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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.  
. 4:03-CR-188-A  
VS. .  
. .  
RICHARD MICHAEL SIMKANIN . January 5, 2004  
. 12:25 p.m.  
. . . . .

VOLUME II  
TRIAL TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN H. McBRYDE  
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the United States: Mr. David L. Jarvis  
Assistant United States Attorney  
801 Cherry Street, Suite 1700  
Fort Worth, Texas 76102  
(817) 252-5200  
  
Mr. Robert A. Kemins  
U.S. Department of Justice  
717 North Harwood, Suite 400  
Dallas, Texas 75201  
(214) 880-9781  
  
For Defendant Simkanin: Mr. Arch C. McColl, III  
McColl & McColloch  
1601 Elm Street, Suite 2000  
Dallas, Texas 75201-4761  
(214) 979-0999  
  
Official Court Reporter: Eileen M. Brewer  
424 United States Courthouse  
501 West Tenth Street  
Fort Worth, Texas 76102-3637  
(817) 850-6661

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

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## I N D E X

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## GOVERNMENT'S DIRECT EVIDENCE

3

|    | Direct          | Cross | Redirect | Recross | Voir Dire | Court |
|----|-----------------|-------|----------|---------|-----------|-------|
| 4  | WITNESSES:      |       |          |         |           |       |
|    | Dianne Clemonds | 30    | 49       |         |           |       |
| 5  | James Kelly     | 52    |          |         | 56        |       |
|    |                 | 57    | 73       |         |           |       |
| 6  | Fred Taylor     | 90    | 97       |         |           |       |
|    | Al Sharp        | 102   | 109      |         |           |       |
| 7  | Robert Dean     | 110   | 116      |         |           |       |
|    | Joe Cooper      | 119   | 126      |         |           |       |
| 8  | Randy Perdue    | 144   | 147      |         |           |       |
|    | Louis Morris    | 148   | 152      |         |           |       |
| 9  | Phillip Eastman | 156   | 164      |         |           |       |
|    | Ron Wright      | 166   | 172      |         |           |       |
| 10 | Allan McGowan   | 174   | 178      |         |           |       |

11

## GOVERNMENT'S DOCUMENTARY EVIDENCE

12

|    | No.   | Description   | Offered | Admitted |
|----|-------|---|---------|----------|
| 13 | GX-1  | Secretary of State Records,<br>Arrow Custom Plastics  | 176     | 176      |
| 14 | GX-2  | Secretary of State Records,<br>Simkanin, Inc.         | 176     | 176      |
| 15 | GX-3  | Letter From Simpson & Taylor,<br>3-28-2000            | 96      | 96       |
| 16 | GX-4  | Form 1120 Tax Return                                  | 60      | 61       |
|    | GX-5  | Form 1120 Tax Return                                  | 60      | 61       |
| 17 | GX-6  | Form 1120 Tax Return                                  | 60      | 61       |
|    | GX-7  | Form 1120 Tax Return                                  | 60      | 61       |
| 18 | GX-8  | Form 1120 Tax Return                                  | 60      | 61       |
|    | GX-9  | Form 1120 Tax Return                                  | 60      | 61       |
| 19 | GX-10 | Individual Tax Return, 1993                           | 65      | 65       |
|    | GX-11 | Individual Tax Return, 1994                           | 65      | 65       |
| 20 | GX-12 | Individual Tax Return, 1995                           | 65      | 65       |
|    | GX-13 | Fax, From James Kelly to<br>Richard Simkanin, 11-5-99 | 70      | 70       |
| 21 | GX-14 | Summary Wage Data, 1995 - 2001                        | 104     | 104      |
| 22 | GX-15 | Employee Wages, 3rd Qtr. 1999                         | 104     | 104      |
|    | GX-16 | Supporting Documents, 3rd Qtr. 1999                   | 104     | 104      |
| 23 | GX-17 | Employee Wages, 4th Qtr. 1999                         | 104     | 104      |
|    | GX-18 | Supporting Documents, 4th Qtr. 1999                   | 104     | 104      |
| 24 | GX-19 | Employee Wages, 1st Qtr. 2000                         | 104     | 104      |
|    | GX-20 | Supporting Documents, 1st Qtr. 2000                   | 104     | 104      |
| 25 | GX-21 | Employee Wages, 2nd Qtr. 2000                         | 104     | 104      |
|    | GX-22 | Supporting Documents, 2nd Qtr. 2000                   | 104     | 104      |

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## I N D E X

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## GOVERNMENT'S DOCUMENTARY EVIDENCE CONTINUED

| 3  | No.   | Description   | Offered | Admitted |
|----|-------|---|---------|----------|
|    | GX-23 | Employee Wages, 3rd Qtr. 2000   | 104     | 104      |
| 4  | GX-24 | Supporting Documents, 3rd Qtr. 2000   | 104     | 104      |
|    | GX-25 | Employee Wages, 4th Qtr. 2000   | 104     | 104      |
| 5  | GX-26 | Supporting Documents, 4th Qtr. 2000   | 104     | 104      |
|    | GX-27 | Employee Wages, 1st Qtr. 2001   | 104     | 104      |
| 6  | GX-28 | Supporting Documents, 1st Qtr. 2001   | 104     | 104      |
|    | GX-29 | Employee Wages, Mid 2nd Qtr. 2001   | 104     | 104      |
| 7  | GX-30 | Supporting Documents, Mid 2nd Qtr. 2001   | 104     | 104      |
| 8  | GX-31 | Summary Wage Data, Richard M. Simkanin, Mid 2nd Qtr. 2001 through 3rd Qtr. 2003 | 104     | 104      |
| 9  | GX-32 | Employee Wages, Mid 2nd Qtr. 2001   | 104     | 104      |
| 10 | GX-33 | Supporting Documents, Mid 2nd Qtr. 2001   | 104     | 104      |
| 11 | GX-34 | Employee Wages, 3rd Qtr. 2001   | 104     | 104      |
|    | GX-35 | Supporting Documents, 3rd Qtr. 2001   | 104     | 104      |
| 12 | GX-36 | Employee Wages, 4th Qtr. 2001   | 104     | 104      |
|    | GX-37 | Supporting Documents, 4th Qtr. 2001   | 104     | 104      |
| 13 | GX-38 | Employee Wages, 1st Qtr. 2002   | 104     | 104      |
|    | GX-39 | Supporting Documents, 1st Qtr. 2002   | 104     | 104      |
| 14 | GX-40 | Employee Wages, 2nd Qtr. 2002   | 104     | 104      |
|    | GX-41 | Supporting Documents, 2nd Qtr. 2002   | 104     | 104      |
| 15 | GX-42 | Employee Wages, 3rd Qtr. 2002   | 104     | 104      |
|    | GX-43 | Supporting Documents, 3rd Qtr. 2002   | 104     | 104      |
| 16 | GX-44 | Employee Wages, 4th Qtr. 2002   | 104     | 104      |
|    | GX-45 | Supporting Documents, 4th Qtr. 2002   | 104     | 104      |
| 17 | GX-46 | Employee Wages, 1st Qtr. 2003   | 104     | 104      |
|    | GX-47 | Supporting Documents, 1st Qtr. 2003   | 104     | 104      |
| 18 | GX-48 | Employee Wages, 2nd Qtr. 2003   | 104     | 104      |
|    | GX-49 | Supporting Documents, 2nd Qtr. 2003   | 104     | 104      |
| 19 | GX-50 | Employee Wages, 3rd Qtr. 2003   | 104     | 104      |
|    | GX-51 | Supporting Documents, 3rd Qtr. 2003   | 104     | 104      |
| 20 | GX-52 | Form 941, 1st Qtr. 1997   | 113     | 113      |
|    | GX-53 | Form 941, 2nd Qtr. 1997   | 113     | 113      |
| 21 | GX-54 | Form 941, 3rd Qtr. 1997   | 113     | 113      |
|    | GX-55 | Form 941, 4th Qtr. 1997   | 113     | 113      |
| 22 | GX-56 | Form 941, 1st Qtr. 1998   | 113     | 113      |
|    | GX-57 | Form 941, 2nd Qtr. 1998   | 113     | 113      |
| 23 | GX-58 | Form 941, 3rd Qtr. 1998   | 113     | 113      |
|    | GX-59 | Form 941, 4th Qtr. 1998   | 113     | 113      |
| 24 | GX-60 | Form 941, 1st Qtr. 1999   | 113     | 113      |
|    | GX-61 | Form 941, 2nd Qtr. 1999   | 113     | 113      |
| 25 | GX-62 | Form 941, 3rd Qtr. 1999   | 113     | 113      |

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## GOVERNMENT'S DOCUMENTARY EVIDENCE CONTINUED

| 3  | No.    | Description                     | Offered | Admitted |
|----|--------|---------------------------------|---------|----------|
|    | GX-63  | Form 941, 4th Qtr. 1999         | 113     | 113      |
| 4  | GX-64  | IRS Transcript, 1st Qtr. 2000   | 113     | 113      |
|    | GX-65  | IRS Transcript, 2nd Qtr. 2000   | 113     | 113      |
| 5  | GX-66  | IRS Transcript, 3rd Qtr. 2000   | 113     | 113      |
|    | GX-67  | IRS Transcript, 4th Qtr. 2000   | 113     | 113      |
| 6  | GX-68  | IRS Transcript, 1st Qtr. 2001   | 113     | 113      |
|    | GX-69  | IRS Transcript, 2nd Qtr. 2001   | 113     | 113      |
| 7  | GX-70  | IRS Transcript, 3rd Qtr. 2001   | 113     | 113      |
|    | GX-71  | IRS Transcript, 4th Qtr. 2001   | 113     | 113      |
| 8  | GX-72  | IRS Transcript, 1st Qtr. 2002   | 113     | 113      |
|    | GX-73  | IRS Transcript, 2nd Qtr. 2002   | 113     | 113      |
| 9  | GX-74  | IRS Transcript, 3rd Qtr. 2002   | 113     | 113      |
|    | GX-75  | IRS Transcript, 4th Qtr. 2002   | 113     | 113      |
| 10 | GX-76  | IRS Transcript, 1st Qtr. 2003   | 113     | 113      |
|    | GX-77  | IRS Transcript, 2nd Qtr. 2003   | 113     | 113      |
| 11 | GX-78  | IRS Transcript, 3rd Qtr. 2003   | 113     | 113      |
|    | GX-79  | IRS Transcript, Form 1040, 1998 | 113     | 113      |
| 12 | GX-80  | IRS Transcript, Form 1040, 1999 | 113     | 113      |
|    | GX-81  | IRS Transcript, Form 1040, 2000 | 113     | 113      |
| 13 | GX-82  | IRS Transcript, Form 1040, 2001 | 113     | 113      |
|    | GX-83  | IRS Transcript, Form 1040, 1988 | 113     | 113      |
| 14 | GX-84  | IRS Transcript, Form 1040, 1989 | 113     | 113      |
|    | GX-85  | IRS Transcript, Form 1040, 1990 | 113     | 113      |
| 15 | GX-86  | IRS Transcript, Form 1040, 1991 | 113     | 113      |
|    | GX-87  | IRS Transcript, Form 1040, 1992 | 113     | 113      |
| 16 | GX-88  | IRS Transcript, Form 1040, 1993 | 113     | 113      |
|    | GX-89  | IRS Transcript, Form 1040, 1994 | 113     | 113      |
| 17 | GX-90  | IRS Transcript, Form 1040, 1995 | 113     | 113      |
|    | GX-91  | Letter From Simkanin, 1-28-2000 | 121     | 121      |
| 18 | GX-92  | Amended Form 941, 1st Qtr. 1997 | 121     | 121      |
|    | GX-93  | Amended Form 941, 2nd Qtr. 1997 | 121     | 121      |
| 19 | GX-94  | Amended Form 941, 3rd Qtr. 1997 | 121     | 121      |
|    | GX-95  | Amended Form 941, 4th Qtr. 1997 | 121     | 121      |
| 20 | GX-96  | Amended Form 940-EZ, 1997       | 121     | 121      |
|    | GX-97  | Amended Form 941, 1st Qtr. 1998 | 121     | 121      |
| 21 | GX-98  | Amended Form 941, 2nd Qtr. 1998 | 121     | 121      |
|    | GX-99  | Amended Form 941, 3rd Qtr. 1998 | 121     | 121      |
| 22 | GX-100 | Amended Form 941, 4th Qtr. 1998 | 121     | 121      |
|    | GX-101 | Amended Form 940-EZ, 1998       | 121     | 121      |
| 23 | GX-102 | Amended Form 941, 1st Qtr. 1999 | 121     | 121      |
|    | GX-103 | Amended Form 941, 2nd Qtr. 1999 | 121     | 121      |
| 24 | GX-104 | Amended Form 941, 3rd Qtr. 1999 | 121     | 121      |
|    | GX-105 | Amended Form 941, 4th Qtr. 1999 | 121     | 121      |
| 25 | GX-106 | Amended Form 940-EZ, 1999       | 121     | 121      |

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## I N D E X

## GOVERNMENT'S DOCUMENTARY EVIDENCE CONTINUED

| No.    | Description                                | Offered | Admitted |
|--------|--|---------|----------|
| GX-107 | Target Letter to Simkanin, 3-14-01         | 175     | 175      |
| GX-113 | Web page, 8-1-00                           | 169     | 169      |
| GX-114 | Fax from James Kelly to<br>Dianne Clemonds | 45      | 45       |
| GX-115 | Signature Card, 7-9-96                     | 145     | 145      |
| GX-116 | Signature Card, 1-3-00                     | 145     | 145      |
| GX-117 | Signature Card, 7-13-01                    | 145     | 145      |
| GX-131 | Letter to Joe Barton, 1-11-99              | 167     | 167      |
| GX-132 | Letter to Joe Barton, 8-2-00               | 167     | 167      |
| GX-134 | Barton Letter to Simkanin, 3-15-01         | 167     | 167      |
| GX-136 | IRS Letter to Simkanin, 6-30-00            | 157     | 157      |
| GX-137 | Simkanin Letter to IRS, 7-26-00            | 157     | 157      |
| GX-138 | IRS Letter to Simkanin, 8-18-00            | 157     | 157      |
| GX-139 | Simkanin Letter to IRS, 8-23-00            | 157     | 157      |
| GX-140 | IRS Letter to Simkanin, 9-11-00            | 157     | 157      |
| GX-141 | Simkanin Letter to IRS, 9-26-00            | 157     | 157      |
| GX-142 | IRS Letter to Simkanin, 10-4-00            | 157     | 157      |
| GX-143 | Simkanin Letter to IRS, 10-13-00           | 157     | 157      |
| GX-144 | IRS Letter to Simkanin, 12-20-00           | 157     | 157      |
| GX-145 | Simkanin Letter to IRS, 1-3-01             | 157     | 157      |
| GX-146 | IRS Letter to Simkanin, 1-19-01            | 157     | 157      |
| GX-147 | Simkanin Letter to IRS, 1-25-0             | 157     | 157      |
| GX-148 | E-mail From Morris to Simkanin,<br>2-21-01 | 151     | 151      |

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

(Court Reporter's Note: This is a continuation from  
Volume I. There have been no deletions or additions.)

THE COURT: Okay. At this time the defendant will  
stand while the attorney for the government reads the  
indictment.

MR. JARVIS: Indictment. The grand jury charges: At  
all times material to the indictment, introduction.

One. The Internal Revenue Code requires employers to pay  
to the United States the employer's share of Federal Insurance  
Contribution Act taxes, FICA or social security taxes, and  
Medicare taxes owing on wages paid to employees.

Two. The Internal Revenue Code also requires employers to  
withhold from the wages of their employees, the employees'  
share of FICA taxes, Medicare taxes, and income taxes, to  
account for these taxes, and to pay withheld amounts over to  
the United States.

Three. A person is responsible for collecting, accounting  
for, and paying over the employees' share of FICA, Medicare,  
and income taxes if he has the authority to exercise  
significant control over the employer's financial affairs,  
regardless of whether the individual exercised such control in  
fact.

Four. A person willfully violates his duty to collect,  
account for, and pay over FICA, Medicare, and income taxes if

1 he knew of the duty and he voluntarily and intentionally  
2 violated that duty.

3         Five. On or about April 5, 1982, Arrow Custom Plastics,  
4 Inc., (Arrow) was incorporated in the State of Texas, with its  
5 principal place of business in Bedford, Texas. From April of  
6 1982, when the company was formed, through and including the  
7 dates included in this indictment, Arrow was engaged in the  
8 business of the production of customized plastic molds for  
9 various manufacturers. At the time of incorporation, through  
10 and including the dates included in the indictment, Richard  
11 Michael Simkanin (Simkanin or the defendant) served in the  
12 capacity of President and Chief Executive Officer of Arrow.

13         Six. From the date of Arrow's incorporation through  
14 approximately September 2001, Simkanin was the sole shareholder  
15 of Arrow Custom Plastics, Inc. Sometime in August of 2001,  
16 Simkanin was informed by the government that he must produce  
17 Arrow's corporate documents. Shortly after receiving notice to  
18 produce these corporate documents, in September of 2001,  
19 Simkanin caused the dissolution of Arrow Custom Plastics, Inc.  
20 From about September 2001 through the dates included in the  
21 indictment, Simkanin continued to operate and control the  
22 business as a sole proprietorship under the name Arrow Custom  
23 Plastics (Arrow).

24         Seven. Simkanin had the authority to exercise  
25 significant control over the financial affairs of Arrow. This

1 fact made Simkanin responsible for collecting FICA, Medicare,  
2 and income taxes from the wages of Arrow employees, accounting  
3 for those taxes, and paying those taxes over to the United  
4 States Treasury through the IRS.

5 Eight. Prior to December 1999, Simkanin caused Arrow to  
6 withhold, account for, and pay over FICA, Medicare --

7 THE COURT: Let me interrupt you, Mr. Jarvis. I told  
8 the marshal he can unlock the courtroom and allow the  
9 spectators in. So we won't be disrupted, let's let the  
10 spectators come on in before you continue reading with the  
11 indictment.

12 MR. JARVIS: Yes, sir.

13 THE COURT: You can be seated for the time being,  
14 Mr. Simkanin.

15 (Brief pause.)

16 THE COURT: I'm told that there are some news media  
17 persons here, and I have advised the court personnel that they  
18 can be seated in that front row to my right. So if there's  
19 anyone associated with the news media, you can be seated in  
20 that front seat on the right side.

21 (Brief pause.)

22 THE COURT: Mr. Davidson, when it appears that  
23 everyone is in, lock the door because we're not going to have  
24 people going in and out during the trial.

25 THE U.S. MARSHAL: Yes, sir.



1           THE COURT: And I might mention that to all in the  
2 courtroom. We're not going to have people going in and out of  
3 the courtroom during the trial. The front door will be locked,  
4 so unless you have -- If you're in here now and don't want to  
5 stay until the next recess, you need to know that you should  
6 leave, because we're simply not going to have traffic coming in  
7 and out of the courtroom.

8           Okay. You may proceed, Mr. Jarvis.

9           MR. JARVIS: Thank you, Your Honor. Paragraph eight.  
10 Prior to December 1999, Simkanin caused Arrow to withhold,  
11 account for, and pay over FICA, Medicare, and income taxes from  
12 the wages of Arrow employees.

13          Nine. In or about December 1999, and again in or about  
14 June of 2000, Simkanin called meetings for Arrow employees to  
15 inform them that Arrow would no longer withhold taxes from  
16 employee paychecks. Simkanin also encouraged employees to file  
17 amended tax returns and request refunds of taxes that employees  
18 had previously paid.

19          Ten. Beginning sometime in or about late 1999 or shortly  
20 thereafter, Simkanin instructed Arrow's bookkeeper to no longer  
21 collect, account for, and pay over taxes from the wages of  
22 Arrow employees. On or about November 5, 1999, Simkanin told  
23 Arrow's accounting firm that effective January 1st, 2000, Arrow  
24 was no longer going to withhold taxes from the wages of Arrow's  
25 employees. On or about November 5, 1999, Arrow's accounting

1 firm advised Simkanin against this course of action and sent  
2 Simkanin a copy of Section 3402 entitled, "Requirements of  
3 Withholding." As a result of Simkanin's decision to not  
4 withhold taxes from January 1st, 2000, through the present,  
5 Simkanin was able to retain \$175,032 in taxes that Simkanin  
6 was obligated to pay as the employer's share of the taxes  
7 due.

8       Eleven. During the period beginning at least 1997 through  
9 the present, Simkanin took several steps to demonstrate that  
10 Simkanin did not consider himself subject to the jurisdiction  
11 of the laws of the United States and the State of Texas.  
12 During this period, Simkanin also challenged the  
13 constitutionality of both federal and state laws.

14       Twelve. To demonstrate that he was not subject to the  
15 jurisdiction of the State of Texas, sometime on or before 1997  
16 Simkanin surrendered his Texas driver's license to the Texas  
17 Department of Motor Vehicles. However, Simkanin continued to  
18 operate a motor vehicle on the public streets and highways of  
19 Texas without a valid driver's license.

20       Thirteen. On or about February 12, 2002, Simkanin filed a  
21 Notice of Expatriation and Repatriation with the Secretary of  
22 the Treasury as part of his effort to demonstrate that he was a  
23 stranger to the laws of the United States and no longer subject  
24 to the laws of the United States. In this document, Simkanin  
25 also stated that certain tax laws of the United States violated

1 the Constitution of the United States. In this document,  
2 Simkanin also stated that he refused to support the present  
3 insurgent government and that his only allegiance was to the  
4 Texas Republic.

5 Fourteen. On or about February 18, 2002, Simkanin signed  
6 an affidavit which also stated that he was not a Fourteenth  
7 Amendment citizen and was not within the jurisdiction of the  
8 corporate United States and its instrumentalities.

9 Fifteen. Beginning on or about August of 2001, Simkanin  
10 posted a document on his website entitled, "Foreign  
11 Jurisdiction," in which he stated that the jurisdiction of the  
12 United States government is limited to the District of Columbia  
13 and military installations.

14 Sixteen. On or about March 2nd, 2001, Simkanin agreed to  
15 use his photo in a full page advertisement in the newspaper USA  
16 Today in which the constitutionality of the tax laws of the  
17 United States were challenged.

18 Counts 1 through 12, willful failure to collect, account  
19 for, and pay over taxes due, a violation of 26 United States  
20 Code, Section 7202.

21 One. The allegations contained in paragraphs 1 through 16  
22 of the introduction are incorporated herein by reference as  
23 though they were fully restated.

24 Two. On or about the dates listed below, in the Fort  
25 Worth Division of the Northern District of Texas, Richard

1 Michael Simkanin, defendant, did willfully fail to collect,  
2 truthfully account for, and pay over to the Internal Revenue  
3 Service the federal income taxes, Medicare taxes, and Federal  
4 Insurance Contribution Act taxes due and owing to the United  
5 States of America from the total taxable wages of Arrow  
6 employees for each quarter listed below in Counts 1 through 12  
7 respectively.

8       Count 1. Tax quarter ending date, March 31, 2000. Total  
9 wages subject to collection, \$240,217. Total taxes not  
10 collected, \$18,377.

11       Count 2. Quarter ending date, June 30, 2000. Wages  
12 subject to collection, \$234,704. Taxes not collected, \$17,955.

13       Count 3. Quarter ending September 30, 2000. Wages  
14 subject to collection, \$236,928. Taxes not collected, \$18,125.

15       Count 4. Quarter ending December 31, 2000. Wages subject  
16 to collection, \$263,427. Taxes not collected, \$20,152.

17       Count 5. Quarter ending date, March 31, 2001. Wages  
18 subject to collection, \$233,309. Taxes not collected, \$17,848.

19       Count 6. Quarter ending June 30, 2001. Wages subject to  
20 collection, \$162,197. Taxes not collected, \$12,408.

21       Count 7. Quarter ending September 30, 2001. Wages  
22 subject to collection, \$165,738. Taxes not collected, \$12,679.

23       Count 8. Quarter ending December 31, 2001. Wages subject  
24 to collection, \$177,689. Taxes not collected, \$13,593.

25       Count 9. Quarter ending date, March 31, 2002. Wages

1 subject to collection, \$146,217. Taxes not collected, \$11,186.

2 Count 10. Quarter ending date, June 30, 2002. Wages

3 subject to collection, \$141,907. Taxes not collected, \$10,856.

4 Count 11. Quarter ending date, September 30, 2002. Wages

5 subject to collection, \$144,610. Taxes not collected, \$11,063.

6 Count 12. Quarter ending date, December 31, 2002. Wages

7 subject to collection, \$141,048. Taxes not collected, \$10,790.

8 For a total of Counts 1 through 12, wages subject to

9 collection, \$2,287,991. Total taxes not collected, \$175,032.

10 Of this total amount of \$175,032 taxes due from employees, the

11 employer, Simkanin, was also obligated to pay or match the same

12 amount, \$175,032, which was the employer's 7.65 percent share

13 of the FICA and Medicare taxes. All in violation of Title 26,

14 United States Code, Section 7202.

15 Counts 13 through 27, false claims against the United

16 States, in violation of Title 18 United States Code, Section

17 287.

18 One. The allegations contained in paragraphs one through

19 sixteen of the introduction are incorporated herein by

20 reference as though they were fully restated.

21 Two. On or about January 28 of 2000, in the Fort Worth

22 Division of the Northern District of Texas, Richard Michael

23 Simkanin, defendant, as president of Arrow, did knowingly make

24 and present and cause to be made and presented to the United

25 States Treasury Department, through the Internal Revenue

1 Service, 15 false claims against the United States, claiming  
2 that payment of refunds of the employer's share of FICA taxes  
3 and Medicare taxes paid by Arrow and by the employees' share of  
4 FICA taxes, Medicare taxes, and income taxes collected from  
5 Arrow's employees, covering the period of March of 1997 through  
6 December of 1999, each of which the defendant knew to be false,  
7 fictitious, and fraudulent, for each of Counts 13 through 27  
8 respectively.

9           Count 13. Form submitted, Amended Form 941. Period  
10 ending 3-31-97. Refund, \$18,120.

11           Count 14. Form submitted, Amended Form 941. Period  
12 ending 6-30 of '97. Refund, \$17,310.

13           Count 15. Form submitted, an Amended Form 941. Period  
14 ending 9-30-97. Refund amount, \$16,517.

15           Count 16. Amended Form 941. Period ending 12-31-97.  
16 Refund, \$18,508.

17           Count 17. Amended Form 941-EZ, dated 12-31-97. Refund,  
18 \$2,548.

19           Count 18. Amended Form 941, dated 3-31-98. Refund,  
20 \$16,295.

21           Count 19. Amended Form 941, dated 6-30 of '98. Refund,  
22 \$17,616.

23           Count 20. Amended Form 941, dated 9-30-98. Refund,  
24 \$18,677.

25           Count 21. Amended Form 941, dated 12-31-98. Refund,

1 \$19,979.

2 Count 22. Amended Form 940-EZ, dated 12-31-98. Refund,  
3 \$2,291.

4 Count 23. Amended Form 941, dated 3-31-99. Refund,  
5 \$18,766.

6 Count 24. Amended Form 941, dated 6-30-99. Refund,  
7 \$19,049.

8 Count 25. Amended Form 941. Period ending, 9-30 of '99.  
9 Refund, \$22,829.

10 Count 26. Amended Form 941, dated 12-31-99. Refund,  
11 \$22,818.

12 Count 27. Amended Form 940-EZ, dated 12-31-99. Refund,  
13 \$3,192.

14 All in violation of Title 18, United States Code, Sections  
15 287 and 2.

16 Counts 27 through 31, failure to file individual income  
17 tax returns, in violation of 26 United States Code, Section  
18 7203.

19 One. The allegations contained in paragraphs one through  
20 sixteen of the introduction are incorporated herein by  
21 reference as though they were fully restated.

22 Two. On or about the dates listed below, Defendant  
23 Richard Michael Simkanin, who is married and was a resident of  
24 Bedford, Texas, which is a community property state, had and  
25 received approximate gross income in the amounts listed below,

1 such amounts computed on the community property basis, and by  
2 reason of such income, the law required the defendant to file a  
3 tax return with respect to income, following the close of the  
4 below listed calendar years and the below listed filing  
5 deadlines, and to make such return to the District Director of  
6 the Internal Revenue Service for the Internal Revenue District  
7 of Dallas, at Dallas, Texas, or to the Director of the Internal  
8 Revenue Service Center, at Austin, Texas, or other proper  
9 officer of the United States, stating specifically the items of  
10 his gross income and any deductions and credits to which he was  
11 entitled; that well-knowing and believing all of the foregoing,  
12 the defendant did willfully fail to make said income tax return  
13 to the said Director of the Internal Revenue Service, to said  
14 Director of the Internal Revenue Service Center, or to any  
15 other proper office of the United States, for each of Counts 28  
16 through 31 respectively:

17       Count 28. Calendar year 1998. Filing deadline, April 15,  
18 1999. Approximate gross income, \$42,933.

19       Count 29. Calendar year 1999. Filing deadline, April 17,  
20 2000. Approximate gross income, \$62,007.

21       Count 30. Calendar year 2000. Filing deadline, April 16,  
22 2001. Approximate gross income, \$189,750.

23       Count 31. Calendar year 2001. Filing deadline, April 15,  
24 2002. Approximate gross income, \$115,500.

25       All in violation of Title 26, United States Code, Section



1 7203.

2 THE COURT: How does the defendant plead to the  
3 counts of the indictment?

4 THE DEFENDANT: Not guilty.

5 THE COURT: Okay. Y'all can be seated.

6 Okay. Mr. Jarvis, you can make your opening statement at  
7 this time.

8 MR. JARVIS: Your Honor, could I have a warning after  
9 I've used four minutes?

10 THE COURT: Okay.

11 MR. JARVIS: Good afternoon, members of the jury.

12 We're going to bring to you eleven witnesses in our case in  
13 chief. The first witness will be Dianne Clemonds. She was the  
14 -- considered the responsible -- will testify the defendant was  
15 the responsible party, the one responsible to have taxes  
16 withheld and paid. She will testify that once she realized in  
17 the summer of '99 that the atmosphere had changed, she became  
18 concerned. She will testify the defendant told her that she  
19 and the other employees were slaves if they pay taxes. She  
20 responded to him that it's against the law. She will testify  
21 that he named her as the president even though that was a  
22 figurehead and a facade. He needed someone to flow things  
23 through so that he could "drop out" of the system.

24 She will testify that he received a minimum of 1,000 to  
25 \$1500 a week in cash through the corporation and that business

1 expenses at the company were paid by check and not by cash.

2 She will testify in March and April of '99, \$90,000 was  
3 withdrawn at the defendant's request and he had her go to the  
4 bank to do it. She will testify she was increasingly concerned  
5 in late 1999 to the point where she asked for the accounting  
6 firm to send a copy of the law she could give to the defendant.  
7 She put it on his desk, and he continued with this course of  
8 action.

9 Our second witness will be James Kelly who had the  
10 face-to-face routine contact from the accounting firm with the  
11 defendant's firm, did the returns, and so on. He will testify  
12 he prepared individual tax returns for both the defendant and  
13 his wife for '93, '94, and '95. And when he asked the  
14 defendant if he wanted Mr. Kelly to prepare individual returns  
15 in '96 and '97, the defendant told him, no, there's no income.  
16 I'm not getting any income from Arrow. I'm not taking any  
17 funds from Arrow. We will have other witnesses who will  
18 testify that was not true.

19 Mr. Kelly had a conversation in the summer of '99 where  
20 the defendant told him -- this is the defendant speaking to  
21 Kelly, "That I'm a free and sovereign citizen. There's no  
22 legal requirement for me to pay taxes. The federal government  
23 has no jurisdiction over me. I'm a free man and as a free man,  
24 a free and sovereign citizen, I have no obligation to pay taxes  
25 or file any kind of tax returns." Kelly will testify he also

1 sent a copy of the law to Mr. Simkanin, who ignored it.

2 Mr. Taylor, our third witness, is a senior partner of that  
3 accounting firm. He will testify in March of 2000, after Kelly  
4 was unsuccessful in dissuading the defendant in March of 2000,  
5 Mr. Fred Taylor, the senior partner, had a meeting; and at that  
6 meeting he told the defendant that the law required  
7 withholding. The defendant told Mr. Taylor, "The Internal  
8 Revenue Code does not apply to me. I'm not subject to the  
9 rules of the Internal Revenue Code, and the IRS is not the real  
10 law." Taylor told him that the law required him to withhold  
11 and he would get into legal trouble if he persisted.

12 Our fourth witness, Al Sharp, will bring in wage data to  
13 show that wages were paid to employees of Arrow as alleged in  
14 the indictment.

15 Mr. Dean, Robert Dean of IRS, will come in and talk about  
16 the defendant had a history of filing these tax returns,  
17 withholding/941s, for '97, '98, and '99. And suddenly in 2000  
18 he just stopped filing his withholding on his taxes.

19 Our next witness, Mr. Cooper, also with the IRS, will  
20 testify that he considered the claim that was filed in January  
21 of 2000 by the defendant asking for a refund of all the taxes  
22 that had been paid in '97, '98, and '99. That claim was  
23 denied. Mr. Cooper will testify he had a telephone  
24 conversation with the defendant. The defendant explained his  
25 position that, well, wages are not taxable income. That's what

1 the defendant told Cooper, and Cooper said, well, that's not  
2 true and the courts have repeatedly rejected that argument.  
3 And the defendant continued with his course.

4 Our seventh witness, Randy Perdue, will testify that over  
5 a period of March of '99 though April of 2003, the defendant,  
6 through CTRs, withdrew over a half million dollars, \$567,000 in  
7 cash in \$100 bills --

8 THE COURT: You used four minutes, Mr. Jarvis.

9 MR. JARVIS: Thank you, Your Honor.  
10 -- from the bank account.

11 Our eighth witness, Phillip Eastman, will testify about  
12 some correspondence between the defendant and the IRS.

13 Our tenth witness, Ron Wright, will testify that he worked  
14 for Congressman Barton, and on August 2nd of 2000 -- or excuse  
15 me, March of 2001 Congressman Barton told the defendant the law  
16 requires you to withhold the taxes. Wages are taxable income.  
17 It's taxable, and included were a bunch of IRS sources to  
18 Mr. Simkanin.

19 Our last witness will be Special Agent Allan McGowan who  
20 will testify about numerous IRS resources that are available to  
21 the defendant and any other citizen. It lists all the court  
22 decisions showing the defendant's position has been rejected in  
23 the past.

24 In sum, the evidence will show the defendant was  
25 repeatedly warned what the law required. He rejected that

1 advice and continued to defy the law. Thank you.

2 THE COURT: Mr. McColl, does the defendant wish to  
3 make an opening statement?

4 MR. McCOLL: We do, Your Honor.

5 THE COURT: Okay.

6 MR. McCOLL: Good morning, ladies and gentlemen. The  
7 evidence that the defense will bring you will show that this  
8 man, Dick Simkanin, an engineer, was trained to do things in a  
9 logical manner. By the book, step-by-step. And that he built  
10 a company from scratch over a 20-year period. It was very  
11 successful. That he's a thermodynamic engineer that takes  
12 great precision to be successful in that field and that he had  
13 an excellent reputation and clients who thought that he gave  
14 value and good product. Made everything for the things to go  
15 on baseball bats to big stuff for industry.

16 That he paid millions in dollars in taxes because he  
17 thought he had to. And in 1995 he began to distrust the IRS  
18 because his tax bill went from 40,000 to 300,000, and his CPA  
19 couldn't explain it. So he started asking other professionals,  
20 and they couldn't explain it. That's just the way it is.

21 So he started on his own study, and he went to the SMU law  
22 library and he looked in the Internal Revenue Code and he found  
23 it incomprehensible. And he started looking at the original  
24 source, the Constitution, and found out that there must be a  
25 direct tax only on certain things, that the state can tax you

1 directly. But that an income tax is an indirect tax, and that  
2 income, he found, and will so testify, is profit derived from  
3 capital or labor or both. That is, that he found that income  
4 is profit separated from capital or labor or both.

5       So he reached some tentative conclusions, but he studied  
6 further and sought out advice from other people: CPAs,  
7 lawyers, et cetera. And he concluded -- he found other things  
8 and he felt he had been deceived. He found that he didn't have  
9 to have a social security number, that he didn't have to  
10 participate in the social security system. And he had always  
11 been given the impression that that was mandatory.

12       He found out that lots of people don't participate legally  
13 in the social security system: schoolteachers in Texas,  
14 et cetera. So he gives notice to the IRS. He gets advice from  
15 a CPA about how to go about giving notice that I'm not going to  
16 withhold social security anymore from my wage earners. And he  
17 gets advice, he follows it, and gives notice to the IRS, these  
18 are the reasons I'm doing it, tell me if I'm wrong, and he does  
19 it.

20       And when he does it, his business starts to decline. And  
21 people tell him don't do this. You're killing yourself. But  
22 he persisted. And time went on and he asked -- kept studying,  
23 he asked for other information. And he realized that he had  
24 wrongfully paid, in his judgment, the social security that he  
25 had paid in earlier. So he asked for a refund. It was denied.

1 And when he asked for the refund, he sent in his reasons why he  
2 asked for the refund. And when it was denied, it came back and  
3 said, "But you can appeal." He didn't. He dropped it.

4 The next thing he gets is a subpoena to a grand jury. He  
5 goes and makes a presentation, and the first grand jury takes  
6 no action. The second grand jury is convened. He makes a  
7 presentation, and they take no action. The third grand jury is  
8 convened. He is not allowed to make a presentation, and they  
9 indict. The fourth grand jury is convened, he's not allowed to  
10 make a presentation and they reindict.

11 MR. JARVIS: Your Honor, I'd object to the suggestion  
12 that the government asked the earlier grand juries for an  
13 indictment. It's improper and it's --

14 MR. McCOLL: I think that's --

15 THE COURT: I'll instruct the jury to disregard all  
16 of his comments about grand juries. That's not proper, and you  
17 should disregard it.

18 You may proceed.

19 MR. McCOLL: Thank you, Your Honor.

20 Even though he dropped the matter and could have appealed  
21 and didn't appeal, he gets indicted for falsely asking for the  
22 refund back and for failure --

23 THE COURT: Let's don't argue, Mr. McColl. Let's  
24 talk about what the evidence will be.

25 MR. McCOLL: Yes, sir. And --

1 THE COURT: Let's don't argue. Let's talk about what  
2 the evidence will be.

3 MR. McCOLL: Yes, sir.

4 And the evidence will show you that he acted in good faith  
5 in a step-by-step logical manner, going back to the  
6 Constitution and the Supreme Court cases that he read that  
7 interpret the Constitution, that there is no definition for  
8 "income" in the Internal Revenue Code. That you have to look  
9 to the United States Supreme Court cases.

10 THE COURT: You've used your time.

11 MR. McCOLL: And that he acted in good faith. Thank  
12 you.

13 THE COURT: Okay. We're to the point where we will  
14 start the evidence. We're going to take a recess for one hour.  
15 We'll resume at 2:00 o'clock.

16 (Jury out, 1:00 p.m.)

17 THE COURT: Y'all can be seated.

18 Mr. McColl, before we -- Yes, come up.

19 (Court confers with U.S. Marshal.)

20 THE COURT: Mr. McColl, I would like to go ahead and  
21 get Mr. Wayne Paul, witness Wayne Paul sworn. Has he arrived  
22 yet?

23 MR. McCOLL: He has not arrived, Your Honor. He's  
24 not here.

25 THE COURT: What is the latest report?



1           MR. McCOLL: I'll find out during the lunch hour and  
2 report to the Court.

3           THE COURT: Okay.

4           MR. McCOLL: Your Honor, we offer at this point to  
5 stipulate to that which was read in the indictment regarding --

6           THE COURT: If you have a stipulation you want to  
7 make, put it in writing; and when you come back, if the  
8 government will not join the stipulation, you can present it as  
9 an admission and a stipulation by the defendant and we will see  
10 what legal effect it will have once you do that.

11          MR. McCOLL: Thank you, Your Honor.

12          THE COURT: Okay. We're in recess for lunch.

13          (Court in recess, 1:03 p.m. until 2:21 p.m.)

14          THE COURT: Okay. Before we bring the jury in, and  
15 it may be a few minutes because the delivery person bringing  
16 the lunch over for the jurors was running late, and we're going  
17 give them time to eat their lunch.

18          I received something that was filed during the lunch hour.  
19 It looks like it was filed at 11:52 (sic) that appears to be a  
20 proposed stipulation.

21          Have you seen that, Mr. Jarvis?

22          MR. JARVIS: Yes, Your Honor.

23          THE COURT: I take it that what Mr. McColl is trying  
24 to do is eliminate the possibility that his withdrawals from  
25 the place of business will be admitted in evidence as bearing

1 on Counts 28 through 31 of the indictment.

2 Is that what your goal is, Mr. McColl?

3 MR. McCOLL: Under Rule 403, yes, sir. I'm trying to  
4 avoid unfair prejudice.

5 THE COURT: I'm just trying to find out if that's  
6 what you're trying to do.

7 MR. McCOLL: That is correct.

8 THE COURT: To eliminate the possibility that they'll  
9 be received in evidence, the withdrawals as relevant to Counts  
10 28 through 31?

11 MR. McCOLL: That is correct, Your Honor. And any  
12 unfair prejudice that might flow from the introduction of that  
13 evidence.

14 THE COURT: Does the government concede that what  
15 he's filed would eliminate those things from being relevant as  
16 to Counts 28 through 31? Frankly, I don't understand what the  
17 document says, but maybe the government does understand what it  
18 says.

19 MR. McCOLL: May I read it, Your Honor?

20 THE COURT: I can read your writing. I just don't  
21 understand what you've said, Mr. McColl. I don't have any idea  
22 what it refers to when it talks about government summary  
23 exhibit and some other things.

24 MR. McCOLL: May I respond to clarify that?

25 THE COURT: Well, I've asked you -- I'm trying to

1 find out from Mr. Jarvis what the government's position is.

2 MR. JARVIS: I'm not real clear on the objective of  
3 it, but based upon the form of the document we decline to  
4 stipulate.

5 THE COURT: I don't think he's asking you to  
6 stipulate.

7 Or are you asking the government to stipulate?

8 MR. McCOLL: Your Honor, I'm asking --

9 THE COURT: I'm simply asking: Are you asking the  
10 government to stipulate, or is this simply an admission on the  
11 part of your client?

12 MR. McCOLL: It's an admission asking the Court to  
13 adopt it as such.

14 THE COURT: Okay. So it's not a requested  
15 stipulation.

16 My question to you, Mr. Jarvis: Taking it as an  
17 admission, does it, in your view, eliminate the possibility  
18 that the withdrawals from the bank account would be admissible  
19 as bearing on Counts 28 through 31?

20 MR. JARVIS: No, Your Honor.

21 THE COURT: And why does it not?

22 MR. JARVIS: Because the total amount withdrawn, we  
23 think the jury ought to know the total amount of cash and  
24 income.

25 THE COURT: Well, why does it make any difference as

1 long as it's at least the amount of gross income alleged in the  
2 indictment?

3 MR. JARVIS: Your Honor, I think it's a factual  
4 matter the jury ought to know about.

5 THE COURT: Okay. Let me say this, Mr. McColl. I  
6 can't guarantee that if you ever come up with a meaningful  
7 admission that it will accomplish your objective, because the  
8 government is still maintaining those things are admissible as  
9 to the other counts of the indictment. But it occurred to me  
10 if you're trying to create a record that would cause those  
11 withdrawals not to be admissible in evidence as to Counts 28  
12 through 31, the stipulation would be something to the effect  
13 that the defendant stipulates and admits that during the  
14 calendar year 1998 he received gross income as contemplated by  
15 Count 28 of the indictment in the amount of \$42,933. And then  
16 it would say the same thing as to Count 29, it would say the  
17 same thing as to Count 30, and it would say the same thing as  
18 to Count 31.

19 Now, if you want to prepare me a document signed by you  
20 and your client to that effect, that probably will accomplish  
21 your objective as to Counts 28 through 31. That does not  
22 assure you that those withdrawals will not be admissible for  
23 some other purpose.

24 MR. McCOLL: Yes, sir.

25 THE COURT: The government is still maintaining

1 they're admissible for some other purpose, and, of course, I'll  
2 hear their arguments as the case goes along and take into  
3 account their arguments as the situation exists from time to  
4 time.

5 MR. McCOLL: Yes, sir. But we do so stipulate, and  
6 my client is here to confirm that on the record, just as the  
7 Court stated.

8 THE COURT: I want that in writing, Mr. McColl.

9 MR. McCOLL: Yes, sir.

10 THE COURT: Signed by you and your client.

11 Okay. Is the jury still eating?

12 THE COURT SECURITY OFFICER: No, sir.

13 THE COURT: Okay. Have them come in.

14 MR. McCOLL: Your Honor, the problem with writing  
15 it --

16 THE COURT: Pardon me, Mr. McColl. You can be  
17 seated. I wanted to say something to those in the audience.

18 In case you were not here this morning, those in the  
19 audience, we're not allowing people to leave the courtroom  
20 between recesses. So if someone is not in a position to stay  
21 in the courtroom until we have the next recess, which might be  
22 about two hours, you need to leave the courtroom now.  
23 Otherwise, you will not be permitted to leave the courtroom  
24 because we don't want traffic coming in and out of the  
25 courtroom while the jury is listening to evidence.

1 Okay. Go ahead and get them in.

2 (Jury in, 2:27 p.m.)

3 THE COURT: Okay. Call your first witness,  
4 Mr. Jarvis.

5 MR. JARVIS: Yes, Your Honor. We would call at this  
6 time Dianne Clemonds.

7 THE COURT: Okay. For the information of the members  
8 of the jury, all of these witnesses have appeared before me  
9 before you came in the courthouse this morning -- or in the  
10 courtroom, and were sworn to tell the truth. In other words,  
11 they're all testifying under oath, even though you don't see  
12 the oath being administered. There may have been one or two  
13 witnesses who weren't here at that time, but this witness and  
14 most of the other witnesses have already been sworn.

15 Okay. You may proceed.

16 MR. JARVIS: Thank you, Your Honor.

17 DIANNE ELLEN CLEMONDS,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. JARVIS:

21 Q. For the record, ma'am, would you state your name and spell  
22 it.

23 A. My name is Dianne, D-I-A-N-N-E; Ellen, E-L-L-E-N;  
24 Clemonds, C-L-E-M-O-N-D-S.

25 Q. Directing your attention to the time period 1998 through

1 approximately late '99 to early 2000, were you an employee of  
2 Arrow Custom Plastics?

3 A. Late '99 to 2000?

4 Q. Yes, ma'am.

5 A. Or, during '99 I was.

6 Q. So from the period -- Well, let me ask you: Were you ever  
7 an employee at Arrow Custom Plastics?

8 A. Yes.

9 Q. Can you tell us about the rough time period, when you  
10 started and when you left.

11 A. '88 through the end of '99.

12 Q. And during that period, could you tell us what positions  
13 you held from the beginning and through when you left?

14 A. I went in as a file clerk; then did accounting clerk; did  
15 some accounts payable; then toward the latter part starting in  
16 probably '96, I started doing financials and tax returns and  
17 things.

18 Q. Bookkeeping-type functions?

19 A. Yes.

20 Q. All right. Now, do you know the defendant in this case,  
21 Richard Michael Simkanin?

22 A. Yes, I do.

23 Q. Was he the president and owner of Arrow Custom Plastics  
24 during the entire period you were there?

25 A. Yes.

1 Q. Do you see him in the courtroom, ma'am?

2 A. Yes.

3 Q. If I'm number one, moving to my left two, three, and so  
4 on, what number would he be?

5 A. Three.

6 THE COURT: She's identified the defendant.

7 MR. JARVIS: Thank you.

8 BY MR. JARVIS:

9 Q. And are you related to the defendant's wife, Carole  
10 Simkanin?

11 A. I am.

12 Q. And how is -- What is that relationship?

13 A. I'm her -- She's my sister.

14 Q. Now, as the owner of Arrow Custom Plastics, was  
15 Mr. Simkanin the responsible party as far as the person that  
16 had to make sure taxes were paid and financial affairs were  
17 handled?

18 A. Yes.

19 Q. Did he delegate that to you at times?

20 A. He was the one that made all the decisions.

21 Q. As far as filing various paperwork, did he direct you to  
22 do that?

23 A. Yes.

24 Q. Let me direct your attention to approximately the summer  
25 of 1999 and tell us if you can, did the atmosphere at the



1 company there change in any way?

2 A. There became more of a push to become --- or not be paying  
3 taxes. He started talking much more to employees about it and  
4 trying to get their cooperation.

5 Q. Was there ever a statement made to you that, "You're a  
6 slave if you pay taxes"?

7 A. Oh, yes.

8 MR. McCOLL: Objection, leading.

9 THE COURT: Don't lead the witness.

10 BY MR. JARVIS:

11 Q. And who made that statement, ma'am?

12 A. Dick Simkanin.

13 Q. Did he make it to -- How many people did he make the  
14 statement to?

15 A. He made it to people all the time.

16 Q. What was your -- Did there come a time when you were  
17 placed on the bank account and credit cards as the president of  
18 Arrow Custom Plastics?

19 A. Yes, sir.

20 Q. Tell us the circumstances.

21 A. Dick called me to his office one day.

22 Q. Give us a time frame if you would, just an approximate.

23 A. Approximately '97.

24 Q. Okay. He called you into his office?

25 A. Called me in his office, told me what he wanted to do,

1 that he needed to get out of the system, that I was to be  
2 president. I signed on the bank accounts and put a credit card  
3 in my name and those types of things.

4 Q. So you were the only one on the signature card at the bank;  
5 is that correct?

6 A. Yes.

7 Q. Did he explain to you, the defendant, why he wanted you on  
8 the bank account instead of himself?

9 A. Yes. Because he needed his social security number at the  
10 bank. He didn't want to give that. He needed to, like I said,  
11 drop out of the system.

12 Q. Excuse me. What exactly does that mean? Did he explain  
13 that?

14 A. He didn't want to have to sign any kind of legal documents  
15 or legal forms, have his name on anything. He didn't want to  
16 be part of the system. He didn't want the government -- it's  
17 almost like he didn't want the government to know he was there.  
18 I don't know.

19 Q. When you acted as the president, did there come a time --  
20 or while you functioned as the president, did Mr. Simkanin  
21 continue to have the ultimate authority of the company?

22 A. Oh, yes.

23 Q. Beginning in approximately 1995 and '96, were you doing  
24 the bookkeeping duties about that time?

25 A. Yes.

1 Q. Could you tell us if the defendant drew cash and if so how  
2 much per week?

3 MR. McCOLL: Objection. May we approach?

4 THE COURT: No.

5 MR. McCOLL: I have a document that's new and  
6 different from what we discussed, Your Honor.

7 THE COURT: No. Let's go ahead with the question.  
8 You can approach at an appropriate time.

9 Go ahead, Mr. Jarvis.

10 A. It was approximately 1500 a week as, you know, a salary.

11 BY MR. JARVIS:

12 Q. All right. And how was that accomplished? How did you,  
13 on an average of 1,000 to 1500 a week, how did you get that  
14 money into Mr. Simkanin's hands?

15 A. Gave it to him.

16 Q. Did you have to go to the bank and make out a check, or  
17 how did you accomplish that?

18 A. You know, during '95 and '96 it may have been -- no, that  
19 wasn't a direct deposit. It was a check that was made out to  
20 him.

21 Q. Was that -- you said that was compensation as a corporate  
22 officer?

23 A. Yes.

24 Q. By the way, business expenses at Arrow during the time you  
25 were there, were they paid by check or by cash?

1 A. By check.

2 Q. Let me direct your attention, ma'am, to Government's  
3 Exhibit 127 and 128.

4 A. Okay.

5 Q. Have you had an opportunity to look through the various  
6 copies of checks in Government's Exhibit 127 and 128?

7 A. Briefly.

8 Q. Do these represent some of the checks you're talking about  
9 as far as funds given to Mr. Simkanin?

10 A. Yes.

11 Q. I direct your attention, ma'am, to March and April of  
12 1999, specifically Government's Exhibit 118 and 119. Let me  
13 know when you're there.

14 THE COURT: Let me have the parties approach the  
15 bench at this time.

16 (Bench conference with lead attorneys:)

17 THE COURT: Let me see what it was that Mr. McColl  
18 wanted to show me.

19 MR. MCCOLL: We've executed a document, my client and  
20 me. We've amended this to say that we hereby stipulate to the  
21 accuracy of the Government's Summary Exhibit No. 176 attached  
22 to the stipulation. So that it shows the years in question,  
23 for the gross income in question. That's the entire exhibit.  
24 I was just going to attach that page, but I wanted to give you  
25 the entire exhibit, and we stipulate to that.

1 THE COURT: Well, is this signed by your client?

2 MR. McCOLL: It is signed originally by the client,  
3 Your Honor. Right down there, Dick Simkanin, and I re-signed  
4 it and the original so you would have both.

5 THE COURT: Okay. If you want to make such a  
6 stipulation, there's no way I can keep you from doing it if you  
7 want to make this admission. Is that what you're doing, making  
8 this admission on behalf of your client?

9 MR. McCOLL: What I'm doing --

10 THE COURT: Just answer my question, Mr. McColl. Is  
11 your client making the admission in this document?

12 MR. McCOLL: Yes.

13 THE COURT: Okay. It's made. The admission is made.

14 MR. McCOLL: Yes, sir.

15 THE COURT: Okay.

16 MR. McCOLL: Thank you.

17 THE COURT: I'm not telling you what the effect of it  
18 is, but you've made the admission for your client.

19 MR. McCOLL: May I go further and ask the Court at  
20 this time that in light of that admission, that while we're  
21 here at the bench, I'd ask that -- it becomes completely  
22 unnecessary for the government's stated purpose on the record  
23 here this morning for the cash withdrawal evidence to show --

24 THE COURT: What is it you want? Don't tell me what  
25 the government has already told me. Tell me what you want.

1 MR. McCOLL: We would object. There's absolutely no  
2 reason for it based on what the government's stated purpose was  
3 this morning.

4 THE COURT: What's your response to that?

5 MR. JARVIS: Your Honor --

6 THE COURT: Have you seen this?

7 MR. JARVIS: No, Your Honor.

8 THE COURT: Okay.

9 MR. McCOLL: I've added that one sentence there that  
10 says, "and the gross income is as stated in Government's  
11 Exhibit 176 attached," signed by the defendant.

12 THE COURT: Why don't we put an indication that was  
13 filed -- it has a file mark on it.

14 MR. McCOLL: Yes, sir.

15 THE COURT: It was filed. Was this the same thing  
16 you presented earlier?

17 MR. McCOLL: Well, Judge, there's been about five  
18 minutes that's elapsed, and so I added. This is an addendum to  
19 this exhibit where we said -- we attach the exhibit and said --  
20 with the client's signature that we so stipulate.

21 THE COURT: You've written on the same document you  
22 filed at 1:52, some other things?

23 MR. McCOLL: Well, not the same document. I created  
24 a new document by writing on it.

25 THE COURT: Okay. This is not what I contemplated

1 you would do. But if you've done it and if you want to file it  
2 as an admission, I'll put a new file stamp on it.

3 MR. McCOLL: Yes, sir.

4 THE COURT: I'll put a new file mark on it.

5 MR. McCOLL: Thank you, Judge.

6 THE COURT: I'll say it's filed at 1-5-04 at 2 -- and  
7 I'll mark through the old file stamp -- at 2:37 p.m.

8 MR. McCOLL: Yes, sir.

9 THE COURT: Okay. Now, I'm taking this as an  
10 admission by the defendant for whatever it is. I'm not sure I  
11 understand what it says because I don't understand the  
12 attachments. Are these attachments to it, these things that  
13 are stapled to it?

14 MR. McCOLL: That's the government's exhibits.

15 THE COURT: Are these attachments to it?

16 MR. McCOLL: Yes, sir.

17 THE COURT: To what you just filed?

18 MR. McCOLL: Yes, sir.

19 THE COURT: Okay.

20 MR. McCOLL: In other words, I incorporated by  
21 reference. Rather than to have to write it out, I just said we  
22 stipulate to the gross income for the years that the government  
23 is alleging.

24 THE COURT: Okay. It's not clear that's what this  
25 says.

1 Now, what's the government's response to it?

2 MR. JARVIS: Yes, Your Honor. We still maintain that  
3 evidence is admissible on the issue of intent and willfulness  
4 on the other counts of the indictment.

5 THE COURT: I don't agree to that at this time. It  
6 may be that you can persuade me somewhere along the line that  
7 that's the case, but if it is, you can come back to it. Do you  
8 agree that they've taken it out of consideration as to Counts  
9 28 through 31?

10 MR. JARVIS: Yes, Your Honor.

11 THE COURT: By that admission?

12 MR. JARVIS: Yes, sir.

13 THE COURT: Okay.

14 MR. JARVIS: So does that mean that the motion in  
15 limine is now granted?

16 THE COURT: I'm just saying I don't think it's  
17 relevant to your other issues. Presumably you won't be asking  
18 questions about things that I've already said are not relevant.

19 MR. JARVIS: All right, sir. Thank you.

20 (End of bench conference.)

21 BY MR. JARVIS:

22 Q. Ms. Clemonds, let me direct your attention to late 1999  
23 and a particular time when Mr. Kelly --

24 THE COURT: Let me be sure I -- Y'all come back up  
25 here just a minute.



1 (Bench conference with lead attorneys:)

2 THE COURT: Now, I'm going to have to make this known  
3 to the jury somehow that he's made this admission and  
4 stipulation. And my intent -- this won't make any sense to the  
5 jury the way you've written it.

6 MR. McCOLL: Yes, sir.

7 THE COURT: My intent would be to say that your  
8 client has stipulated that he received gross income in the  
9 amount of that much.

10 MR. McCOLL: Yes, sir.

11 THE COURT: As alleged in Count 28 of the indictment  
12 for the year 1998, and say the same thing as to each of those,  
13 that your client has agreed and stipulated to that.

14 MR. McCOLL: Yes, sir.

15 THE COURT: And that will convey to the jury what I  
16 think you're trying to do. Now, do you want me to do that?

17 MR. McCOLL: Yes, sir.

18 THE COURT: Okay. I'll do that now.

19 MR. McCOLL: Okay.

20 (End of bench conference.)

21 THE COURT: In order to save a little time, we have  
22 an admission and stipulation by the defendant that will  
23 eliminate the need for proof on these things, so listen closely  
24 to what I'm going to tell you. And there won't be any need for  
25 there to be proof on these things.

1 As alleged in Count 28 of the indictment, the defendant  
2 received gross income during the year 1998 of at least \$42,933.  
3 As alleged in Count 29 of the indictment, during the year 1999  
4 the defendant received gross income in the amount of 62 -- or  
5 at least in the amount of \$62,007.

6 As alleged in Count 30 of the indictment, the defendant  
7 received gross income of at least \$189,750 during the year  
8 2000. As alleged in Count 31 of the indictment, the defendant  
9 received as gross income at least \$115,500 during the year  
10 2001.

11 Does that accurately state the defendant's stipulation and  
12 admission?

13 MR. McCOLL: Yes, sir.

14 THE COURT: Is that what the government understands  
15 it is, Mr. Jarvis?

16 MR. JARVIS: Your Honor, it certainly accurately  
17 states the admission.

18 THE COURT: That's all I asked you. Does it  
19 accurately state the admission and stipulation?

20 MR. JARVIS: Yes, Your Honor.

21 THE COURT: Okay. You may proceed.

22 Those facts that I just stated will be deemed established  
23 for all purposes in the record of this case without any further  
24 proof of those facts.

25 BY MR. JARVIS:

1 Q. Ms. Clemonds, let me direct your attention to late 1999.

2 Were you present in -- Well, first of all, who is Jim Kelly?

3 Could you identify him?

4 A. Jim Kelly was our CPA who prepared year-end taxes. He was  
5 our accountant.

6 Q. All right. Was he involved in the preparation of the  
7 corporate tax returns for the company?

8 A. Yes.

9 Q. Did he also do some individual returns for the defendant?

10 A. Yes.

11 Q. How long had you known Mr. Kelly?

12 A. Oh, six, seven years.

13 Q. Directing your attention to the month or so before you  
14 left, were you present shortly after a meeting between  
15 Mr. Kelly and the defendant?

16 A. Yes.

17 Q. Could you tell us what you observed as far as after that  
18 meeting was over?

19 A. Mr. Kelly and his senior partner left with a -- from a  
20 meeting with Dick that they seemed a little distraught about.

21 Q. Who would "they" be?

22 A. Mr. Kelly and his senior partner. I believe his name is  
23 Taylor. Kind of rolled their eyes and said that they could not  
24 be a part of it.

25 Q. All right. And did you consult with an attorney, ma'am,

1 in December of '99 because of your concerns about you being a  
2 part of this?

3 A. Yes, I did.

4 Q. And what was the name of that attorney?

5 A. The name of the attorney was Crill, and he's with Bracket  
6 & Ellis.

7 Q. Following consultation with the attorney, did you decide  
8 it would be in your interest to leave?

9 A. Yes. He told me --

10 MR. McCOLL: Objection, hearsay.

11 THE COURT: Don't say what he said. Just answer --

12 Restate the question.

13 Just listen close to the question.

14 BY MR. JARVIS:

15 Q. Without going into what he told you, after you consulted  
16 with him, did you make a decision?

17 A. I did.

18 Q. What was that decision?

19 A. The decision was that as long as Dick was just talking, it  
20 was okay. But if he started really acting, then --

21 MR. McCOLL: Objection, hearsay. It incorporates a  
22 hearsay answer.

23 THE COURT: That is hearsay.

24 BY MR. JARVIS:

25 Q. My question is: Did you make a decision after you

1 consulted with the attorney about what your course of action  
2 would be?

3 A. Yes. I was going to leave.

4 Q. Why were you concerned about staying with the company?

5 A. Because it was going to possibly put a liability --  
6 responsibility on me if I was to stay.

7 Q. Now, let me direct your attention, ma'am, to Exhibit 114.  
8 I believe it's open in front of you in the book. Let me know  
9 when you're there.

10 A. Okay.

11 Q. Could you identify what Exhibit 114 is?

12 A. 114 is a fax from Mr. Kelly that I asked him to send  
13 because I was concerned about Dick.

14 Q. The date on that is December 20 of '99?

15 A. Yes.

16 Q. Is it addressed to yourself, ma'am?

17 A. Yes.

18 MR. JARVIS: We would offer Government's Exhibit 114  
19 at this time.

20 THE COURT: It's received.

21 BY MR. JARVIS:

22 Q. And tell us what were the circumstances, why did you ask  
23 Mr. Kelly to send you this fax and what does the fax contain?

24 A. Because Dick was saying that as of January 2000 he was no  
25 longer withholding FICA, Medicare withholding, federal

1 withholding period, and it became a concern to me because I  
2 didn't want him going to jail.

3 Q. Did you try to talk him out of it?

4 A. I didn't -- we talked several times but, you know, we just  
5 didn't have the same philosophy about it, so it became very  
6 frustrating. So when I got this, I just took it and laid it on  
7 his desk and hoped for the best.

8 Q. And it's from Mr. Kelly. Is that Jim Kelly the  
9 accountant?

10 A. Yes.

11 Q. Was it sent at your request, ma'am?

12 A. Yes.

13 Q. Attached to it, does it have the actual statute from the  
14 Internal Revenue Code that speaks to the requirement for  
15 withholding?

16 A. Yes.

17 Q. After you put this document on Mr. Simkanin's desk, did he  
18 have any further comment as far as you know? Did he come back  
19 and discuss it with you?

20 A. No.

21 Q. Well, describe the circumstance when you and Mr. Simkanin  
22 were talking and the decision was made for you.

23 A. Oh, that was -- I normally go on vacation during Christmas  
24 and the New Year's, and when it was obvious that this was going  
25 to happen -- it was not if.

1 Q. What do you mean when you say "this" was going to happen?

2 A. The stopping of withholding of the taxes and all that.

3 MR. McCOLL: Objection, relevance.

4 THE COURT: Overruled.

5 A. Then before I left I sent him an e-mail telling him that I

6 couldn't sign on the bank statement anymore, that he needed to

7 go down to the bank and sign up. And when I came back from

8 vacation, as soon as I walked in he asked me what "this" was,

9 and I told him.

10 THE COURT: "This" being what, the letter?

11 THE WITNESS: The e-mail, that I could no longer be a

12 part of --

13 THE COURT: Okay.

14 THE WITNESS: -- the payroll.

15 THE COURT: Okay. I just wanted to clarify that.

16 THE WITNESS: I could no longer be a part of the

17 payroll, that he needed to go down to the bank and sign.

18 BY MR. JARVIS:

19 Q. Speaking of the bank, we'll come back to that. Would you

20 look at the very next exhibit, Exhibit 115, if you would,

21 please. Do you see that, ma'am?

22 A. Yes.

23 Q. Is that the signature card for the bank account you're

24 talking about with your signature on it?

25 A. Yes.

1 Q. And why did you tell Mr. Simkanin you wanted -- you no  
2 longer could be on the bank account?

3 A. Because I couldn't take that responsibility, that  
4 liability, you know. I wasn't going to go to jail for him.

5 MR. McCOLL: Objection. It's repetitive.

6 THE COURT: Do you have a legal objection?

7 MR. McCOLL: Asked and answered.

8 THE COURT: I'll overrule the objection.

9 BY MR. JARVIS:

10 Q. Ma'am, as far as the employees' options, were they given  
11 options at Arrow Custom Plastics as to some he would withhold,  
12 the defendant would withhold from some but not from others?  
13 Was there any kind of flexibility there?

14 A. No.

15 Q. Would you explain that.

16 A. If you didn't want to be part of the program, I guess you  
17 could have left. You could have -- I think some employees went  
18 ahead and paid their own taxes in addition to the employer's  
19 FICA. But, you know, no, there was no question. You were part  
20 of the program.

21 THE COURT: What do you mean "part of the program,"  
22 that taxes would not be withheld from your income?

23 THE WITNESS: That's correct.

24 THE COURT: That was what was to happen to all the  
25 employees?



1 THE WITNESS: That's correct.

2 THE COURT: Okay.

3 BY MR. JARVIS:

4 Q. And did, in fact, some employees leave?

5 A. Yes.

6 MR. JARVIS: Pass the witness.

7 THE COURT: Okay. Do you have any questions of this  
8 witness?

9 MR. McCOLL: Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. McCOLL:

12 Q. Good afternoon, ma'am.

13 A. Good afternoon.

14 Q. So part of the decision was to withhold social security  
15 and Medicare -- to not withhold social security and Medicare;  
16 is that correct?

17 A. That's correct.

18 Q. And did you have a discussion with Mr. Simkanin wherein he  
19 explained that social security was, according to the Social  
20 Security Administration, a matter of voluntary participation?

21 A. Not that I recall.

22 Q. Do you know that as a matter of fact that it --

23 THE COURT: Pardon me, Mr. McColl. As a matter of  
24 fact, it's not. So let's don't get into things that --

25 MR. McCOLL: We would object to the Court's --

1 THE COURT: -- are incorrect such as that.

2 MR. McCOLL: We would object to the Court --

3 THE COURT: And limit your cross-examination to the  
4 scope of the direct.

5 MR. McCOLL: We would object to the Court's remark as  
6 being an inaccurate statement of the law.

7 THE COURT: You may proceed. It is not an inaccurate  
8 statement of law, Mr. McColl. You may proceed with your  
9 questioning. If you want to take up something with the Court,  
10 you can do so at the appropriate time.

11 MR. McCOLL: So my objection is overruled, Your  
12 Honor?

13 THE COURT: You may proceed.

14 MR. McCOLL: Thank you.

15 BY MR. McCOLL:

16 Q. In the document that you sponsored here as a witness, the  
17 statement is made in Section (p) about voluntary withholding  
18 agreements. Are you familiar with that statement in the  
19 document that you talked about?

20 A. I've seen it.

21 Q. Do you know what that means?

22 A. No.

23 Q. This whole document is Section 3402 of the Internal  
24 Revenue Code; is that correct?

25 A. Are you talking about what Mr. Kelly sent me?

1 Q. Yes. 3402?

2 A. Yes.

3 Q. You don't really know what 3402 means, do you?

4 A. No.

5 Q. Could you tell us what credit card that you had in the  
6 name of the company?

7 A. Oh, American Express was in the company's.

8 Q. And Mr. Simkanin was still the CEO, correct?

9 A. Yeah.

10 Q. Okay. And did his employees consider him to be a good  
11 boss, in your opinion?

12 MR. JARVIS: Your Honor, we object.

13 THE COURT: I sustain the objection.

14 MR. McCOLL: Thank you, ma'am.

15 MR. JARVIS: No further questions.

16 THE COURT: Okay. Can she be excused as a witness?

17 MR. JARVIS: Subject to recall, Your Honor.

18 THE COURT: Okay. You can step down. You're not  
19 excused, because of the possibility the government would want  
20 to call you back. But you can step down now and you'll, of  
21 course, you'll leave the courtroom and wait until you hear from  
22 them further. Thank you.

23 Okay. Call your next witness.

24 MR. KEMINS: We call Jim Kelly, Your Honor.

25 THE COURT: What's the witness's name?

1 MR. KEMINS: Jim Kelly, K-E-L-L-Y, Your Honor.

2 THE COURT: Okay. You may proceed, Mr. Kemins.

3 MR. KEMINS: Thank you, Your Honor.

4 JAMES P. KELLY,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. KEMINS:

8 Q. Sir, could you give us your full name, spelling your name  
9 for the court reporter, please.

10 A. James P. Kelly.

11 Q. How do you spell your last name?

12 A. K-E-L-L-Y.

13 Q. And, sir, are you employed?

14 A. Yes.

15 Q. And by whom are you employed?

16 A. Simpson & Taylor accounting firm.

17 Q. And how long have you been with Simpson & Taylor?

18 A. Since 1996.

19 Q. How long have you been involved in the accounting field?

20 A. Since 1965.

21 Q. Could you briefly tell us your educational background,  
22 please.

23 A. I have a degree from Texas A&M in agriculture and I have a  
24 minor in accounting at UTA.

25 Q. Are you a CPA, sir?

1 A. No.

2 Q. In your career from when you started, have you been  
3 involved in the preparation of corporate returns?

4 A. Yes.

5 Q. During your time in the accounting field, how many  
6 corporate clients could you estimate you may have had?

7 A. 250 -- 200, 250. That's a guess.

8 Q. All right. Now, during your time at Simpson & Taylor, and  
9 I guess specifically from 1993 to around 1999, was Arrow Custom  
10 Plastics a client of Simpson & Taylor?

11 A. Yes.

12 Q. It was an account that you were, in effect, in charge of?

13 A. Yes.

14 Q. Did you get to know the owner of the company,  
15 Mr. Simkanin?

16 A. Yes.

17 Q. And do you know Mr. Simkanin?

18 A. Yes.

19 Q. Do you see Mr. Simkanin in the courtroom here today?

20 A. Yes.

21 Q. Could you point him out, please.

22 A. Right there (indicating.)

23 Q. The man with the blue tie?

24 A. Yes.

25 THE COURT: He's identified the defendant.

1 MR. KEMINS: Thank you, Your Honor.

2 BY MR. KEMINS:

3 Q. When do you recall Arrow Plastics became a client of your  
4 firm?

5 A. Actually, they became a client of the firm I was with in  
6 1993.

7 Q. And --

8 THE COURT: That was a different firm from the  
9 Simpson firm?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. Go ahead.

12 BY MR. KEMINS:

13 Q. I guess, just so it won't confuse anybody, could --

14 THE COURT: He became an employee of the Simpson firm  
15 in 1996, so he's saying that he was with some other firm before  
16 that.

17 BY MR. KEMINS:

18 Q. But was that, in effect, what Simpson & Taylor is today?

19 A. Yes. Simpson & Unsworth became Simpson & Taylor in  
20 1996.

21 Q. What services did Simpson & Taylor perform for Arrow?

22 A. We did corporate tax returns and we did personal tax  
23 returns for Mr. and Mrs. Simkanin.

24 Q. Let me ask you: Are you familiar with the terms "cash  
25 basis" and "accrual basis" method of accounting?

1 MR. McCOLL: Your Honor, may we approach the bench?

2 THE COURT: Yes.

3 (Bench conference with Mr. Kemins and Mr. McColl:)

4 MR. McCOLL: Judge, he's proposing to get expert  
5 opinions from a guy who is not even a CPA on cash, accrual, et  
6 cetera. He doesn't even have a degree in accounting. He's  
7 got a minor.

8 THE COURT: I don't think he has to have a degree in  
9 accounting. I overrule the objection.

10 MR. McCOLL: Well, it's under Daubert. I would just  
11 like to make a record, under the Daubert Supreme Court case. I  
12 don't think there's been a predicate laid for his expertise  
13 under Rule 702 and we object.

14 (End of bench conference.)

15 THE COURT: Okay. Let me have the jury go back to  
16 the jury room just a minute while we deal with an issue.

17 (Jury out, 3:01 p.m.)

18 THE COURT: Okay. Since the issue of his  
19 qualifications has been raised, I'm excusing the jury long  
20 enough for you to ask whatever questions you think are  
21 appropriate to establish that he is qualified to answer  
22 whatever questions you propose to ask him.

23 MR. KEMINS: And I point out, Your Honor, that we're  
24 not using these --

25 THE COURT: I don't want you to argue with me. I

1 just want you to ask him questions.

2 MR. KEMINS: Yes, sir.

3 VOIR DIRE EXAMINATION

4 BY MR. KEMINS:

5 Q. Mr. Kelly, you testified that you've had over 250 clients,  
6 is that correct, corporate clients?

7 A. Yes, sir.

8 Q. In your work with corporate clients and in your --

9 THE COURT: I think the last issue dealt with accrual  
10 basis versus cash basis. Let's see if he's qualified to answer  
11 the question you asked him on that subject.

12 BY MR. KEMINS:

13 Q. Mr. Kelly, do you understand the difference between cash  
14 basis and accrual basis accounting?

15 A. Yes.

16 Q. And how is it that you understand this difference?

17 A. Would you would repeat the question.

18 Q. Why is it that you have knowledge of cash basis and  
19 accrual basis method of accounting?

20 A. We use that a lot in my field. We use cash basis and  
21 accrual basis accounting for different clients.

22 THE COURT: How long have you, altogether, been in  
23 the accounting business?

24 THE WITNESS: About 38 years.

25 THE COURT: And throughout that time, have you had to



1 deal with the concepts of accrual basis accounting and cash  
2 basis accounting?

3 THE WITNESS: Yes, sir.

4 THE COURT: And have you had to deal with all  
5 aspects of accounting that have to do with keeping track of  
6 the financial affairs of individuals and corporations  
7 through partnerships and other entities throughout that  
8 time?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay. I'll overrule the objection.

11 Call the jury back in.

12 (Jury in, 3:03 p.m.)

13 THE COURT: Okay. You may proceed.

14 MR. KEMINS: Thank you, Your Honor.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. KEMINS:

17 Q. Mr. Kelly, in your work in accounting, you've become  
18 familiar with both the cash basis and the accrual basis method  
19 of accounting; is that correct?

20 A. Yes.

21 Q. Could you please provide a nutshell definition of cash  
22 basis method of accounting, please.

23 A. In accrual basis accounting, you account for the income at  
24 the point in time that you have the right to receive it. You  
25 account for the expenses during the period of time the

1 accounting period that they apply to.

2 In cash basis accounting, you account for the income at  
3 the time you receive the payment. You account for the expenses  
4 at the time you pay the bill.

5 Q. Now, when Arrow became a client of your firm, what method  
6 of accounting were they using?

7 A. Cash basis.

8 Q. And did you make a determination as to whether that was a  
9 correct method of accounting for them?

10 A. I did.

11 Q. And what was your determination?

12 A. I determined that they weren't qualified to use that cash  
13 basis of accounting.

14 Q. And why did you make that determination?

15 A. Because they had a material amount of accounts receivable  
16 and inventories. The Internal Revenue Service regulation, I  
17 believe it's No. 446, requires corporations -- C Corporations  
18 to use the accrual basis of accounting.

19 Q. Now, you said that there was IRS rules. Besides that, is  
20 your work governed by professional standards?

21 A. Yes.

22 Q. And what standards are those that it's governed by?

23 A. What standards?

24 Q. Yes. They're accepted accounting standards?

25 A. Oh, generally accepted accounting principles?

1 Q. Under those principles, would the answer be the same,  
2 would Arrow still have to be an accrual basis taxpayer?

3 A. Yes.

4 Q. Now, when you reached this determination, did you discuss  
5 this with Mr. Simkanin?

6 A. Excuse me?

7 THE COURT: When you determined that it should be on  
8 an accrual basis instead of a cash basis, that is, Arrow  
9 Plastics, did you discuss that with Mr. Simkanin?

10 THE WITNESS: Yes, sir.

11 BY MR. KEMINS:

12 Q. And did you explain to him the reasons why the change had  
13 to be made?

14 A. Yes.

15 Q. And did he object to that?

16 A. No.

17 Q. Did you explain to him what impact that would have on  
18 Arrow's tax liability?

19 A. Yes.

20 Q. And did he ask you any questions about that?

21 A. We discussed it. I don't recall any specifics.

22 Q. Now, the impact on Arrow Plastics' tax liability, did it  
23 raise it or lower it?

24 A. It raised it temporarily.

25 Q. And the raise, did that money have to be paid immediately?

1 A. No.

2 Q. Over how long could it be paid over?

3 A. There are variations in the regulation, adjustments. Some  
4 adjustments can be spread over three years and some over six  
5 years.

6 Q. And did Arrow's changes fall into those periods?

7 A. Yes.

8 Q. So some would have to be paid back over three and some  
9 would have to be paid back over six.

10 A. Right.

11 Q. Now, in front of you is a book of exhibits, and we've met  
12 before today; isn't that correct? You and I have talked before  
13 you got on the stand.

14 A. Yes, we did.

15 Q. Could I ask you to look in the book in front of you at  
16 Government's Exhibits 4 through 9, please.

17 A. All right.

18 Q. Are those copies of corporate tax returns from the files  
19 of Simpson & Taylor?

20 A. Yes.

21 Q. Are those copies of corporate tax returns you prepared for  
22 Arrow Custom Plastics?

23 A. Yes.

24 MR. KEMINS: And, Your Honor, at this point I would  
25 move Government's Exhibit 4 through 9 into evidence, please.

1 THE COURT: They're received.

2 MR. KEMINS: Thank you.

3 BY MR. KEMINS:

4 Q. Now, if you could turn back and just look at Exhibit 4,  
5 please, first.

6 A. All right.

7 Q. And that's the 1993 1120 for Arrow; is that correct?

8 A. That's correct.

9 Q. And it says for the period ending 3-31-94?

10 A. Yes, sir.

11 Q. In March, is that when Arrow's fiscal year ended?

12 A. They had a March 31 year-end.

13 Q. And this would be the first return you prepared for them;  
14 is that correct?

15 A. Yes, sir.

16 Q. And this was done under the accrual method of accounting;  
17 is that correct?

18 A. Yes, sir.

19 Q. If you look down on line 13 -- no, excuse me, line 34 of  
20 that return?

21 A. Line 34?

22 Q. Yes, sir.

23 A. Okay.

24 Q. Line 34 says "tax due," what Arrow had to send in with  
25 that return; is that correct?

1 A. Yes. That's what's due at that moment.

2 Q. And how much is that amount on that return?

3 A. \$13,614.

4 Q. Now, as long as we're on this return, can I get you to  
5 turn to the next page, please.

6 THE COURT: Let's save some time. If you want to  
7 read from the return, you simply read from it. You don't need  
8 to go through him to read from a return. It's already in  
9 evidence.

10 MR. KEMINS: Yes, sir.

11 BY MR. KEMINS:

12 Q. Schedule E on this return is compensation to officers; is  
13 that correct?

14 A. Correct.

15 Q. And it lists Mr. Simkanin as the officer and gives a  
16 social security number, says he owns 100 percent of the  
17 business and that he received \$79,500 in compensation for that  
18 year; is that correct?

19 A. Yes, sir.

20 THE COURT: You misunderstand. You don't need to ask  
21 him if something is correct. You have it in front of you.  
22 It's in evidence. Simply read it if you want to read it.

23 MR. KEMINS: Yes, sir. On Government Exhibit 5, it's  
24 in evidence, line 36 -- This is the 1994 1120 for Arrow Custom  
25 Plastics for the period ending March 31st, 1995, on line 36

1 where it talks about the tax liability of Arrow for that year,  
2 line 36 indicates that Arrow received a tax refund of \$116,607.

3 The Schedule E on this return indicates that one officer,  
4 Mr. Simkanin, owned 100 percent of the common stock of the  
5 business, received compensation in the amount \$72,925.

6 Schedule E on Exhibit 6, compensation of officers. It  
7 lists one officer, Richard M. Simkanin, social security number,  
8 says he owns 100 percent of the stock, and compensation in the  
9 amount \$69,000.

10 BY MR. KEMINS:

11 Q. Now, Mr. Kelly, I would ask you to look at Government's  
12 Exhibit 7, if you could, please.

13 A. (Witness complies.)

14 Q. Now, reading from the exhibit, the Schedule E on this  
15 return, lists two corporate officers, a Dianne E. Clemonds and  
16 a Bob M. Fitch, but it does not list Mr. Simkanin. And I would  
17 point out that Government Exhibit 7 is the 1120 dated 1996 for  
18 the quarter ending March 31st, 1997. You prepared this return;  
19 is that correct?

20 A. That's correct.

21 Q. Did you ever receive an explanation why Mr. Simkanin was  
22 no longer listed as an officer receiving compensation of  
23 officers?

24 A. No, not directly.

25 Q. Did you ever inquire?

1 A. I asked.

2 Q. And who did you ask, if you recall?

3 A. Dianne Clemonds.

4 Q. Do you recall what she told you?

5 MR. McCOLL: Objection, hearsay, Your Honor.

6 THE COURT: That's hearsay. I sustain the objection.

7 BY MR. KEMINS:

8 Q. Now, you prepared other returns for Mr. Simkanin?

9 A. Yes, sir.

10 Q. And what returns were those?

11 A. Individual returns, Form 1040s.

12 Q. And do you recall what years you prepared those for?

13 A. '93, '94, and '95, I believe.

14 Q. Now, if you could look at Government's Exhibits 11 -- 10,  
15 11, and 12, please. And you've looked at these before, have  
16 you not?

17 A. Yes, sir.

18 Q. And these are certified copies of the 1040s filed by the  
19 Simkanins for the years 1993, which is Exhibit 10; 1994, which  
20 is Exhibit 11; and 1995, which is Exhibit 12. And is that your  
21 signature that appears as the preparer's signature on each of  
22 these returns?

23 A. Yes, sir.

24 Q. So these are the returns you prepared for the Simkanins.

25 A. Yes, sir.



1 MR. McCOLL: Your Honor, may we approach the bench?

2 THE COURT: Yes, if you want to.

3 (Bench conference with Mr. Kemins and Mr. McColl:)

4 MR. McCOLL: I don't understand the relevance of '93,  
5 '94, and '95 for his personal returns.

6 THE COURT: What is the relevance?

7 MR. KEMINS: It shows a pattern of filing. He's  
8 charged with failure to file.

9 THE COURT: Okay. I'll overrule the objection.

10 (End of bench conference.)

11 THE COURT: You may proceed.

12 MR. KEMINS: Yes, Your Honor. Thank you. At this  
13 point, we would ask the Court to move into evidence  
14 Government's Exhibit 10, 11, and 12.

15 THE COURT: They're received.

16 BY MR. KEMINS:

17 Q. Now, was this unusual for you to prepare the personal  
18 returns for your corporate clients?

19 A. No, sir.

20 Q. Now, when the time came for the 1996 personal return, did  
21 you ask Mr. Simkanin about preparing that return?

22 A. Yes, I did.

23 Q. His personal return.

24 A. Yes.

25 Q. And what, if anything, did he tell you about preparing a

1 1996 personal tax return?

2 A. He said he didn't have to file a tax return because he  
3 didn't have any income for that year.

4 Q. Did you ask him further about that?

5 A. Well, not really. I mean, I didn't ask him why.

6 Q. Did you ask him what he had been living on?

7 A. Yes.

8 Q. And what was the answer you got?

9 A. He said he had savings.

10 Q. Did you ask him specifically whether he was getting any  
11 money from Arrow Plastics?

12 A. I didn't ask him specifically. It didn't show up on the  
13 financial statements.

14 Q. So the financial statement you looked at for that year  
15 indicated no money from Arrow to Mr. Simkanin.

16 A. Right.

17 Q. Now, did you have a similar conversation with him when it  
18 came time to prepare the 1997 return?

19 A. Yes.

20 Q. And did you get substantially the same answers?

21 A. Same answers.

22 Q. And did the 1997 financials of Arrow Custom Plastics, if  
23 you recall, show any compensation to Mr. Simkanin?

24 A. No.

25 Q. Now, in your dealings with Mr. Simkanin, did there ever

1 come a time when he started to talk to you about beliefs that  
2 the income tax might not be legal or proper?

3 A. Yes.

4 Q. Do you recall approximately when you first heard that from  
5 him?

6 A. I don't recall exactly. I think probably it was sometime  
7 in the summer of '99, early spring.

8 Q. Do you recall any details about that conversation, what he  
9 may have told you?

10 A. No, not other than -- He gave me some information, which  
11 supposedly backed this up, but I didn't have time to go into it  
12 at the time.

13 Q. Did he use any terms with you? Did he throw around any  
14 terms about why he didn't have to pay taxes?

15 A. Well, he said as a free man he didn't have -- he wasn't  
16 required to file returns. It was voluntary.

17 Q. Did he explain to you by what he meant by being a "free  
18 man"?

19 A. If he did, I don't recall.

20 Q. Did you express any opinion to him as to what you thought  
21 of this argument, that is, as a free man he didn't have to pay  
22 income taxes?

23 A. Only that I thought if he didn't file his returns that it  
24 would get him in a lot of trouble.

25 Q. And what, if anything, did he say to you when you told him

1 you thought he would get in trouble?

2 A. No response that I recall.

3 Q. Now, did there come a time when Mr. Simkanin, besides  
4 talking about his personal taxes, also told you that he planned  
5 to stop withholding from Arrow employees?

6 A. Yes, sir.

7 Q. And do you recall when you heard that?

8 A. That was in around the first of November 1999.

9 Q. And do you recall what caused that conversation to happen?

10 A. Yes, sir.

11 Q. And what was that?

12 A. I delivered the 1999 -- 1998 corporate 1120 tax return to  
13 him, and he told me at the time that he did not intend to file  
14 -- he might not file that return and he didn't intend to file  
15 the federal withholding returns, the 941s and the 940s, and he  
16 didn't intend to withhold from the employees' salaries after  
17 January the 1st.

18 Q. And when he told you that, what, if anything, did you say  
19 to him?

20 A. I said that's illegal and that will get you in trouble.

21 THE COURT: The withholding you're talking about, is  
22 that Medicare tax and social security tax and income tax?

23 THE WITNESS: That's federal withholding, Medicare,  
24 and social security.

25 THE COURT: Pardon me. We can't both talk at the

1 same time. The withholding you're talking about, was that  
2 Medicare tax, social security tax, and income tax?

3 THE WITNESS: Yes, sir.

4 THE COURT: That was related to the wages of the  
5 employees of Arrow Plastics?

6 THE WITNESS: Sir?

7 THE COURT: That was related to the wages of the  
8 employees of Arrow Plastics?

9 THE WITNESS: Yes, sir.

10 THE COURT: What the law requires to be held from  
11 those wages?

12 THE WITNESS: Right.

13 THE COURT: Okay.

14 BY MR. KEMINS:

15 Q. And when you told him you thought that was illegal and  
16 would get him in trouble, what, if anything, did Mr. Simkanin  
17 say to you?

18 A. He asked me to send him proof of it.

19 Q. And did you, in fact, send him proof?

20 A. I did.

21 Q. I'll ask you now to turn in the book in front of you to  
22 what's marked as Government's Exhibit 13, please.

23 A. All right.

24 Q. Government's Exhibit 13, it's a faxed cover sheet from you  
25 to Mr. Simkanin?

1 A. Yes.

2 Q. And behind that is -- it looks like Section 3402 of the  
3 income tax code; is that correct?

4 A. That's correct.

5 Q. Is that what you sent Mr. Simkanin?

6 A. Yes, sir.

7 MR. KEMINS: Your Honor, at this time we would ask  
8 Government's Exhibit 13 be admitted into evidence, please.

9 THE COURT: It's received.

10 BY MR. KEMINS:

11 Q. Now, after Mr. Simkanin received this from you, did he ask  
12 for any more information?

13 A. No, sir.

14 Q. Well, up till this conversation with Mr. Simkanin about  
15 them not withholding -- and, again, when was that?

16 A. In --

17 THE COURT: He said November of 1999.

18 THE WITNESS: 1999.

19 BY MR. KEMINS:

20 Q. Up until that point, to your knowledge, had Arrow  
21 consistently withheld from the employees' wages and filed the  
22 necessary returns?

23 A. Yes, sir.

24 Q. When you first had your discussion that -- to reference  
25 back to the summer of 1999 and Mr. Simkanin brought up this

1 free man concept with you, did he also combine that with a  
2 discussion about his need for having a driver's license?

3 A. He told me he didn't have to have a Texas driver's license  
4 and he didn't have one.

5 Q. As part of this discussion, did he also talk to you about  
6 his automobile registration?

7 A. I believe he said it was registered in the Bahamas, as far  
8 as I can remember.

9 Q. Now, after you found out that Mr. Simkanin was no longer  
10 going to withhold, did you discuss this issue with anybody else  
11 at your firm?

12 A. Mr. Taylor, the owner of the firm.

13 Q. Why did you discuss it with him?

14 A. It was his decision as to whether or not we continued to  
15 work with Mr. Simkanin and Arrow Custom Plastics.

16 MR. KEMINS: No further questions, Your Honor. Thank  
17 you. Pass the witness.

18 THE COURT: Do you have any questions of this  
19 witness?

20 MR. McCOLL: Yes, Your Honor, I do.

21 Excuse me just a moment, Your Honor.

22 (Brief pause.)

23 MR. McCOLL: May I approach the witness, Your Honor?

24 THE COURT: Yes.

25 MR. KEMINS: Your Honor, may we approach the bench?

1 THE COURT: Yes.

2 (Bench conference with Mr. Kemins and Mr. McColl:)

3 MR. KEMINS: We're going to object to these exhibits,  
4 Your Honor.

5 THE COURT: Why?

6 MR. KEMINS: Because they're the income tax law, and  
7 the Court should be -- and we believe that's beyond the scope.

8 THE COURT: The microphone is turned off.

9 MR. KEMINS: Oh, I'm sorry.

10 THE COURT: Talk loud for me to hear you.

11 MR. KEMINS: We believe that this will be beyond the  
12 scope of direct and that it's irrelevant because the Court  
13 should be the source of the law to the jury in this case.

14 THE COURT: What is your point in it?

15 MR. McCOLL: I'm going to cross-examine him on how he  
16 calculated these things and ask him if he took into  
17 consideration certain things.

18 THE COURT: How he calculated what?

19 MR. McCOLL: Well, the things he's testified to, that  
20 he had liability.

21 THE COURT: You mean on the tax returns?

22 MR. McCOLL: Yes, sir.

23 THE COURT: In other words, you're going to want him  
24 to show you the tax laws that justify his conclusion on those  
25 tax returns that he owed so much money and so on?



1 MR. McCOLL: Well, just in general sense did he  
2 consider certain categories. It will be relatively brief, Your  
3 Honor.

4 THE COURT: No, we're not going to get into that. I  
5 sustain the objection to all these exhibits. I take it that's  
6 the purpose of all that?

7 MR. McCOLL: Well, that's part of it.

8 THE COURT: I'll sustain the objection.

9 MR. McCOLL: Can I leave these here?

10 THE COURT: Well, you don't need to leave them here.  
11 You can take that with you, Mr. McColl.

12 (End of bench conference.)

13 CROSS-EXAMINATION

14 BY MR. McCOLL:

15 Q. Sir, you sent 3402 to Mr. Simkanin; is that correct?

16 A. Yes, sir.

17 Q. And your doing that was an attempt to persuade him that he  
18 needed to withhold taxes from his employees?

19 A. Yes, sir.

20 Q. You're familiar with the Internal Revenue Code, are you  
21 not, sir?

22 A. Yes, sir.

23 Q. And the collection of income tax at the source is what you  
24 sent him, Section 3402 on page 523 of that volume in front of  
25 you; is that correct?

1 THE COURT: Do you have it as an exhibit, what you  
2 sent him? Is one of the earlier exhibits what you sent him?

3 MR. KEMINS: It's Government Exhibit 13, Your Honor.

4 THE COURT: It's in evidence. He has as an exhibit  
5 what he sent him. It's Government's Exhibit 13.

6 MR. McCOLL: This is the Code. It's a different  
7 exhibit.

8 THE COURT: Okay. But I'm telling you in evidence is  
9 Exhibit 13, which is what you sent him. Your question is what  
10 did he send him.

11 MR. McCOLL: Right.

12 THE COURT: And I'm reminding you that in evidence is  
13 what he sent him. We don't need the book to see what he sent  
14 him.

15 BY MR. McCOLL:

16 Q. May I ask you if when you sent him that you understood the  
17 definition of "employee" in the document that you sent him?

18 A. I understood what I thought I had been taught for years,  
19 yes.

20 Q. Isn't the definition of "employee" --

21 MR. KEMINS: Objection, Your Honor. Beyond the  
22 scope.

23 THE COURT: I'm going to sustain that objection.  
24 That is beyond the scope of the direct.

25 You can come get your book back. He's not going to be

1 testifying in reference to the book and the other documents you  
2 handed up there.

3 MR. McCOLL: Your Honor --

4 THE COURT: You can come get those back, if you would  
5 like, Mr. McColl.

6 MR. McCOLL: May I leave it there for other purposes?

7 THE COURT: No. Come get them back, and if there's a  
8 need for them later, you can bring them back up.

9 (Brief pause.)

10 BY MR. McCOLL:

11 Q. Now, you sent something to a client, and you  
12 purported to tell him that he needed to do it or he would get  
13 in trouble. And he was telling you that he didn't want to do  
14 it; is that correct?

15 A. Yes, sir.

16 Q. And he was telling you that in his opinion he was not  
17 obligated under the law to do it; is that correct?

18 A. Yes, sir.

19 Q. Did that cause you to look closely at the regulations that  
20 you sent him to be sure they were applicable to him?

21 A. No, sir.

22 Q. Have you ever looked at the definition of "employee" that  
23 applies to Section 3402 that you sent him?

24 MR. KEMINS: Objection, Your Honor.

25 MR. McCOLL: I can ask that question, Judge.

1 THE COURT: I think I've already sustained the  
2 objection to that question. I sustain it again.

3 BY MR. McCOLL:

4 Q. When you sent it to him back then, did you know what the  
5 definition of "employee" was?

6 A. I knew what I thought it was.

7 Q. What did you think it was?

8 A. An employee is somebody who works for an organization --  
9 an entity and is employed by, under the direction of, that  
10 entity.

11 Q. And that was your understanding?

12 A. Yes, sir.

13 MR. McCOLL: May I approach the witness, Your Honor?

14 THE COURT: Let me see what you're going to approach  
15 him with.

16 (Bench conference with Mr. Kemins and Mr. McColl:)

17 MR. McCOLL: I want him to read the definition of  
18 "employee" for purposes of 3402.

19 THE COURT: We're not going to play this game.

20 MR. McCOLL: That's not a game. That's the  
21 definition.

22 THE COURT: Pardon me. Listen to what I'm saying  
23 first.

24 MR. McCOLL: Yes, sir.

25 THE COURT: This says for purposes of this chapter

1 the term "employee" includes. It goes on to say the things it  
2 includes. It does not say it's an inclusive definition  
3 applicable to the issue of the section under consideration. So  
4 we're not going to play that game. That obviously is not an  
5 inclusive definition. So we're just not going to go through  
6 that.

7 MR. McCOLL: But, Judge, it doesn't incorporate  
8 anything else. It doesn't say this incorporates --

9 THE COURT: We're not going to go through that. I  
10 sustain the objection.

11 (End of bench conference.)

12 BY MR. McCOLL:

13 Q. Sir, did you explain in detail why, in your opinion, there  
14 had to be a change to be made from cash to the accrual basis?

15 A. Would you repeat the question, please.

16 Q. Did you explain to Mr. Simkanin in any detail as to how or  
17 why the change had to be made from cash to the accrual basis?

18 A. Yes, sir.

19 Q. And what was the most important aspect of that  
20 explanation, in your opinion?

21 MR. KEMINS: We're going to object. This has been  
22 asked and answered already, Your Honor.

23 THE COURT: Well, I'll let him answer it again. I  
24 think he's already said it was legally required.

25 Is that what you said?

1 THE WITNESS: Sir?

2 THE COURT: I think you said the law required it?

3 THE WITNESS: The law requires C Corporations to use  
4 the accrual method of accounting.

5 THE COURT: Okay. Now, he's answered it again.

6 BY MR. McCOLL:

7 Q. I understand we talked about "the law," but as an  
8 accounting minor from A&M what was your specific IRC that you  
9 were relying on?

10 A. I couldn't give you the number. I don't remember.

11 Q. But you gave this advice to more than one corporate  
12 client, correct?

13 A. Yes.

14 Q. And when you gave them that advice, you had to refer or  
15 base your opinion on authority, correct?

16 A. True.

17 Q. And what was that authority?

18 A. I might be mistaken, but I think that authority was  
19 Internal Revenue Code Section 446.

20 Q. And let me ask you: Isn't it correct that his tax bill  
21 quintupled, or however you want to say it. It was five times  
22 more than it had been going from the cash to the accrual basis?

23 A. No, sir.

24 Q. Well, looking at Exhibit No. 5, that -- or, yeah, that you  
25 were asked to look at earlier. Actually, Government's Exhibit

1 No. 4.

2 A. No. 4?

3 Q. Yes, sir. Do you see that, sir?

4 A. Yes, sir.

5 Q. And so November 22nd, 1994, you're telling him please be  
6 sure to make your estimated tax deposits on or before the date  
7 indicated for each payment period. And then you've got down  
8 payment periods, July 15th, 1994, \$40,000, roughly, correct?

9 A. Yes, sir.

10 Q. Now, that predated your letter, didn't it?

11 A. That's what?

12 Q. That date, July 15th, was before you wrote this letter in  
13 November of the same year, correct?

14 A. July 1994. That was --

15 THE COURT: He wants to know if July in the year  
16 comes before November of the year.

17 THE WITNESS: Yes, sir, it does.

18 THE COURT: Okay. We've got that figured out. Now  
19 go on to another question.

20 BY MR. McCOLL:

21 Q. So wouldn't that mean -- and that would also be true for  
22 the quarterly payments September 15th referred to in your  
23 letter below that sentence.

24 A. Yes, sir.

25 Q. So wouldn't that indicate that you had already requested

1 of the company two payments of approximately \$40,300 each?

2 A. I believe those payments had already been made.

3 Q. Okay. And isn't it true that the IRS, under those  
4 regulations that you talked about on direct, says when you go  
5 from cash to the accrual basis, if you disagree with the tax  
6 and we have to demand it of you, you got to pay it all at once.  
7 But if you'll agree to it, we'll give you time to pay it out.  
8 Isn't that correct?

9 A. I don't know.

10 Q. Do you know the regulations that allow you to -- the  
11 number of the regulation that allows you to stretch it out over  
12 three years?

13 A. Yes, sir.

14 Q. And what number is that?

15 A. Section 481.

16 Q. Six and 481?

17 A. Section -- Code Section 481.

18 Q. And which is the one that allows you to stretch it out  
19 over six years?

20 A. The same code section.

21 Q. All right. Have you ever had a client say, "I protest  
22 that tax. It's too much. Can we," you know. . .

23 A. No.

24 MR. KEMINS: Objection. It's beyond the scope of the  
25 direct.



1 THE COURT: I think that is beyond the scope of the  
2 direct, and I'll sustain the objection.

3 BY MR. McCOLL:

4 Q. Didn't Mr. Simkanin say to you during your conversations  
5 when you were trying to explain why his bill increased under  
6 the cash versus accrual method, that he was --

7 THE COURT: I'm sorry. I misunderstood something you  
8 said earlier, if your question is correct.

9 Did Mr. Simkanin's, or Arrow Plastics', bill increase, tax  
10 bill increase, because of the change from cash to accrual?

11 THE WITNESS: It increased temporarily, Your Honor.

12 THE COURT: What do you mean by that?

13 THE WITNESS: You're going to pay the same amount of  
14 tax regardless. It just is a timing matter. If you're on an  
15 accrual basis, you're going to pay the tax earlier, more than  
16 likely, than you are if you're on a cash basis.

17 THE COURT: So when you made the conversion over,  
18 there may be one year where you have sort of a piling up?

19 THE WITNESS: Exactly.

20 THE COURT: Go ahead. I think he did not say  
21 ultimately that it increased, which your question implied. But  
22 go ahead with your question.

23 BY MR. McCOLL:

24 Q. Well, isn't it true, sir, that they couldn't even pay the  
25 accrual tax bill that you were indicating in this letter in

1 November?

2 A. Repeat the question.

3 Q. Isn't it true that they couldn't even pay, as of the date  
4 of your letter in November, the tax bill that you had sent them  
5 so far with regard to what they need to make in quarterly  
6 deposits? They were unable to keep current; isn't that  
7 correct?

8 A. I'm not understanding the question, I don't think.

9 THE COURT: He's trying to find out if Arrow Plastics  
10 had enough money to pay its tax bill during that temporary  
11 period when it converted over from cash to accrual.

12 THE WITNESS: I'm not sure they had enough money.  
13 I'm not sure what the cash flow was at that point.

14 THE COURT: You don't know the answer to the  
15 question?

16 THE WITNESS: I don't know the answer to the  
17 question.

18 THE COURT: Okay.

19 BY MR. McCOLL:

20 Q. Well, doesn't the first letter of your -- the sentence of  
21 your letter, rather, say that it shows -- the second sentence  
22 says -- it shows a balance due of 13,600 --

23 THE COURT: Let's read it aloud. You don't need to  
24 ask him what it says. Just read whatever you want to read in  
25 the letter.

1 BY MR. McCOLL:

2 Q. The return shows a balance due of \$13,614.

3 A. Yes.

4 Q. That would indicate they haven't been able to pay --

5 THE COURT: Let's don't make an argument.

6 BY MR. McCOLL:

7 Q. -- correct?

8 A. It would indicate they hadn't paid, not that they haven't  
9 been able to pay.

10 Q. They have not paid. And up until that time,

11 Mr. Simkanin had paid as well as he was required, correct?

12 A. Correct.

13 Q. What period of time did the IRS give Arrow Custom Plastics  
14 to pay their new bill?

15 MR. KEMINS: Objection, Your Honor. That's been  
16 asked and answered.

17 THE COURT: I'll let him answer it again if he's  
18 already answered.

19 How long?

20 THE WITNESS: Six years.

21 BY MR. McCOLL:

22 Q. Are you certain about that, or could you think it might  
23 have been three years?

24 A. Part of it is due in the first three years and then part  
25 of it is due in the following three years, depending on the

1 adjustment.

2 Q. As I understand your testimony on direct examination --

3 THE COURT: You don't need to repeat his testimony.

4 Just ask a question if you have one.

5 MR. McCOLL: Yes, sir.

6 BY MR. McCOLL:

7 Q. Is it correct that Arrow Custom Plastics indicated that

8 there was no income to Mr. Simkanin in '96 and '97?

9 A. No income?

10 Q. No compensation of any kind?

11 A. For Mr. Simkanin?

12 Q. That's correct.

13 A. Yes, sir, that's true.

14 Q. So he wouldn't be required to have paid or to have filed

15 an income tax return for '96 or '97; is that correct?

16 A. Yes, sir.

17 THE COURT: Mr. Kelly, his question was, if Mr. -- I

18 guess this is his question: If, in fact, Mr. Simkanin had no

19 income for the years 1996 and 1997, would he be required to

20 file an income tax return?

21 THE WITNESS: No, sir, he would not.

22 THE COURT: I think that's what he was asking.

23 THE WITNESS: I'm sorry. I must have missed that

24 question.

25 THE COURT: Okay.

1 MR. McCOLL: Could I ask him to repeat the answer,  
2 Your Honor?

3 THE COURT: He answered no.

4 MR. McCOLL: He wouldn't be required.

5 THE COURT: He answer no, Mr. McColl. Go ahead.

6 MR. McCOLL: Thank you.

7 BY MR. McCOLL:

8 Q. Now, in response to my question about the section  
9 requiring a change from cash to accrual, I believe you cited  
10 Section 446?

11 A. I believe that's right. I'm not --

12 MR. McCOLL: May I approach the witness, Your Honor?

13 THE COURT: No. Let's don't go back and forth. What  
14 is it you want to ask him? Ask him a question.

15 BY MR. McCOLL:

16 Q. Where in 446 does it say there's a requirement to convert  
17 -- or provide any indication that a conversion must be made  
18 from the cash to the accrual basis?

19 A. I don't remember the subcategories -- I mean, the  
20 subparagraphs under that regulation.

21 Q. Well, isn't it true it says in subsection (c), subject to  
22 the provision --

23 MR. KEMINS: Objection, Your Honor.

24 THE COURT: I'm going to -- What is the legal basis  
25 for the objection?

1 MR. KEMINS: It's irrelevant, Your Honor. He's  
2 testified --

3 (Laughter from audience.)

4 MR. KEMINS: He's testified to the best of his  
5 knowledge what he remembers. To ask him further questions from  
6 the Code --

7 THE COURT: I don't think we're going to conduct a  
8 test on his memory of the precise language of the Code.

9 MR. McCOLL: I'm not going to ask that, and I'll be  
10 fair to the witness, Your Honor.

11 BY MR. McCOLL:

12 Q. But doesn't this section give the option to the taxpayer?

13 A. Give the option to the taxpayer?

14 Q. Yes, sir. Doesn't it say taxable income under any of the  
15 following methods of accounting can be done?

16 A. Depending on the taxpayer.

17 Q. Right.

18 A. Some don't have that option, some do.

19 Q. And why was it that Mr. Simkanin didn't?

20 A. Two reasons. The Code requires C Corporations to use the  
21 accrual method.

22 Q. And where does it say that, sir?

23 THE COURT: Let's let him answer the question.

24 A. The other reason is because he had a material amount of  
25 accounts receivable and inventory.

1 BY MR. McCOLL:

2 Q. And where does it say that C Corporations are required to  
3 use the accrual method?

4 A. Somewhere in Code Section -- I believe 446.

5 MR. McCOLL: May I approach the witness? It's a  
6 short section.

7 THE COURT: If you have it in front of you, you don't  
8 need to have him look at it, and if you have somebody else who  
9 wants to deal with that subject if it's relevant at that time,  
10 we'll deal with it at that time. Let's go on to something else  
11 now. We've dealt with that enough now.

12 BY MR. McCOLL:

13 Q. If I told you there was no mention of C Corporations --

14 THE COURT: I said we've dealt with that enough now.  
15 Let's go on to something else.

16 BY MR. McCOLL:

17 Q. With regard to the other reason besides the C Corporation  
18 that you mentioned about inventory, et cetera, is that in a  
19 different section of the Code?

20 A. I'm not sure where that is.

21 Q. Is it in the Code, in the Internal Revenue Code?

22 A. I don't know.

23 Q. And do you know the definition for "income" and where  
24 that's located in the Internal Revenue Code?

25 THE COURT: That's outside the scope of the direct.

1 A. I don't know where it's located, no.

2 MR. McCOLL: Thank you, Your Honor.

3 THE COURT: Okay. Can he be excused as a witness?

4 MR. McCOLL: Subject to recall, Your Honor.

5 MR. KEMINS: Subject to recall.

6 THE COURT: Is he on your list?

7 MR. McCOLL: No, Your Honor.

8 THE COURT: Okay. Does the government want him to be  
9 available for recall?

10 MR. KEMINS: Yes, sir.

11 THE COURT: Okay. You can step down, but you're  
12 subject to possible recall by the attorney for the government.

13 Okay. Call your next witness.

14 MR. JARVIS: Your Honor, may I approach the bench,  
15 please?

16 THE COURT: Yes.

17 (Bench conference with lead attorneys:)

18 MR. JARVIS: I'm concerned about the public out here  
19 laughing and joking around and making comments based on the  
20 witnesses and their testimony, and rulings of this Court. I'd  
21 like the Court to instruct these people to keep their mouth  
22 shut.

23 (End of bench conference.)

24 THE COURT: Okay. Let me have the jury go back to  
25 the jury room just a minute.



1 (Jury out, 3:44 p.m.)

2 THE COURT: Okay. You can be seated.

3 This is directed to the persons in the audience. If we  
4 have another outburst of laughter or any further comments aloud  
5 during the course of the trial, the audience section of the  
6 courtroom will be vacated. We cannot have that kind of  
7 disruption in the trial process. So I'm alerting you all now  
8 that if that occurs one more time, the entire audience section  
9 of the courtroom will be vacated and you will not be allowed  
10 back into the courtroom.

11 MR. JARVIS: Thank you, Your Honor.

12 THE COURT: Okay. Let's get the jury back.

13 MR. McCOLL: Your Honor, may we approach the bench?

14 THE COURT: Yes.

15 (Bench conference with lead attorneys:)

16 MR. McCOLL: In the prior trial there was a question  
17 asked, "If an employer fails to collect and withhold the taxes,  
18 does that place any financial burden on the employees of the  
19 company," to this witness. He says, "Yes, sir." And then  
20 Mr. Jarvis asked him, "Did you discuss this with Mr. Simkanin?"  
21 He said, "I can't recall discussing that with Mr. Simkanin."  
22 So we would object that it was not discussed with Mr. Simkanin;  
23 therefore, it's irrelevant.

24 MR. JARVIS: I'm not going to go into that, Judge.

25 THE COURT: You don't plan to ask that?

1 MR. JARVIS: No, Your Honor.

2 THE COURT: Okay.

3 (End of bench conference.)

4 (Jury in, 3:48 p.m.)

5 THE COURT: You may proceed.

6 MR. JARVIS: Yes, Your Honor, at this time the  
7 government would call Mr. Fred Taylor.

8 THE COURT: Okay. You can proceed.

9 FRED TAYLOR,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JARVIS:

13 Q. Mr. Taylor, would you state your name for the record and  
14 spell your last name.

15 A. Fred Taylor, T-A-Y-L-O-R.

16 Q. What is your occupation, sir?

17 A. I'm a CPA here in Fort Worth.

18 Q. Would you briefly tell us your background and education  
19 and experience.

20 A. I have a BBA in accounting, I'm a CPA, and I've been in  
21 public accounting about 30 years, 29 to 30 years.

22 Q. As a CPA, are you licensed by the State of Texas?

23 A. That's correct.

24 Q. The firm you're with is Simpson & Taylor; is that right?

25 A. That's correct.

- 1 Q. And how long have you been with that firm, sir?
- 2 A. We've been in existence about eight years.
- 3 Q. And prior to that, the name of the firm was?
- 4 A. Just Fred Taylor, CPA.
- 5 Q. Now, do you know Jim Kelly?
- 6 A. Yes, I do.
- 7 Q. Has he worked for your firm a number of years?
- 8 A. Yes.
- 9 Q. Are you familiar with the account or the client by the  
10 name of Arrow Custom Plastics?
- 11 A. Yes.
- 12 Q. And has that been a customer or a client of your company  
13 for a number of years?
- 14 A. Three or four years, I believe, yes.
- 15 Q. And did there come a time in approximately 1999/early 2000  
16 when you had a conversation with Mr. Kelly about concerns about  
17 Mr. Simkanin's decision about withholding taxes?
- 18 A. Yes.
- 19 Q. Do you recall about the first time you were aware this  
20 might be an issue with Arrow Custom Plastics?
- 21 A. It was in '99, I believe, late '99/early 2000 sometime.
- 22 Q. Without going into the content of the conversation, did  
23 you have conversations with Jim Kelly about this issue?
- 24 A. Yes, I did.
- 25 Q. Did there come a time, sir, in March of 2000 when you went

1 with Mr. Kelly to have a personal visit with Dick Simkanin?

2 A. Yes, sir.

3 Q. And do you see Mr. Simkanin in the courtroom?

4 A. Yes, sir, I do.

5 Q. Please point to him and describe where he's seated.

6 A. Mr. Simkanin is on my far right at the desk in front.

7 Q. With the blue tie there?

8 A. Blue tie.

9 THE COURT: He's identified the defendant.

10 MR. JARVIS: Thank you, Your Honor.

11 BY MR. JARVIS:

12 Q. Tell us the purpose of that visit, you and Mr. Kelly going  
13 to visit Mr. Simkanin.

14 A. Well, Mr. Kelly had voiced concern about some comments  
15 Mr. Simkanin was making about not withholding and not filing  
16 tax returns, so we thought it was best to go hear what he had  
17 to say.

18 Q. And was there anyone else present for the meeting other  
19 than yourself, Mr. Kelly, and Mr. Simkanin?

20 A. No.

21 Q. And, again, a rough time frame would be early/mid-March  
22 2000?

23 A. March 2000.

24 Q. About how much time did you spend with Mr. Simkanin?

25 A. I would say 30 to 45 minutes.

1 Q. Was that in his office?

2 A. That was in his office, yes, sir.

3 Q. Tell us what happened during that meeting, sir.

4 A. Mr. Simkanin informed us that he had quit withholding from  
5 his employees and was not going to remit. He was not going to  
6 file the tax returns we had prepared for him.

7 THE COURT: The personal tax return or corporate  
8 taxes?

9 THE WITNESS: Both, sir. He wasn't going to file any  
10 tax returns.

11 BY MR. JARVIS:

12 Q. And did he tell you why he felt -- he justified not  
13 withholding taxes or filing corporate or personal returns?

14 A. He did not believe that the Internal Revenue Code applied  
15 to him.

16 Q. Did he elaborate on why he felt the Internal Revenue Code  
17 did not apply to him personally?

18 A. He quoted some parts of law, which I don't remember.

19 Q. Now, up to that time had Mr. Simkanin followed your advice  
20 as his accounting firm?

21 A. Yes, sir.

22 Q. And what was your reaction when he said that was his plan?

23 A. I was surprised. We hear a lot of people say I'm not  
24 going to do this and I'm not going to do that. When it comes  
25 right down to it, though, they wind up doing what they should.

1 So I wanted to hear it.

2 Q. Now, the end of March, March 31st of 2000, would that have  
3 been the last opportunity for Mr. Simkanin to file his 941s,  
4 his withholding taxes, for the first quarter of 2000?

5 A. I don't recall, sir.

6 Q. I guess my question is: Why did you decide to go out in  
7 March of 2000 as opposed to February or April or any other  
8 time?

9 A. It was tax season and we were very busy.

10 Q. What was your response when he said the Internal Revenue  
11 Code does not apply to me?

12 A. Well, I told him I thought it did and that he should file  
13 the returns, and if he did not do so he was going to get in a  
14 lot of trouble.

15 Q. What kind of trouble, sir?

16 THE COURT: Well, let's back up a minute.

17 Did you tell him what kind of trouble you thought he would  
18 get in?

19 THE WITNESS: Yes, I believe I said criminal trouble.

20 BY MR. JARVIS:

21 Q. And did he respond to that when you said he could get into  
22 criminal trouble if he persisted with his plan?

23 A. He persisted, yes, sir.

24 Q. Did he react in any way when you told him criminal  
25 trouble?

1 A. No, sir.

2 Q. If taxes are due and payable and wages are taxable income,  
3 would the defendant, as the owner of Arrow Custom Plastics, in  
4 your judgment, be the responsible party to collect those taxes?

5 A. Yes, sir.

6 Q. After 30 or 45 minutes -- is that what you said the time  
7 of the meeting?

8 A. Roughly.

9 Q. At the end of the meeting, did you make any headway in  
10 convincing Mr. Simkanin to reconsider?

11 A. No, sir, I did not.

12 Q. So how did you leave it?

13 A. We left it that we were going to go back. Mr. Simkanin  
14 asked -- I don't know why -- if we were going to continue to  
15 work for him. I said I didn't know, and we left at that point.

16 Q. Let me direct your attention, Mr. Taylor, to Government's  
17 Exhibit 3. I believe it's open in the book there.

18 A. Yes, sir.

19 Q. Would you identify that document, sir?

20 A. It's a letter I wrote March the 28th of 2000 to Mr. Dick  
21 Simkanin.

22 Q. This appears to be a filed, unsigned copy. Was the copy  
23 that was mailed to him actually signed with your signature?

24 A. Yes, sir, it was.

25 Q. Why was it sent to Mr. Simkanin, Mr. Taylor?

1 A. We were resigning the account. We were no longer going to  
2 represent Mr. Simkanin.

3 MR. JARVIS: We would offer at this time Government's  
4 Exhibit 3.

5 MR. McCOLL: No objection.

6 THE COURT: It's received.

7 BY MR. JARVIS:

8 Q. "March 28, 2000, Mr. Dick Simkanin, Arrow Custom Plastics,  
9 Bedford Texas. Dear Dick: Inasmuch as your year-end of March  
10 31st is approaching rapidly, I felt it necessary to contact you  
11 regarding our future relationship.

12 "Due to differing opinions regarding certain business  
13 practices, we believe it to be in both of our best interests  
14 for you to obtain the services of another accounting firm for  
15 your future requirements." And it goes on for another  
16 paragraph or so.

17 Mr. Taylor, why did you consider it important for you to  
18 disengage from representing Mr. Simkanin?

19 A. Because the ethics of my profession, the CPAs, and the  
20 Internal Revenue Service say that I cannot be associated with  
21 anything like that.

22 Q. Is the integrity and reputation of your firm important to  
23 you, sir?

24 A. Yes, very.

25 Q. If you continue to represent Arrow Custom Plastics, would



1 that put the reputation of your firm at risk?

2 A. I believe it would have, yes, sir.

3 MR. JARVIS: One moment, please.

4 (Government counsel confer.)

5 MR. JARVIS: Pass the witness, Your Honor.

6 THE COURT: Do you have any questions for this  
7 witness?

8 MR. McCOLL: Yes, I do, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. McCOLL:

11 Q. Good afternoon, Mr. Taylor.

12 A. Good afternoon.

13 Q. You said that the IRS wouldn't allow you to do -- to  
14 participate in something like "this."

15 A. Yes, sir.

16 Q. What sanction could they bring against you that would make  
17 you -- what enforcement power do they have against a private  
18 CPA?

19 A. They have enforcement power to stop me from representing  
20 people before the IRS.

21 Q. So if people don't file their --

22 THE COURT: I think he's answered the question.

23 Let's don't repeat it. He's answered the question.

24 MR. McCOLL: Yes, sir.

25 BY MR. McCOLL:

1 Q. So does that also apply to any other area other than not  
2 withholding?

3 A. Yes, sir.

4 Q. Just basically when they're not -- there are a variety of  
5 things they don't like, and when they say you can't do that,  
6 they can enforce it by taking away your opportunity to appear  
7 before them.

8 A. Are you talking about the Service only?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. Now, isn't it true that under corporate -- with  
12 regard to calculating the corporate earnings and profits that  
13 there is income that's exempted by statute as well --

14 MR. JARVIS: Your Honor, we object. It's beyond the  
15 scope of the direct.

16 THE COURT: That is beyond the scope of the direct.  
17 I sustain the objection.

18 BY MR. McCOLL:

19 Q. Did you not testify you had a conversation with him about  
20 his obligation to file a corporate return?

21 A. Yes.

22 Q. Are there exceptions under the Constitution for liability  
23 for corporate income?

24 A. Exceptions under what, sir?

25 Q. Under the Constitution.

1 A. I have no idea.

2 MR. McCOLL: May I approach the witness?

3 THE COURT: No. We're not going to get into that at  
4 this time.

5 BY MR. McCOLL:

6 Q. Do you consult the Code of Federal Regulations, 26 --

7 THE COURT: I think that's beyond the scope of the  
8 direct.

9 BY MR. McCOLL:

10 Q. Could that have been the law that he was referring to that  
11 you don't remember? Does that refresh your memory?

12 A. It does not.

13 Q. Now, in your letter that you sent him, I believe you  
14 referred to Government's Exhibit 3, you talk about "differing  
15 opinions"; is that correct?

16 A. That's correct.

17 Q. Do you often have differing opinions with CPAs, or are you  
18 aware that there is a wide variety of differing opinions as to  
19 the interpretation of the Internal Revenue Code?

20 A. There always is.

21 THE COURT: Did you have in mind a difference in  
22 opinion between you and Mr. Simkanin, or your firm and  
23 Mr. Simkanin?

24 THE WITNESS: No, sir.

25 THE COURT: In the letter?

1 THE WITNESS: No, sir.

2 THE COURT: Okay. Go ahead.

3 BY MR. McCOLL:

4 Q. There's nothing in your letter about criminality, is  
5 there?

6 A. No.

7 Q. Did you tell him what specific authority, other than  
8 sending -- You understood that your colleague had sent him a  
9 fax about 3402, correct?

10 A. That's correct.

11 Q. Other than that, did you provide any specific authority to  
12 him to show him that he was not exempt under the rules for  
13 calculating gross income as a corporation?

14 A. Gross income as a -- I don't understand.

15 Q. Well, isn't it true that --

16 THE COURT: Did you call his attention to any laws or  
17 regulations that supported whatever you were telling him?

18 THE WITNESS: I can do that.

19 Not specifically, no, sir. Just the Code in general.

20 BY MR. McCOLL:

21 Q. Just the Code in general?

22 A. Uh-huh, that's correct.

23 Q. Is it correct that with regard to the Code in general that  
24 with regard to gross income that may consist of one or more  
25 items that are excepted --

1 MR. JARVIS: Your Honor, we object. Beyond the scope  
2 of direct. It's irrelevant.

3 THE COURT: That is beyond the scope of the direct.  
4 We won't get into that at this time.

5 BY MR. McCOLL:

6 Q. How long did you discuss with Mr. Simkanin his  
7 understanding of what he was trying to convey to you?

8 A. As I said, 35 to 45 minutes for the entire meeting.

9 Q. But you have no recollection of what he told you.

10 A. No, sir.

11 MR. McCOLL: Thank you.

12 THE COURT: Can this witness be excused?

13 MR. McCOLL: Could I have just a minute, Your Honor?

14 (Brief pause.)

15 THE COURT: Mr. Jarvis, can this witness be excused?

16 MR. JARVIS: Subject to recall, Your Honor.

17 THE COURT: Okay. You can step down. You're excused  
18 for the time being, but you are subject to recall if the  
19 government's attorney recalls you.

20 Call your next witness.

21 MR. KEMINS: We call Al Sharp, Your Honor.

22 Mr. McCOLL: Your Honor, could I approach the bench  
23 on a housekeeping matter?

24 THE COURT: All right.

25 (Bench conference with lead attorneys:)

1 MR. McCOLL: I asked your bailiff about an hour and a  
2 half ago if I could get some extra water, but I guess I asked  
3 the wrong person. I should have asked the court personnel --

4 THE COURT: See if there's some water there.

5 MR. McCOLL: There is.

6 THE COURT: You can borrow that. Just take it.

7 MR. JARVIS: I'm running low, too.

8 (End of bench conference.)

9 THE COURT: Okay. You may proceed, Mr. Kemins.

10 MR. KEMINS: Thank you, Your Honor.

11 AL SHARP,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. KEMINS:

15 Q. Sir, could you give us your full name, spelling your last  
16 name, please.

17 A. Al Sharp, S-H-A-R-P.

18 Q. And, Mr. Sharp, how are you employed?

19 A. I'm employed by the Texas Work Force Commission.

20 Q. What's your current position with the Texas Work Force  
21 Commission?

22 A. I'm an accounts examiner.

23 THE COURT: Hold on just a minute. Let me interrupt.

24 (Court confers with secretary.)

25 THE COURT: I'm sorry for the interruption. Go

1 ahead.

2 MR. KEMINS: No problem, Your Honor. Thank you.

3 BY MR. KEMINS:

4 Q. You said you're employed by the Texas Work Force  
5 Commission.

6 A. That's correct.

7 Q. And what's your position there?

8 A. Accounts examiner.

9 Q. And how long have you been employed with the Texas Work  
10 Force Commission?

11 A. Over 32 years.

12 Q. And just briefly, what does the Texas Work Force  
13 Commission do?

14 A. It collects an unemployment tax from employers in the  
15 state of Texas.

16 Q. And what type of duties do you specifically have with the  
17 Texas Work Force Commission?

18 A. I help in the collection of the unemployment tax. We  
19 collect the quarterly reports and the tax.

20 Q. And that's from employers?

21 A. That's correct.

22 Q. Now, let me ask you this: In your work with the Texas  
23 Work Force Commission, did you have any role whatsoever in the  
24 criminal investigation of Mr. Simkanin?

25 A. No, sir.

1 Q. Have you, in fact, ever met Mr. Simkanin?

2 A. No, sir.

3 Q. In a book in front of you there's a group of exhibits,  
4 Government's Exhibits 14 through 50. Could I get you to flip  
5 through those real quick.

6 A. You want me to look through each one of them?

7 THE COURT: Have you already looked at those?

8 THE WITNESS: Yes, sir, I have.

9 THE COURT: There's no point in him taking the time  
10 to study them again --

11 MR. KEMINS: Fourteen through 51, Your Honor.

12 THE COURT: Pardon me. We can't talk at the same  
13 time, Mr. Kemins.

14 I was saying there's no point in him looking at them again  
15 if he's already looked at them.

16 MR. KEMINS: Yes, Your Honor.

17 BY MR. KEMINS:

18 Q. Mr. Sharp, Government's Exhibits 14 through 51, are those  
19 official records of the Texas Work Force Commission?

20 A. They are.

21 MR. KEMINS: Your Honor, at this point we would move  
22 Government's Exhibits 14 through 51 into evidence.

23 THE COURT: They're received.

24 BY MR. KEMINS:

25 Q. Now, the Texas Work Force Commission, what types of



1 reports does it require from employers in Texas?

2 A. It requires a quarterly report that's filed four times a  
3 year.

4 Q. What type of information do you ask the employers to  
5 furnish you with?

6 A. The main information on the report is the total wages paid  
7 to all the employees during that particular calendar quarter as  
8 well as the taxable wages.

9 Q. Government Exhibit 16, if you could turn to that real  
10 quick.

11 A. (Witness complies.)

12 Q. Is that an example of one of these employer quarterly  
13 reports you were talking about?

14 A. It is.

15 Q. And this one is for Simkanin, Incorporated/Arrow Custom  
16 Plastics in Bedford, Texas; is that correct?

17 A. That's correct.

18 Q. Now, within 14 through 51, there are other reports such as  
19 this; is that correct?

20 A. That's correct.

21 Q. As you said, all of them ask for this wage information  
22 from the employer; is that correct?

23 A. That's correct.

24 Q. Does it also ask for an employee's social security number?

25 A. It does.

1 Q. And the employee's name?

2 A. It does.

3 Q. And the wages that are paid.

4 A. That's correct.

5 Q. Now, if I could have you turn back to look at Government  
6 Exhibit 15, please.

7 THE COURT: Let me interrupt you a minute. What were  
8 the series of exhibits that you just offered and that were  
9 received? It was Exhibits 14 through -- what was the end  
10 number?

11 MR. KEMINS: Fifty-one, Your Honor.

12 THE COURT: Fifty-one?

13 MR. KEMINS: Yes, sir.

14 THE COURT: Okay. Go ahead.

15 BY MR. KEMINS:

16 Q. What is Government Exhibit 15?

17 A. It's a list of the wages taken from the reports that  
18 Simkanin, Incorporated, submitted to the Texas Work Force  
19 Commission.

20 THE COURT: Is Simkanin, Incorporated, just another  
21 name for Arrow Custom Plastics?

22 THE WITNESS: Yes, sir, it's the legal entity. Arrow  
23 Custom Plastics is a d/b/a.

24 THE COURT: That's the name that --

25 THE WITNESS: Doing business as.

1 THE COURT: -- a company by the name of Simkanin,  
2 Inc., does business by?

3 THE WITNESS: Yes, sir. That's what they did  
4 business by here in this third quarter of '99.

5 THE COURT: Okay. Go ahead.

6 MR. KEMINS: Thank you, Your Honor.

7 BY MR. KEMINS:

8 Q. Government Exhibit 15, that's prepared by the Texas Work  
9 Force Commission?

10 A. That's correct.

11 Q. From information provided by the employer.

12 A. That's correct.

13 Q. I ask you to turn to Government Exhibit 30, please.

14 Government 30 is another one of these quarterly reports for  
15 Simkanin, Incorporated. It looks like for the periods April  
16 and May of 2001; is that correct?

17 A. Well, it's for the second quarter 2001. That's April,  
18 May, June. That's correct.

19 Q. Now, I would ask you to turn to Government Exhibit 33,  
20 please.

21 A. (Witness complies.)

22 Q. Government Exhibit 33 is for the same period but now it  
23 says Dick Simkanin/Arrow Custom Plastics; is that correct?

24 A. That's correct.

25 Q. So at some point Simkanin, Incorporated, went away and

1 Dick Simkanin started reporting for Arrow Plastics; is that  
2 correct?

3 A. That's correct. From looking at these reports, that's  
4 what appears to have happened.

5 Q. Now, regardless of the formation, whether it's a  
6 corporation, sole proprietorship, it's still required to file  
7 these reports with the state if it has employees; is that  
8 correct?

9 A. That's correct.

10 Q. Now, when we met prior, did I ask you to match up the  
11 wages listed in the quarterly reports filed by either Simkanin,  
12 Incorporated, or Dick Simkanin as Arrow Plastics with the  
13 periods alleged in Counts 1 through -- Hold on a second here --  
14 1 through 12 of the government's indictment?

15 A. You did.

16 Q. And under the column "total wages subject to collection,"  
17 did they match up with what was filed with the Texas Work Force  
18 Commission?

19 A. They did.

20 Q. Let me ask you this: The Texas Work Force Commission,  
21 that's a state entity; is that correct?

22 A. That's correct.

23 Q. Where does the Texas Work Force Commission receive most of  
24 its funding for its daily operations?

25 A. The federal government.

1 Q. Thank you.

2 MR. KEMINS: I have no further questions, Your Honor.

3 THE COURT: Okay. Does the defendant have any  
4 questions?

5 MR. McCOLL: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. McCOLL:

8 Q. So as I understand it, sir, Arrow Custom Plastics never  
9 stopped following the legally required quarterly reporting with  
10 regard to the wages paid to their workers; is that correct?

11 A. That is correct.

12 THE COURT: You mean to the Texas Work Force  
13 Commission as opposed to some other agency?

14 MR. McCOLL: To the Texas Work Force Commission.

15 THE WITNESS: That's correct, for this time period.

16 BY MR. McCOLL:

17 Q. Yes, sir. Now, you talked about taxable wages. I take it  
18 that all wages are not taxable; is that correct?

19 A. That's correct.

20 Q. You also mentioned that this -- you retrieve a social  
21 security number from workers. You're not suggesting that each  
22 worker is legally required to have a social security number,  
23 are you?

24 MR. KEMINS: Objection, beyond the scope, Your Honor.

25 THE COURT: That's beyond the scope of the direct.

1           You don't need to answer that. I sustain the objection.

2           MR. McCOLL: Thank you, sir.

3           MR. KEMINS: Subject to recall, Your Honor.

4           THE COURT: Okay. You're excused now. You can step  
5 down, but you might be recalled so you'll have to stand back.

6           Okay. Call your next witness.

7           MR. KEMINS: We call Robert Dean, Your Honor.

8           THE COURT: You may proceed.

9           MR. KEMINS: Thank you, Your Honor.

10                                 ROBERT DEAN,

11           having been duly sworn, testified as follows:

12                                 DIRECT EXAMINATION

13 BY MR. KEMINS:

14 Q.    Could you give us your full name, spelling your last name,  
15 please.

16 A.    Robert Dean, D-E-A-N.

17 Q.    And, Mr. Dean, how are you employed?

18 A.    With the Internal Revenue Service.

19 Q.    What's your current position with the Internal Revenue  
20 Service?

21 A.    The custodian of records.

22 Q.    And how long have you been with the IRS?

23 A.    I've been with the IRS about 17 years.

24 Q.    What specifically, and briefly, does your job entail with  
25 the IRS?

1 A. Mainly my job consists of researching accounts, helping  
2 produce documents for trial, preparing transcripts for trial,  
3 and then testifying in trials.

4 Q. Now, in your duties with the IRS, did you have any role  
5 whatsoever in the criminal investigation of Mr. Simkanin?

6 A. No, I did not.

7 Q. As part of your duties, did you have occasion to search  
8 IRS records for the records of Arrow Custom Plastics?

9 A. Yes, I did.

10 Q. Did you also search for records for an individual named  
11 Richard Simkanin?

12 A. Yes, I did.

13 Q. And how did you conduct this search?

14 A. I used the IRS computer to research through using the  
15 social security number for Mr. Simkanin and the employer  
16 identification number for Arrow Plastic.

17 Q. Now, I forget what you said. Where are you stationed with  
18 the IRS?

19 A. I'm from Austin, Texas.

20 Q. When you searched the IRS computers, did you just search  
21 computers in Austin, or did you search all over the country?

22 A. No. Our computer records search for any filings or  
23 anything made from across the country.

24 Q. Now, you're going to be talking about some forms in your  
25 testimony. Just to go over them briefly, what is a Form 941?

1 A. A Form 941 is what employers use to quarterly report wages  
2 that they pay to their employees, income tax withholding from  
3 their employees' paychecks, social security, Medicare/Medicaid  
4 withholding, plus the employer's part of Medicare/Medicaid and  
5 social security in order to pay in the money that they had  
6 withheld from the employees' wages.

7 Q. Now, what is a Form 940-EZ?

8 A. A Form 940-EZ is a short form of a Form 940, and a Form  
9 940 is for the federal unemployment tax. And that's where an  
10 employer reports certain wages and pays in unemployment tax to  
11 cover any claims against the company from employees that no  
12 longer work there.

13 Q. And, finally, what's a Form 1040?

14 A. A Form 1040 is what an individual uses to report their  
15 income from any -- many sources and any kind of deductions to  
16 come up with a tax due.

17 Q. Now, you mentioned in your testimony you used the term  
18 "transcript"?

19 A. A transcript is a statement of account for an individual  
20 or a business for a particular tax period -- what we would call  
21 a tax period or a tax year.

22 Q. And how is a transcript created?

23 A. A transcript can be created -- I can order it through the  
24 computer where it's generated. Or if it's not available, I can  
25 have someone else manually do a transcript.



1 Q. Now, in front of you there is a binder which contains  
2 Government's Exhibits 52 through 90. Now, prior to coming into  
3 court today, have you reviewed Government's Exhibits 52 through  
4 90?

5 A. Yes, I did.

6 Q. And are these records official records of the Internal  
7 Revenue Service?

8 A. Yes, they are.

9 MR. KEMINS: Your Honor, at this point we would move  
10 Government's Exhibits 52 through 90 into evidence, please.

11 THE COURT: They're received.

12 BY MR. KEMINS:

13 Q. Now, talking first about the block of exhibits that start  
14 with Exhibit 52 and go to Government Exhibit 63, and you've  
15 looked at these before. What are they?

16 A. These are certified copies of Form 941s. These are  
17 employer's quarterly federal tax returns, and they cover from  
18 the first quarter of tax year 1997 -- In other words, March of  
19 '97 through the fourth quarter of 1999.

20 Q. And are these forms for Simkanin, Incorporated, which did  
21 business as Arrow Custom Plastics?

22 A. Yes, they are.

23 Q. Now, if we look at the group of exhibits that start with  
24 Government Exhibit -- Now, these exhibits that we just talked  
25 about, 52 through 63, they show a prior history of withholding

1 and filing 941s on the part of Arrow Custom Plastics; is that  
2 correct?

3 A. Yes. These show wages reported -- or they're reporting  
4 wages and they're reporting withholding and social security and  
5 Medicare wages and withholding.

6 Q. Now, talking about the group of exhibits that start with  
7 Government Exhibit 64 and go to Government Exhibit 78, and you  
8 reviewed those before. What are those?

9 A. These are transcripts of account for Simkanin,  
10 Incorporated/Arrow Custom Plastics; and these are certified  
11 transcripts for the 941 accounts.

12 Q. And what do these transcripts show?

13 A. These show for the quarters starting with March of 2000  
14 through September of 2003, that no return has been filed with  
15 the IRS, there's been no money paid in for money withheld from  
16 any employee's paychecks, and there's nothing that the IRS has  
17 received.

18 Q. And, again, this is from your search of IRS records  
19 nationwide; is that correct?

20 A. That's correct.

21 Q. Now, did I ask you with Government's Exhibits 64 through  
22 78 to match them up for the tax quarter ending dates that is  
23 listed in Counts 1 through 12 of the indictment?

24 A. Yes, you did.

25 Q. And do they match up with what's been -- what periods are

1 included in the indictment?

2 A. Yes, they match.

3 Q. Now, if we could turn to the block of exhibits that begin  
4 with Government Exhibit 83 and go through Exhibit 90. And  
5 we're going to do this just a little bit out of order. I  
6 apologize. Eighty-three through 90.

7 A. Okay.

8 Q. And what are these exhibits?

9 A. These are certified transcripts for Richard Simkanin or  
10 Richard and Carole simkanin for their individual tax returns,  
11 and they start with the 1988 tax year and go through 1995.

12 Q. So these exhibits indicate a history of filing of personal  
13 income tax returns by the defendant.

14 A. Yes. These show income -- the transcripts will show  
15 adjusted gross income, say, for instance, in 1988 of \$107,000.  
16 It shows that a return was filed and a tax assessed of \$26,320  
17 and that that tax had been paid.

18 Q. Okay. Now, if we turn back to the group of exhibits that  
19 begin with Government Exhibit 79 and going through Government  
20 Exhibit 82.

21 A. (Witness complies.)

22 Q. And what are those?

23 A. These are certified transcripts for Richard and Carole  
24 Simkanin.

25 Q. And what do they show?

1 A. These show that no return has been filed for tax periods  
2 1998, 1999, 2000, or 2001.

3 Q. And these are the same periods alleged in Counts 28  
4 through 31 of the indictment; isn't that correct?

5 A. That's correct.

6 MR. KEMINS: I have no further questions, Your Honor.  
7 Pass the witness.

8 THE COURT: Do you have any questions of this  
9 witness?

10 MR. McCOLL: Briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. McCOLL:

13 Q. Sir, you do not have to file returns in the future.

14 MR. KEMINS: Objection, Your Honor, beyond the scope.

15 THE COURT: It's beyond the scope of the direct.

16 BY MR. McCOLL:

17 Q. With regard to the 94 --

18 THE COURT: Pardon me. I sustained the objection.  
19 Go on to another question.

20 MR. McCOLL: Could I have the answer for the bill?

21 THE COURT: Go on to another question now. We can  
22 take that matter up at an appropriate time.

23 BY MR. McCOLL:

24 Q. You're not a CPA, are you, sir?

25 A. No.

1 MR. McCOLL: Thank you.

2 THE COURT: Okay. Can this witness be excused?

3 MR. KEMINS: Subject to recall, Your Honor.

4 MR. McCOLL: Your Honor, I do have --

5 THE COURT: Okay. You can --

6 MR. McCOLL: Excuse me, Your Honor. I was just  
7 handed a question, if you don't mind.

8 THE COURT: Okay. Go ahead.

9 BY MR. McCOLL:

10 Q. As custodian of the records, your job primarily is to come  
11 to court and bring records; is that correct?

12 A. Yes.

13 Q. So you do this frequently?

14 A. Uh, this --

15 THE COURT: I'm sorry. I didn't hear the question.

16 BY MR. McCOLL:

17 Q. You do this frequently?

18 A. Sometimes. It depends upon the court calendars in my  
19 area.

20 Q. Yes, sir. Thank you.

21 THE COURT: Okay. You can step down. You're  
22 excused, but you're subject to recall by the government, if the  
23 government needs you again.

24 Okay. Why don't we -- How many more witnesses does the  
25 government have?

1 MR. KEMINS: We have six more, Your Honor.

2 MR. JARVIS: Six more, Your Honor.

3 THE COURT: I guess we'd better take a recess.

4 Why don't we take a recess to -- a 15-minute recess. And  
5 I'm anticipating -- Obviously, we're not going to finish today,  
6 but I'm anticipating we might work until around 6:30 and move  
7 along and then recess until 8:30 in the morning, so you can  
8 know what my plans are.

9 Let me ask, before the jury leaves: Is that timing going  
10 to create a problem with anybody? I indicated when we started  
11 that we might work late some days, but it's not essential that  
12 we work as late as I've indicated today. So if that timing has  
13 created a problem, somebody raise your hand and tell me. If  
14 not, I would like to go ahead and work until 6:30 so we can  
15 move on that far.

16 (Juror No. 5 raises hand.)

17 THE COURT: Okay. I don't see -- Oh, you have a hand  
18 raised?

19 JUROR NO. 5: I have a 7:00 o'clock appointment that  
20 I would like to try to keep. It's about 30 minutes away.

21 THE COURT: Okay. If we work until 6:15, will that  
22 do it?

23 JUROR NO 5: Yes, that's good.

24 THE COURT: And for the record, you're --

25 JUROR NO. 5: Five.

1 THE COURT: -- Juror five. Okay. Very good. We'll  
2 work until 6:15.

3 (Court in recess, 4:24 p.m. until 4:44 p.m.)

4 THE COURT: Okay. You may proceed, Mr. Jarvis.

5 MR. KEMINS: I'll have this witness, Your Honor, and  
6 we'd call Joe Wayne Cooper to the stand, Your Honor.

7 THE COURT: Okay. You may proceed.

8 MR. KEMINS: Thank you, sir.

9 JOE WAYNE COOPER,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KEMINS:

13 Q. For the record, could you give us your full name, spelling  
14 your last name, please.

15 A. Joe Wayne Cooper, C-O-O-P-E-R.

16 Q. Mr. Cooper, how are you employed?

17 A. I'm an internal revenue agent with the Internal Revenue  
18 Service.

19 Q. And what is your current duty with the Internal Revenue  
20 Service?

21 A. I'm an employment tax specialist.

22 Q. And how long have you been employed with the Internal  
23 Revenue Service?

24 A. Since January 1988.

25 Q. And as title "employment law specialist," how long have

1 you been in that position?

2 A. Since July of 2000.

3 Q. Could you briefly describe your duties as a revenue  
4 agent/employment law specialist, please.

5 A. As an employment tax specialist, I review employment tax  
6 returns, Forms 941/940. We conduct examinations of those  
7 returns when necessary. We also review claims for refund.

8 Q. Now, as part of your duties, were you assigned to review a  
9 claim for refund submitted by the defendant, Mr. Simkanin?

10 A. Yes, sir.

11 Q. Now, in front of you should be a book, and the first  
12 exhibit should be Government Exhibit 91.

13 A. (Witness complies.)

14 Q. Do you see that exhibit?

15 A. Yes, sir.

16 Q. And we met prior to you coming into court today; is that  
17 correct?

18 A. Yes, sir.

19 Q. As part of that, did you review Government's Exhibits 91  
20 through 106?

21 A. Yes, sir.

22 Q. And are those official records of the Internal Revenue  
23 Service?

24 A. Yes, sir, they are.

25 Q. In fact, is that taken together, Government Exhibits 91



1 through 106, is that the claim for refund Mr. Simkanin  
2 submitted?

3 A. Yes, it is.

4 MR. KEMINS: Your Honor, at this time we'd move into  
5 evidence Government's Exhibits 91 through 106, please.

6 THE COURT: They're received.

7 MR. KEMINS: Thank you, sir.

8 BY MR. KEMINS:

9 Q. If you can recall, when were you assigned to review  
10 Mr. Simkanin's claim for refund?

11 A. In August 2000.

12 Q. And what steps did you take in reviewing this claim?

13 A. When I first received the file that had the claim, I  
14 reviewed all the information in it, including the exhibits that  
15 were mentioned earlier, the Forms 941/940, other attachments  
16 that were included in the case file.

17 Q. Now, in your time with the IRS, have you reviewed other  
18 claims for refunds before?

19 A. Yes, sir.

20 Q. And did you treat this claim for refund for Mr. Simkanin,  
21 did you treat it any differently than any other claim?

22 A. No, sir.

23 Q. Now, Government Exhibit 91, it is a certified mail letter  
24 that says, "Transmittal of documents. Gentlemen, enclosed  
25 you'll find for Year ending December 31st, 1997," and then it

1 lists a number of exhibits. Then it says for the year ending  
2 December 31st, 1998, and it lists seven classes of exhibits.  
3 And then for the year ending December 31st, 1999, it lists four  
4 classes of exhibits; is that correct?

5 A. Yes, sir.

6 Q. And this letter is signed by Richard Simkanin, President,  
7 Arrow Custom Plastics?

8 A. Yes, sir.

9 Q. Now, there's a document behind it, is that correct, also  
10 dated 28 January 2000?

11 A. Yes, sir.

12 Q. And that's to the United States Department of Treasury,  
13 Internal Revenue Service in Austin, and attention --

14 THE COURT: You don't need to go through him to read  
15 the document.

16 MR. KEMINS: Yes, sir.

17 THE COURT: If you want to read the document, just  
18 read the documents without asking him if it's right.

19 MR. KEMINS: Yes, Your Honor.

20 THE COURT: They're in evidence.

21 MR. KEMINS: Yes, sir.

22 It's a letter dated 28 January 2000 to the U.S. Department  
23 of Treasury, attention of District Director.

24 BY MR. KEMINS:

25 Q. And this was also part of the claim for refund that you

1 reviewed; is that correct?

2 A. Yes, sir.

3 MR. McCOLL: What number is that?

4 MR. KEMINS: It's 91.

5 BY MR. KEMINS:

6 Q. Now, it looks like in here that Mr. Simkanin cited some  
7 court cases and some sections of the Internal Revenue Code; is  
8 that correct?

9 A. Yes, sir.

10 Q. Now, when you reviewed this claim, did you review what he  
11 put in this letter?

12 A. Yes, sir, I did.

13 Q. After you reviewed all of this, did you reach a conclusion  
14 as to whether this refund should be granted or not?

15 A. I did.

16 Q. And what was your conclusion?

17 A. Concluded that the refund had no merit and the claim would  
18 be denied in full.

19 Q. And did you inform Mr. Simkanin of this decision?

20 A. Yes, I did.

21 Q. And did you actually have any conversations with  
22 Mr. Simkanin about this decision?

23 A. Yes, I did.

24 Q. Were these in person?

25 A. They were over the telephone.

1 Q. And what, if you recall, did you tell Mr. Simkanin?

2 A. I informed Mr. Simkanin that after reviewing the  
3 information that he provided I denied his claim in full. I  
4 also told him that the courts have consistently ruled against  
5 this type of position that he was taking in regards to seeking  
6 refunds of payroll taxes.

7 Q. And did you tell him anything -- Did you express any  
8 opinion about some of the court cases or other legal areas he  
9 put in that letter?

10 A. Not that I recall.

11 Q. Now, when you told Mr. Simkanin that his claim was being  
12 denied, did he ask you any questions about that?

13 A. No, sir.

14 Q. Did he ask you to provide him with whatever information  
15 you were basing your answer on?

16 A. No, sir.

17 Q. And did he offer to send you any other additional  
18 information?

19 A. No, sir.

20 Q. Did he try to argue with you, anything from Section 3402  
21 of the income tax code?

22 A. No, sir.

23 Q. Did he try to argue with you that there was no reason for  
24 anybody to have a social security number?

25 THE COURT: I think he's already answered in a

1 general way what you're asking him specifically.

2 MR. KEMINS: Yes, sir.

3 THE COURT: Let's don't ask him the same thing two or  
4 three different ways.

5 BY MR. KEMINS:

6 Q. Did he ask you to provide any court cases, or things like  
7 that, that you were relying on?

8 A. No, sir.

9 Q. Now, did you discuss with him specifically how courts had  
10 viewed the position he had taken in his letter?

11 MR. McCOLL: Objection. Asked and answered.

12 THE COURT: I think he's answered that. He's already  
13 said that he told him the courts have consistently denied his  
14 position.

15 BY MR. KEMINS:

16 Q. Now, as an employment law specialist you also understand  
17 how to calculate employers' shares of the withholding taxes; is  
18 that correct?

19 A. Yes, sir.

20 Q. At our request in our prior meeting, did you look at  
21 Counts 1 through 12 of the indictment, specifically the "taxes  
22 not collected" column?

23 A. Yes, sir.

24 Q. And did you match that calculation up with the "total  
25 wages subject to collection" column?

1 A. Yes, sir.

2 Q. And are those, in your opinion, correct figures?

3 A. Yes, sir.

4 Q. Now, also in looking at this claim and what was submitted,  
5 did you compare that to the form submitted and the periods  
6 ending and the refund amount in Counts 13 through 27 of the  
7 indictment?

8 A. Yes, sir.

9 Q. And do they match up with what Mr. Simkanin asked for a  
10 refund on?

11 A. Yes, sir.

12 MR. KEMINS: I have no further questions, Your Honor.  
13 Pass the witness.

14 THE COURT: Do you have any questions of this  
15 witness?

16 MR. McCOLL: Yes, Your Honor, I do.

17 CROSS-EXAMINATION

18 BY MR. McCOLL:

19 Q. Good afternoon, sir. Is it correct that if Arrow Custom  
20 Plastics' corporate income was exempt from taxation, then --

21 MR. KEMINS: Objection, Your Honor, beyond the scope.

22 THE COURT: Pardon me. That's beyond the scope.

23 BY MR. McCOLL:

24 Q. Then --

25 THE COURT: That's beyond the scope.

1 MR. McCOLL: May I finish my question for the record?

2 THE COURT: I understand what your question is,

3 Mr. McColl, and it's beyond the scope of the direct. So go on

4 to another question.

5 BY MR. McCOLL:

6 Q. You determined this was an invalid request for a refund.

7 A. Yes, sir.

8 Q. If it had been exempted income, it would have been a valid

9 request.

10 MR. KEMINS: Same objection, Your Honor.

11 THE COURT: I'll let him answer that. If it had been

12 exempted income, I'll let him answer that.

13 A. Would you repeat. I don't understand.

14 THE COURT: If it was exempted income, would it have

15 been a valid request?

16 THE WITNESS: If it was exempted income?

17 THE COURT: You mean, if he didn't have -- I'm not

18 sure --

19 THE WITNESS: I don't understand the question. I'm

20 sorry.

21 THE COURT: -- doesn't have any income, Mr. McColl?

22 Restate your question.

23 BY MR. McCOLL:

24 Q. Well, don't the CFRs provide that some income is exempted

25 by statute and also under the Constitution as to corporate

1 returns?

2 MR. KEMINS: We're going to object to that question,  
3 Your Honor. That's beyond the scope.

4 THE COURT: Well, that is beyond the scope of the  
5 direct. I think you've dealt with that enough. It really ends  
6 up just being an argument, Mr. McColl. Go on to something  
7 else.

8 MR. McCOLL: Well, Your Honor, if the Court please --

9 THE COURT: Go to something else at this time.

10 BY MR. McCOLL:

11 Q. When you made your evaluation, did you base it on the Code  
12 of Federal Regulations under Chapter 26?

13 A. Yes, sir.

14 Q. And was part of that to analyze his letter, which is  
15 Government's Exhibit 91?

16 A. Yes, sir.

17 Q. Okay. And did you look at the citations that he provided?  
18 Let me see if we're on the same page here. This is a six-page  
19 letter --

20 THE COURT: Mr. McColl, let me have you and  
21 Mr. Kemins come up here.

22 (Bench conference with Mr. Kemins and Mr. McColl:)

23 THE COURT: Mr. McColl, what you're, in effect, doing  
24 is cross-examining to the end of proving that he was wrong in  
25 his conclusion, which means you're trying to prove that the law



1 is not what the law is. And I'm not going to permit that kind  
2 of cross-examination. The law is what the law is.

3 MR. McCOLL: Fine, Judge, but how about a valid, you  
4 know, point that he could say, look, I'm wrong but it was not  
5 totally unreasonable.

6 THE COURT: If your client wants to make that point  
7 when he's on the stand, he can.

8 MR. McCOLL: Well, why can't I get him to say --

9 THE COURT: But we're not to that point yet.

10 MR. McCOLL: Can't I get him to go there, too?

11 THE COURT: No, we're not going to go through that  
12 with this witness.

13 MR. McCOLL: Judge, you're cutting off my right to  
14 cross-examine the most critical witness in the case.

15 THE COURT: Well, your cross-examination is directed  
16 to lead the jury to believe that there might be something about  
17 the Code that caused him not to be required to make those  
18 payments.

19 MR. McCOLL: All right. I won't --

20 THE COURT: And I'm not going to permit that.

21 MR. McCOLL: I won't do that.

22 THE COURT: Okay. Well, you can go back. Don't  
23 proceed in that direction whatsoever.

24 (End of bench conference.)

25 BY MR. McCOLL:

1 Q. Is it your practice or the policy of the IRS when you're  
2 rejecting a claim from a citizen to cite cases, legal cases, if  
3 they have cited cases?

4 A. Not necessarily.

5 Q. Did you have any Supreme Court cases that you could have  
6 cited if you wanted to?

7 THE COURT: That's beyond the scope of the direct.  
8 We're not going into that area.

9 BY MR. McCOLL:

10 Q. Well, I know you said that you --

11 THE COURT: Pardon me. Go on to something else.

12 BY MR. McCOLL:

13 Q. When you said that the cases were against him, were you  
14 referring to any Supreme Court case?

15 A. I don't recall referring to a Supreme Court case.

16 Q. You would agree the Supreme Court is the law of the land.

17 MR. KEMINS: Objection, Your Honor.

18 THE COURT: I'll sustain that objection.

19 BY MR. McCOLL:

20 Q. Assuming that Mr. Simkanin is incorrect in his claim for  
21 this refund, is it correct that CFRs do provide, both by  
22 statute and Constitution, that some corporate income is exempt?

23 MR. KEMINS: Objection, Your Honor. That's beyond  
24 the scope of the direct.

25 THE COURT: That's beyond the scope of the direct.

1 I'll sustain that objection.

2 BY MR. McCOLL:

3 Q. How many telephone conversations did you have with

4 Mr. Simkanin, sir?

5 A. Two.

6 Q. And could you tell us how long each one was?

7 A. I cannot tell you exactly, no, sir.

8 Q. Approximately?

9 A. I do not recall.

10 Q. Do you have any records to reflect that?

11 A. I don't record time limits.

12 Q. Okay. There is no requirement that you make a record by

13 the IRS?

14 MR. KEMINS: He answered that.

15 MR. McCOLL: That's a different question, Your Honor.

16 THE COURT: I'm going to sustain that objection.

17 He's already indicated he does not record time.

18 BY MR. McCOLL:

19 Q. So you don't have any recollection today at all how long

20 you talked to Mr. Simkanin.

21 THE COURT: I think he's already answered that

22 question, Mr. McColl. Do you have any other questions?

23 MR. McCOLL: I've forgotten the answer.

24 THE COURT: He's answered the question he does not

25 recall the time.

1 BY MR. McCOLL:

2 Q. Do you remember how far apart the conversations were that  
3 you had with him?

4 A. No, sir, I don't.

5 Q. Do you remember what year they occurred in?

6 A. 2000.

7 Q. And did you call him or did he call you?

8 A. I called him.

9 Q. Okay. Now, in order to reject this claim, you've got to  
10 do somewhat of a calculation on your own, do you not?

11 A. Yes, sir.

12 Q. And did you do a calculation with regard to his returns?

13 A. Calculation of what?

14 Q. For example, the gross income that was involved in the  
15 taxable income.

16 A. He wasn't -- there was no calculation involved in gross  
17 income. He was seeking a refund of taxes already paid.

18 Q. Right. But wouldn't it be appropriate to see if in  
19 calculating the gross income there had been classes of  
20 excludable income that weren't excluded?

21 MR. KEMINS: Objection, Your Honor.

22 THE COURT: The claims were for withholding that had  
23 already been paid; is that correct?

24 THE WITNESS: Yes, sir.

25 THE COURT: Gross income doesn't have anything to do

1 with that, though.

2 THE WITNESS: Gross income has absolutely nothing to  
3 do with it.

4 THE COURT: Okay. Let's get on to something that's  
5 relevant to his testimony, Mr. McColl. Gross income doesn't  
6 have anything to do with that.

7 MR. McCOLL: Well, maybe I'm confused, Your Honor,  
8 but --

9 THE COURT: Well, just go on and ask a question even  
10 if you are, and we'll see how to deal with it.

11 BY MR. McCOLL:

12 Q. If his accountant or his bookkeeper had made a  
13 determination of gross income that was incorrect and included  
14 excludable income --

15 MR. KEMINS: Objection, Your Honor. That's beyond  
16 the scope.

17 MR. McCOLL: It's in the heart of the scope, Your  
18 Honor.

19 THE COURT: Well, it's nonsensical, so I'm going to  
20 sustain the objection on that ground, since gross income  
21 doesn't have anything to do with what he was dealing with.

22 BY MR. McCOLL:

23 Q. Is it true that there are certain items within the class  
24 of gross income that may be excluded income?

25 MR. KEMINS: Objection, Your Honor. That's beyond

1 the scope.

2 THE COURT: Let me be sure I understand the witness's  
3 testimony. Does gross income have anything to do with your  
4 determinations?

5 THE WITNESS: No, sir. I'm dealing with wages paid,  
6 not gross income.

7 THE COURT: Okay. So let's go on to some other  
8 subject. Let's drop gross income because it doesn't have  
9 anything to do with his testimony, and therefore it would  
10 certainly be beyond the scope of the direct.

11 BY MR. McCOLL:

12 Q. Did you have any conversations with Mr. Simkanin about his  
13 not filing any returns?

14 A. Yes, sir.

15 Q. What was the nature of the conversation?

16 A. I asked him why he hadn't filed any employment tax  
17 returns, forms 941/940.

18 Q. And did he go over some of the items in this multi-page  
19 letter with you to try to explain what his position was?

20 A. To the best of my recollection, the only thing we  
21 discussed was the fact that he believed he didn't have to  
22 withhold payroll taxes from his employees' wages.

23 Q. Okay. In the process, did he explain to you that his  
24 understanding of the definition of income was that it was  
25 profit separated from capital --

1 THE COURT: I think that's beyond the scope of the  
2 direct.

3 MR. McCOLL: I was asking what their conversation  
4 was.

5 THE COURT: I'm telling you that's beyond the scope  
6 of the direct.

7 BY MR. McCOLL:

8 Q. Did you tell him what income was?

9 THE COURT: That's beyond the scope of the direct.  
10 Do you have anything else you want to ask the witness?

11 BY MR. McCOLL:

12 Q. How was it that you knew that courts -- or lower courts --  
13 you said you didn't have any Supreme Court opinions -- that  
14 lower courts, not the law of the land, had ruled --

15 MR. KEMINS: Objection to the form of the question.  
16 Argumentative.

17 THE COURT: And I sustain the objection. Rephrase  
18 the question.

19 BY MR. McCOLL:

20 Q. How was it that you knew that some lower courts had ruled  
21 against his position?

22 A. Because I've dealt with cases of this type in the past,  
23 and I've done research.

24 Q. You've dealt with many or few cases in the past?

25 A. Few.

1 Q. Just a few? And did you read any Fifth Circuit cases  
2 about this?

3 A. I don't recall.

4 MR. KEMINS: Objection, Your Honor. It's way beyond  
5 the scope.

6 THE COURT: I sustain the objection.

7 BY MR. McCOLL:

8 Q. Do you understand --

9 THE COURT: I sustain that objection. Let's don't  
10 delve further into the issue of what courts have decided.  
11 That's been dealt with enough.

12 MR. McCOLL: May I ask if he knows what  
13 jurisdiction --

14 THE COURT: No. I think it's been dealt with enough.  
15 Go on to another subject.

16 BY MR. McCOLL:

17 Q. Did he explain to you that he understood that social  
18 security was not a mandatory system that you had to participate  
19 in?

20 A. We did not talk about social security.

21 Q. But is that your understanding, that it's voluntary?

22 MR. KEMINS: Objection, Your Honor.

23 THE COURT: I sustain the objection.

24 BY MR. McCOLL:

25 Q. Within the scope of your expertise as an employment



1 specialist, do you --

2 MR. KEMINS: Same objection, Your Honor.

3 THE COURT: Well, I haven't heard this question.

4 Go ahead and ask the question.

5 MR. McCOLL: Go ahead and sustain us, Judge.

6 THE COURT: Pardon?

7 BY MR. McCOLL:

8 Q. Within the scope of your expertise --

9 THE COURT: Is this the same question you just asked  
10 rephrased?

11 MR. McCOLL: No, Your Honor.

12 THE COURT: Doesn't have anything to do with social  
13 security?

14 MR. McCOLL: Different question.

15 THE COURT: Okay. Go ahead.

16 BY MR. McCOLL:

17 Q. Within the scope of your expertise as an employment  
18 specialist, do you deal with Medicare and social security  
19 issues?

20 A. Yes, sir.

21 Q. And in that process, have you come to find out whether  
22 social security is mandatory for an employer to participate in?

23 MR. KEMINS: Your Honor, objection. This is beyond  
24 the scope of anything we asked him.

25 THE COURT: It's beyond the scope of the direct. I

1 sustain the objection.

2 BY MR. McCOLL:

3 Q. From the employee's perspective, do you know of your own  
4 personal knowledge and your expertise, whether an employee can  
5 go to an employer and say, "I don't wish to participate in the  
6 social security program and please do not deduct for me for  
7 that purpose"?

8 MR. KEMINS: Objection again, Your Honor. It's  
9 beyond the scope.

10 THE COURT: That's beyond the scope of the direct. I  
11 sustain the objection.

12 Please, Mr. McColl, try to keep your questioning within  
13 the scope of the direct. Do you have any other questions?

14 MR. McCOLL: I'm just having difficulty  
15 understanding --

16 THE COURT: Do you have any other questions,  
17 Mr. McColl?

18 MR. McCOLL: Yes, Your Honor, I do.

19 BY MR. McCOLL:

20 Q. In August of 2000 you started this review; is that  
21 correct?

22 A. Yes, sir.

23 Q. And when did you conclude it?

24 A. Late August 2000.

25 Q. So it took about a month?

1 A. Yes, sir.

2 Q. Okay. And did you say that you researched some law?

3 A. Yes, sir.

4 Q. And what law did you research?

5 A. I don't recall the specific cases.

6 Q. Did you send him an opinion letter?

7 A. No, sir.

8 Q. And I think you told us you didn't give him a court case?

9 THE COURT: If he's already said that, we don't need  
10 to go over it again.

11 BY MR. McCOLL:

12 Q. Did you say that?

13 THE COURT: Mr. McColl --

14 MR. McCOLL: I don't remember.

15 THE COURT: -- let's move forward. He's already  
16 answered that question once. Let's move forward.

17 BY MR. McCOLL:

18 Q. Did you look at any regulations?

19 A. Yes, sir.

20 Q. Which ones?

21 MR. KEMINS: Asked and answered and beyond the scope,  
22 Your Honor. We'd object.

23 THE COURT: Oh, go ahead and answer. Do you remember  
24 which regulations you looked at?

25 THE WITNESS: I don't recall the specifics, but it

1 would have covered the regulations for 3401.

2 BY MR. McCOLL:

3 Q. And did you discuss those with Mr. Simkanin?

4 A. No, sir.

5 Q. Why?

6 A. He didn't have any questions after I told him I was  
7 denying his claim.

8 Q. But you didn't feel compelled to offer any explanations?

9 THE COURT: Let's don't argue with him about it.  
10 He's already answered the question.

11 BY MR. McCOLL:

12 Q. Is it the policy of the IRS to offer an explanation?

13 MR. KEMINS: Objection, Your Honor.

14 THE COURT: I'm going to sustain the objection.  
15 Let's stay within the scope of the direct examination.

16 BY MR. McCOLL:

17 Q. When you deny a claim from a citizen who gives you a --

18 THE COURT: Pardon me, Mr. McColl, that's a different  
19 way of asking the same question. I've already sustained the  
20 objection to the question. Go on to another question.

21 BY MR. McCOLL:

22 Q. Well, are there guidelines that you act under when you're  
23 involved with this process?

24 MR. KEMINS: We're going to object, Your Honor.

25 Again, that's beyond the scope.

1 THE COURT: Are there guidelines you act under. No,  
2 go ahead and answer the question. Are there guidelines you act  
3 under?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay.

6 BY MR. McCOLL:

7 Q. Do the guidelines call for you to provide anything in  
8 writing to the citizen?

9 A. Yes, sir.

10 Q. And did there come a point when you did that?

11 A. No, sir, but --

12 Q. Excuse me. Does the guideline require that you have to be  
13 requested?

14 A. No, sir.

15 Q. Now, part of Mr. Simkanin's understanding of this depends  
16 a great deal on whether the tax is on people or property or  
17 activity; is that correct?

18 MR. KEMINS: Objection, Your Honor.

19 THE COURT: That's beyond the scope of the direct.

20 MR. McCOLL: Your Honor, this is in evidence.

21 THE COURT: Pardon me, Mr. McColl. Don't you respond  
22 in that manner. You go on to another question.

23 BY MR. McCOLL:

24 Q. What class of tax was applied, direct or indirect?

25 MR. KEMINS: Objection, Your Honor, beyond the scope.

1 THE COURT: Mr. McColl, if you are unable to ask a  
2 question within the scope of the direct, I'm going to have to  
3 conclude that your questioning of this witness is concluded,  
4 that you've exhausted the questions that are appropriate to ask  
5 of this witness. So I'm going to give you another chance to  
6 ask questions, if you have any to ask, within the scope of the  
7 direct. And when you ask them beyond the scope, I'll conclude  
8 that you've run out.

9 BY MR. McCOLL:

10 Q. Did you think this was a thoughtful, five-page letter that  
11 he sent you?

12 MR. KEMINS: Objection, Your Honor.

13 THE COURT: I'll let him answer that.

14 A. I'm not sure I understand your question.

15 BY MR. McCOLL:

16 Q. Well, do you know what "thoughtful" means?

17 A. Yes, sir.

18 Q. Okay. Did you think some thought had gone into the  
19 letter?

20 A. I thought some thought had went into it, yes.

21 Q. It cites probably 20 regulations and numerous court cases,  
22 correct?

23 A. Yes, sir.

24 Q. Can you see how a person might have this view by  
25 reading --

1 THE COURT: Pardon me. That's an argumentative  
2 question. I'm going to give you one more chance, Mr. McColl,  
3 to ask an appropriate question.

4 BY MR. McCOLL:

5 Q. Did you tell him he could appeal when you denied his  
6 claim?

7 A. Yes, sir.

8 Q. Do you know whether he did or not?

9 A. We didn't get to the point of issuing a formal claim  
10 disallowance letter because criminal investigation had already  
11 intervened and had a freeze code on it.

12 Q. And what is the normal process had he wanted to appeal the  
13 decision?

14 THE COURT: I think that's beyond the scope of the  
15 direct. Mr. McColl, unless you have another question within  
16 the scope, I'm going to ask that you be seated.

17 MR. McCOLL: Thank you, Your Honor.

18 THE COURT: Okay. Do you have any other questions?

19 MR. KEMINS: Nothing.

20 THE COURT: May this witness be excused?

21 MR. KEMINS: Subject to recall, Your Honor.

22 THE COURT: Okay. You can step down. You're subject  
23 to being recalled as a witness by the government, but you can  
24 leave the courtroom at this time.

25 Call your next witness.

1 MR. JARVIS: Your Honor, the government calls Randy  
2 Perdue.

3 THE COURT: Okay. You may proceed.

4 MR. JARVIS: Thank you, Your Honor.

5 RANDY PERDUE,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. JARVIS:

9 Q. Mr. Perdue, would you state your name and spell it for the  
10 record, please.

11 A. Yes, my name is Randy Perdue. R-A-N-D-Y P-E-R-D-U-E.

12 Q. And how are you employed, sir?

13 A. I work at First National Bank Mid Cities.

14 Q. How long have you been employed in the field of banking?

15 A. I've been in the banking industry for 24 years.

16 Q. And did you at one time work for a bank by the name of  
17 Western American National Bank?

18 A. Yes, I did.

19 Q. What period of time did you work there, sir?

20 A. I started in 1987 and I'm still employed.

21 Q. Do they have a different name now, though?

22 A. That's correct. We changed names.

23 THE COURT: Let me have you come up here -- The  
24 attorneys come up here a minute, Mr. McColl and Mr. Jarvis.

25 (Bench conference with lead attorneys:)



1 THE COURT: What is going to be the subject of this  
2 testimony?

3 MR. JARVIS: Only three exhibits, Your Honor. The  
4 signature cards, that's it. We're not going into any of the  
5 CTRs, of course.

6 THE COURT: Okay.

7 (End of bench conference.)

8 BY MR. JARVIS:

9 Q. I'm sorry. What period of time were you working with  
10 Western American National Bank?

11 A. I started in 1987.

12 Q. Is that located in Bedford, Texas?

13 A. That is correct.

14 Q. I direct your attention, Mr. Perdue, to Government's  
15 Exhibit 115, 116, and 117. Could you identify those three  
16 documents, sir?

17 A. Yes. Those are signature cards for Arrow Custom Plastics.

18 MR. JARVIS: Your Honor, we would move those into  
19 evidence at this time.

20 THE COURT: They're received.

21 BY MR. JARVIS:

22 Q. 115, the only person on the signature card would be Dianne  
23 Clemonds.

24 A. Yes, sir.

25 Q. And 116, what happened there? Could you describe that as

1 far as change to the signature card?

2 A. Yes. On --

3 Q. Well, first of all, back up and give us a date, if you  
4 would, on 115. The account name and --

5 THE COURT: You have that information. Just read it  
6 into the record, Mr. Jarvis, if you want it in the record.

7 MR. JARVIS: Exhibit 115 would be in the name of  
8 Simkanin, Inc., d/b/a Arrow Custom Plastics, and it's listed as  
9 a corporation for profit. Dianne Clemonds on the signature  
10 card.

11 BY MR. JARVIS:

12 Q. Directing your attention to the next exhibit, 116, that  
13 was revised on 1-3 of 2000. What is happening there on January  
14 the 3rd of 2000, sir?

15 A. They did a revised signature card. They took Dianne  
16 Clemonds off and added Richard Simkanin.

17 Q. Backing up to 115, in your experience in banking, is it  
18 unusual for the president and owner of a corporation to not  
19 even be on the bank signature card?

20 A. Yes, sir.

21 Q. To your knowledge, when Government's Exhibit 115 was in  
22 effect, was Mr. Simkanin the owner of Arrow Custom Plastics?

23 A. Yes, sir.

24 Q. Did he ever explain to you why he didn't want to be on the  
25 bank signature card?

1 A. No, sir.

2 Q. Did Mr. Simkanin explain to you why there was a change  
3 needed in Government's Exhibit 116, pulling Dianne Clemonds off  
4 and putting his name on?

5 A. No, sir.

6 Q. Moving along to Exhibit 117, we're moving from a  
7 corporation to a sole proprietorship; is that correct, sir?

8 A. Yes, sir.

9 Q. And the date of this would be July 13 of 2001.

10 A. That is correct.

11 Q. And is there anyone other than Mr. Simkanin on the  
12 signature card at this time?

13 A. No, sir.

14 MR. JARVIS: Pass the witness.

15 THE COURT: Did you offer 117? All I show you  
16 offered was 114 through --

17 MR. JARVIS: Yes, Your Honor, I offered 115, 116, and  
18 117.

19 THE COURT: Okay. They're admitted.

20 MR. JARVIS: Pass the witness.

21 CROSS-EXAMINATION

22 BY MR. McCOLL:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. If you are the owner of a corporation or the CEO, it's

1 certainly no crime not to be on the signature card, is it?

2 A. Not that I'm aware of any.

3 MR. McCOLL: Thank you.

4 THE COURT: Can this witness be excused?

5 MR. JARVIS: Yes, Your Honor.

6 MR. McCOLL: Yes, sir.

7 THE COURT: You're excused as a witness. You can  
8 step down. You can go about your business.

9 Call your next witness.

10 MR. JARVIS: Your Honor, we would call Mr. Louis  
11 Morris.

12 THE COURT: Come up and be seated here.

13 You may proceed.

14 MR. JARVIS: Thank you, Your Honor.

15 LOUIS MORRIS,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JARVIS:

19 Q. For the record, sir, would you state your full name and  
20 spell it.

21 A. Louis Morris, L-O-U-I-S M-O-R-R-I-S.

22 Q. And how are you employed, sir?

23 A. How am I employed? I'm employed for Dick Simkanin at  
24 Arrow Custom Plastics.

25 Q. And how long have you worked for Dick Simkanin at Arrow

- 1 Custom Plastics?
- 2 A. Over ten years.
- 3 Q. What is your current position, sir?
- 4 A. Tool room manager.
- 5 Q. And how long have you known Mr. Simkanin?
- 6 A. Since '83.
- 7 Q. Do you see him in the courtroom, sir?
- 8 A. Yes, I do.
- 9 Q. The second man to my left?
- 10 A. Yes, it is.
- 11 Q. Let me direct your attention to a period effective January  
12 2000. Were you working at Arrow Custom Plastics at that time?
- 13 A. Yes.
- 14 Q. And did it come to your attention that Mr. Simkanin had  
15 decided to no longer withhold taxes from the wages of the  
16 employees?
- 17 A. Yes.
- 18 Q. And directing your attention to early 2001, about a year  
19 after this had happened, did you contact an individual by the  
20 name of Richard Warren?
- 21 A. Yes, I did.
- 22 Q. Who is Richard Warren, sir?
- 23 A. He's a guy that I ride motorcycles with that happens to be  
24 an IRS agent.
- 25 Q. Did Mr. Simkanin send out some information to various

1 employees explaining basically his position and why he decided  
2 to stop withholding?

3 A. Yes, he did.

4 Q. Let me turn your attention, sir, to Exhibit 148. I  
5 believe it's open in front of you.

6 A. (Nods head.)

7 Q. Do you see that, sir?

8 A. Yes, I do.

9 Q. Did you send this e-mail attachment to Mr. Warren? The  
10 e-mail attachment that Mr. Simkanin sent out, did you forward  
11 it to Mr. Warren?

12 A. Yes, I did.

13 Q. For what purpose, sir?

14 A. To see what his response was to the e-mail I had gotten  
15 from Dick.

16 MR. McCOLL: Can we get an exhibit number, Your  
17 Honor?

18 MR. JARVIS: 148.

19 BY MR. JARVIS:

20 Q. And did Mr. Warren respond -- review the information from  
21 Mr. Simkanin and respond?

22 A. Yes, he did.

23 Q. And did you forward Mr. Warren's comments to Mr. Simkanin  
24 on February 21st, 2001?

25 A. Yes, I did.

1 Q. I direct your attention to Government's Exhibit 148. Is  
2 that a copy of the e-mail you forwarded from yourself to Dick  
3 Simkanin and Jerry Williams?

4 A. Yes, it is.

5 Q. And the --

6 MR. JARVIS: Your Honor, we would move Government's  
7 Exhibit 148 into evidence.

8 THE COURT: It's received.

9 BY MR. JARVIS:

10 Q. Mr. Morris, the two or three lines at the bottom where it  
11 says, "Subject: Taxable income," what is that? What part of  
12 the message is that?

13 A. That's the question that was sent along with the e-mail to  
14 Richard Warren.

15 Q. So it says, "Could you take a minute or two and look this  
16 attachment over and tell me if it is true or not? If not could  
17 you give me some ammunition to dispute it with?" Those are  
18 your words, from Louis Morris to Richard Warren; is that right?

19 A. Yes.

20 Q. Along with the attachment.

21 A. Yeah.

22 Q. And Warren looks it over and sends back Government's  
23 Exhibit 148. How did you -- After you sent this to  
24 Mr. Simkanin on Wednesday, February 21, 2001, at 6:40 in the  
25 morning, did you have a conversation with Mr. Simkanin

1 indicating whether or not he received it, read it, had any  
2 reaction to it?

3 A. Yes, I did.

4 Q. Tell us about that.

5 A. Well, I don't remember a lot of the details about it, but  
6 I just asked him if he got it and what he thought of it.

7 Q. And was that later that same day on February 21st, 2001?

8 A. Yes.

9 Q. Any other discussion about the contents of this e-mail  
10 other than what you've already told us?

11 A. Not that I remember.

12 MR. JARVIS: One moment, please, Your Honor.

13 (Government counsel confer.)

14 MR. JARVIS: We pass the witness at this time.

15 THE COURT: Do you have any questions of this  
16 witness?

17 CROSS-EXAMINATION

18 BY MR. McCOLL:

19 Q. Isn't it true, sir, that Mr. Simkanin, when you showed him  
20 this or sent this to him, told you that if you would come back  
21 with some actual law that he could respond to it?

22 A. I do remember something about that, yes, sir.

23 Q. You were asked about -- by the prosecutor about if he put  
24 out an explanation to the people in the job at Arrow Custom  
25 Plastics, why he stopped withholding. Did he explain that to



1 you in personal conversations?

2 A. Yes.

3 Q. Few or many times?

4 A. Several times.

5 Q. And where would these discussions take place?

6 A. There at work.

7 Q. Did he have a library of material regarding this stuff?

8 A. Yes, he did.

9 Q. Did some of these things make sense to you?

10 A. Yes.

11 Q. Did he seem like he was just trying to get out of paying  
12 taxes?

13 MR. JARVIS: Your Honor, we object to the form of the  
14 question. It calls for speculation.

15 MR. McCOLL: I think he can talk about the demeanor.

16 THE COURT: If I need a response, I'll invite one.

17 MR. McCOLL: Yes, sir.

18 MR. JARVIS: We'd object, Your Honor.

19 THE COURT: You can go ahead and answer that  
20 question.

21 A. Okay. State the question again, please.

22 BY MR. McCOLL:

23 Q. When he presented this information to you, did he seem  
24 like he was just trying to get out of paying taxes?

25 A. No.

1 Q. Seemed sincere about it?

2 A. Yes.

3 Q. And believed that this was the law.

4 A. Yes.

5 MR. JARVIS: Your Honor, again, we'd object to him  
6 speculating about the state of mind of the defendant. We  
7 object.

8 THE COURT: Are you telling me what you thought from  
9 talking to him?

10 THE WITNESS: Yes. From what he said, yes.

11 THE COURT: Okay. I'll overrule the objection. But  
12 you've gone as far as you need to go on that.

13 MR. McCOLL: Yes, sir.

14 BY MR. McCOLL:

15 Q. When it came to -- You said you worked there ten years.  
16 When it came to engineering, did he follow the engineering --

17 MR. JARVIS: Your Honor, we'd object. Beyond the  
18 scope.

19 THE COURT: I can tell it is beyond the scope, so I  
20 sustain the objection.

21 BY MR. McCOLL:

22 Q. Was he a good engineer?

23 MR. JARVIS: Your Honor, again, we object to  
24 relevance and beyond the scope.

25 THE COURT: Do you have anything else you want to ask

1 within the scope of the direct, Mr. McColl? If so, ask it now  
2 and then we'll move on.

3 BY MR. McCOLL:

4 Q. Why did you stay there ten years?

5 MR. JARVIS: Your Honor, again, relevance.

6 THE COURT: I'm going to sustain the objection.

7 BY MR. McCOLL:

8 Q. When you were there -- the beginning of your tenure of ten  
9 years and from the time that -- throughout the ten-year period,  
10 did the company grow?

11 MR. JARVIS: Your Honor, we'd object to relevance.

12 THE COURT: Okay. I sustain that objection.

13 Mr. McColl, I'm going to again ask you to stick within the  
14 scope of the direct. If you have another question within the  
15 scope, ask it; otherwise, be seated.

16 BY MR. McCOLL:

17 Q. Do you know Mr. Simkanin's reputation in the community for  
18 truth and honesty?

19 MR. JARVIS: Your Honor --

20 THE COURT: I sustain the objection.

21 You can be seated, Mr. McColl.

22 Do you have any further questions of this witness,  
23 Mr. Jarvis?

24 MR. JARVIS: No, Your Honor.

25 THE COURT: Can he be excused as a witness?

1 MR. JARVIS: Subject to recall, Your Honor.

2 THE COURT: You can step down now, but you might be  
3 recalled as a witness.

4 Call your next witness.

5 MR. KEMINS: We call Phillip Eastman, Your Honor.

6 THE COURT: You may proceed.

7 MR. KEMINS: Thank you, sir.

8 CHARLES PHILLIP EASTMAN,  
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. KEMINS:

12 Q. Could you give us your full name, spelling your last name,  
13 please.

14 A. Charles Phillip Eastman, last name is spelled  
15 E-A-S-T-M-A-N.

16 Q. And, Mr. Eastman, by whom are you employed?

17 A. The Internal Revenue Service.

18 Q. And how long have you been employed by them?

19 A. Twenty-seven years.

20 Q. And what's your current position within the Internal  
21 Revenue Service?

22 A. I'm a taxpayer compliance officer.

23 Q. And what, briefly, are your duties as a taxpayer  
24 compliance officer?

25 A. Currently I'm a coordinator of five different programs. I

1 coordinate things such as the statutes controls, the  
2 bankruptcy, inventory, the prompt assessment requests, alimony  
3 project, and the preparer projects.

4 Q. As part of your duties with the IRS, did you have any role  
5 whatsoever in the criminal investigation of the defendant,  
6 Mr. Simkanin?

7 A. Other than the responses to the SS-8 letters we sent in.

8 Q. You did not yourself do any investigation.

9 A. No, sir.

10 Q. Now, I've met with you previously and asked you to look at  
11 what's marked as Government's Exhibits 136 through 147; is that  
12 correct?

13 A. Yes, sir.

14 Q. And have you reviewed those?

15 A. Yes, sir.

16 Q. Are those a series of correspondence from the IRS to  
17 Mr. Simkanin and letters back from Mr. Simkanin?

18 A. Yes, sir.

19 Q. And are they official IRS records?

20 A. Yes, sir.

21 MR. KEMINS: Your Honor, at this time I'd move  
22 Government's Exhibits 136 through 147 into evidence.

23 THE COURT: They're received.

24 MR. KEMINS: Thank you.

25 BY MR. KEMINS:

1 Q. Now, Government Exhibit 136, that's a letter from the  
2 Department of Treasury, Internal Revenue Service, dated June  
3 30th, 2000, to Simkanin, Incorporated. It has some phone  
4 numbers and things on there, and it says "Worker, Susan  
5 McIntyre." And it says, "Dear Taxpayer: We have under  
6 consideration, for Federal employment tax purposes, the status  
7 of the above-named worker in the performance of service to you.  
8 The worker states services were rendered for the years 2000."

9 And I would point out that Government's Exhibit 136, 142,  
10 and 147 are similar letters from the IRS to Arrow Custom  
11 Plastics -- 136, 142, and 144 are similar letters from the IRS  
12 to Arrow Plastics; is that correct?

13 A. Yes, sir.

14 Q. And what triggers the sending of this type of letter to an  
15 employer?

16 A. Well, the first letter was triggered by Ms. McIntyre when  
17 she sent us an SS-8 form requesting a determination as to  
18 whether or not she would be considered an employee of the  
19 company.

20 Q. What is an SS-8 form?

21 A. It's a formal questionnaire. It's about four pages long,  
22 legal -- I'm sorry. Letter size, and it's front and back.  
23 It's filled with questions -- well, basically an outline of  
24 what the behavior and financial controls and the relationship  
25 to the firm is with this individual.

1 Q. Now, looking at the other letters we spoke about, Exhibit  
2 142, that involves an employee named Kyle Lampkin, or worker to  
3 be exact. And 144 involves a worker named Katherine Daum.

4 A. Yes, sir.

5 Q. Now, all of these people would have sent in this SS-8 to  
6 the IRS.

7 A. Yes, sir.

8 Q. And why is it important to make a determination for a  
9 worker what their status is with a company?

10 A. Well, primarily the worker is trying to avoid paying  
11 self-employment tax, which is roughly 15.3 percent of the total  
12 income earned at that source. The -- what we did --

13 THE COURT: Let me interrupt a minute. Why don't you  
14 come up here.

15 (Bench conference with Mr. Kemins and Mr. McColl:)

16 THE COURT: I take it that the response was that they  
17 were employees?

18 MR. KEMINS: Well, what's important here is the  
19 response from Mr. Simkanin to these letters. The IRS  
20 ultimately determined at least one of them was an employee.  
21 But these letters triggered responses from Mr. Simkanin that we  
22 think go to our burden of proof.

23 THE COURT: Let's get down to the important issue if  
24 that's what you're leading to.

25 MR. KEMINS: Okay. Yes, sir.

1 THE COURT: Okay.

2 MR. McCOLL: Your Honor, just -- that he protected  
3 the privacy rights, as he saw them, of these employees saying,  
4 "I don't know under what authority are you asking me to give  
5 you information about my employee."

6 THE COURT: You mean that's in the exhibit? I don't  
7 understand what you're --

8 MR. McCOLL: Yes, sir. In his letter.

9 THE COURT: Well, I haven't seen the letters.

10 MR. McCOLL: Well, I just don't understand the  
11 relevance of this.

12 THE COURT: Well, apparently the relevance is  
13 something Mr. Simkanin responded.

14 MR. KEMINS: Yes, sir.

15 THE COURT: So let's get down to that.

16 MR. KEMINS: Yes, sir.

17 (End of bench conference.)

18 BY MR. KEMINS:

19 Q. Now, this letter regarding Ms. McIntyre went in on June  
20 30th, 2000, and Government Exhibit 137 is a reply from  
21 Mr. Simkanin dated 26 July 2000; is that correct?

22 A. Yes, sir.

23 Q. He asked some questions in that, and to move quickly along  
24 here, Government Exhibit 138 is the IRS's response to  
25 Mr. Simkanin's questions in his letter; is that correct?



1 A. Yes, sir.

2 Q. Now, Government Exhibit 139 is Mr. Simkanin again  
3 responding to the IRS's response to his letter; is that  
4 correct?

5 A. Yes, sir.

6 Q. And in that letter he says, "Although your letter contains  
7 the heading 'Department of the Treasury,'" he puts that in  
8 quotes, "it does not indicate the entity of which it is the  
9 treasury of. For all I know, it could be the Department of the  
10 Treasury of Puerto Rico or the Department of the Treasury of  
11 IBM Corporation"; is that correct?

12 A. Yes, sir.

13 Q. Now, again, and this one -- This letter is dated 23 August  
14 of 2000. Now, on September 11th, 2000, the IRS once again  
15 responded to Mr. Simkanin trying to answer his questions; is  
16 that correct?

17 A. Yes, sir.

18 Q. And did you author this letter?

19 A. Yes, sir, I did.

20 Q. And you provided all sorts of enclosures and tried to  
21 answer his questions.

22 A. Yes, sir. Basically I tried to address every question he  
23 had in his prior letter. Or actually prior two letters, the  
24 letter dated July 26th and letter dated August 23rd, 2000.

25 Q. Now, Government's Exhibit 141 is his reply to your letter

1 where he, in effect, said that it looks like all -- whatever  
2 duties you were writing about had been transferred from the IRS  
3 to the Bureau of Alcohol, Tobacco, and Firearms; is that  
4 correct?

5 A. Yes, sir.

6 Q. Now, Exhibit 142 is another one of those SS-8 letters for  
7 another employee; is that correct?

8 A. Yes, sir.

9 Q. Which is dated October 4th, 2000. And on 13 October 2000  
10 Mr. Simkanin again replied, and in that letter he said, in  
11 part, "Please do not include authority under the Corporation  
12 known as 'United States'." He put that in quotes, "'United  
13 States of America', 'USA', or 'U.S.'"; is that correct?

14 A. Yes, sir.

15 Q. And then the IRS wrote him again on December 20th, 2000,  
16 that another one of his workers had written in asking for their  
17 status to be worked out; is that correct?

18 A. Yes, sir.

19 Q. And once again Mr. Simkanin replied and was not going to  
20 answer any of the questions.

21 A. Yes, sir.

22 Q. And then again -- and I should say that reply, which is  
23 Government Exhibit 145, is dated 3 January 2001. On January  
24 19th, 2001, the IRS again responded to Mr. Simkanin; is that  
25 correct?

1 A. Yes, sir.

2 Q. And on the 25th of January 2001, Mr. Simkanin replied and  
3 again said, "Please do not include authority under the  
4 Corporation known as the 'United States', 'United States of  
5 America', 'USA', or 'U.S.'"; is that correct?

6 A. Yes, sir.

7 Q. Now, again, these letters that went out, these SS-8  
8 letters, they were triggered by his employees writing into the  
9 IRS; is that correct?

10 THE COURT: Let's don't summarize. I think we've  
11 already developed all that.

12 A. They were triggered by his workers.

13 THE COURT: When I tell him not to proceed further,  
14 you don't answer the question.

15 THE WITNESS: I'm sorry.

16 THE COURT: Let's get down to something that you  
17 haven't gone over; otherwise, conclude your questioning.

18 MR. KEMINS: Yes, sir. Could I have one second, Your  
19 Honor?

20 THE COURT: Okay.

21 (Government counsel confer.)

22 MR. KEMINS: I have no further questions, Your Honor.  
23 Thank you. Pass the witness.

24 THE COURT: Okay. Do you have any questions of this  
25 witness?

1 MR. McCOLL: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. McCOLL:

4 Q. I think you testified that these letters --

5 THE COURT: You don't need to go over what he's  
6 already testified to. We've heard that. Go on with some  
7 questions.

8 BY MR. McCOLL:

9 Q. Were you able to determine whether or not these workers  
10 for Mr. Simkanin were employees?

11 A. Yes, sir. Our opinion was that they are employees.

12 Q. And there's more than one definition of employee in the  
13 Internal Revenue Code?

14 MR. KEMINS: Objection, Your Honor, beyond the scope.

15 THE COURT: I sustain the objection.

16 BY MR. McCOLL:

17 Q. Which definition of employee did you --

18 THE COURT: I'm sustaining the objection as to the  
19 definitions of employees in the Internal Revenue Code. There  
20 will be no further questions about that from this witness.

21 MR. McCOLL: May I ask him which one he applied?

22 THE COURT: I'm telling you there will be no further  
23 questions on that subject, Mr. McColl.

24 BY MR. McCOLL:

25 Q. Is there a difference of opinion, from time to time,

1 whether or not someone is an employee or not?

2 A. Yes, sir.

3 Q. Now, I know that these letters are somewhat sarcastic, but  
4 does a worker have a right of privacy as to the information  
5 about him when you contact a business person?

6 MR. KEMINS: Object, Your Honor, beyond the scope.

7 THE COURT: Yes. That's beyond the scope of the  
8 direct and, plus, don't have a preamble into your question  
9 that's a statement. Ask only questions. I sustain the  
10 objection to that question.

11 BY MR. McCOLL:

12 Q. Are you hampered in your work at all in trying to get  
13 information by the Privacy Act?

14 MR. KEMINS: Objection, Your Honor. That's --

15 THE COURT: I sustain the objection.

16 BY MR. McCOLL:

17 Q. To your knowledge, can an employer get in trouble or  
18 violate any law with regard to the privacy of an employee by --

19 THE COURT: I sustain that objection as well, and I'm  
20 going to ask that you be seated unless you have a question  
21 that's within the scope of the direct that you would like to  
22 ask.

23 MR. McCOLL: Thank you, Your Honor.

24 THE COURT: Okay. Can this witness be excused?

25 MR. KEMINS: Subject to recall, Your Honor.

1 THE COURT: Okay. You're excused. You can step  
2 down, but you're not excused as a witness. You're excused from  
3 the stand, but the government might recall you.

4 Call your next witness.

5 MR. JARVIS: Your Honor, we would call Ron Wright.

6 THE COURT: You may proceed.

7 MR. JARVIS: Thank you, Your Honor.

8 RON WRIGHT,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. JARVIS:

12 Q. For the record, sir, would you state your full name and  
13 spell it for the record.

14 A. Ron Wright, R-O-N W-R-I-G-H-T.

15 Q. And how are you employed, sir?

16 A. I'm the district director for Congressman Joe Barton.

17 Q. How long have you been with Congressman Barton?

18 A. About three years, nine months.

19 Q. What are your duties as a district director?

20 A. We have three congressional offices. I oversee those  
21 three offices and fill in for the Congressman at meetings and  
22 events when he's in D.C.

23 Q. As part of those duties, do you handle correspondence or  
24 letters to the Congressman from constituents?

25 A. Yes.

1 Q. Let me direct your attention, Mr. Wright, to Government's  
2 Exhibit 131. Let me know when you're there.

3 A. I'm here.

4 Q. And if you could keep your hand on 113. We'll be coming  
5 back to that.

6 Could you identify Government's Exhibits 131, 132, and  
7 134.

8 A. Yes. The first two are letters from Mr. Simkanin to the  
9 Congressman regarding the IRS, and the third is a response from  
10 Congressman Barton to Mr. Simkanin.

11 Q. 132 and 133 are from Mr. Simkanin and 134 is the final  
12 response from the Congressman?

13 A. That is correct.

14 MR. JARVIS: Your Honor, we would move into evidence  
15 Government's Exhibits 131, 132, and 134.

16 THE COURT: They're received.

17 BY MR. JARVIS:

18 Q. Now, 131, dated 11 January 1999, is that a correct date?

19 A. No. We believe that that is an incorrect date.

20 Q. What should it be, sir?

21 A. That should be 2001, I believe.

22 Q. And do you know that just by referring to the other  
23 letters, the series of correspondence?

24 A. Yes.

25 Q. 2001 or 2000?

1 A. 2000, I beg your pardon.

2 Q. So he starts off on 11 January 2000, and is it your  
3 responsibility to respond to that letter?

4 A. Yes. We routinely will respond to all such letters.

5 Q. What, if anything, did you do as far as contacting the  
6 IRS, or whatever?

7 A. Typically, and as we did in this case, we forward the  
8 constituent's concerns to the relative federal agency, in this  
9 case the IRS, for their response, which we then forward back to  
10 the constituent.

11 Q. Were there a series of letters in between January and  
12 August of 2000 between you and Mr. Simkanin?

13 A. Yes, there were.

14 Q. Direct your attention to Government's Exhibit 132. Would  
15 you tell us the purpose of this letter, sir?

16 A. This is --

17 Q. From Mr. Simkanin to the Congressman.

18 A. Congressman Barton. Yes, this is another letter from  
19 Mr. Simkanin where he is not satisfied with the IRS, the  
20 response he's getting from the IRS.

21 Q. On page 2 of the letter, sir, again on Exhibit 132, does  
22 he make reference to new legislation being introduced by  
23 Congressman Ron Paul?

24 A. Yes, he does.

25 Q. And directing your attention to Government's Exhibit 113,



1 is that a copy of a press release by Congressman Ron Paul  
2 describing that new legislation, HR 4855?

3 A. Yes, it is.

4 MR. JARVIS: Your Honor, we would move in  
5 Government's Exhibit 113.

6 THE COURT: It's received.

7 BY MR. JARVIS:

8 Q. And what is the purpose of the new legislation by  
9 Congressman Paul?

10 A. The legislation would basically abolish the requirement  
11 for withholding tax and require citizens to pay taxes on a  
12 monthly basis.

13 Q. All right. Moving, sir, to Government's Exhibit 134,  
14 could you tell us what that is? A letter dated March 15 of  
15 2001.

16 A. This is a letter from Congressman Barton to Mr. Simkanin  
17 explaining the response that we had received from the IRS.

18 Q. In the prior correspondence, had Mr. Simkanin basically  
19 taken the position that wages are not subject to tax?

20 A. Yes.

21 Q. Paragraph three of Congressman Barton's letter states, "In  
22 answer to your letter, the Taxpayer Advocate has responded;  
23 yes, the income of Americans who live and work exclusively  
24 within the United States is subject to the income tax imposed  
25 by Title 26, United States Code, Section 1. I've also enclosed

1 material to inform you of the position taken by the IRS and the  
2 Taxpayer Advocate Service regarding current statutory arguments  
3 disputing the legality of the individual income tax. I trust  
4 that this information will be of assistance to you."

5 Walk us through the attachments and what they are and why  
6 did you give these attachments to Mr. Simkanin?

7 A. These are bulletins from the IRS that we routinely will  
8 send to constituents in matters like this that explains why  
9 withholding tax is necessary. There's also a bulletin to  
10 employees warning them about employers that may fail to  
11 withhold their taxes.

12 Q. These are called consumer alerts, the first attachment  
13 dated February 14 of 2001, Consumer Alert to Watch For  
14 Employers Failing To Withhold Taxes. Did you include that?

15 A. Yes, we did.

16 Q. Paragraph two, "These schemes are based on an incorrect  
17 interpretation of the Internal Revenue Code that wages are not  
18 a source of income and that the definition of sources of income  
19 does not apply to U.S. individuals. This incorrect  
20 interpretation is contrary to the express language of the  
21 Internal Revenue Code and its regulations, and the  
22 interpretation has been refuted in court."

23 In any of your contact with Mr. Simkanin, Mr. Wright, did  
24 he ever ask you to provide him with the court decisions that  
25 had refuted his position?

1 A. I don't recall him requesting any kind of case law, if  
2 that's what you're asking.

3 Q. And the second attachment, also dated February 14 of '01,  
4 the first paragraph of that one says, "No tax is being withheld  
5 from your wages. Illegal schemes are being promoted that  
6 instruct employers not to withhold federal income tax or  
7 employment taxes from wages paid to their employees. These  
8 schemes are based on an incorrect interpretation of tax law and  
9 have been refuted in court. If you have concerns, you can get  
10 help," and then it lists the numbers; is that right, sir?

11 A. That's correct.

12 THE COURT: Isn't that basically the same thing you  
13 read a minute ago, Mr. Jarvis?

14 MR. JARVIS: It's similar, Your Honor.

15 THE COURT: Let's don't go over the same thing  
16 different ways. That's in evidence already. There's no need  
17 to spend a lot of time talking about it.

18 BY MR. JARVIS:

19 Q. Mr. Wright, after you sent -- or after Congressman Barton  
20 sent the letter, Government's Exhibit 134, on March 15, 2001,  
21 did the defendant ever provide to you any court cases to  
22 support his position?

23 A. No.

24 MR. JARVIS: Pass the witness.

25 THE COURT: Okay. Do you have any questions of this

1 witness?

2 MR. McCOLL: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. McCOLL:

5 Q. Good afternoon, sir.

6 A. Good afternoon.

7 Q. In the letter you were asked about, March 15th, Joe Barton  
8 writes, "I completely share your frustration and have worked in  
9 the past to drastically reform the tax code to make it easier  
10 for people to understand." Was that your understanding of  
11 Mr. Barton's objective in sponsoring some legislation?

12 MR. JARVIS: Excuse me, Your Honor. Which exhibit  
13 are we on?

14 MR. McCOLL: Government's 134.

15 BY MR. McCOLL:

16 Q. Because he felt --

17 MR. JARVIS: Excuse me.

18 THE COURT: Was that his objective in sponsoring the  
19 legislation? That was his question.

20 A. To simplify the tax code.

21 BY MR. McCOLL:

22 Q. Yes, sir.

23 A. Yes.

24 Q. To make it easier for people to understand.

25 A. Yes.

1 Q. And in the attachments that you sent with your letter,  
2 they were IRS generated, correct?

3 A. That's correct.

4 Q. There was not one case law or one case cited in any of  
5 those; is that correct?

6 A. I believe that's correct.

7 Q. And in the correspondence and all of the attachments,  
8 et cetera, that Mr. Simkanin sent to you -- or to Joe Barton's  
9 office, you understood in all those filings and in the  
10 attachments that Mr. Simkanin attached to the many things that  
11 he sent you, that he always agreed that we are all subject to  
12 the tax code but not necessarily liable for the particular  
13 taxes; is that correct?

14 A. That was my understanding.

15 MR. McCOLL: Thank you.

16 THE COURT: Okay. Can this witness be excused?

17 MR. McCOLL: Yes, Your Honor.

18 MR. JARVIS: Subject to recall, Your Honor.

19 THE COURT: Okay. You can step down. They're  
20 through with you now, but they may want you again.

21 How many more witnesses does the government now have?

22 I've forgotten. I've lost track.

23 MR. JARVIS: We have one left, Your Honor.

24 THE COURT: And who is that?

25 MR. JARVIS: That would be our case agent, Special

1 Agent Allan McGowan.

2 THE COURT: And how long do you anticipate his  
3 testimony will take?

4 MR. JARVIS: Maybe 10 or 15 minutes on direct, Your  
5 Honor.

6 THE COURT: Okay. That's going to run us well after  
7 6:00 o'clock by cross-examination.

8 MR. McCOLL: Your Honor, I probably won't have too  
9 much, but in light of --

10 THE COURT: If we get through -- I've decided we're  
11 going to quit around 6:00 o'clock if we can, but if it won't  
12 take any longer and if Mr. McColl doesn't have much, we'll go  
13 ahead.

14 Call him on in. You may proceed, Mr. Jarvis.

15 ALLAN McGOWAN,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JARVIS:

19 Q. Would you state your name and spell it for the record.

20 A. My name is Allan McGowan, A-L-L-A-N M-C-G-O-W-A-N.

21 Q. And how are you employed, sir?

22 A. I'm a special agent with Internal Revenue Service.

23 Q. How long have you been with the IRS?

24 A. Since 1982.

25 Q. Are you the case agent assigned to this case?

1 A. Yes.

2 Q. I would like to direct your attention to Exhibit 107.

3 Would you identify that, sir?

4 A. That is the target letter that I hand-delivered to

5 Mr. Simkanin.

6 MR. JARVIS: Your Honor, we would offer that into

7 evidence at this time.

8 THE COURT: It's received. What was the number of

9 that?

10 MR. JARVIS: 107, Your Honor.

11 THE COURT: Okay. Go ahead.

12 BY MR. JARVIS:

13 Q. You didn't have any conversation. You just delivered the

14 letter; is that right, sir?

15 A. That's correct.

16 Q. And did you have occasion, following the date of that

17 letter, to actually deliver some various subpoenas to

18 Mr. Simkanin in May, June, and August of 2001?

19 A. That's correct.

20 Q. Again, just serve the subpoena and no conversation; is

21 that right?

22 A. That's right.

23 Q. I direct your attention to Exhibits 1 and 2. Are you

24 there?

25 A. Yes.

1 Q. All right. Are those the certified records indicating the  
2 official incorporation of records of Arrow Custom  
3 Plastics/Simkanin, Inc.?

4 A. That's correct.

5 MR. JARVIS: We would move Exhibits 1 and 2 into  
6 evidence, Your Honor.

7 THE COURT: They're received.

8 BY MR. JARVIS:

9 Q. Direct your attention, Agent McGowan, to Exhibits 148  
10 through 152.

11 A. You mean 149?

12 Q. Yes, I'm sorry.

13 THE COURT: To 152, is that what you said?

14 MR. JARVIS: Yes, Your Honor. That's correct.

15 THE COURT: Okay. Go ahead.

16 BY MR. JARVIS:

17 Q. And could you identify Exhibit 149, please.

18 A. Exhibit 149 is an IRS news release. It was released on  
19 January 31, 2002. It's entitled the --

20 MR. McCOLL: Objection, Your Honor. May we approach?

21 THE COURT: Yes, you can approach.

22 (Bench conference with lead attorneys:)

23 MR. McCOLL: This is the exhibit, Your Honor, and  
24 it's hearsay. I can't cross-examine.

25 THE COURT: How is that relevant to this case?



1 MR. JARVIS: It goes to willfulness, Your Honor. It  
2 shows that this information was available to all citizens,  
3 including the defendant.

4 MR. McCOLL: But it wasn't given to him.

5 MR. JARVIS: Well, we can recall him in rebuttal. He  
6 talked about he did extensive research, but his research,  
7 apparently --

8 THE COURT: Well, for the time being I'm going to  
9 sustain the objection as to that exhibit. That's 149.

10 MR. JARVIS: All right.

11 (End of bench conference.)

12 MR. JARVIS: Could I have just a moment in light of  
13 the Court's ruling?

14 THE COURT: Yes.

15 (Government counsel confer.)

16 MR. JARVIS: Pass the witness.

17 THE COURT: Let's see, did you offer any of the  
18 exhibits you asked him about other than 149, which I excluded?

19 MR. JARVIS: No, Your Honor.

20 MR. KEMINS: One and 2, we offered 1 and 2.

21 THE COURT: I'm talking about 148 through 151.

22 MR. JARVIS: Actually, it was 149, Your Honor, but --

23 THE COURT: You didn't offer --

24 MR. JARVIS: I didn't offer any of those, and I will  
25 not at this time.

1 THE COURT: Well, I thought you offered Exhibit 149,  
2 but you're saying you didn't offer any of them?

3 MR. JARVIS: No, we had a bench conference before I  
4 offered it, Your Honor.

5 THE COURT: Okay.

6 MR. JARVIS: Pass the witness.

7 THE COURT: Do you have any questions, Mr. McColl?

8 MR. McCOLL: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. McCOLL:

11 Q. Agent McGowan, is that your real name, Allan McGowan?

12 A. Yes.

13 Q. Do you recall Mr. Simkanin testifying in the grand jury  
14 over a year ago that --

15 THE COURT: That's beyond the scope of the direct and  
16 is something I've already instructed that you not go into. Do  
17 you have anything within the scope of the direct that is an  
18 appropriate question to ask? Otherwise, be seated.

19 MR. McCOLL: No, sir. Thank you.

20 THE COURT: Okay. We are going to recess now, and  
21 we'll resume --

22 MR. JARVIS: Excuse me --

23 THE COURT: Well, first of all, does the government  
24 rest?

25 MR. JARVIS: Forgive me, Your Honor, but we might

1 recall one witness very briefly. So we're not going to rest,  
2 but we will rest first thing in the morning after we might call  
3 one witness -- or recall one witness.

4 THE COURT: Okay. We're recessing overnight, and  
5 I'll see you at 8:30 in the morning.

6 (Jury out, 5:56 p.m.)

7 THE COURT: Y'all be seated just a minute.

8 Mr. McColl, I would like to go ahead and swear your  
9 remaining witness, Mr. Paul. Would you call him forward so I  
10 can administer the oath to him.

11 MR. McCOLL: I'll check and see if he's here.

12 THE COURT: Okay.

13 (Brief pause.)

14 MR. McCOLL: He's not here, Your Honor.

15 THE COURT: Is he out in the hall maybe?

16 MR. McCOLL: I don't know.

17 THE COURT: Do you know him when you see him?

18 MR. McCOLL: I do know him when I see him.

19 THE COURT: Why don't you see if maybe he's out in  
20 the hall. Surely he's had time to get here from Houston.  
21 Where was he coming from?

22 MR. McCOLL: I thought it was called Lake of the  
23 Pines. I'm not exactly sure where that is.

24 THE COURT: I think that's down in the Houston area,  
25 I believe.

1           MR. McCOLL: Well, he had some difficulty. It was  
2 kind of a difficult and tortured situation, so we'll see  
3 whether he came.

4           THE COURT: Is he here yet?

5           MR. BEALL: No, sir.

6           THE COURT: Do you know him when you see him?

7           MR. BEALL: Yes, sir.

8           THE COURT: Who are you?

9           MR. BEALL: I'm Charles Beall.

10          THE COURT: Okay. Well, are you going to have him as  
11 a witness? I'm trying to find out where we are. I'm trying to  
12 get some feel for how long we'll be tomorrow.

13          MR. McCOLL: I will call him and I will call a number  
14 -- if you want me to provide it to your court deputy tonight --  
15 to find out if he's coming or not. But, frankly, Your Honor, I  
16 do not know at this point.

17          THE COURT: Okay. We'll leave it that if he is going  
18 to be used as a witness, I'll swear him the first thing in the  
19 morning before the jury is brought into the courtroom.

20          MR. McCOLL: Yes, sir. Is the Court through? I do  
21 have one brief housekeeping.

22          THE COURT: Okay.

23          MR. McCOLL: It's regarding -- the prosecutor and I  
24 have talked about his potential recall of Dianne Clemonds about  
25 -- to show the amount of money that went to Mr. Simkanin. And

1 I didn't know exactly how to approach that and so we thought  
2 we would discuss it with the Court, because it was my  
3 understanding that we had already passed that point and  
4 already --

5 THE COURT: Well, I thought we had, too.

6 MR. KEMINS: Your Honor, if I could address it,  
7 please?

8 THE COURT: Yes.

9 MR. KEMINS: We were concerned about a mistaken  
10 impression the defense's cross-examination of Mr. Kelly left  
11 with the jury, that for the years he had asked him about, 1996  
12 and 1997, that Mr. Simkanin, in fact, had no income. The  
13 government's position is that is not true. That Ms. Clemonds  
14 would testify that at the defendant's instruction she either  
15 took checks made out to cash to the bank to cash and brought  
16 that cash to Mr. Simkanin, or took checks made out in his name  
17 to the bank in those years, cashed them, and brought him the  
18 cash. So we just wanted to correct that. We believe the  
19 mistaken impression brought out in the cross-examination of --

20 THE COURT: So you'll limit it to '96?

21 MR. KEMINS: 1996 and 1997.

22 THE COURT: Well, I think the door has been opened as  
23 to those two years.

24 MR. McCOLL: But, Your Honor, he's not on trial for  
25 that. I was just --

1 THE COURT: Well, why did you ask the witness about  
2 it, then?

3 MR. McCOLL: Because the implication was that he had  
4 done something wrong by not filing.

5 THE COURT: Well, you wanted to persuade the jury  
6 that he didn't do anything wrong by filing, I take it, by your  
7 asking the question and getting the answer?

8 MR. McCOLL: Well, right, but he was an expert there.

9 THE COURT: And since you left that implication with  
10 the jury, the government is entitled to respond to it, so I  
11 will let them make that proof as to those two years.

12 MR. KEMINS: Thank you, Your Honor.

13 THE COURT: Okay. I'll see y'all at 8:30 in the  
14 morning.

15 (Proceedings concluded for the day, 6:00 p.m.)

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17 CERTIFICATE

18 I certify that the foregoing is a correct transcript from  
19 the record of proceedings in the above-entitled matter. I  
20 further certify that the transcript fees format comply with the  
21 those prescribed by the Court and the Judicial Conference of  
22 the United States.

21

22 \_\_\_\_\_  
23 Eileen M. Brewer  
24 Official Court Reporter  
25 Texas CSR No. 3016

\_\_\_\_\_  
Date