

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
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1 AFTERNOON SESSION

2 JULY 10, 2007

3 (Court called to order with defendant
4 present at 1:45 p.m.)

5 THE COURT: Thank you. You may be seated. Anything
6 to review before we get the jury in, for me to sign?

7 MR. BECRAFT: I don't know if this is the right
8 posture, but I'm not going to make a Rule 29 at this time, Your
9 Honor.

10 THE COURT: That's okay. It's up to you.

11 Mr. Campbell?

12 MR. CAMPBELL: We submitted the stipulations, and
13 when you read them, I realized that there was one provision
14 that referenced the trust. And so I redrafted it and omitted
15 that reference, and we all signed it, and I believe you should
16 have it right there.

17 THE COURT: It does not need to be reread, then?

18 MR. CAMPBELL: No, sir.

19 THE COURT: Mr. Becraft, do you concur with that?

20 MR. BECRAFT: Yes, we do, Your Honor.

21 THE COURT: All right. If the jury remembers that
22 one paragraph, so be it. We'll see when they ask a jury
23 question and they write it out and submit it.

24 All right. I apologize for being late. I was on the
25 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, restauranteurs. 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 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.

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