's position that Tommy Cryer acted  
21 willfully.

22 Now let's look at the other side of the coin, the  
23 defense. Tommy Cryer's position is that "I sat down in '94, I  
24 studied the law," something he hadn't done before, "and reached  
25 a conclusion that did not apply to me." Let's examine some of

1 this evidence. Let's examine why somebody like Tommy Cryer  
2 would do such a thing.

3           We know that he was born in 1949 down in Lake  
4 Charles. We know that he grew up on a farm. Those are facts  
5 that I think you should consider. A young lad growing up on a  
6 farm, working his way through high school. A dad that's an  
7 electrician. Ultimately, he goes to college. He attends the  
8 local college. And what does he say? He paid for his own  
9 expenses to go through college. He lived at home during that  
10 period of time and he rode back and forth to work with his dad.  
11 His dad would get up in the morning, go to work, Tommy is  
12 riding along with him to go to school.

13           Tommy Cryer was interested in becoming a lawyer. At  
14 an early age, I think the evidence shows that, "Oh, I want to  
15 become a lawyer. I'm very interested in this topic." The law  
16 is real important. You know, a lot of people, perhaps in your  
17 experience, people -- a lot of Americans really don't know a  
18 whole lot about the law. But once you get into it, it's much  
19 like any other endeavor. In your own jobs, you are  
20 probably interested in what you do. And Tommy Cryer at an  
21 early age said, "I want to be a lawyer and I find this very  
22 interesting." And once he gets in college and once he gets in  
23 law school, it becomes probably something that is like what you  
24 are like: You like your job.

25           And law is important. It's the fabric of American

1 society. It deals with the rules of conduct. And that, ladies  
2 and gentlemen, is very important. It helps American society.  
3 And Tommy Cryer took his oath as a lawyer very, very seriously.

4           And in law, we -- it's obvious to I think  
5 all Americans that, you know, you have situations in which  
6 people don't know about the law, they come to see a lawyer for  
7 advice. There are other types of situations where somebody  
8 gets into a dispute, civil or criminal, well, you go see a  
9 lawyer to get advice or representation. That's what he  
10 (indicating) does. He deals with the law on a practical,  
11 everyday level. He reads cases that relate to his cases, he  
12 reads statutes that relate to his cases, and he's very  
13 interested in doing this.

14           But one area in which he neglected for a long period  
15 of time was tax. In law school, his testimony is that he could  
16 care less about taxes. He's filing returns when he's working  
17 back -- what'd he say? It's either high school or college.  
18 From that time forward, Tommy Cryer is doing what everybody  
19 else did, until a day in the summer of 1994. In about a  
20 two-week span of time, Tommy Cryer had a complete change. You  
21 know, we have those changes in life, like, for  
22 example, let's say that -- we have American events.  
23 We have -- our society's involved in world events right now,  
24 and you can follow one side of these world events and then  
25 suddenly you'll just have, kind of an epiphany, if

1 you will, a change of heart, and now you have changed  
2 the way that you believed before to something completely  
3 opposite. And you know what, I think that's going on across  
4 American society today. With the events of the world that  
5 confront us, I think a lot of us have been through those: Oh,  
6 you know, I agree with this, and then I changed. So  
7 this is something that is typical and it's completely  
8 understandable that in this situation Tommy Cryer could come  
9 along, crack open some books that he had never really studied  
10 and based upon what a lawyer would do, sit down and read the  
11 black and white, and he can go through an epiphany, like we all  
12 have.

13           Now, how did this get started off? Well, there was  
14 a -- sometime in the summer of '94, there's this dinner, a  
15 luncheon meeting. Tommy Cryer, as we do every day,  
16 depending on what type of work you do -- a lot of  
17 people that are in the -- lawyers, we go to lunch. So he goes  
18 to lunch and runs into a man by the name of Jan Holland. Jan  
19 Holland lays out an argument for him, a tax argument. How is  
20 Tommy Cryer's -- what is his reaction to that? He pooh-poohs  
21 the idea: "Oh, this is preposterous. Where did you come up  
22 with those wild ideas?"

23           And then a couple days later, maybe a week later,  
24 Tommy Cryer is getting out of court, you know, 2:00, 3:00 in  
25 the afternoon, walks by a law library: "Oh, I want to show

1 this guy he's wrong." Runs upstairs. "I know I can find a  
2 statute that makes somebody liable for the federal income tax."  
3 Starts looking. "Oops. It's not as easy as I thought, but  
4 it's there. Maybe it's hidden."

5           So he gets the Internal Revenue Code, which, you  
6 know, a lot of people -- we saw George McGovern in this case,  
7 hold up the books, and he can recognize it from  
8 probably across the room. Other people wouldn't. But he gets  
9 the Internal Revenue Code, something he's never looked at  
10 before, and he's got this little task: "I know that there must  
11 be a section in the Internal Revenue Code that makes me liable  
12 for the federal income tax, and I want to find it because Jan  
13 Holland says it doesn't exist." And he looks. You heard the  
14 testimony. He spent a considerable amount of time looking  
15 through the Code. Where is it?

16           The ultimate conclusion: "I think it should be there  
17 and I don't find it." Is that an epiphany? Is that a change?  
18 Certainly it is. And that, ladies and gentlemen, is the event  
19 that begins to push Tommy Cryer on down the road.

20           What does he do next? Well, he would do what a  
21 lawyer would do: "Well, I'm going to start digging around."  
22 What's the testimony? '94-'95 he starts reading into areas of  
23 the law that he's really never explored before. What  
24 is income? His view is, is that from what he read, what he  
25 believed was that the Constitution uses this word

1 income and therefore it's left up to the courts to define what  
2 income is. Makes sense.

3 Then Tommy Cryer gets into these cases. I  
4 asked him on the stand: "Well, tell us the cases you read."  
5 He listed them all. Then I asked him to kind of summarize it,  
6 and Tommy's summary is -- this is what he believes  
7 based upon his readings of these Supreme Court cases. He says  
8 the Supreme Court -- "based on what I read, I believe that  
9 income is a profit or gain."

10 Tommy Cryer continues his studies. He looked into  
11 areas that he hadn't looked into before. You know, after you  
12 find out you're -- he believes he's not liable, and when he  
13 gets down into this research that says all income's a gain or a  
14 profit, is there something there that's going to  
15 change his mind about this epiphany that he had probably in  
16 August or September of '94? No. What he's finding is, is just  
17 simply further confirmation of his beliefs. What did he tell  
18 you? He was looking for -- "I just wanted to see what's there  
19 in black and white, good, bad, or indifferent." So he finds  
20 out what income is.

21 Then he -- at some stage, maybe it's around  
22 the same time -- you remember what the testimony was -- he's  
23 flipping through the Code. I look at Section 1 of the Code  
24 imposes the tax, there's this party known as individual. And  
25 then he goes over and looks at the definitions part of the Code



1 and he finds that an individual is identified under  
2 a definition of person.

3           Let me just tell you, ladies and gentlemen, it's real  
4 important, you would think, that if you're dealing with a law  
5 and there's definitions in it, the definitions that are in the  
6 act would control. And what Tommy -- imagine, if you  
7 will, that there's a law that says don't cross the streets,  
8 individuals shall not cross the street against a red  
9 light. Well, what if you looked at the law and it said,  
10 "Individuals are hereby defined as people born on even number  
11 days." Well, don't you think that that statutory definition  
12 would control how that law operated? Of course it does.

13           And Tommy Cryer comes along, he says, "Hey, what I'm  
14 looking for is -- I'm a citizen." He was born in  
15 Lake Charles in 1949. "I'm a citizen. Where is citizen talked  
16 about in this Code?" So he finds it: Tax is imposed upon  
17 individuals. Individuals are required to file income tax  
18 returns.

19           And he looked over there in 7701 of the Internal  
20 Revenue Code and says, "Well, a person is defined as an  
21 individual." But then remember what he said? "I looked  
22 farther down the same page." And I think I remember him  
23 saying, "I looked at 7701(A)30." Well, that's a little  
24 subsection, apparently, of the Code. He looks at it and says,  
25 "Whoa. Now I am a U.S. person."

1           Well, isn't it understandable if somebody like a  
2 lawyer is looking at definitions and comes along and finds this  
3 distinction, he can say: "Wait. It's not me. I'm a citizen,  
4 I'm in a class known as U.S. persons, but we've got this law  
5 talking about persons and individuals, which is, the way I find  
6 it, is not me." What's wrong with that?

7           Tommy Cryer also -- he continued his studies. He's  
8 looking at: What's the taxing power? What's this  
9 belief in -- in this respect, he says that, you know,  
10 sovereignty of a government is the authority to reach over and  
11 regulate and control you. Well, his conclusion was, is that,  
12 "Well, I'm really controlled not by the federal  
13 government but by the State of Louisiana." It's logical. He  
14 reaches the conclusion that, "Well, since I'm not within the  
15 reach of the taxing power, it doesn't apply to me."

16           Tommy Cryer also engages in some more detailed  
17 studies. What'd he say? You know, he had three --  
18 two good periods of time in which he's really sat down and  
19 looked at the law. What was -- his testimony, as I recall, was  
20 '94 or '95, he's spending his nights and weekends  
21 when he gets off work, going -- you know, I don't  
22 know; I didn't count. But, when I would ask the  
23 questions, "Well, on this proposition of law that you just  
24 summarized for us, how many cases did you read?" He  
25 listed off a string of them. But don't you know that that

1 takes some work? And when you sit down and read Supreme Court  
2 cases, you can reach conclusions. Isn't that exactly what  
3 Tommy Cryer has done?

4           Let me ask you this question: in our  
5 lifetime, we've had on many occasions the Supreme Court of the  
6 United States engaged in -- making changes that have  
7 fundamentally affected American society. I'm going to bring  
8 one up, and I'm not going to say good, bad, or indifferent  
9 about it. But we all know about Roe v. Wade. Did Roe v. Wade  
10 change American society? Doesn't this -- don't Supreme Court  
11 decisions, just on that one example alone -- and there are  
12 countless others that we can all remember we've had  
13 some in recent, recent times. More and more Supreme Court  
14 cases come out. When the Supreme Court speaks, we know, ladies  
15 and gentlemen, that's the top, we can't go any further. And  
16 when the Supreme Court makes a decision, it has an effect upon  
17 American society.

18           So what did Tommy Cryer find out in reading some of  
19 the Supreme Court cases? There was a proposition he  
20 kind of summarized. He says, "You know, I have fundamental  
21 rights." What was his illustration? Oh, I think, you know,  
22 if -- I don't have a fundamental right -- if a fundamental  
23 right can be taxed just 1 percent, it can be taxed 100 percent.  
24 If that be the case, it is no longer a fundamental right but a  
25 privilege. And it is also, as I recall from his testimony, the

1 power to destroy.

2 Now, what's wrong with reading some Supreme Court  
3 case, reading profound opinions of the Supreme Court that  
4 ultimately result in that type of a summary that he expressed  
5 to you? Would it not have an effect -- would it not have an  
6 effect upon him that is as profound as some of these decisions  
7 of the United States Supreme Court that we're all aware of? If  
8 those decisions of the Supreme Court can affect American  
9 society profoundly, how can we say that Supreme Court decisions  
10 did not affect Tommy Cryer profoundly?

11 So, ultimately, Tommy Cryer's view is this: "I've  
12 got rights." Maybe it was yesterday afternoon. Maybe it was  
13 this morning. I forget. You can remember. Tommy Cryer says:  
14 "I don't get my rights from the U.S. Constitution.  
15 Those come from God. All the Constitution does is protect  
16 those rights." So Tommy Cryer is of this view: "I've studied  
17 income. It's a gain or profit. It's not property. And I read  
18 these Supreme Court cases and it declares that my labor is  
19 property. And my labor is something that's a fundamentally  
20 protected constitutional right coming from God." Now, what's  
21 wrong with the ultimate conclusion here that that can't be  
22 taxed? Is that not Tommy Cryer's position? Is it not  
23 something that's based upon decisions of the Supreme Court?  
24 Yes, it is, ladies and gentlemen.

25 And what's Tommy Cryer's ultimate position? That

1 this is at least -- if you listen to his testimony,  
2 he contends that it's not income, but he also said that -- you  
3 know, when I was -- and I was asking him on direct examination,  
4 said, "Well, you've got nonexempt income and you've  
5 got exempt income." And I remember him reading off or telling  
6 us what he believed was not exempt income and he listed off  
7 certain items. Then he said, "Well, what is exempt  
8 income is not something that is provided for by the  
9 regulations." And so if you don't know what it is --  
10 Tommy Cryer has reached over to fundamental law. He said, "I  
11 don't believe it's income, but even if it should be income,  
12 it's exempt income as a result of fundamental law." Now, that,  
13 ladies and gentlemen, right there explains everything in this  
14 case.

15           We've had three people here that the Government tries  
16 to -- that testified in this case -- that tries to  
17 say, "Well, considering these facts, you know, this  
18 conflicts with what Tommy Cryer says." Well, we've  
19 got Mr. Sandefur. Mr. Sandefur, he has a position,  
20 that what Tommy made was gross income. We've got George  
21 McGovern. George McGovern, the accountant, comes along and  
22 says, "Oh, you know" -- we know what his calculations were.  
23 And we also have his secretary, Gloria. You know, she's  
24 approached: "Well, do you want to have withholding or not?"  
25 Tommy Cryer's view is it's not income or it's exempt income.

1 She decides not to have or get out of withholding.

2 Now, considering these facts with what Mr. Sandefur  
3 said, with what George McGovern said, or Gloria Whatley (sic)  
4 said, is that consistent with the position taken by Tommy  
5 Cryer? May I suggest to you that it is consistent, and that  
6 consistency boils down to this: Tommy Cryer believes that  
7 you've got to look at yourself. Are you going to assert that  
8 you have fundamental rights? Are you going to assert that  
9 you've got exempt income? That's Tommy Cryer's position.

10 Now, while Mr. Sandefur might say -- might not know  
11 about, probably doesn't, while George McGovern whose practice  
12 is devoted 60 percent to preparing returns, while Mr. McGovern  
13 and Gloria Whatley may not sit there and think, "Well, gee,  
14 my -- what if my labor is not profit, it isn't income, or it  
15 falls in the classification of exempt income," therein, ladies  
16 and gentlemen, is the difference between Tommy Cryer and those  
17 other three people. And all Tommy Cryer has done is this:  
18 "Well, all these other people, including my secretary, may  
19 think that what they get is income, but upon further  
20 consideration of the facts, I think, I believe, according to  
21 the law, that that's exempt income, it's not taxable." So then  
22 it's left up to people like Tommy Cryer to make that decision,  
23 and that's exactly what Tommy Cryer thinks.

24 What we have here, ladies and gentlemen, is what I  
25 would say is kind of a conflict. And how do we resolve a

1 conflict? Let me give you an example. A young boy -- a house  
2 on a busy street, maybe even a corner, and in that house is a  
3 young boy 8 or 9 years old. His friend lives across the  
4 street. Mom's at home. She has a rule: "Tommy, you can't  
5 cross the street without my permission." So here it is  
6 summertime. Tommy knows that that's the rule. One Saturday  
7 Dad's out in the front yard mowing the grass. Tommy comes up  
8 and says, "Dad, can I go across the street?" Dad gives  
9 permission. Mom's in the living room or kitchen, looks out the  
10 window and sees Tommy crossing the street. What goes through  
11 her mind? "He's violated my rule." So when Tommy comes back,  
12 maybe after she's told him to come back -- she's got  
13 that stern finger that she's shaking in Tommy's face: "You  
14 broke my rule." What's Tommy's defense? "Ask Dad." So you  
15 have two different versions here. And may I suggest to you  
16 what we have here in reference to two different versions, just  
17 like that situation, is present in this case. There's a  
18 conflict. But the presence of that conflict does not mean that  
19 Tommy Cryer acted with the essential criminal intent in order  
20 to be found guilty. And that, ladies and gentlemen, is the  
21 defense.

22           You know, here in America, a lot of people think  
23 we've only got three branches of government. May I suggest  
24 that there are four. A lot of people think we've got Congress  
25 as one branch of government. Well, Congress has an effect in

1 this courtroom, because, see those books over there?  
2 They're work product. Congress is sitting here. That's one  
3 branch of government. Another branch of the government is the  
4 courts. We have a very capable jurist presiding over this  
5 trial. He represents the judicial branch. And I'm honored to  
6 be here with part of the executive branch, which is  
7 Mr. Campbell. I like trying cases with people like him. Good  
8 lawyer. So there might be a lot of good people on this side of  
9 the courtroom. There might be three branches of the government  
10 that are represented by this side of the courtroom, but let me  
11 just tell you, ladies and gentlemen, there's a fourth branch of  
12 the government, it's mentioned in the United States  
13 Constitution, and that's the jury. And that's you. And what  
14 we do here in America is, we present disputed cases like this,  
15 conflicts over the facts. You know what the facts are. You've  
16 heard them. You've been sworn to decide this case fairly. The  
17 fourth branch of government in America is people pulled like  
18 you from the community to come in and sit on a case like this.  
19 The fourth branch of government goes into the jury room, takes  
20 a case much like this, a disputed case, you decide the facts  
21 and you apply the law to the facts. And that's your duty.

22 I'm firmly convinced that you know how to do your  
23 duty. And I'm firmly convinced that you see very clearly that  
24 in this case Tommy Cryer did not act willfully, that he held a  
25 good faith belief that he was not required to file income tax



1 returns, and that is crystal clear. Consequently, the verdict  
2 that must be returned in this case, that which is fair, that  
3 which is just, that which is reasonable, is not guilty verdicts  
4 against Tommy Cryer for both counts. Thank you, ladies and  
5 gentlemen.

6 THE COURT: Mr. Campbell, you have a total of 33  
7 minutes out of your 45 available.

8 GOVERNMENT'S REBUTTAL ARGUMENT

9 MR. CAMPBELL: Mr. Becraft just gave you an analogy  
10 about young Tommy running across the street when his mother  
11 told him not to and then the excuse he gave was that, "Well,  
12 Dad told me." The problem -- and I'm going to apply that  
13 hypothetical or analogy to this case, and by applying this, I  
14 certainly do not mean any disrespect to any men in the jury or  
15 in this audience. But the problem with that hypothetical as it  
16 applies to this case, in this case what mom says is the law.  
17 IRS, those cases that we talked about, that binding Fifth  
18 Circuit case, that's the law. And just because someone else  
19 says that's not the law, that you could do A, B, C, and D, that  
20 doesn't mean that you have a good faith exception or that  
21 doesn't mean that you are excused from disobeying the law.  
22 Now, as applied to this case -- and certainly I'm not  
23 suggesting that fathers do not lay down the law in their house.  
24 I'm not suggesting that. But as it applies in this case, mom  
25 is the law in this case based on that hypothetical he gave.

1 The IRS. George McGovern. Sandefur. Even his own secretary,  
2 Gloria Worthey. He told her what everybody else said, what his  
3 opinion was, but she chose to obey the law. That's a choice.

4 Now, when Mr. Becraft was talking about Mr. Cryer's  
5 views and what he believed in all this research, did it sound  
6 to you like someone who had some kind of misunderstanding or  
7 some kind of mistaken belief of what the law is, or does it  
8 sound like somebody who disagreed with the law? I submit to  
9 you that Mr. Cryer's defense is a disagreement with the law.  
10 It's not about some mistaken understanding or misunderstanding  
11 and so forth. And a disagreement with the law is not a basis  
12 for a good faith exception. You cannot disobey the law because  
13 you disagree with it. That cannot excuse your conduct. For  
14 example, Mr. Becraft said that this case kind of boils down to  
15 what Mr. Cryer believes is his fundamental right and his  
16 fundamental right is to be able to work, earn money, and not  
17 have the federal government tax it because it's his property  
18 and you can't tax that. That's his belief.

19 Now, Mr. Cryer is aware that the IRS, that's not  
20 their view and that they are relying on what? The Internal  
21 Revenue Code. And the IRS, based on what's in the Internal  
22 Revenue Code, taxes what he gains, what his money, what he took  
23 in. So he's attacking that and he's saying it's  
24 unconstitutional. And again, a belief that it's  
25 unconstitutional is not good faith. Disregard it.

1           This case boils down to, and I said it over and over  
2 again, it's a choice. And what you have to decide and what's  
3 your choice, you have to determine whether or not he made a  
4 sincere, honest mistake or whether he looked at the law,  
5 understood what the law said, understood what the law demanded  
6 of him, understood what was required of him, but for some  
7 reason decided to disobey it. That's what you have to decide.

8           And let's think about it. Who benefits from this?  
9 You know what the old saying is? Sometimes to figure out  
10 what's really going on, follow the money. Now, based on Tommy  
11 Cryer's views, he keeps all his money. That \$200,000 that he  
12 made in 2000 and then that \$175,000 he made in 2001, and all of  
13 that money he made before that, he keeps all that in his  
14 pocket. Follow the money. He don't want to give none of that  
15 up as far as to the federal government. But yet he signs forms  
16 taking money out of Ms. Worthey's check, who only makes  
17 \$21,000. So sometimes when you get through all of the legal  
18 principles and all of these broad concepts about fundamental  
19 rights and what's constitutional and what is my God-given  
20 right, sometimes, ladies and gentlemen, it's just as simple as  
21 who gets the money; and according to his theory, he gets all of  
22 that money.

23           Under the law, whether you like it or not, under the  
24 law, if you meet certain thresholds, you have to pay taxes. He  
25 doesn't agree with that. And now he wants you to excuse him.

1 Don't be that one person. Do not let him get away with it. We  
2 all have to follow the law and we all have to make a choice to  
3 follow the law. He did not make that choice and now he should  
4 be held accountable for it. Thank you.

5 THE COURT: Thank you, Mr. Campbell. At this time,  
6 ladies and gentlemen, we are going to provide you with copies  
7 of the jury instructions. We'll hand those out momentarily and  
8 you'll read along with them as I read them out loud to you.

9 (Clerk hands documents to Jury.)

10 THE COURT: We ended up with one extra copy?  
11 Everybody have one? Okay. All right.

12 JURY INSTRUCTIONS

13 THE COURT: Members of the jury, in any jury trial  
14 there are, in effect, two judges. I am one of the judges. The  
15 other is the jury. It is my duty to preside over the trial and  
16 to decide what evidence is proper for your consideration. It  
17 is also my duty at the end of the trial to explain to you the  
18 rules of law that you must follow and apply in arriving at your  
19 verdict.

20 First, I will give you some general instructions  
21 which apply in every case; for example, instructions about  
22 burden of proof and how to judge the believability of  
23 witnesses. Then I will give you some specific rules of law  
24 about this particular case. And finally, I will explain to you  
25 the procedures you should follow in your deliberations.

1           You, as jurors, are the judges of the facts. But in  
2 determining what actually happened, that is, in reaching your  
3 decision as to the facts, it is your sworn duty to follow all  
4 of the rules of law as I explain them to you. You have no  
5 right to disregard or give special attention to any one  
6 instruction or to question the wisdom or correctness of any  
7 rule that I may state to you. You must not substitute or  
8 follow your own notion or opinion as to what the law is or  
9 ought to be. It is your duty to apply the law as I explain it  
10 to you, regardless of the consequences. It is also your duty  
11 to base your verdict solely upon the evidence, without  
12 prejudice or sympathy. That was the promise you made and the  
13 oath you took before being accepted by the parties as jurors,  
14 and they have the right to expect nothing less.

15           The indictment or formal charge against the defendant  
16 is not evidence of guilt. The indictment is simply the  
17 description of the charge against the defendant. The defendant  
18 is presumed by the law to be innocent. The law does not  
19 require a defendant to prove his innocence or produce any  
20 evidence at all, and no inference whatever may be drawn from  
21 the election of a defendant not to testify.

22           The presumption of innocence means that the defendant  
23 starts the trial with a clean slate. In other words, I  
24 instruct you that the defendant is presumed by you to be  
25 innocent throughout your deliberations until such time, if

1 ever, that you as a jury are satisfied that the government has  
2 proven him guilty beyond a reasonable doubt. Unless you are  
3 satisfied beyond a reasonable doubt that the defendant is  
4 guilty, the presumption of innocence alone is sufficient to  
5 find the defendant not guilty. The government has the burden  
6 of proving the defendant guilty beyond a reasonable doubt.  
7 Unless the government proves beyond a reasonable doubt that the  
8 defendant has committed every element of each of the offenses,  
9 you must find the defendant not guilty.

10           While the government's burden of proof is a strict or  
11 heavy burden, it is not necessary that the defendant's guilt be  
12 proved beyond all possible doubt. It is only required that the  
13 government's proof exclude any reasonable doubt concerning the  
14 defendant's guilt.

15           A reasonable doubt is a doubt based upon reason and  
16 common sense after careful and impartial consideration of all  
17 the evidence in the case. Proof beyond a reasonable doubt,  
18 therefore, is proof of such a convincing character that you  
19 would be willing to rely and act upon it without hesitation in  
20 the most important of your own affairs.

21           As I told you earlier, it is your duty to determine  
22 the facts. In so doing, you must consider only the evidence  
23 presented during the trial, including the sworn testimony of  
24 the witnesses and the exhibits. Remember that any statements,  
25 objections, or arguments made by the lawyers are not evidence.

1 The function of the lawyers is to point out those things that  
2 are most significant or most helpful to their side of the case  
3 and in so doing to call your attention to certain facts or  
4 inferences that might otherwise escape your notice. In the  
5 final analysis, however, it is your own recollection and  
6 interpretation of the evidence that controls in the case. What  
7 the lawyers say is not binding upon you.

8           During the trial I sustained objections to certain  
9 questions and exhibits. You must disregard those questions and  
10 exhibits entirely. Do not speculate as to what the witness  
11 would have said if permitted to answer the question or as to  
12 the contents of an exhibit. Also, certain testimony or other  
13 evidence has been ordered stricken from the record and you've  
14 been instructed to disregard this evidence. Do not consider  
15 any testimony or other evidence which has been stricken in  
16 reaching your decision. Your verdict must be based solely on  
17 the legally admissible evidence and testimony.

18           Also, do not assume from anything I may have done or  
19 said during the trial that I have any opinion concerning any of  
20 the issues in this case. Except for the instructions to you on  
21 the law, you should disregard anything I may have said during  
22 the trial in arriving at your own findings as to the facts.

23           While you should consider only the evidence, you are  
24 permitted to draw such reasonable inferences from the testimony  
25 and exhibits as you feel are justified in the light of common

1 experience. In other words, you may make deductions and reach  
2 conclusions that reason and common sense lead you to draw from  
3 the facts which have been established by the evidence.

4 I remind you that it is your job to decide whether  
5 the government has proved the guilt of the defendant beyond a  
6 reasonable doubt. In doing so, you must consider all of the  
7 evidence. This does not mean, however, that you must accept  
8 all of the evidence as true or accurate. You are the sole  
9 judges of the credibility or believability of each witness and  
10 the weight to be given to the witness' testimony.

11 An important part of your job will be making  
12 judgments about the testimony of the witnesses, including the  
13 defendant who testified in this case. You should decide  
14 whether you believe all or any part of what each person had to  
15 say and how important that testimony was. In making that  
16 decision, I suggest that you ask yourself a few questions: Did  
17 the person impress you as honest? Did the witness have any  
18 particular reason not to tell the truth? Did the witness have  
19 a personal interest in the outcome of the case? Did the  
20 witness have any relationship with either the Government or the  
21 Defense? Did the witness seem to have a good memory? Could  
22 the witness clearly see or hear the things about which he  
23 testified? Did the witness have the opportunity and ability to  
24 understand the questions clearly and answer them directly? Did  
25 the witness' testimony differ from the testimony of other



1 witnesses? These are a few of the considerations that will  
2 help you determine the accuracy of what each witness said.

3           The testimony of the defendant should be weighed and  
4 his credibility evaluated in the same way as that of any other  
5 witness.

6           Your job is to think about the testimony of each  
7 witness you have heard and decide how much you believe of what  
8 each witness had to say. In making up your mind, in reaching a  
9 verdict, do not make any decisions simply because there were  
10 more witnesses on one side than on the other. Do not reach a  
11 conclusion on a particular point just because there were more  
12 witnesses testifying for one side on that point.

13           Because a particular witness may be a law enforcement  
14 officer, such as an investigator or an employee of any other  
15 government agency, that does not mean that his or her testimony  
16 is deserving of any special consideration or any greater weight  
17 by reason of that fact.

18           The testimony of a witness may be discredited by  
19 showing that the witness testified falsely concerning a  
20 material matter or by evidence that at some other time the  
21 witness said or did something or failed to say or do something  
22 which is consistent with the testimony the witness gave at this  
23 trial. Earlier statements of a witness were not admitted in  
24 evidence to prove that the contents of those statements are  
25 true. You may consider the earlier statements only to

1 determine whether you think they are consistent or inconsistent  
2 with the trial testimony of the witness and, therefore, whether  
3 they affect the credibility of the witness. If you believe  
4 that a witness has been discredited in this manner, it is your  
5 exclusive right to give the testimony of that witness whatever  
6 weight you think it deserves.

7           During the trial you heard the testimony of George  
8 McGovern, III, a certified public accountant who has expressed  
9 opinions concerning taxes and accounting. If scientific,  
10 technical or other specialized knowledge might assist the jury  
11 in understanding the evidence or in determining a fact in  
12 issue, a witness qualified by knowledge, skill, experience,  
13 training, or education may testify and state an opinion  
14 concerning such matters. Merely because such a witness has  
15 expressed an opinion does not mean, however, that must accept  
16 this opinion. You should judge such testimony like any other  
17 testimony. You may accept it or reject it and give it as much  
18 weight as you think it deserves considering the witness's  
19 education and experience, the soundness of the reasons given  
20 for the opinion, and all other evidence in the case.

21           You will note that the indictment charges that the  
22 offense was committed on or about a specified date. The  
23 government does not have to prove that the crime was committed  
24 on that exact date so long as the government proves beyond a  
25 reasonable doubt that the defendant committed the crime on a

1 date reasonably near the date stated in the indictment.

2           You are here to decide whether the government has  
3 proved beyond a reasonable doubt that the defendant is guilty  
4 of the crime charged. The defendant is not on trial for any  
5 act, conduct, or offense not alleged in the indictment.  
6 Neither are you concerned with the guilt of any other person or  
7 persons not on trial as a defendant in this case, except as you  
8 are otherwise instructed.

9           A separate crime is charged in each count of the  
10 indictment. Each count, and the evidence pertaining to it,  
11 should be considered separately. The fact that you may find  
12 the defendant guilty or not guilty as to one of the crimes  
13 charged should not control your verdict as to any other.

14           If a defendant is found guilty, it will be my duty to  
15 decide what the punishment will be. You should not be  
16 concerned with punishment in any way. It should not enter your  
17 consideration or discussion.

18           You have heard evidence of acts of the defendant  
19 which may be similar to those charged in the indictment but  
20 which were committed on other occasions. You must not consider  
21 any of this evidence in deciding if the defendant committed the  
22 acts charged in the indictment. However, you may consider this  
23 evidence for other very limited purposes. If you find beyond a  
24 reasonable doubt from other evidence in this case that the  
25 defendant did commit the acts charged in the indictment, then

1 you may consider evidence of the similar acts allegedly  
2 committed on other occasions to determine whether the defendant  
3 had the state of mind or intent necessary to commit the crime  
4 charged in the indictment, or whether the defendant had a  
5 motive or the opportunity to commit the acts charged in the  
6 indictment, or whether the defendant acted according to a plan  
7 or in preparation for commission of a crime, or whether the  
8 defendant committed the acts for which he is on trial by  
9 accident or mistake. These are the limited purposes for which  
10 any evidence of other similar acts may be considered.

11           The crime of willful failure to file a tax return as  
12 charged in Counts 1 and 2 of the superseding indictment has  
13 three essential elements. The government must prove beyond a  
14 reasonable doubt that: One, the defendant was required to file  
15 a federal income tax return for tax years 2000, Count 1, and  
16 2001, Count 2; two, the defendant knew that he was required to  
17 file such a tax return; and three, the defendant willfully  
18 failed to file such a tax return on or about April 16, 2001 for  
19 Count 1. For Count 2, you must find beyond a reasonable doubt  
20 that the defendant willfully failed to file the required tax  
21 return on or before April 15, 2002.

22           I instruct you as a matter of law a single person  
23 under 65 years old was required to file a federal tax return  
24 for the year 2000 if he had gross income in excess of \$7,200.  
25 A married individual was required to file a federal income tax

1 return for the year 2000 if he had separate gross income in  
2 excess of \$2,800, and a total gross income when combined with  
3 that of his spouse in excess of \$12,950 where both are under 65  
4 years old.

5 I further instruct you as a matter of law a single  
6 person under 65 years old was required to file a federal income  
7 tax return for the year 2001 if he had gross income in excess  
8 of \$7,450. A married individual was required to file a federal  
9 income tax return for the year 2001 if he had a separate gross  
10 income in excess of \$2,900 and a total gross income when  
11 combined with that of his spouse in excess of \$13,400 where  
12 both are under 65 years old.

13 Gross income includes the following: Compensation  
14 for services, including fees, commissions, and other similar  
15 items, gross income derived from business, gains derived from  
16 dealings in property, interest, rents, royalties, dividends,  
17 alimony and separate maintenance payments, annuities, income  
18 from life insurance and endowment contracts, pensions, income  
19 from discharge of indebtedness, distributive share of  
20 partnership gross income, income in respect of a decedent,  
21 income from an interest in an estate or trust.

22 The fact that a person may be entitled to deductions  
23 from income in sufficient amounts so that no tax is due does  
24 not affect that person's obligation to file.

25 The government is not required to show that a tax was

1 due and owing or that the defendant intended to evade or defeat  
2 the payment of taxes, only that he willfully failed to file a  
3 return.

4           If you find beyond a reasonable doubt that the  
5 defendant had the required gross income in 2000, then the  
6 defendant was required to file a tax return on or before  
7 April 16, 2001.

8           If you find beyond a reasonable doubt that the  
9 defendant had the required gross income in 2001, then the  
10 defendant was required to file a tax return on or before  
11 April 15, 2002.

12           The word knowingly, as that term has been used from  
13 time to time in these instructions, means that the act was done  
14 voluntarily and intentionally, not because of mistake or  
15 accident.

16           You may find that a defendant had knowledge of a fact  
17 if you find that the defendant deliberately closed his eyes to  
18 what would have been otherwise obvious to him. While knowledge  
19 on the part of the defendant cannot be established merely by  
20 demonstrating that the defendant was negligent, careless or  
21 foolish, knowledge can be inferred if the defendant  
22 deliberately blinded himself to the existence of a fact.

23           To act willfully means to act voluntarily and  
24 intentionally in violation of a known legal duty. Mere  
25 negligence, even gross negligence, does not constitute

1 willfulness under the criminal law.

2           A defendant does not act willfully if he believes in  
3 good faith that he is acting within the law or that his actions  
4 comply with the law. A good faith belief is one which is  
5 honestly and genuinely held. Therefore, if the defendant  
6 subjectively believed that what he was doing was in compliance  
7 with the tax statutes, he cannot be said to have the criminal  
8 intent required to willfully fail to file federal income tax  
9 returns.

10           In proving willfulness, it is the government's burden  
11 to prove beyond a reasonable doubt that the defendant did not  
12 act with a good faith belief as to what the law required of  
13 him. If you find that the defendant believed in good faith he  
14 was acting in compliance with the law as to any count, you must  
15 find him not guilty as to that count.

16           A belief need not be objectively reasonable to be  
17 held in good faith. Nevertheless, you may consider whether the  
18 defendant's stated belief about the tax statutes was reasonable  
19 as a factor in deciding whether the belief was honestly or  
20 genuinely held.

21           In considering the defendant's good faith  
22 misunderstanding of the law, you must make your decision based  
23 upon what the defendant believed in his own mind and not upon  
24 what you or someone else believes or think the defendant ought  
25 to believe. Whether the defendant's beliefs about the legality

1 of his actions were right or wrong, reasonable or unreasonable,  
2 it is irrelevant to the issues of willfulness. The only issue  
3 is whether those beliefs were in fact held by the defendant.  
4 It should be pointed out, however, that neither a defendant's  
5 disagreement with the law nor his own belief that the tax  
6 statutes are invalid, no matter how earnestly held, constitutes  
7 a defense or good faith misunderstanding or mistake. It is the  
8 duty of all citizens to obey the law whether they agree with it  
9 or not.

10 MR. CAMPBELL: Your Honor, may we approach?

11 THE COURT: You may.

12 (At sidebar.)

13 THE COURT: Did I miss something?

14 MR. CAMPBELL: Everything is fine. I apologize, Your  
15 Honor; I should have caught this as far as the unanimity  
16 instruction as far as failure to pay. There is no substantive  
17 instruction for what constitutes failure to pay. Because the  
18 judge gave willful failure to file, and I think, my  
19 understanding, failure to pay is different because you do have  
20 to show that the defendant did fail to pay, where that's not a  
21 requirement for failure to file, and so either --

22 THE COURT: How do you want to correct it?

23 MR. BECRAFT: Leave it alone.

24 MR. CAMPBELL: What I can do is say don't submit an  
25 instruction on failure to pay and we'll just proceed on failure



1 to file and all of this stuff, and you can basically omit the  
2 unanimity, because there's no alternative.

3 MR. BECRAFT: Okay. I'll do whatever the court wants  
4 to do.

5 MR. CAMPBELL: I mean, because to go back and try to  
6 reinstruct failure to pay would kind of --

7 MR. BECRAFT: Yeah.

8 MR. CAMPBELL: And so I say just forget about failure  
9 to pay. As far as unanimity, there's no need, because there's  
10 only one now, failure to file.

11 MR. BECRAFT: I'll go along with whatever the  
12 Government wants to do. I'll leave it up to you, Judge.

13 THE COURT: Let me see your instruction.

14 MR. CAMPBELL: Sure.

15 THE LAW CLERK: One or two paragraphs you'd have to  
16 strike.

17 MR. CAMPBELL: And I should have caught that.

18 THE COURT: Well, here Counts 1 and 2 of the  
19 indictment accuse the defendant of violating 26, U.S. Code,  
20 7203 in two different ways. The first is on taxable income and  
21 willfully failed to file a tax return. The second one is the  
22 defendant owed the tax liability and willfully failed to pay  
23 his tax liability. That picks it up.

24 MR. CAMPBELL: If you're fine with it, I'm fine.

25 THE COURT: It picks it up adequately, in my opinion.

1 Do you have an objection?

2 MR. BECRAFT: No. Whatever --

3 THE COURT: I'm going to read the instructions as is.

4 MR. BECRAFT: Okay. Good enough.

5 (End of sidebar.)

6 THE COURT: We'll pick up with Jury Instruction 18 at  
7 the bottom of page 12.

8 To reach a verdict, whether it is guilty or not  
9 guilty, all of you must agree. Your verdict must be unanimous  
10 on each count in the indictment. Your deliberations will be  
11 secret. You'll never have to explain your verdict to anyone.

12 You have been instructed that your verdict, whether  
13 guilty or not guilty, must be unanimous. The following  
14 instruction applies to Counts 1 and 2 of the superseding  
15 indictment.

16 Counts 1 and 2 of the indictment accuse the defendant  
17 of violating 26, U.S. Code, Section 7203 in two different ways.  
18 The first is that the defendant had taxable income and  
19 willfully failed to file a tax return. The second is that the  
20 defendant owed a tax liability and willfully failed to pay his  
21 tax liability.

22 The government does not have to prove both that the  
23 defendant: One, failed to file a return; and two, failed to  
24 pay his tax liability. Proof beyond a reasonable doubt of one  
25 is enough. But in order for you to return a guilty verdict,

1 all 12 of you must agree that the same failure or failures have  
2 been proved. All of you must agree that the government proved  
3 beyond a reasonable doubt that the defendant failed to file a  
4 tax return, or all of you must agree that the defendant (sic)  
5 proved beyond a reasonable doubt that the defendant failed to  
6 pay his tax liability.

7           It is your duty to consult with one another and to  
8 deliberate in an effort to reach agreement, if you can do so.  
9 Each of you must decide the case for yourself, but only after  
10 an impartial consideration of the evidence with your fellow  
11 jurors. During your deliberations, do not hesitate to  
12 reexamine your own opinions and change your mind if convinced  
13 that you were wrong, but do not give up your honest beliefs as  
14 to the weight or effect of the evidence solely because of the  
15 opinion of your fellow jurors or for the mere purpose of  
16 returning a verdict.

17           Remember at all times you are judges, judges of the  
18 facts. Your sole duty is to decide whether the government has  
19 proved the defendant guilty beyond a reasonable doubt.

20           When you go to the jury room, the first thing that  
21 you should do is select one of your number as your foreman, who  
22 will help guide you -- who will help guide your deliberations  
23 and will speak for you here in the courtroom.

24           A form of verdict has been prepared for your  
25 convenience. The foreman will write the unanimous answer of

1 the jury in the space provided for in each charge of the  
2 indictment, either guilty or not guilty. At the conclusion of  
3 your deliberations, the foreperson should date and sign the  
4 verdict.

5           If you need to communicate with me during your  
6 deliberations, the foreperson should write the message and give  
7 it to the marshal. I will either reply in writing or bring you  
8 back into court to answer your message.

9           Bear in mind that you are never to reveal to any  
10 person, not even to the Court, how the jury stands, numerically  
11 or otherwise, on any count of the indictment until after you  
12 have reached a unanimous verdict.

13           Ladies and gentlemen, one of the order of -- on your  
14 order of business when you adjourn for your deliberations will  
15 be to select what you want to eat for lunch from a menu that  
16 will be provided to you. Lunch will be provided since it is  
17 now 20 minutes of 12:00 and your deliberations most likely will  
18 extend into the noon hour.

19           At this time, I need to announce the alternates that  
20 have been placed on the jury. In this particular instance,  
21 they occupy Seats 13 and 14. Ms. Mixon, Mr. Harris, you are  
22 the alternate jurors. Nobody has gotten ill or had a family  
23 emergency out of the original 12, so your exercise as potential  
24 jurors on this case is now at an end. I'm going to ask that  
25 you stay behind as I dismiss the jury to begin their

1 deliberations.

2           You are hereby to begin them now. You are released  
3 from my order not to talk. You are now ordered to talk about  
4 what you heard in the case.

5           All rise for the jury.

6           (Jury exits courtroom at 11:41 a.m.)

7           THE COURT: All right. Court is in recess pending  
8 return of the verdict by the jury.

9           MR. BECRAFT: Your Honor? Can I just add on the  
10 record that we had last week -- at the conference I delivered  
11 all the defense exhibits to the clerk. Of course, none of them  
12 have been offered or admitted in evidence. But, you know, I  
13 think the only thing we've got here is his (indicating)  
14 evidence, and I think it's in order.

15           THE COURT: And your question or comment --

16           MR. BECRAFT: No. My comment, I was just simply  
17 informing the Court that I put into the ID category our  
18 exhibits.

19           THE COURT: Correct. Any exhibit that was introduced  
20 that they ask for can be provided without clearing it from the  
21 Court. Anything further Mr. Becraft?

22           MR. BECRAFT: None, Your Honor.

23           THE COURT: Mr. Campbell?

24           MR. CAMPBELL: No, Your Honor.

25           THE COURT: All right. We are in recess.

1                   (Jury deliberations begun at 11:43 a.m.,  
2                   and court reconvened at 4:06 p.m.  
3                   with defendant present.)

4                   JURY NOTE

5                   THE COURT: Thank you. You may be seated. All  
6 right. We have a question from the foreman, and it's in the  
7 form of a question that says: "Your Honor, clarification of  
8 jury instruction dealing with reasonable doubt & #17. How to  
9 determine what is in the defendant's mind. If unable to  
10 determine what is in defendant's mind? What."

11                   All right. Let's go to the instructions first.

12                   With respect to the request by the jury for a  
13 clarification of jury instruction dealing with reasonable  
14 doubt, there are actually several different instructions  
15 containing that as a requirement for the government's burden of  
16 proof. That includes -- let's start at the beginning.

17                   MR. CAMPBELL: It starts at Instruction 3.

18                   THE COURT: Yes. The second paragraph of 3 mentions  
19 it first. Actually, Instruction 3, period, paragraphs 1 and 2.

20                   MR. BECRAFT: Well, Your Honor, the very last  
21 paragraph through 2.

22                   MR. CAMPBELL: Yes.

23                   THE COURT: Yeah. It's the whole -- well, it's at  
24 the bottom of page 2, the third paragraph. I'm sorry. Second  
25 paragraph mentions it. Okay, what I'm going to do is refer

1 them to Instruction 3, but only after indicating that pursuant  
2 to Instruction No. 2, that they are not to disregard or give  
3 special attention to any one instruction.

4           It pops up again in Instruction 6. Is that the next  
5 time it's mentioned? Do you concur, counsel?

6           MR. BECRAFT: What did the Court say?

7           THE COURT: Talking about beyond a reasonable doubt,  
8 clarifying the instruction, and it actually pops up in several  
9 of the instructions. It next appears in Instruction 6,  
10 paragraph 1.

11           MR. CAMPBELL: I agree.

12           THE COURT: And No. 10.

13           MR. CAMPBELL: I think it appears in No. 9, too.

14           THE COURT: 9 as well? Oh, true, as to the dates, on  
15 or about. Pops up again in 14, 15.

16           MR. BECRAFT: Actually, 17 on page 12.

17           THE COURT: 17. 18.

18           As to the presumption of innocence, burden of proof,  
19 and reasonable doubt, the instruction included as No. 3 is  
20 essentially the pattern instruction out of the Fifth Circuit  
21 pattern jury instructions for criminal cases, Instruction 1.05.  
22 In researching that, I am not seeing that there is alternative  
23 language that's either recommended or authorized beyond the  
24 pattern. Mr. Campbell, do you have any comment on that?

25           MR. CAMPBELL: I concur, Your Honor.

1 THE COURT: Mr. Becraft?

2 MR. BECRAFT: I think if the Court is going to do  
3 something like direct their attention to something like  
4 reasonable doubt, we should just simply direct their attention  
5 to Instruction No. 3.

6 THE COURT: Denise, do you have a form jury note that  
7 I can have. The reply is going to be longer than what's  
8 contained on the note.

9 THE CLERK: I can print another one.

10 THE COURT: All right. Let's deal with the first  
11 segment of the jury's note to the Court. The proposed response  
12 that I drafted is this, and only with respect to their request  
13 for clarification of the jury instruction dealing with  
14 reasonable doubt and No. 17, as it's phrased: "The phrase  
15 reasonable doubt occurs in several instructions, Nos. 3, 6, 9,  
16 10, 14, 15, 17, and 18. While the primary definition of  
17 reasonable doubt is set forth in Instruction No. 3, you should  
18 not ignore its use in the other numbered instructions. As  
19 stated in Instruction No. 2, the jury has no right to disregard  
20 or give special attention to any one instruction."

21 That takes care, I think, of the reasonable doubt  
22 issue for a reply. Any objection, Mr. Becraft?

23 MR. BECRAFT: None, Your Honor.

24 THE COURT: Mr. Campbell?

25 MR. CAMPBELL: No, sir.



1           THE COURT: All right. That will be Part 1. Let's  
2 go now to, quote, Instruction No. 17, end quote. That is the  
3 willfully definition.

4           MR. CAMPBELL: Your Honor, when I read the question,  
5 I was -- I asked to get a copy of my proposed instruction for  
6 good faith to see if there was anything that kind of addressed  
7 the issue of state of mind, and the only thing that I see in my  
8 instruction that is not included in the instruction that was  
9 given by the Court is the sentence -- and I don't know if it  
10 adds anything to address the issue or not, but it says: "The  
11 issue of intent as to whether the defendant willfully failed to  
12 pay tax or willfully filed, willfully failed or willfully  
13 filed, failed to file income tax returns is one in which you  
14 must determine from a consideration of all the evidence in the  
15 case bearing on defendant's state of mind."

16           I don't know if that really adds anything to the  
17 instruction seeing that the instructions taken as a whole that  
18 you gave certainly give the jury that kind of direction, that  
19 they should look at the evidence bearing on the defendant's  
20 state of mind.

21           THE COURT: That particular sentence does tend to  
22 link, however, state of mind with willfully, but I don't  
23 know -- let's see.

24           The language . . .

25           (Off-the-record discussion between the Law

1 Clerk and the Court.)

2 THE COURT: Mr. Becraft, do you have the Government's  
3 proposed jury instruction for good faith instruction in front  
4 of you?

5 MR. BECRAFT: Well, a minute ago I drifted over to  
6 him and said it was -- it sounds like a good solution to me,  
7 Your Honor.

8 THE COURT: The third paragraph under proposed  
9 instructions submitted by the Government -- and I understand  
10 that the Government acceded to the actual wording submitted by  
11 the defendant for that specific jury instruction, but in this  
12 one paragraph 3 --

13 MR. BECRAFT: It might need to be modified in some  
14 respects, but I think this was at a time before we had the --  
15 while we had evasion in the case. But if that third paragraph  
16 is what the Court's looking at --

17 THE COURT: It is. And in this instance, "required  
18 to pay tax and/or file a return and did not do so, the issue of  
19 intent as to whether the defendant willfully failed to pay tax  
20 and/or file an income tax return is one in which you must  
21 determine from a consideration of all the evidence in the case  
22 bearing on the defendant's state of mind," that particular  
23 paragraph is absent from the instruction as given by the Court,  
24 but that is a correct statement of the law based on Simkanin.

25 MR. BECRAFT: I understand, Your Honor. All I'm --

1           THE COURT: And it doesn't have anything to do with  
2 evasion. The word evasion doesn't appear anywhere in that  
3 paragraph.

4           MR. BECRAFT: In reference to the pay issue. And I  
5 don't want to complicate anything further. I like that last  
6 sentence, "willfully failed to file an income tax return."  
7 That was my suggestion.

8           THE COURT: In this instance, we have already  
9 accounted for -- and now I'm just using the Government's  
10 proposed jury instruction as a templet just so that we can show  
11 for the record what's already included in the instruction.  
12 Paragraph 1 of the Government's proposed instruction is  
13 covered. Paragraph 2 is covered. Paragraph 3 is not.  
14 Paragraph 4 is covered. Is that your reading of this,  
15 Mr. Becraft?

16           MR. BECRAFT: I would agree with that, Your Honor.

17           THE COURT: All right. What I am going to do with  
18 respect to paragraph 17 is to include by way of further  
19 explanation paragraph 3 in the Government's proposed jury  
20 instructions. Do you have an objection to that, Mr. Campbell?

21           MR. CAMPBELL: No, sir.

22           THE COURT: Mr. Becraft?

23           MR. BECRAFT: None, Your Honor.

24           THE COURT: All right. What we will do is print out  
25 paragraph 3 on one copy, and I'll add a prefatorial remark and

1 then sign it. We'll actually submit these on three separate  
2 pages, in all probability, to the jury.

3           The second sheet in reply to Jury Note No. 1 will  
4 contain the prefatory statement as follows: "The Court  
5 provides the jury with the following paragraph in reply to the  
6 inquiry regarding Instruction No. 17."

7           The second paragraph of Jury Note No. 1 includes the  
8 question, "How to determine what is in the defendant's mind."  
9 And then the follow-up question, "If unable to determine what  
10 is in defendant's mind?" Followed by the word "what." I  
11 assume that means then what? That's how I interpret that.  
12 Mr. Campbell, you have any suggestions on how to word the  
13 response?

14           MR. CAMPBELL: Well, I kind of guess I got kind of  
15 ahead of myself, because the instruction that you included in  
16 the good faith exception or the willfulness I was --

17           THE COURT: The same paragraph.

18           MR. CAMPBELL: The same paragraph. I was really  
19 addressing that to at least the first part of the question, how  
20 to determine what's in the defendant's state of mind, and I  
21 believe there is some language that talks about some --  
22 basically, look at all the evidence bearing on the  
23 defendant's --

24           THE COURT: It does, and that's the link that I was  
25 talking about.

1           MR. CAMPBELL: And that's what I was addressing.  
2 Now, as far as the "what," I'm perplexed by that, as to what --  
3 how to answer that. I would say, just my opinion, just  
4 reinforce the instructions that the Court has already given as  
5 far as reasonable doubt and if not being able to make a  
6 reasonable doubt determination, what their duties are as far as  
7 acquittal and so forth. But I don't think there ought to be  
8 any additional or supplemental instructions to that. I think  
9 the instructions are pretty clear as to if they cannot reach  
10 any resolution as far as beyond a reasonable doubt what their  
11 duties are.

12           THE COURT: Mr. Becraft, would you speak to that,  
13 please.

14           MR. BECRAFT: Your Honor, I don't have a whole lot to  
15 disagree with Mr. Campbell.

16           THE COURT: It looks like to me, upon further  
17 reflection, that the reply that we just read into the record  
18 answers both the question about No. 17 as well as paragraph 2  
19 of the jury note, and "if unable to determine what is in D's  
20 mind," that's an issue for the jury to consider that does not  
21 get a reply from the Court. That's part of their deliberative  
22 process.

23           MR. BECRAFT: Understood, Your Honor.

24           THE COURT: And that would be, I think, also  
25 effectively answered by the last statement or the last clause

1 in the reply, "the issue of intent is one which you must  
2 determine from a consideration of all of the evidence in the  
3 case bearing on the defendant's state of mind." I think that  
4 that is an appropriate response without getting into a thicket  
5 of legal issues.

6 MR. BECRAFT: I'm not disagreeing with the Court.

7 (Off-the-record discussion between the  
8 Court, Courtroom Clerk, and Law  
9 Clerk.)

10 THE COURT: There's a subsidiary issue that we're  
11 dealing with having to do with court security provided after  
12 5:00 p.m., since it's now 4:35, and I am dispatching the  
13 courtroom deputy clerk to the jury with a CSO to ask the  
14 question if they want to continue today; if so, for how long,  
15 or make a decision to return tomorrow at either 8:30 or 9:00 in  
16 order to continue their deliberations. And Denise will also  
17 tell them that if they're going to stay tonight, that we will  
18 order dinner and provide that to them at the Marshal's expense.  
19 But that will be up to them. And we need it for staffing  
20 purposes tonight, and it will be the jury's decision as to how  
21 long into the evening they decide to go or not go. That's up  
22 to them.

23 Denise, would you take care of that, please.

24 (Courtroom Clerk exits courtroom, then  
25 returns.)

1 THE COURT: Denise, would you allow the lawyers to  
2 read that before we give it to the jury, please.

3 Any concern or problem with that, gentlemen, either  
4 counsel?

5 MR. BECRAFT: None, Your Honor.

6 MR. CAMPBELL: Nothing.

7 THE COURT: All right. I'll put the time on it and  
8 then we'll copy it and provide it to the jury.

9 We'll wait here for a few more minutes to see if they  
10 have a reply to the Court's question about how long they intend  
11 to stay.

12 (Courtroom Clerk exits courtroom, then  
13 returns.)

14 THE COURT: All right, the reply from the jury is  
15 that they are going to stay and work a while and that they will  
16 notify us if they make the decision to eat dinner in the  
17 courthouse. So, counsel, you are released until we receive  
18 another communiqué from the jury. Thank you very much. We're  
19 in recess.

20 (Recess had 4:06 - 5:05 p.m. Defendant  
21 present when court called to order.)

22 VERDICT

23 THE COURT: Thank you. You may be seated. Ladies  
24 and gentlemen, we have been informed that the jury has reached  
25 a verdict.

1                   Let's get the jury and bring them in at this time,  
2 please.

3                                   (Jury enters courtroom.)

4                   THE COURT: Our jury has returned. Please be seated.  
5 Mr. Davis, you were elected foreman?

6                   THE FOREMAN: Yes, sir.

7                   THE COURT: I understand the jury has reached a  
8 verdict?

9                   THE FOREMAN: Yes, sir.

10                  THE COURT: Would you hand a copy of the signed  
11 verdict form to the court security officer, please.

12                                   (The Foreman complies.)

13                  THE COURT: The verdict form is signed and properly  
14 dated. Denise, would you publish this verdict, please.

15                  THE CLERK: In the matter of the United States of  
16 America versus Tommy Cryer, we, the jury, unanimously find the  
17 defendant, Tommy Cryer, as to Count 1, not guilty; as to  
18 Count 2, not guilty. Dated and signed in Shreveport,  
19 Louisiana, this 11th day of July, 2007. Signed by the foreman.

20                  THE COURT: Ladies and gentlemen, in a few moments I  
21 will dismiss you from your jury service. I'm going to ask that  
22 you return to your jury deliberation room. Please be sure to  
23 take off your juror buttons before you depart. And please wait  
24 for me; I have a couple of things to provide to you as a  
25 memento of your service to us.



1 All rise for the jury.

2 (Jury exits courtroom.)

3 THE COURT: All right. Please be seated. Based on  
4 the jury's verdict of not guilty as to the sole two counts, the  
5 defendant is free to leave.

6 Do we have any follow-up, last-minute business before  
7 we depart today from the Government, Mr. Campbell?

8 MR. CAMPBELL: No, sir.

9 THE COURT: From the Defendant?

10 MR. BECRAFT: None, Your Honor.

11 THE COURT: Very well. We are adjourned.

12 (Proceedings concluded at 5:09 p.m.)

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C E R T I F I C A T E

I, Marie Moran Runyon, Official Court Reporter, do hereby certify that the foregoing pages numbered 296 through 405 do constitute a true and correct record of proceedings had in said trial to the best of my ability and understanding.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Subscribed and sworn to this 14th day of August, 2007.

---

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