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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 6, 2004
. 8:39 a.m.
.

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

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produced by computer-aided transcription.

1

I N D E X

2

GOVERNMENT'S DIRECT EVIDENCE

3

4

WITNESSES:

	Direct	Cross	Redirect	Recross	Voir Dire	Court
Dianne Clemonds	4	12	13	14		
Allan McGowan	14	16				
GOVERNMENT RESTS		17				

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DEFENDANT'S DIRECT EVIDENCE

10

11

WITNESSES:

	Direct	Cross	Redirect	Recross	Voir Dire	Court
Richard Simkanin	18	79	125	132		
Joseph Banister	134	143	147	148		
John Stadtmiller	163	166				
Eduardo Rivera	167	169	182			
Robert Schulz	184	193				
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CLOSING: MR. McCOLL		234				
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GOVERNMENT'S DOCUMENTARY EVIDENCE

21

No.	Description	Offered	Admitted
GX-108	Notice of Expatriation	97	97
GX-109	Notice of Severance	101	101
GX-110	Defendant's Affidavit, 2-18-02	102	102
GX-111	Proclamation of Warning	103	103
GX-149	IRS News Release, 1-31-02	87	87
GX-150	IRS Fact Sheet, April 2001	87	87
GX-151	IRS News Release, 8-24-01	87	87
GX-152	Web Page From irs.gov, April 2001	87	87

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I N D E X

GOVERNMENT'S DOCUMENTARY EVIDENCE CONTINUED

No.	Description	Offered	Admitted
GX-158	International Motorist Card	118	118
GX-172	USA Today Ad, March 2, 2001	96	96
GX-173	USA Today Ad, March 23, 2001	96	96
GX-176	Summary Sheet, Gross Income	15	15
GX-180	Injunction, Eduardo Rivera	170	170
GX-181	Letter From Eduardo Rivera	174	174
GX-182	We The People Ad, 2-16-01	144	144

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

2 THE COURT: Good morning.

3 MR. JARVIS: Good morning, Your Honor.

4 THE COURT: Let me have an attorney for each side
5 come up here just a minute.

6 (Bench conference with lead attorneys:)

7 THE COURT: Here's the charge that I propose to use.
8 Let's see, I've got one for each of you, and here's you one.
9 That's the charge I propose to use, and here's the verdict form
10 I propose to use.

11 MR. JARVIS: Thank you, Judge.

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

13 (End of bench conference.)

14 THE COURT: You may proceed, Mr. Jarvis.

15 MR. JARVIS: Thank you, Your Honor. At this time we
16 would recall Dianne Clemonds.

17 THE COURT: You may proceed.

18 MR. JARVIS: Thank you.

19 DIANNE CLEMONDS,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. JARVIS:

23 Q. Are you the same Dianne Clemonds who testified yesterday
24 at this hearing?

25 A. Yes.

1 Q. Directing your attention to the period 1995 to 1999, did
2 the defendant, Richard Simkanin, receive funds from Arrow?

3 A. Yes.

4 Q. And could you tell us how he received those funds, both in
5 the form of regular checks and then special occasions.

6 THE COURT: I'm sorry, I missed the years. What
7 years did you ask?

8 MR. JARVIS: 1995 through 1999.

9 THE COURT: I think we were limiting this to 1996 and
10 1997. Limit your question to 1996 and 1997.

11 MR. JARVIS: All right, sir.

12 BY MR. JARVIS:

13 Q. And limiting the period to 1996 and 1997, did Mr. Simkanin
14 receive funds from Arrow?

15 A. Yes.

16 Q. Tell us how he received that money.

17 A. In the form of a check.

18 Q. And, again, breaking it down to the two categories of
19 regular checks versus special occasions.

20 A. Okay. There was his regular weekly check, and then on
21 occasion he would come to me and ask -- tell me that he needed
22 me to go to the bank and get cash.

23 THE COURT: Was that during the period of time when
24 you were given the title "president," or was that before that
25 time?

1 THE WITNESS: (Pause.) I don't really recall when I
2 became president.

3 THE COURT: But you were on the bank account at that
4 time?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Go ahead.

7 BY MR. JARVIS:

8 Q. Let's just focus on one category at a time. Now, the
9 regular checks, again, how much was Mr. Simkanin receiving on
10 an average basis in '96 and '97?

11 A. About 1500 a week.

12 Q. And walk us through how he would receive that money. When
13 you say "by check," how was that done?

14 A. It was payroll check.

15 Q. All right. So you would go to the bank -- and just walk
16 us through it slowly.

17 THE COURT: Well, I think she's answered it's by
18 payroll checks. I don't know how you can walk through that too
19 much more.

20 BY MR. JARVIS:

21 Q. Well, are you saying the payroll checks were issued
22 routinely every week, or did you hand-write them?

23 A. No. The payroll checks were issued routinely. Now, there
24 were other occasions that he received checks.

25 Q. On the routine payroll checks of 1500 a week, who were

1 those payable to?

2 A. Richard Simkanin.

3 Q. And how were those expensed on the books and records of
4 Arrow Custom Plastics?

5 A. That went into officer salary, and I'm not sure at what
6 time that it switched to remuneration. So there's probably a
7 period in there where money started going to a remuneration
8 account rather than officer salary account.

9 Q. On the general ledger of -- You would maintain the general
10 ledger of Arrow Custom Plastics; is that correct?

11 A. Yes.

12 Q. And on that general ledger, was there a line item called
13 "remuneration"?

14 A. Yes.

15 Q. Is that where the money that went to the defendant was
16 entered?

17 A. Yes.

18 THE COURT: She said that some of it was entered in
19 the payroll account, Mr. Jarvis.

20 THE WITNESS: Some of it was.

21 MR. McCOLL: Could we have a year on this?

22 THE COURT: Don't force her to say something that's
23 not accurate by your questions. I think we've clarified that
24 now.

25 MR. McCOLL: May we have a date?

1 THE COURT: Pardon?

2 MR. McCOLL: A date. She said she wasn't sure as to
3 the year.

4 THE COURT: I think we're talking about 1996 and
5 1997. I think that's the question.

6 Do you understand that's the time period we're talking
7 about?

8 THE WITNESS: Yes, sir, I understand.

9 BY MR. JARVIS:

10 Q. You're saying part of that period was as a corporate
11 officer and part of that period was remuneration.

12 A. Yes.

13 THE COURT: She's said that already, Mr. Jarvis.
14 Let's don't waste time asking the same question different ways.

15 MR. JARVIS: Yes, sir.

16 BY MR. JARVIS:

17 Q. Now, when you look at the general ledger, is there any way
18 that somebody can tell on the remuneration that it went to
19 Mr. Simkanin?

20 A. No.

21 Q. Now, did there come a time when Mr. Simkanin, on these
22 special checks, special expenses above and beyond the 1500 a
23 week, how were those expensed on the books and records of the
24 corporation?

25 A. That was -- normally he would say to put it in repair and

1 maintenance.

2 MR. McCOLL: Could we have a time period on this,
3 Your Honor?

4 THE COURT: I think we have a time period, and let's
5 don't keep interrupting with that because she's already defined
6 the time period as 1996 and 1997. She doesn't know the exact
7 months, I take it.

8 If you do -- do you know the exact months when these
9 different things happened?

10 THE WITNESS: No, sir. That's been a long time ago.

11 BY MR. JARVIS:

12 Q. In '96 and '97, can you give us an idea of these special
13 expenses, what amounts we're talking about. Just an example.

14 A. 2500, sometimes he'd need 3,000, sometimes he'd need
15 5,000.

16 Q. And was that money going, to your knowledge, to repair and
17 maintenance?

18 A. That's where I was putting it. I mean, that's where I was
19 expensing it. What was he using it for?

20 Q. Yes, ma'am.

21 A. I don't know.

22 Q. Did you hand him, on those special expenses of the amounts
23 you already indicated, did you hand him cash money?

24 A. Yes, sir.

25 THE COURT: At whose request did you do that?

1 THE WITNESS: Dick's.

2 BY MR. JARVIS:

3 Q. On these amounts you've testified to, were there W-2s and
4 1099s issued for those expenses?

5 A. The amounts that -- or the checks that went through
6 payroll, there was withholding and there was W-2 for it. The
7 remuneration amounts, no, there was not anything.

8 Q. Is there any way, ma'am, somebody looking at your general
9 ledger, such as Mr. Kelly, could know that Mr. Simkanin was
10 receiving money from Arrow?

11 MR. McCOLL: Objection, Your Honor, asked and
12 answered and it's unclear.

13 THE COURT: I'll overrule that objection.

14 BY MR. JARVIS:

15 Q. Just looking at the general ledger.

16 A. No.

17 MR. JARVIS: Your Honor, may we approach?

18 THE COURT: Wouldn't the payroll account show on the
19 general ledger that --

20 THE WITNESS: The payroll, yes.

21 THE COURT: So the general ledger would reflect that
22 he received whatever went through the payroll.

23 THE WITNESS: On the payroll, but not in the
24 remuneration.

25 THE COURT: Let's get it clear.

1 MR. JARVIS: Your Honor, may I approach the bench?

2 THE COURT: Yes.

3 (Bench conference with lead attorneys:)

4 MR. JARVIS: Your Honor, based upon the evidence of
5 deception and the lies to Mr. Kelly, we would like to go into
6 '97 and '98 where none of it was reflected on payroll. It was
7 all buried in remuneration.

8 MR. McCOLL: He's not charged with tax evasion.

9 THE COURT: I think they opened the door to '96 and
10 '97, the defendant did. That's what we discussed yesterday and
11 I'm limiting it to that.

12 MR. JARVIS: All right. I take it, then, the CTRs
13 would also --

14 THE COURT: Pardon?

15 MR. JARVIS: I take it, then, the CTRs --

16 THE COURT: This is turned off. You can talk so I
17 can hear you.

18 MR. JARVIS: Yes, sir. I take it, then, the Court's
19 ruling is the same on the CTRs?

20 THE COURT: The ruling is you can't do it. I've
21 already ruled on that about a half dozen times.

22 MR. JARVIS: On the CTRs, yes, sir. Thank you.
23 That's all we have.

24 (End of bench conference.)

25 MR. JARVIS: Could we have just one moment, please?

1 THE COURT: Yes.

2 (Government counsel confer.)

3 BY MR. JARVIS:

4 Q. This remuneration account, Ms. Clemonds, on the line item
5 on the general ledger, who asked you to set up that line item?

6 A. Dick.

7 MR. JARVIS: We pass the witness.

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

10 MR. McCOLL: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. McCOLL:

13 Q. Good morning, Ms. Clemonds.

14 A. Good morning.

15 Q. Now, there was an airplane project that was being built at
16 the plant, and there was repair and maintenance for that and
17 research and development; isn't that correct?

18 A. That's correct.

19 Q. Okay. And there were investments in tugboats in the
20 Middle East; isn't that correct?

21 A. That's correct.

22 Q. And there were investments in real estate in Hico.

23 MR. JARVIS: Your Honor, we object unless it's
24 limited to the time frame we're talking about.

25 THE COURT: Are you talking about 1996 and 1997?

1 THE WITNESS: Yes.

2 MR. McCOLL: Thank you. Appreciate it.

3 THE COURT: Okay. Can this witness be excused?

4 MR. JARVIS: I would like a short redirect.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION

7 BY MR. JARVIS:

8 Q. Ms. Clemonds, on this repair and maintenance, does the
9 corporation, Arrow Custom, normally have a receipt or some
10 documentary evidence to support that in case there's an audit
11 or somebody wants to know about repair and maintenance?

12 A. Normally.

13 Q. Did Mr. Simkanin ever bring you a receipt showing that he
14 used that cash, that \$3,000 or whatever, for repair and
15 maintenance, did he ever bring that back?

16 A. Most of the time not.

17 Q. And, of course, investments in purchases of property down
18 in the Hill Country or the tugboat are not repair and
19 maintenance expenses, are they?

20 A. (Pause.) I suppose that depends on how he was classifying
21 the tugboat, but no, down in the Hill Country I can't see it.

22 MR. JARVIS: That's all we have, Your Honor.

23 THE COURT: Can she be excused?

24 MR. McCOLL: I just have one question.

25 THE COURT: Okay.

1 RE CROSS-EXAMINATION

2 BY MR. McCOLL:

3 Q. So you would agree that if there were repairs necessary on
4 the tugboat, that would be a proper --

5 THE COURT: That's not a proper recross.

6 BY MR. McCOLL:

7 Q. Is that what you said?

8 THE COURT: That's not proper recross. Do you have
9 anything else?

10 MR. McCOLL: No, Your Honor.

11 THE COURT: Okay.

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

13 THE COURT: Okay. You can step down. I understand
14 that you're not excused yet, but you can step down. You're
15 subject to being recalled, according to Mr. Jarvis.

16 Does the government have any other witnesses?

17 MR. JARVIS: We'd like to recall Agent McGowan for
18 our last witness, Your Honor.

19 THE COURT: Okay. You may proceed.

20 ALLAN McGOWAN,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. JARVIS:

24 Q. Agent McGowan, I would like to direct your attention to
25 Government's Exhibit 176. Let me know when you're there.

U.S. DISTRICT COURT

1 A. I'm ready.

2 Q. All right. Did you prepare that chart indicating the
3 approximate gross income Mr. Simkanin received?

4 A. Yes, I did.

5 MR. JARVIS: Your Honor, we would move Exhibit 176
6 into evidence.

7 THE COURT: It's received.

8 BY MR. JARVIS:

9 Q. At my request did you total up the amounts of payments to
10 Mr. Simkanin, as well as his 50 percent share relating to
11 Counts 28, 29, 30, and 31 of the indictment?

12 A. Yes.

13 Q. And the total payments to Mr. Simkanin, did they equal
14 \$820,715? Is that correct?

15 A. That's correct.

16 Q. And his 50 percent community property share would be
17 \$410,357.

18 A. That's right.

19 Q. And attached to Exhibit 176, does that list the minimum
20 filing requirements for the tax years in question, 1998, '99,
21 2000, and 2001?

22 A. That's correct.

23 Q. And based upon the amounts listed in the chart, was
24 Mr. Simkanin above the minimum filing requirement?

25 A. Yes, he was.

1 Q. All right. Based upon the evidence there in the chart,
2 was Mr. Simkanin required to file an individual tax return for
3 1998, '99, 2000, and 2001?

4 A. Yes, he was.

5 MR. JARVIS: We pass the witness, Your Honor.

6 THE COURT: Okay. Do you have any questions?

7 MR. McCOLL: I do.

8 CROSS-EXAMINATION

9 BY MR. McCOLL:

10 Q. Mr. McGowan, you're not a CPA, are you?

11 A. No.

12 Q. And you don't have a major in accounting?

13 A. Yes.

14 Q. You do have a major in accounting?

15 A. Yes.

16 Q. So you know that this just shows gross income, don't you?

17 A. Yes.

18 Q. And it's just an estimate, isn't it?

19 A. It's a very low estimate.

20 Q. Right, but it's just an estimate.

21 MR. JARVIS: Your Honor, we would object. There's an
22 admission on this point and now it's being disputed,
23 apparently.

24 MR. McCOLL: No, I'm trying to clarify.

25 THE COURT: Well, why was there evidence offered,

1 Mr. Jarvis, if it's established by an admission?

2 MR. JARVIS: Because I want the chart into evidence
3 the way we presented it, not buried on a form --

4 THE COURT: Okay. Well, since you want to put on
5 evidence, even though there's an admission in the case, I'm
6 going to let him cross-examine about your evidence. You didn't
7 need to put that evidence on because there was already an
8 admission in the case.

9 You can be seated.

10 BY MR. McCOLL:

11 Q. In other words, the chart just shows, for the jury, the
12 gross rather than the taxable income, correct?

13 THE COURT: I'm going to -- I'm going to say that we
14 won't go into that because the issue is gross, not taxable.

15 MR. McCOLL: Yes, sir. Thank you.

16 THE COURT: Let's don't question about that, because
17 the issue is gross. That's what your stipulation was, gross.

18 MR. McCOLL: Yes, sir. Thank you.

19 THE COURT: Okay. You can step down.

20 MR. JARVIS: Your Honor, at this time the government
21 rests.

22 THE COURT: Okay. Does the defendant have any
23 evidence the defendant wishes to offer?

24 MR. McCOLL: Yes, Your Honor. If the Court please, I
25 just need a minute or two to put some books up at the. . .

1 THE COURT: Okay. Go ahead and do that.

2 MR. McCOLL: Thank you.

3 (Brief pause.)

4 MR. McCOLL: Your Honor, we would call the defendant
5 at this time, Richard Simkanin.

6 THE COURT: Come be seated, Mr. Simkanin.

7 Let's see, wait just a minute, Mr. Simkanin. You haven't
8 been sworn.

9 Have your other witness, Mr. Paul, come in, the one that
10 was to be here yesterday but you said will be here this
11 morning.

12 MR. McCOLL: Your Honor, he's got something like
13 Parkinson's, and apparently --

14 THE COURT: He's not going to be here?

15 MR. McCOLL: Correct.

16 THE COURT: Okay. Raise your right hand to be sworn.

17 (The defendant is sworn.)

18 THE COURT: Okay. Come up and be seated.

19 MR. McCOLL: May I proceed, Your Honor?

20 THE COURT: Yes, you may proceed.

21 RICHARD MICHAEL SIMKANIN,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. McCOLL:

25 Q. Your name is Richard Simkanin; is that correct?

- 1 A. Yes.
- 2 Q. How old a man are you?
- 3 A. I'm 59; will be 60 this year.
- 4 Q. All right, sir. And what is your profession?
- 5 A. I'm an engineer and business owner.
- 6 Q. What kind?
- 7 A. Mechanical engineer.
- 8 Q. Okay. Do you deal with thermodynamics?
- 9 A. Yes, in the molding of plastics.
- 10 Q. Is that your business?
- 11 A. Yes.
- 12 Q. And how long have you done that?
- 13 A. Oh, I've done that for 40 years.
- 14 Q. All right, sir. And did you have a business in the
- 15 mid cities here in the Dallas/Fort Worth area?
- 16 A. Yes.
- 17 Q. When did you start that business?
- 18 A. In 1982.
- 19 Q. All right, sir.
- 20 A. Actually, in 1978. I went into a tool building business
- 21 first in the Fort Worth area and then moved to the mid cities
- 22 area and started both an additional tooling and plastics
- 23 manufacturing operation.
- 24 Q. All right, sir. And as I understand it, in a word you
- 25 build molds for plastic products; is that correct?

1 MR. JARVIS: Your Honor, object to the relevance.

2 THE COURT: I don't think that's relevant to the
3 issues in the case. I sustain the objection.

4 MR. McCOLL: Yes, sir.

5 BY MR. McCOLL:

6 Q. So the jury may understand --

7 THE COURT: Pardon me. Do not make inappropriate
8 comments.

9 MR. McCOLL: Yes, sir.

10 BY MR. McCOLL:

11 Q. Now, did you build that business up over time?

12 A. Yes, I did.

13 Q. And could you give us just some idea about the growth of
14 it over time.

15 MR. JARVIS: Your Honor, again, object to the
16 relevance and history.

17 THE COURT: I'm going to sustain the objection.
18 Let's get to matters that are relevant to this case.

19 MR. McCOLL: Yes, sir.

20 BY MR. McCOLL:

21 Q. Did you pay taxes in the normal manner for several years?

22 A. Yes. When I started the business back in --

23 THE COURT: He just asked you if you paid taxes in
24 the normal manner for several years, and you've answered yes.
25 Listen close to his questions and just answer his questions.

1 BY MR. McCOLL:

2 Q. And did you do that with the advice of professionals?

3 A. Yes, I did.

4 Q. Did that amount to millions over the 20 years that you had
5 the business?

6 A. Yes.

7 Q. And did there come a time when you began to have doubts
8 about the accuracy of the taxes that you were paying?

9 A. I initially paid all my taxes under the assumption that
10 there was a law that required me to do that.

11 THE COURT: He said did there come a point in time
12 when you developed doubts about the payment of your taxes.
13 Just answer that question.

14 BY MR. McCOLL:

15 Q. Yes or no.

16 A. Yes.

17 Q. Okay. Approximately when was that, Mr. Simkanin?

18 A. Would you start all over and repeat that question?

19 Q. Sure. Approximately when was it that you started
20 developing doubts about the accuracy of your tax bill?

21 A. The early '90s.

22 Q. All right, sir. And did you feel you had overpaid the
23 taxes?

24 A. Well, I felt -- I know I'm subject to taxes.

25 THE COURT: No. He wants to know if you felt like

1 you overpaid your taxes. Just listen close to his questions
2 and answer his questions.

3 A. No.

4 BY MR. McCOLL:

5 Q. Was there something that happened in the change of the
6 accounting process that gave you pause or serious --

7 A. During '94, I believe, or '95, we changed our accounting
8 method from the cash method to the accrual method and we
9 instantly obtained a \$300,000 tax bill that greatly upset me.

10 Q. And did you ask for explanations as to that bill?

11 A. Yes. And I actually got some very poor response. My own
12 accounting people could not really explain it because this all
13 came from our CPA firm in Fort Worth, Simpson & Taylor.

14 Simpson & Taylor tried to give me an explanation that the
15 increase in taxes would only be temporary and then the taxes
16 would revert back to a normal amount that we had been paying
17 under the cash accrual. Well --

18 Q. Did you find that to be accurate?

19 A. They could never really explain to me exactly why there
20 would be this hump, if you will, in the tax and then come back
21 down. If he would have told me that you would pay more in
22 taxes and then have a lull in taxes, then it would be --

23 THE COURT: Mr. Simkanin, listen very close to his
24 questions. He simply asked you did you find what they said was
25 accurate.

1 THE WITNESS: Well, sir, the --

2 THE COURT: Listen to his questions and answer his
3 questions.

4 Ask the question again.

5 THE WITNESS: The question is complicated.

6 THE COURT: Pardon me, Mr. Simkanin. Listen to his
7 questions and answer his questions, and don't volunteer
8 information.

9 BY MR. McCOLL:

10 Q. Let me withdraw that question and ask you: How long were
11 you given to pay that bill?

12 A. Three years.

13 Q. And was there an option at that time for you to do one
14 thing or the other?

15 A. Yes. I never could understand exactly why we were
16 supposed to go into the accrual method other than the fact --

17 THE COURT: Mr. Simkanin, he asked you if you had an
18 option.

19 THE WITNESS: Well, I'm trying to explain the option.

20 THE COURT: Answer his question. Did you have an
21 option?

22 THE WITNESS: Yes.

23 BY MR. McCOLL:

24 Q. And what was that option?

25 A. The option was if we voluntarily went to an accrual basis

1 from a cash basis that we could take three years to pay this
2 large sum of money for taxes. But if we were forced to do it
3 by the IRS then the tax bill would become immediately due.

4 Q. Did your company have \$300,000 extra money to pay a tax
5 bill?

6 A. No, we did not.

7 Q. So you opted for the three-year option?

8 A. Yes.

9 Q. All right, sir. After you talked to your own CPAs, did
10 you approach others to try to get answers about why this was
11 required of you --

12 A. Yes, I did.

13 Q. -- or of your company? And did you receive answers that
14 were satisfactory to you?

15 A. No.

16 Q. And then what did you do?

17 A. Well, then I started studying accounting and the actual
18 tax laws myself.

19 Q. Do you see those two books in front of you, the Internal
20 Revenue Code?

21 A. 26 United States Code, yes.

22 Q. Did you start studying those?

23 A. Yes, I did.

24 Q. All right. Did you create a library of material about
25 taxes?

1 A. I probably, at this point in time, have one of the largest
2 private tax book libraries in Texas, yes.

3 Q. All right. And did you consult any CPAs?

4 A. Yes, I did.

5 Q. And was Wayne Paul one of those?

6 A. Yes, he is.

7 Q. Did you ask him his advice about whether or not you were
8 obligated to withhold, for example?

9 A. Yes. I approached him because I felt that I could be
10 wrong. I came to some tentative conclusions, and I needed to
11 have my understanding verified by somebody that was learned and
12 so that's why I approached Mr. Wayne Paul who was a CPA for
13 many years.

14 Q. Now, in your own study, what did you begin with in the
15 process of your study to inform yourself?

16 A. Well, I initially went to Title 26, but I had found that
17 it was so convoluted and very hard to understand, so I figured
18 I would go back to the beginning and start where taxation was
19 instituted and that was in the Constitution.

20 Q. What did you see in the Constitution and read to inform
21 yourself?

22 A. The Constitution provides for two classes of taxes, a
23 direct tax and an indirect tax. This is stipulated in three
24 cites in the Constitution. It's at --

25 MR. JARVIS: Your Honor, I would object and ask for

1 some clarifying instruction to the jury. This is not the law.
2 It's just the defendant's --

3 THE COURT: Well, I'm going to instruct the jury on
4 what the law is in the instructions I give the jury at the end
5 of the case. I do have some misgivings about the relevance of
6 this testimony, but I'll allow it to continue, at least for the
7 time being.

8 BY MR. McCOLL:

9 Q. So you first looked at the Constitution with regard to the
10 taxing clauses.

11 A. Yes. The Constitution in three places talks about
12 taxation. In Article I, Section 2, Clause 3, and in Article I,
13 Section 9, Clause 4, deals with direct taxes.

14 Q. What are direct taxes?

15 A. Direct taxes are taxes that apply to people or property.

16 Q. So, for example, a tax on my car or a tax on my house,
17 that's a direct tax.

18 A. Yes, that's a direct tax, or a tax on you yourself.

19 Q. A poll tax.

20 A. A poll tax would be an example.

21 Q. Per person, that would be a direct tax.

22 A. Yes, sir.

23 Q. And what does the Constitution require with regard to
24 direct taxes?

25 A. The Constitution sets up rules for both of these taxes, a

1 direct tax and an indirect tax. A direct tax to be applied
2 across the country needs to be apportioned according to the
3 census, or population.

4 Q. And is the census correlated with the number of
5 representatives we have in Congress?

6 A. Yes.

7 Q. So has there been a direct tax levied by the Congress in
8 our history as a country?

9 A. In the history of the country, there has only been three
10 direct taxes that have been levied, and the last one was during
11 the Civil War.

12 Q. And so the bill was given to the states; is that correct?

13 A. That's correct.

14 Q. And then it's given --

15 THE COURT: Mr. McColl, let's get this down to the
16 issues that are relevant in this case. I'm going to instruct
17 the jury on the law.

18 MR. McCOLL: Yes, sir.

19 THE COURT: And we're not going to allow a witness to
20 state what the law is contrary to what I'm going to instruct
21 the jury the law is.

22 MR. McCOLL: Absolutely.

23 THE COURT: So if you have some testimony -- you know
24 what the issue is in this case. If you have some testimony
25 relevant to that, let's develop that testimony.

1 MR. McCOLL: Yes, sir.

2 BY MR. McCOLL:

3 Q. Everything you're saying today is not necessarily the law
4 but what you understand the law to be. Is that correct,
5 Mr. Simkanin?

6 A. That's correct.

7 Q. Okay. In arriving -- in trying to understand the tax
8 laws, you just wanted to understand the origin of the taxing
9 power.

10 THE COURT: Let me have the attorneys come up here
11 just a minute.

12 (Bench conference with lead attorneys:)

13 THE COURT: You know, maybe the best way to approach
14 this, because I think you are getting into an area where you're
15 trying to tell the jury what the law is.

16 MR. McCOLL: No, Judge, I don't --

17 THE COURT: Listen to me, Mr. McColl, and don't
18 interrupt.

19 MR. McCOLL: Yes, sir.

20 THE COURT: We're going to -- I'll tell you that the
21 first thing you're going to have to do is establish why he
22 didn't pay. Just ask him why he didn't pay.

23 MR. McCOLL: Okay. I will.

24 THE COURT: And then we can go from there and see how
25 much elaboration we'll allow.

1 MR. McCOLL: Okay.

2 THE COURT: Why he refused to withhold, or whatever
3 you want to call it.

4 MR. McCOLL: Okay.

5 THE COURT: And why he didn't file his tax returns
6 and why he asked for the refunds. Those are the three
7 bottom-line issues, why he did those things. Not what the tax
8 law means but why he did those things.

9 MR. McCOLL: Yes, sir.

10 THE COURT: Then we'll go from there, but let's do
11 that first.

12 MR. McCOLL: Well, I will, but if you'll let me have
13 five predicate questions prior --

14 THE COURT: No. We're going to ask those things
15 first, and not get into what the law is.

16 MR. McCOLL: I'm going to stop asking about the law
17 right now. I just wanted to establish who he relied on and
18 then say is that why -- you know, the part of what. . .

19 THE COURT: Before you talk about anything else
20 having to do with law, we've got to find out what caused him
21 not to do what he should have.

22 MR. McCOLL: Fair enough. I'll stay away from the
23 law for the time being.

24 THE COURT: Okay.

25 (End of bench conference.)

1 BY MR. McCOLL:

2 Q. Realizing that you were not an expert on the law, did you
3 consult other people who had professional degrees?

4 A. Yes.

5 Q. Did you consult, for example, Attorney Ed Rivera?

6 A. Yes, I did.

7 Q. And did you consult a CPA, Joe Banister?

8 A. Yes.

9 Q. And did you consult accountant -- or were you influenced
10 by Accountant Vicki Osborn?

11 A. Yes.

12 Q. And you've already mentioned you consulted with Wayne
13 Paul.

14 THE COURT: If he's already mentioned it, let's don't
15 go over it again.

16 MR. McCOLL: All right.

17 BY MR. McCOLL:

18 Q. And on the basis of the advice and information that you
19 received from these people -- and did that include Robert
20 Schulz?

21 A. Yes.

22 Q. Okay. On the basis of advice that you received from those
23 people, did you come to a decision about whether or not you
24 were going to pay -- whether you were going to withhold from
25 your wage earners at your company and whether you were going to

1 file income tax returns?

2 A. I did.

3 Q. What was that decision?

4 A. That since I could not find a law, or nobody could show me
5 a law, and I could be wrong, but I asked and I sought and I
6 studied and looked in the books. Nobody could show me the law.

7 THE COURT: He simply asked what your decision --
8 Mr. Simkanin, he asked what your decision was. Answer that
9 question.

10 A. Yes.

11 THE COURT: Answer that question. What was your
12 decision?

13 A. To not withhold alleged taxes from the payroll of the
14 people that work for me.

15 BY MR. McCOLL:

16 Q. Now, you sought advice about whether you had to be a
17 withholding agent; is that correct?

18 A. That's correct.

19 Q. And what were you told about what you had to do in order
20 to qualify to be a withholding agent?

21 A. A withholding agent --

22 MR. JARVIS: Objection, hearsay.

23 MR. McCOLL: It's his state of mind, Your Honor.

24 THE COURT: Well, is it being offered for the truth
25 of what he was told, or simply that he was told that?

1 MR. McCOLL: Just that he was told that, Your Honor.

2 THE COURT: Not that it was true.

3 MR. McCOLL: No, sir.

4 THE COURT: Who told you whatever you're getting
5 ready to say you were told?

6 THE WITNESS: Title 26.

7 THE COURT: You read it in the Code?

8 THE WITNESS: Section 1461. And was confirmed --

9 THE COURT: He's not answering what he was told. You
10 might want to ask him another question.

11 BY MR. McCOLL:

12 Q. I understand you came to a tentative conclusion after
13 reading Title 26 and that you also consulted Wayne Paul and
14 others; is that correct?

15 A. Yes.

16 Q. Did you consult Mr. Paul with regard to how to become a
17 withholding agent?

18 A. Yes, I did.

19 Q. And did you tell him you didn't want to be a withholding
20 agent for the government?

21 A. Mr. Paul told me that at this present time I was not a
22 withholding agent for the government because I didn't comply to
23 the regulations and statutes under --

24 MR. JARVIS: Excuse me, Your Honor. May we approach
25 the bench?

1 THE COURT: Go ahead and make an objection if you
2 have one.

3 MR. JARVIS: My objection is to hearsay, relevance,
4 reliance. I would ask there be more specificity as to what he
5 relied upon, otherwise these other witnesses will be --

6 THE COURT: Okay. We're going to go back to what I
7 said when we were at the bench the last time, Mr. McColl. Find
8 out first why he did whatever he did, and then we'll go to the
9 next step.

10 MR. McCOLL: Well, Your Honor, I'm trying to get
11 there. This is part --

12 THE COURT: Let's go to the first step first. Just
13 ask those questions.

14 MR. McCOLL: Okay.

15 BY MR. McCOLL:

16 Q. Why did you not withhold Medicare and social security
17 taxes out of your workers' checks?

18 A. Because of what I had been told by professional opinion
19 from CPAs and attorneys.

20 Q. With regard to what? Your ability --

21 A. To be a withholding agent.

22 Q. Your authorization.

23 A. Yes.

24 Q. Had you made an application to be a withholding agent?

25 A. No, I had not.

1 Q. So you had no authority, in their opinion, to be a
2 withholding agent.

3 A. That is correct.

4 Q. And that's under Title 26, Section 3501 and 3504?

5 A. That's right.

6 THE COURT: Let me be sure I understand what you're
7 saying. You did not withhold the taxes from your employees'
8 wages because you considered that you were not a withholding
9 agent?

10 THE WITNESS: That is correct.

11 THE COURT: Is that the only reason?

12 THE WITNESS: No.

13 THE COURT: What other reason did you have for
14 declining to withhold?

15 THE WITNESS: I did not -- I could not find out what
16 the tax was on. The tax has to be on something.

17 THE COURT: And is there any other reason?

18 THE WITNESS: Those two reasons.

19 THE COURT: Those are the only two?

20 THE WITNESS: Yes.

21 THE COURT: That you did not consider that you were a
22 withholding agent and you couldn't figure out what the tax was
23 on.

24 THE WITNESS: That's correct.

25 THE COURT: Those are the only two reasons why you

1 did not withhold.

2 THE WITNESS: Yes.

3 THE COURT: Okay. Go ahead. We have that defined.

4 MR. McCOLL: Thank you, Your Honor.

5 BY MR. McCOLL:

6 Q. You had talked about your study. Was part of your
7 reasoning that labor is property?

8 THE COURT: He's already given us the reasons why he
9 didn't withhold.

10 MR. McCOLL: Well, Your Honor, I don't think that's
11 the sum total.

12 THE COURT: So let's go on to something else.

13 BY MR. McCOLL:

14 Q. Could you explain how you came to that conclusion, please.

15 A. Yes, but I would have to go back to the Constitution again
16 and explain direct and indirect taxes and where they come from
17 and what applies to those two great classes of taxation.

18 Q. Could you limit what you thought the Constitution says
19 with regard to direct and indirect as to how that applied to
20 withholding from your workers? When you're talking about
21 direct taxes, could you please be specific with regard --

22 A. Yes, I can.

23 Q. Okay. Thank you.

24 A. Money or your paycheck is your property. Property is a
25 direct tax. It has to be applied under the Constitution

1 according to census, according to the population, which means
2 that it needs to be apportioned according to population and not
3 according to the rules under indirect taxation, which means
4 that it simply is uniform. It's a very simple concept.

5 Q. And what was your conclusion about the income tax, about
6 how it fell into whether direct or indirect?

7 THE COURT: Are we going now to income tax? Are you
8 going away from withholding?

9 BY MR. McCOLL:

10 Q. Well, let me ask this: With regard to your study about
11 income tax, was that related to your decision to not withhold
12 Medicare and social security?

13 A. Yes. That has a good basis.

14 Q. And how is that related to your decision not to withhold?

15 A. Under the Supreme Court case Brushaber versus Union
16 Pacific Railroad, I believe that's 240 U.S. 1, the Supreme
17 Court decided that all income tax was an indirect tax.
18 Indirect taxes must be only on activities or privileges.

19 Q. Can they be on property?

20 A. No.

21 Q. And so --

22 A. Property is a direct tax.

23 Q. So because of that Brushaber case saying income tax is
24 only an indirect tax and cannot be on property, that was part
25 of your thinking.

1 A. That is correct. And there are many Supreme Court cases,
2 in fact, not lower court cases, but Supreme Court cases that
3 affirm that.

4 Q. And was part of your educating yourself with regard to
5 your decision and coming to this conclusion about not
6 withholding Medicare and social security, have anything to do
7 with your -- the definition of "income" in the Supreme Court
8 cases that you read?

9 A. Yes, exactly.

10 Q. And what was the definition that you read and how did that
11 relate to your decision about withholding?

12 A. Well, there are many. Which definition are you pointing
13 to?

14 Q. As it relates to labor and capital and profit.

15 A. I think what we're talking about is the definition of
16 "income" as it relates to the income tax. And income can only
17 be derived from property and segregated -- that can be
18 segregated, but it cannot be -- it cannot diminish the value of
19 whatever is being taxed. That, then, is a direct tax.

20 Q. So it's --

21 A. It's like a bank account. If you have money in an
22 account, the interest would be considered an indirect tax,
23 because it doesn't diminish the principal. But if you went in
24 and made a withdrawal and diminished the principal, then that's
25 direct.

- 1 Q. So let me ask you this: In your study with regard to
2 income, because you said it had a bearing on your decision, is
3 the definition of "income" defined in the Internal Revenue
4 Code?
- 5 A. No, it is not.
- 6 Q. So you looked to the Supreme Court for your definition?
- 7 A. That's correct.
- 8 Q. All right. As I understand it, you're saying that it is a
9 gain from labor or a gain from capital separated from that; is
10 that correct?
- 11 A. That's correct. That's what I just tried to explain.
- 12 Q. So if you hire me at \$15 an hour to do a job for you, is
13 that a gain for me?
- 14 A. Basically, it's not.
- 15 Q. And why is that not?
- 16 A. Well, because your labor is worth something. If your
17 labor was worth nothing, then you would have a gain when I gave
18 you a paycheck.
- 19 Q. Now, if I hire Mr. Jarvis and Mr. Kemins to work for me at
20 \$15 an hour, and I hire them -- and I charge you 30 for their
21 labor, is that a gain?
- 22 A. That is a gain to you.
- 23 Q. Okay. So a man's own labor is his property.
- 24 A. That's correct.
- 25 Q. And it cannot be directly taxed.

1 A. That's correct.

2 Q. Because the income tax is an indirect tax, not a direct
3 tax.

4 A. That is correct.

5 Q. Now, you said you relied on the Brushaber opinion?

6 A. Yes.

7 Q. Could I direct your attention to the notebook underneath
8 your -- down on the floor, actually. Was part of your distrust
9 for the IRS in doing your research that they, in your opinion,
10 would misquote the Supreme Court cases?

11 A. The Supreme Court would misquote it?

12 Q. No. The IRS would misquote the Supreme Court cases?

13 A. Yeah, they do it all the time.

14 Q. And I wonder if you would turn to Exhibit 5 in that
15 notebook.

16 A. Okay.

17 Q. Do you see -- you recognize this and as part of your
18 research that you did, you looked at various things, including
19 the way the IRS characterized the Brushaber opinion that you
20 just talked about on their own website, correct?

21 A. Yes.

22 Q. And is it correct that their website states that the
23 Sixteenth Amendment authorizes a direct, nonapportioned tax
24 upon United States citizens throughout the nation?

25 A. That's exactly what it says here.

1 Q. And under your interpretation of the Constitution, that's
2 an oxymoron. It's a contradiction in terms. You can't have
3 that; isn't that correct?

4 A. That's absolutely true.

5 Q. It only authorized an indirect tax.

6 THE COURT: Let's don't keep going over the same
7 thing, Mr. McColl. I think you've made the point you're making
8 more than once already.

9 MR. McCOLL: Yes, sir. I beg your pardon.

10 BY MR. McCOLL:

11 Q. If you turn, please, to Exhibit 6.

12 A. Okay.

13 Q. Do you see -- That is the Supreme Court Brushaber opinion;
14 is that correct?

15 A. That's correct.

16 Q. And if you turn to the next page, page 2, do you see where
17 it says --

18 THE COURT: Which exhibit number are you referring to
19 now? No, I asked you which exhibit number you were referring
20 to. That's all I asked you, Mr. McColl.

21 MR. McCOLL: This was in the documents I gave them.

22 THE COURT: I simply asked you what exhibit number
23 you were referring to.

24 MR. McCOLL: This doesn't have an exhibit number,
25 Your Honor.

1 MR. JARVIS: I object to any reference.

2 THE COURT: Well, we're not going to be reading
3 from some legal opinion, if that's what you're intending to
4 do.

5 MR. McCOLL: Well, if you'll give me just a minute,
6 Your Honor. It's 71, Your Honor, Exhibit 71.

7 BY MR. McCOLL:

8 Q. Did you read -- could you turn -- You've read this
9 opinion.

10 A. Yes, I have.

11 Q. And it was part of your determination to reach the
12 conclusion that you reached, correct?

13 A. Yes.

14 Q. And it states that --

15 MR. JARVIS: Your Honor, I object to quoting from the
16 law.

17 THE COURT: I sustain the objection.

18 BY MR. McCOLL:

19 Q. Did you rely on this opinion in making up your mind about
20 the -- whether or not this was an appropriate thing for your
21 wage earners to have a deduction taken out of their paycheck?

22 A. Yes, I did rely. It's directly from the Supreme Court.
23 Why wouldn't I rely on it?

24 Q. And in reading this, did you come to the conclusion that
25 the website of the IRS was absolutely incorrect?

1 A. Absolutely incorrect.

2 THE COURT: Mr. McColl, I think we're going over the
3 same thing again and again. Let's go to some new material.

4 BY MR. McCOLL:

5 Q. And is that because the Supreme Court said that was an
6 erroneous assumption to state that it was -- the income tax was
7 a direct tax?

8 A. That's part of the Brushaber case. The Brushaber case
9 says that --

10 MR. JARVIS: Objection, nonresponsive.

11 THE COURT: Mr. McColl, I think we've had him --
12 you've had him testify, I don't know how many times, but more
13 than once that he read the Brushaber case as saying that income
14 tax is an indirect tax. I don't think we need to keep going
15 over that.

16 MR. McCOLL: Yes, sir.

17 THE COURT: We heard what he said the first time, and
18 I'm going to instruct the jury on what the law is applicable to
19 the case, notwithstanding what you and your client might say
20 the law is.

21 MR. McCOLL: Yes, sir. And I understand, but I'm
22 trying to --

23 THE COURT: Let's go on. Let's don't keep repeating
24 the same thing.

25 MR. McCOLL: Right.

1 BY MR. McCOLL:

2 Q. Not with regard to the law, Mr. Simkanin, but with regard
3 to your distrust of the IRS, how did this make you feel when
4 you read that the Brushaber opinion said that that was an
5 erroneous assumption?

6 THE COURT: Mr. McColl, you've already asked him that
7 question and he's answered that question. Let's go on to
8 something else.

9 BY MR. McCOLL:

10 Q. Did it affect --

11 THE COURT: Let's go on to something else,
12 Mr. McColl, please.

13 MR. McCOLL: Yes, sir.

14 BY MR. McCOLL:

15 Q. Was there anything else that you learned, for example,
16 from Vicki Osborn that made you distrust the IRS?

17 A. Yes.

18 Q. What was that?

19 A. False entries that I had found on documents called --

20 MR. JARVIS: Your Honor, I object.

21 A. -- that are called IMF --

22 MR. JARVIS: I object.

23 THE COURT: Pardon me. I may be able to raise my
24 voice every now and then, Mr. Jarvis, but you're not entitled
25 to yell in the courtroom.

1 MR. JARVIS: Excuse me.

2 THE COURT: You can be seated.

3 BY MR. McCOLL:

4 Q. Did Ms. Osborn have a radio show?

5 A. Ms. Osborn?

6 Q. Vicki, did she do radio programs regarding --

7 A. I believe that she was a guest on some radio programs.

8 Q. And did you consult her with regard to your own tax
9 situation?

10 A. Yes, I did.

11 Q. And did she conclude that the IRS owed you money?

12 A. Yes.

13 MR. JARVIS: Your Honor, I object to the relevance of
14 this entire line of testimony.

15 THE COURT: Is that your only objection?

16 MR. JARVIS: I object to the relevance, yes, Your
17 Honor.

18 BY MR. McCOLL:

19 Q. Did you consult --

20 THE COURT: Pardon me.

21 Who is she? Who is this lady you say you talked to?

22 THE WITNESS: Ms. Victoria Osborn is a forensic
23 accountant.

24 THE COURT: Forensic?

25 THE WITNESS: Yes, sir.

1 THE COURT: And where is she?

2 THE WITNESS: She's a witness.

3 THE COURT: She's going to be a witness here?

4 THE WITNESS: Yes, sir.

5 THE COURT: But where does she do business?

6 MR. McCOLL: She's from Colorado, Your Honor.

7 THE COURT: I'm not asking you, Mr. McColl. I was
8 asking your client.

9 MR. McCOLL: I'm sorry, Your Honor.

10 THE WITNESS: Colorado Springs, Colorado, sir.

11 THE COURT: How did you find out about her?

12 THE WITNESS: Pardon?

13 THE COURT: How did you find out about her?

14 THE WITNESS: I've heard her speak on several -- as a
15 guest on some talk shows.

16 THE COURT: When did you first become aware of her?

17 THE WITNESS: '97, '98. You asked me when?

18 THE COURT: Yes.

19 THE WITNESS: About '97 or '98.

20 THE COURT: When did you first have contact with her?

21 THE WITNESS: By telephone after I heard her speak on
22 a radio show.

23 THE COURT: '97 or '98?

24 THE WITNESS: Yes, uh-huh.

25 THE COURT: Okay. What was the question? Go ahead

1 with the next question. I have some misgivings about this, but
2 I want to let you develop it as fully as you can within reason.

3 BY MR. McCOLL:

4 Q. Did you rely on anything that Joe Banister, the CPA,
5 provided you?

6 A. Yes, I did.

7 Q. And what was that, please, sir?

8 A. Joe Banister is a CPA, and he confirmed the tentative
9 conclusions that I came up with in reading the tax laws
10 pertaining to withholding and income tax in general.

11 Q. Did you educate yourself with regard to your understanding
12 of whether or not the social security was a mandatory
13 participation program?

14 A. Yes, I did.

15 Q. And what was your conclusion?

16 MR. JARVIS: Your Honor, object to the relevance.

17 THE COURT: I'll overrule the objection. Again, I'll
18 make the point that I'm going to instruct the jury after the
19 evidence is concluded as to what the law is, and what is being
20 said during the trial as to what the law has been interpreted
21 to be will not control on the law applicable to this case.

22 BY MR. McCOLL:

23 Q. And what was your interpretation of the information that
24 you received, Mr. Simkanin, with regard to whether or not
25 social security was a mandatory program or not?

1 A. Well, I might be wrong, but I don't think that I am, but
2 the social security number, to get one, is strictly voluntary.

3 Q. Okay. And if you want a benefit in the social security
4 program, you must participate; is that correct?

5 A. That's correct.

6 Q. And if you don't want the benefit, you don't have to
7 participate; is that correct?

8 A. That's correct. It's voluntary.

9 Q. And did you educate yourself as to groups of people who
10 were not participating legally in the social security system?

11 A. Yes.

12 Q. Could you give us some examples?

13 A. Some teachers don't participate, some government workers
14 do not participate, Congress doesn't participate. There could
15 be others. As a matter of fact, according to the GOA -- or GAO
16 report, three counties in Texas totally pulled out of the FICA
17 program.

18 Q. All right, sir. Could you turn to Defendant's Exhibit No.
19 12, please. Do you have it?

20 A. Yes, sir.

21 Q. Is this the GAO report that you're referring to dated
22 February 1999?

23 A. Yes.

24 Q. And is this part of the process you did to educate
25 yourself with regard to your decision that social security was

1 not a mandatory program?

2 A. Yes.

3 MR. McCOLL: Your Honor, we would offer into evidence
4 Defendant's Exhibit 12.

5 THE COURT: It's denied.

6 MR. JARVIS: Your Honor, we object.

7 MR. McCOLL: Beg your pardon?

8 THE COURT: It's denied.

9 MR. McCOLL: May we approach the bench, Your Honor?

10 THE COURT: Yes.

11 (Bench conference with lead attorneys:)

12 MR. McCOLL: I'm a little confused, because in the
13 last trial you admitted this, and I don't want -- somebody is
14 going to grade my paper, and if I didn't lay a predicate that I
15 laid last time, I'd like an opportunity --

16 THE COURT: I think we made some mistakes in the last
17 trial, and we're going to try not to make them again.

18 MR. McCOLL: Okay. May I know the reason, please,
19 for the Court's ruling to deny this piece of evidence?

20 THE COURT: One of the reasons is you violated my
21 motion in limine.

22 MR. McCOLL: No, Your Honor, the letter is what the
23 motion in limine was on.

24 THE COURT: You violated my motion in limine by
25 offering it. That's one of the reasons.

1 MR. McCOLL: Begging your pardon, Your Honor.

2 Is that your understanding?

3 THE COURT: My motion in limine was to your entire
4 exhibit list.

5 MR. McCOLL: Oh.

6 THE COURT: Okay. So you can proceed.

7 MR. McCOLL: Okay.

8 MR. JARVIS: I apologize to the Court for raising my
9 voice.

10 THE COURT: Okay.

11 (End of bench conference.)

12 BY MR. McCOLL:

13 Q. Mr. Simkanin, have you ever heard the phrase "the tie goes
14 to the runner" --

15 A. Yes.

16 Q. -- in baseball? Did you tell me that in your study that
17 you ran across a Supreme Court case that influenced your
18 thinking powerfully during this period called Gould v. Gould,
19 that basically said the tie --

20 MR. JARVIS: Your Honor, again, we're going to
21 object.

22 THE COURT: I'll let him continue on with this. I'm
23 not sure how far.

24 MR. McCOLL: I won't go very far, Judge.

25 A. Yes.

1 BY MR. McCOLL:

2 Q. That basically says the tie goes to the taxpayer?

3 A. Yes.

4 Q. And what exactly, and very short, 25 words or less, what
5 did that case say to you?

6 A. If there is a discrepancy or a dispute between the citizen
7 and the government, the evidence of the dispute should strongly
8 be toward the citizen and not the government.

9 Q. Did it have more to do with ambiguity, if there was
10 something that was hard to read?

11 A. Yes. The complexity of the issue and more relevance
12 should be given to the citizen than to the government, and
13 that's what Gould versus Gould, a U.S. Supreme Court case,
14 says.

15 Q. In other words, the benefit of the doubt goes to the
16 citizen.

17 A. Yes.

18 Q. And was the reasoning was because the IRS is the one who
19 wrote the statute so they should be accountable?

20 A. Absolutely.

21 Q. Accountable for the clarity.

22 A. Yes.

23 Q. Now, when you were receiving advice from Mr. Paul with
24 regard to the -- your being a withholding agent, was it your
25 understanding that the way it worked -- that you could be a

1 withholding agent if the employee tendered a W-4 to you and
2 asked you to be?

3 A. No.

4 Q. What was your understanding of how it worked?

5 A. Well, a W-4 is supposed to be given to the principal by
6 the worker, and that's what allows the company to withhold
7 monies from the paycheck. That's the only thing that allows
8 that. There's no other reason.

9 Q. All right. And your understanding from that advice, then,
10 sir, was that without the request being tendered from the
11 employee through the W-4 to the employer, that there couldn't
12 be withholding?

13 A. Well, not even in that instance, because the so-called
14 employer needs to apply for a withholding status. He needs to
15 be a withholding agent.

16 Q. All right.

17 A. And that's in 3501 and 3504.

18 Q. So you didn't apply for that, and I think we talked about
19 that.

20 A. That's right, I did not apply.

21 Q. In addition, did you receive advice from Mr. Paul, and was
22 it your understanding, even though it may be wrong, that there
23 had to be a request from the employee through the W-4 and you
24 had to agree to withhold after they tendered it to you?

25 A. That's what the IRS regulations say.

1 Q. And in the absence of that regulation -- Once you enter
2 into that agreement, if they do give it to you and you do
3 agree, can you then give notice to cancel it?

4 A. Yes, you can.

5 Q. And did you receive that advice from Mr. Paul?

6 A. Yes, I did.

7 Q. And did you follow his advice and give notice that you
8 were going to cancel that?

9 A. Yes, I did. This was under regulation 31.3402(p), yes.

10 Q. Does that regulation talk about if the employee "desires"
11 to have withholding?

12 A. Yes, it does.

13 Q. And does it talk about that you as the employer may accept
14 or reject the request from the employee?

15 A. That is exactly true, the way I understand it.

16 Q. And that at some time you may cancel it even if you've
17 agreed to it.

18 A. The agreement may be cancelled by either --

19 THE COURT: Let's don't keep going back over the same
20 thing, Mr. McColl.

21 MR. McCOLL: Yes, sir.

22 THE COURT: I think you've already developed that.

23 BY MR. McCOLL:

24 Q. In giving notice of a cancellation, did you provide that
25 in writing?

1 A. Yes, sir.

2 Q. Was that pursuant to the advice you received from
3 Mr. Paul?

4 A. Yes. Mr. Wayne Paul said that if we wanted to eliminate
5 withholding that we needed to give written notice to the
6 workers prior to doing so. And so that's what I did. I
7 cancelled the W-4 agreements prior to stopping the withholding.

8 Q. All right, sir. Now, Mr. Wayne Paul is not a well man; is
9 that correct?

10 A. No. He's very sick.

11 Q. Do you know exactly what he has?

12 MR. JARVIS: Your Honor, we object unless --

13 THE COURT: I sustain the objection. I think he's
14 made his point. Let's move on.

15 BY MR. McCOLL:

16 Q. Could you turn --

17 MR. McCOLL: May I approach the bench, Your Honor?

18 THE COURT: Yes.

19 (Bench conference with lead attorneys:)

20 MR. McCOLL: This regulation that he's been talking
21 about is Exhibit 44 in the defense exhibits. You have it and I
22 would like, with the Court's permission, to have him -- to
23 introduce it.

24 THE COURT: Oh, I don't think that's necessary. He's
25 already said that that is what he relied on, and I think it

1 will just be piling on to have a regulation itself in evidence.
2 And even if it had some slight relevance, I think the confusion
3 it would cause, having that kind of legal document introduced
4 into evidence, would far outweigh any possible relevance it
5 has. And I think it would be just a waste of time to put in a
6 lot of these things. The jury is not going to decide what the
7 law in this case is. He can say, and he has said and
8 apparently is continuing to say, what caused him to do what he
9 did or to decline to do whatever he should have done. And I'll
10 allow that. We're not going to put all this stuff in evidence.

11 MR. McCOLL: I'm not arguing with the Court at all,
12 but somebody is going to grade my paper on this case, and just
13 for the record I would respectfully object based on the Sixth
14 Amendment.

15 THE COURT: I think the fact that I've declined is
16 sufficient.

17 MR. McCOLL: I'm going to say on the Sixth Amendment,
18 effective counsel and cross-examination. Thank you.

19 THE COURT: Okay.

20 (End of bench conference.)

21 BY MR. McCOLL:

22 Q. Was there anything in the way of -- did you -- was there
23 anything in the way of learning about financial rewards that
24 went to IRS agents for criminal prosecutions that made you
25 suspicious of the IRS?

1 MR. JARVIS: Excuse me. I'm going to object to the
2 relevance of this line of questioning.

3 THE COURT: I'm going to sustain that objection.
4 We're not going into that subject.

5 BY MR. McCOLL:

6 Q. In trying to educate yourself -- Excuse me.

7 (Brief pause.)

8 BY MR. McCOLL:

9 Q. Did you make an effort to understand the tax from the IRS
10 perspective?

11 A. Yes.

12 Q. Did you obtain IRS documents for that purpose?

13 A. Yes, I did.

14 Q. Did you read them?

15 A. Absolutely.

16 Q. Did that dissuade you from -- Was there anything in there
17 that changed your mind?

18 A. Well, from the government's own documents, or the IRS
19 documents, the Internal Revenue Code itself, and then a lot of
20 other publications, 6209 manuals, 80P manuals, all kinds of
21 manuals from the IRS that indicate how to read codes on IMFs
22 and BMFs, which are individual master files and business master
23 files, I found a lot of discrepancy in my own files that I had
24 requested from the IRS.

25 Q. So that confirmed your views about your decision to

1 withhold, pending your getting answers satisfactory to you?

2 A. Yes, that was part of my decision.

3 Q. If you were to receive answers that were satisfactory to
4 you, Mr. Simkanin, realizing that you, at one time, did pay
5 taxes, would you start paying taxes again?

6 A. I would absolutely pay every tax that I would lawfully
7 owe, yes, sir.

8 Q. And do you pay state and local taxes?

9 A. Yes, I do.

10 Q. If you were in a different kind of business, would you
11 recognize that there are taxes that you would have to pay, for
12 example, in some other business?

13 A. Yes, there would be.

14 Q. And could you give the jury an example?

15 A. Well, the Internal Revenue Code, which is about 7,000 --

16 THE COURT: Pardon me. Why don't you repeat your
17 question.

18 MR. McCOLL: Yes, sir.

19 BY MR. McCOLL:

20 Q. In reaching your conclusion that Arrow Custom Plastics did
21 not have an obligation to withhold Medicare and social security
22 from its workers' checks, did you -- were you brought to that
23 decision by realizing that if you were in a different kind of
24 industry that you would, in fact, have to withhold or otherwise
25 pay taxes to the federal government through the Internal

1 Revenue Service?

2 A. But you're talking about two different taxes here. You're
3 talking about income taxes and you're talking about employment
4 taxes.

5 Q. Right. I beg your pardon, and I apologize. You're more
6 learned than I. I misspoke. But with regard to income taxes
7 only, did that help crystalize your thinking in reaching your
8 decision not to withhold from your workers?

9 A. Yes.

10 Q. How?

11 A. The Code specifically --

12 THE COURT: Mr. McColl, I think you asked exactly
13 that same question sometime back, did his thought about income
14 taxes --

15 MR. McCOLL: You're right.

16 THE COURT: -- affect his decision relative to
17 withholding. Let's don't keep going over the same thing over
18 and over again, Mr. McColl. Let's go on to an entirely new
19 subject.

20 MR. McCOLL: Yes, sir.

21 BY MR. McCOLL:

22 Q. And I think you were about to name an industry that if you
23 were in you would pay income taxes on.

24 A. Yes. As a matter of fact, the Code, which is 7,000 pages
25 long, and the reason that it is, is because it names a lot of

1 industry and activity that is taxable.

2 THE COURT: He just wants to know -- His question,
3 Mr. Simkanin, were you about to name an industry that would
4 require payment of income tax if you were in that industry.
5 That was his question.

6 THE WITNESS: Yes.

7 THE COURT: Were you about to name one.

8 THE WITNESS: The manufacturing of fishing lures is
9 one.

10 BY MR. McCOLL:

11 Q. But that sounds pretty minor.

12 THE COURT: Let's don't make a statement.

13 A. Yes, it is.

14 THE COURT: Just go on with your questioning,
15 Mr. McColl.

16 BY MR. McCOLL:

17 Q. Are there others that are in the Code?

18 A. Manufacturing of gasoline and petroleum products.

19 Q. Any others?

20 A. Offshore mining; Alcohol, Tobacco, and Firearms. Any
21 government agency -- GOA (sic), FDIC, FAA, CIA, FBI -- all of
22 these are taxable because they fall under an indirect tax,
23 which is a privilege to work for the government. And that's a
24 privilege so it's taxable, indirect tax.

25 Q. So under 3402 of the Code, was it your understanding that

1 the definition of "employee" was a person who worked for a
2 governmental entity --

3 A. Absolutely.

4 Q. -- including the state and including a political
5 subdivision thereof?

6 A. That is correct. The Internal Revenue Code has many
7 definitions of the term "employee."

8 Q. All right, sir. Could you turn to 3402, which was in the
9 indictment as the document that was sent to you.

10 A. (Witness complies.)

11 THE COURT: Mr. McColl, if this is going into using
12 or making reference to the text of the Internal Revenue Code,
13 we're not going into that at this time.

14 MR. McCOLL: It's just a real short paragraph.

15 THE COURT: We're not going to do that, Mr. McColl.

16 MR. McCOLL: Yes, sir.

17 BY MR. McCOLL:

18 Q. When you received from your accountant the thing that was
19 in the indictment about your obligation to withhold, that was
20 with reference to Section 3401 and 3402; is that correct?

21 A. That's correct.

22 Q. And did you look -- Without going into it, did you look at
23 the definition of "employee"?

24 A. It does not fit the employees at Arrow Plastics.

25 Q. But you looked at it.

1 A. Yes, oh, yes.

2 Q. And you don't have any of the descriptions that are in
3 that definition; is that correct?

4 A. No. This definition of an employee is an elected or
5 appointed official of the --

6 THE COURT: You've answered his question,
7 Mr. Simkanin.

8 MR. McCOLL: Thank you, Mr. Simkanin.

9 THE COURT: Are you almost through with your direct
10 examination?

11 MR. McCOLL: No, Your Honor.

12 THE COURT: How much more do you think it will be?

13 MR. McCOLL: Probably about 30 to 45 minutes.

14 THE COURT: Okay. We're going to take a 15-minute
15 recess, and part of that is so you can sharpen up your notes
16 and bring proper focus on your questioning and let's shorten
17 this down. We're going to take a 15-minute recess.

18 (Court in recess, 9:53 a.m. until 10:16 a.m.)

19 THE COURT: Okay. You may proceed, Mr. McColl.

20 MR. McCOLL: Thank you, Your Honor.

21 BY MR. McCOLL:

22 Q. Mr. Simkanin, yesterday with regard to your responses to
23 the IRS when they asked you for information about your
24 employees, do you remember your letter asking them for their
25 authority?

1 A. Yes, I do.

2 Q. Okay. And what were you basing your letter on?

3 A. I was basing my letter on some Supreme Court decisions
4 that I had read saying that anyone who approaches you from the
5 government, don't just assume that they are from the
6 government, but they need to have proper authority with the
7 proper credentials.

8 Q. All right. Was there any other requirement that you knew
9 of with regard to having a proper control, valid control
10 number, on any form requesting information?

11 A. With regard to forms, there needs to be a proper OMB
12 number on the form.

13 Q. What does OMB stand for?

14 A. Office of Management Budget.

15 Q. And what was your understanding of why that requirement
16 was important to you with regard to the information about your
17 workers?

18 A. It provides validity to the form that it is from the
19 government.

20 Q. All right, sir. With regard to the 1040 form, did you
21 study, with regard to that form, any information that made you
22 feel that filing it was questionable?

23 A. Yes.

24 Q. And what was that information?

25 A. It was several. First, it did not contain a valid OMB

1 number; second, it only asked for foreign earned income, the
2 1040 form.

3 Q. And has it ever been published, to your knowledge, in the
4 federal register?

5 A. No, it has not. And according to the regulations it must
6 be published in the federal register as a notice to the public
7 that it is a valid form, and it has never been published.

8 Q. All right, sir. Did any one of your advisers tell you,
9 you could be civilly liable to your workers for conversion if
10 you withheld from their checks without authority to do so?

11 A. Yes.

12 Q. All right, sir. And who was that?

13 A. Wayne Paul.

14 Q. All right. Could you tell us, please, why your advisers,
15 in your opinion, were more reliable than Taylor and the IRS?

16 A. Yes. The information that I sought from the IRS,
17 especially on their websites, was grossly different from what I
18 had been reading in the Internal Revenue Code itself and the
19 Code of Federal Regulations that fall under the statutes.

20 Q. And --

21 A. So I decided that I needed to get information from
22 somebody, somebody else, be it CPAs or attorneys, to verify the
23 gross misconception or the gross differences that I was coming
24 up with reading the government material and then reading the
25 actual law.

1 Q. Did the advisers you sought specifically address your
2 concerns about the Code of Federal Regulations as it applied to
3 Title 26?

4 A. Yes.

5 Q. For example, the one we just talked about on the WF --

6 A. Yes.

7 Q. -- the desires of the employee, they talked about that
8 with you. Did the IRS respond to your concerns about that?

9 A. The only way the IRS responded to me was with brochures.
10 They did not answer my specific questions as to what law is it
11 that makes me liable or my workers liable for this particular
12 tax. And I never got a response. That's why I sought out
13 other people such as Wayne Paul; Attorney Ed Rivera; I had
14 conversations with CPA Joe Banister; other former IRS agents
15 John Turner, Sherry Jackson; many people I talked to with
16 regard to, is this what I'm reading on the Internal Revenue
17 correct or is the law correct? And, of course, they confirmed
18 my tentative conclusions that, no, the law is correct.

19 Q. Did you also speak with Larken Rose?

20 A. Yes, I did.

21 Q. Are you telling this jury today that your opinion is that
22 the --

23 THE COURT: Mr. McColl, why don't you and Mr. Jarvis
24 come up here a minute.

25 MR. McCOLL: Yes, sir.

1 (Bench conference with leads attorneys:)

2 THE COURT: We're not going to ask any questions that
3 plays to the jury.

4 MR. McCOLL: Yes, sir

5 THE COURT: "Tell the jury." Plus, we're not going
6 to ask an argumentative question of that kind to begin with.

7 MR. McCOLL: Yes, sir.

8 THE COURT: So let's go to something else.

9 MR. McCOLL: Yes, sir.

10 (End of bench conference.)

11 BY MR. McCOLL:

12 Q. Mr. Simkanin, is it your opinion, based on your study that
13 you did to inform yourself, that the income tax laws are -- the
14 idea of the income tax, the income tax is unconstitutional?

15 A. Absolutely not. It is totally constitutional.

16 Q. What is your objection, then? Is it the IRS application
17 of it?

18 A. The IRS is misapplying the application of Title 26, the
19 Internal Revenue Code, as to the application to wages and
20 various other ways they apply the Code. They seem to be doing
21 it in a deceptive manner.

22 Q. Now, when you sent this Government's Exhibit No. 91 in --
23 that's defense exhibit, so I don't think you'll find it there.
24 But we do have it among our exhibits as well -- did you read
25 each and every one of these citations before you put it in

1 here, in this letter?

2 A. Yes.

3 Q. And did you understand them as best you could?

4 A. Yes.

5 Q. Did you feel you were entitled to a more thorough answer
6 than you got?

7 A. (Pause) Yes. I absolutely did not receive any
8 explanation to the cites that I had cited when I asked for that
9 refund. I didn't make a claim. I asked for a refund. And the
10 cites from the statutes, the regulations, that are in that
11 document, say that I was entitled to those refunds.

12 Q. Now, as I understand it, your thinking, what you've
13 described to us today about not withholding Medicare and social
14 security from your workers' paychecks, led you to ask for that
15 same amount back that you had paid on the employer's side
16 earlier; is that correct?

17 A. What I was asking for was the money that my workers paid
18 in, and I was trying to get that money back for them.

19 Q. Okay. And it's the same amount, 7.65 percent.

20 A. That's correct.

21 Q. Whether you're asking for yours or theirs, correct?

22 A. Yes. But they are two different taxes.

23 Q. Correct. Now, is it your understanding that -- Of course,
24 you wouldn't consider yourself a wage earner, correct? You
25 were an officer of the corporation, correct?

1 A. That's correct.

2 Q. So why didn't you file your returns?

3 A. (Pause.) Well, here again, the income tax laws are not
4 being applied according to the law. If they are, then there
5 should be a law in the statutes that say I'm liable for a
6 particular tax. The activities that I was doing at the company
7 that I formed was not a taxable activity. It was not a revenue
8 taxable activity in the 7,000 pages in the Internal Revenue
9 Code. It was not there. A lot of other things were there but
10 not that.

11 Q. Okay. So the examples that you gave earlier of other
12 industries, if you had been in that, you would have filed a
13 return.

14 A. Absolutely.

15 Q. Now, with regard to your support of a bill by
16 Representative Barton, United States Congressman, what --

17 MR. JARVIS: Your Honor, I object. That's a
18 misstatement. The bill was sponsored by Ron Paul, the brother
19 of Wayne Paul, not Congressman Barton.

20 MR. McCOLL: Well, I mean sponsored in the general
21 sense, Your Honor.

22 THE COURT: Why don't you restate the question
23 accurately.

24 MR. McCOLL: Yes, sir.

25 BY MR. McCOLL:

1 Q. Your support that you showed in letters to Congressman
2 Barton with regard to his bill, what prompted you to -- what
3 was your purpose in writing him to show your support?

4 A. Well, this was Ron Paul's bill, and Ron Paul is the
5 brother of Wayne Paul, the CPA that I conferred with. But
6 anyway, Ron Paul was wanting to introduce a bill that would
7 totally eliminate the withholding from workers, and I totally
8 agreed with that and I supported that, not from the standpoint
9 that the existing laws are wrong, but from the standpoint that
10 the existing laws are so confusing and so complicated and
11 convoluted that -- I've been studying this stuff for seven or
12 eight years now and I don't know all of it. You know, my heart
13 goes out to the poor wage earner that --

14 THE COURT: You've answered the question,
15 Mr. Simkanin.

16 A. -- doesn't have a clue what this says.

17 THE COURT: Just listen to his questions and answer
18 his questions.

19 MR. McCOLL: Thank you, sir.

20 BY MR. McCOLL:

21 Q. So your purpose was to clarify the law with regard to
22 withholding.

23 A. Yes, sir.

24 Q. At one point you filed on your website information about
25 expatriation, notice of expatriation and repatriation.

1 A. Yes, I did.

2 Q. Could you tell us what your thinking was in that regard,
3 please.

4 A. I made a mistake. I was so frustrated at not being able
5 to get any answers directly from the government, and looking
6 and reading at books, that I guess I just kind of turned this
7 thing in on myself and looked for other things to do, and that
8 was, okay, I'm going to expatriate from the United States and
9 repatriate into the state where I live, Texas. And maybe that
10 was a foolish move. Okay, I made a mistake. It's my mistake.
11 I didn't hurt anybody. This was all directed to me.

12 Q. And did you explain that to the grand jury over a year
13 ago?

14 THE COURT: Pardon me --

15 A. Yes, I did.

16 MR. McCOLL: I'm sorry.

17 THE COURT: Let's don't go into that.

18 MR. McCOLL: Withdrawn.

19 THE COURT: I think we've already had a discussion
20 about that. I instruct the jury to disregard even the question
21 on that subject.

22 MR. McCOLL: Yes, sir. I apologize to the Court.

23 BY MR. McCOLL:

24 Q. Did you also surrender your driver's license,

25 Mr. Simkanin?

1 A. Yes, I did.

2 Q. And what was your thinking in that regard, please.

3 A. My thinking was, it was with regard to all of the issues
4 that I had been so consumed with over the income tax,
5 fundamental law, Constitution, Declaration of Independence,
6 freedom issues, and I made a mistake. I shouldn't have
7 probably turned in my driver's license, but I did. That was a
8 mistake and I intend to reapply for that license, because it's
9 Texas law. So, okay, I made a mistake and I admit that. But I
10 didn't hurt anybody, didn't commit any crimes.

11 THE COURT: Pardon me, Mr. Simkanin. Just answer his
12 questions. Listen very closely and answer his questions.

13 BY MR. McCOLL:

14 Q. With regard to your thinking and your reading that led you
15 here today, as it relates to territorial jurisdiction of the
16 federal government, did you read anything, any books, any
17 reports, done in the past by the government, or any other
18 literature, that helped crystalize your thinking in that
19 regard?

20 A. Yes, I did. There was a huge, two-volume study done on
21 the interdepartmental study for the jurisdiction of the federal
22 government in states. It was quite an extensive study, and
23 the result was that the federal government does not have
24 complete --

25 MR. JARVIS: Your Honor, again, I object --

1 A. -- legislative authority.

2 MR. JARVIS: Your Honor --

3 THE COURT: Pardon me. If he's objecting,
4 Mr. Simkanin, let him state his objection and discontinue your
5 answer.

6 What is the objection?

7 MR. JARVIS: I object to him testifying about
8 something that's not in evidence and, also, relevance of that.

9 THE COURT: Well, I think he's answered the question,
10 so we'll go on. He's answered the question. Go on to
11 something else.

12 MR. McCOLL: Your Honor, if we could have it read
13 back, I don't think he finished.

14 THE COURT: Well, we'll read it back at an
15 appropriate time. Let's go on to something else now. He's
16 developed that enough. To whatever extent the objection goes
17 to further testimony on that subject, I sustain the objection.

18 MR. McCOLL: May we know the name of the report, Your
19 Honor?

20 THE COURT: Would you go on with another question?

21 MR. McCOLL: May we approach the bench?

22 THE COURT: Yes, approach the bench.

23 (Bench conference with lead attorneys:)

24 MR. McCOLL: Your Honor, he's referring to the Grace
25 Report from 1954 that was authored by an Attorney General of

1 the United States of America. It's on our exhibit list. It's
2 in your exhibits. The government has it.

3 THE COURT: I think you've developed enough testimony
4 on that subject. He said there's some report he had.

5 MR. McCOLL: Right.

6 THE COURT: You want him to tell you what the name of
7 it is?

8 MR. McCOLL: The name and the author. That's all I
9 want.

10 THE COURT: Okay.

11 MR. McCOLL: Thank you.

12 THE COURT: You can ask that.

13 MR. McCOLL: Could we approach -- I'm approaching
14 here because of the motion in limine about my exhibits.

15 THE COURT: We're not going to have the report in
16 evidence.

17 MR. McCOLL: All right.

18 (End of bench conference.)

19 THE WITNESS: We have that as an exhibit.

20 MR. McCOLL: Thank you, Mr. Simkanin.

21 BY MR. McCOLL:

22 Q. And you did read it; is that correct?

23 A. Yes, it's Exhibit 61.

24 Q. Thank you. And the name of the report is the Grace Report
25 written by an Attorney General of the United States; is that

1 correct?

2 A. Well, on the jurisdiction, this is the jurisdiction over
3 federal areas within the states.

4 Q. All right, sir. And the author was?

5 A. This was submitted to the Attorney General and the
6 President in 1956.

7 Q. All right, sir. And the author, does it show the author?

8 A. Well, the government is the author. This is a government
9 document.

10 Q. This is a United States government printing office
11 document, and it was a report submitted to the President of the
12 United States; is that correct?

13 A. That's correct.

14 Q. Did anything in that report conflict with your own
15 thinking that you had developed?

16 A. Conflict?

17 Q. Yes, sir.

18 A. Well, the government report itself says that the
19 government does not have exclusive jurisdiction everywhere
20 within the continental United States.

21 Q. All right, sir. Thank you.

22 A. So its exclusive legislative power is limited to
23 the District of Columbia; territories; possessions;
24 enclaves, military bases; anything that it owns. That's its
25 exclusive jurisdiction. That doesn't mean it doesn't have

1 jurisdiction --

2 THE COURT: I think he asked you if it conflicted --
3 Just answer the question. Did it conflict with any of your
4 views. That was the question. Did it or did it not?

5 THE WITNESS: Yes, it did.

6 THE COURT: Okay. He's answered the question.

7 BY MR. McCOLL:

8 Q. And which views did it conflict with? How did it educate
9 you and bring you here today with regard to your thinking?

10 A. Well, it starts from the assumptions that we have, that we
11 grow up with; and when we start doing some research to find out
12 what the truth of a matter is, then we learn different things.

13 THE COURT: He wants to know how that report
14 conflicted with your views. Answer that question.

15 THE WITNESS: Federal jurisdiction.

16 BY MR. McCOLL:

17 Q. You thought it was pervasive and that report said it was
18 limited.

19 A. That's correct, yes. And the Constitution limits the
20 federal jurisdiction.

21 Q. Mr. Simkanin, did you study any other countries or the
22 laws of any other countries that crystalized your thinking with
23 regard to the enforcement of the Internal Revenue Code?

24 MR. JARVIS: Your Honor, we object. Relevance, the
25 law of other countries.

1 THE COURT: I'm going to sustain that objection.

2 BY MR. McCOLL:

3 Q. Mr. Simkanin, did you put up a bond with regard to the
4 return, the filings that you made in connection with your
5 income tax?

6 A. Yes, I did.

7 Q. Would you tell us what your thinking was in that regard?

8 A. (Pause.) Yes. During my grand jury investigation,
9 Mr. Jarvis --

10 Q. Mr. Simkanin, could you avoid --

11 THE COURT: Just answer his question.

12 BY MR. McCOLL:

13 Q. About your thinking, just about your thinking.

14 A. All right. My thinking was, was that, yes, I could be
15 wrong. In my 3- to 4,000 hours of study, I could have come to
16 a wrong conclusion about owing any particular tax. So in order
17 to avail myself of any possible penalties, I sent a \$3,000 bond
18 along with a statement to the IRS and asked them basically if I
19 had a liability or if I had an assessment that I didn't know
20 about, then please apply this money to it and tell me how much
21 I owe and I'll pay it, if you can show me the law of liability
22 and show me where I was assessed. So, yes, I did send them
23 that.

24 Q. So that was sort of in the way of a security bond?

25 THE COURT: He's already answered your question.

1 A. Yes.

2 THE COURT: Let's don't dwell on that further.

3 MR. McCOLL: Yes, Your Honor.

4 BY MR. McCOLL:

5 Q. Mr. Simkanin, why did you dissolve your corporate
6 structure with regard to Arrow Custom Plastics?

7 A. Basically, I did not need the corporation anymore.

8 Q. And why did you feel you did not need it?

9 A. Having a corporation subjected myself to endless reports
10 that I had to fill out for the government, the bureaucracy; and
11 it was also an attempt to decrease my tax liability within the
12 state pertaining to corporation franchise taxes.

13 Q. All right, sir. Now, when you took this position with
14 regard to the IRS and put them on notice of your position,
15 there were consequences that happened and we've heard about
16 those today. Did your business suffer any effect?

17 A. Yes, it did.

18 MR. JARVIS: I'd object to the relevance of that. It
19 calls for speculation.

20 THE COURT: I sustain that objection.

21 MR. McCOLL: Well, Your Honor, could we approach the
22 bench?

23 THE COURT: Yes.

24 (Bench conference with lead attorneys:)

25 MR. McCOLL: I have three requests. First, I filed a

1 little brief about bias and how it's always relevant, and so I
2 would like to get into the fact that he has a pending civil
3 case against him.

4 THE COURT: I deny that request.

5 MR. McCOLL: All right, sir. And, secondly, I would
6 like to reurge the Court, and I have some law that says motive,
7 when it comes to good faith, is relevant. And I would like
8 briefly -- and I'll write the questions out, or limit me to one
9 question if the Court wants, that his religious feelings about
10 this matter were some part of his motivation, that he'd always
11 been -- Here's the question: Had you always been bothered
12 about this? Yes. But you took no action? Yes. And when you
13 studied the law, did that then motivate you to go ahead and act
14 on the religious beliefs that you had earlier? Yes.

15 THE COURT: He's already told us what his reasons
16 were, and he hasn't said anything about religious beliefs.

17 MR. McCOLL: Well, you had a motion in limine, Judge.
18 He couldn't. I told him you had instructed me to instruct my
19 witnesses.

20 THE COURT: Well, what's your response to that, if he
21 wants to say he was motivated that he had religious beliefs
22 that prevented him from paying taxes? Maybe he ought to be
23 able to say that. What's your response to that, Mr. Jarvis?

24 MR. JARVIS: Well, then I think it's going to open
25 the door to the Proclamation of Warning exhibit where he uses

1 his religious belief to threaten and intimidate everyone
2 through his website.

3 THE COURT: Maybe it will. I'm just asking your
4 view.

5 MR. JARVIS: I think that's within the discretion of
6 the Court. It could go into --

7 THE COURT: I think I'll let him. If he wants to
8 claim he has a religious belief that keeps him from paying
9 taxes. Go ahead.

10 MR. McCOLL: Okay. Your Honor, as to what brought us
11 up here, the particular question that brought us up, I'm trying
12 to remember.

13 THE COURT: I don't know what prompted you to come up
14 here.

15 MR. McCOLL: No, the question --

16 THE COURT: The question that you asked immediately
17 before you came up here had to do with the effect on his
18 business and his decision not to comply with the tax law.

19 MR. McCOLL: Yes, sir. Is there any flavor or
20 variety of question, just one question, that I could ask to
21 show that his business suffered but he persisted in this
22 belief, just to show that it had a negative financial impact on
23 him but that was not enough to deter him, which would go to his
24 good faith.

25 THE COURT: Okay. I'll let you ask that one

1 question.

2 MR. McCOLL: Yes, sir.

3 THE COURT: With his short answer.

4 MR. McCOLL: Yes, sir.

5 (End of bench conference.)

6 BY MR. McCOLL:

7 Q. Despite the negative effect that your position had on your
8 business, why did you continue to persist in your position with
9 regard to the IRS?

10 A. Mr. McColl, truth is truth. Truth in the law is the
11 truth, and I did not --

12 Q. But you could be wrong.

13 A. I could be wrong, but I was not going to compromise doing
14 something that I came to a tentative conclusion, which was
15 backed up by numerous conversations and studies with CPAs and
16 other attorneys.

17 Q. Even though it hurt your business.

18 A. Even though I could hurt the company, yes.

19 THE COURT: I think he's answered the question,

20 Mr. McColl. Do you have any other questions? You've gotten to
21 the point you're just going over the same thing. Go to some
22 fresh material.

23 MR. McCOLL: I'll go to fresh material.

24 BY MR. McCOLL:

25 Q. In a short, very short, manner, is it correct that you had

1 always been bothered by withholding from your workers, from
2 their paychecks, prior to your learning about the law?

3 A. Yes.

4 THE COURT: You've answered his question "yes."

5 BY MR. McCOLL:

6 Q. Why was that?

7 A. Because of other studies in the form of Scripture,
8 particularly pertaining to Proverbs 3:9 where it says that the
9 first fruits of a person's labor should be given unto the Lord.
10 And if I withhold monies from people that work for me, I'm the
11 one that's taking the first fruits and giving it to the IRS.
12 That always weighed heavy on my shoulders.

13 MR. McCOLL: Pass the witness, Your Honor.

14 THE COURT: Do you have any questions you want to
15 ask, Mr. Jarvis?

16 MR. JARVIS: Yes, Your Honor. May I approach the
17 witness and exchange some of the binders?

18 THE COURT: Yes.

19 (Brief pause.)

20 MR. JARVIS: May I proceed, Your Honor?

21 THE COURT: Yes, you may.

22 CROSS-EXAMINATION

23 BY MR. JARVIS:

24 Q. Mr. Simkanin, relating to the time when the accounting
25 firm, Mr. Kelly, told you about this transfer of cash to

1 accrual basis, do you recall that?

2 A. Yes.

3 Q. All right. If you were upset with their explanation, why
4 did you keep retaining that accounting firm until March of
5 2000?

6 A. I don't believe that we retained them until March of 2000.

7 Q. Well, Exhibit 3 is a letter where they resigned as your
8 accounting firm. Are you disputing that?

9 A. (Pause.) No, I'm not disputing that.

10 Q. All right. So you're saying about seven years you kept --

11 THE COURT: Let's don't argue. You made your point
12 that it was up until then before they resigned.

13 BY MR. JARVIS:

14 Q. Under your understanding, wages of Arrow Custom employees
15 are not taxable; is that correct, sir?

16 A. That's correct.

17 Q. And under your understanding of the law, no employer of a
18 company similar to Arrow Custom Plastics has to withhold; is
19 that correct?

20 A. No, I don't know that. I know about Arrow Plastics.

21 Q. Now, since your understanding is the employees must tender
22 a withholding agreement and must be in agreement there, did you
23 give your employees at Arrow the option to enter into such
24 agreements and have you withhold on a case-by-case basis from
25 different employees?

1 A. What period of time are we talking about?

2 Q. Starting in January of 2000 when you stopped withholding,
3 did you go to your employees and say, listen, I'm going to --

4 THE COURT: He simply wanted to know what period of
5 time you were talking about. I think you're saying commencing
6 in January of 2000?

7 MR. JARVIS: Yes.

8 BY MR. JARVIS:

9 Q. Did you give them an option?

10 THE COURT: That's the period of time he's talking
11 about.

12 A. No, I did not.

13 BY MR. JARVIS:

14 Q. If wages of the employees of Arrow are taxable, do you
15 agree that you are the responsible party as the owner to
16 withhold those taxes?

17 A. The wages are not taxable.

18 THE COURT: He asked you to assume hypothetically
19 that they are taxable, and then the question was, are you the
20 person -- have you been the person within the corporation since
21 the beginning of 2000 who would have responsibility to see that
22 there was withholding?

23 THE WITNESS: Only if I would have went through the
24 formality of becoming a withholding agent, yes. Then, and only
25 then, would I be the person liable.

1 BY MR. JARVIS:

2 Q. Did you mention to Mr. Cooper -- I direct your attention
3 to Exhibit 91. Let me know when you're there.

4 A. I'm there.

5 Q. That's the letter you sent to Mr. Cooper on February --
6 or, excuse me, January 28 of 2000, right, sir?

7 A. Yes, it is.

8 Q. Anywhere in that letter do you ever ask Mr. Cooper, if you
9 will simply appoint me as a designated agent and let me apply
10 in the proper form, then I'll start withholding. Did you ever
11 tell Cooper that in your letter?

12 A. No, because I don't want to be an agent.

13 Q. So you're in the driver's seat on that, that's your
14 position?

15 A. (No response.)

16 Q. Let me rephrase it. What you're saying is it doesn't
17 really matter what the IRS does or follows whatever procedures,
18 however proper they might be, your position is, as the employer
19 of Arrow you ultimately can say, no, I don't want to withhold.

20 A. Well, with all due respect, sir, it's the law's position.
21 It's not my position or the IRS's. It's the law. Whatever
22 the law is, is what I'm trying to follow.

23 Q. It's your understanding of the law, right, Mr. Simkanin?

24 A. Yes.

25 Q. And you've conceded you could be wrong.

1 A. I'm trying to follow the law.

2 Q. Do you agree during the period of '96 and '97 you were
3 receiving income from Arrow in the form of \$1,000/1500 a week
4 through Dianne Clemonds?

5 A. Yes.

6 Q. Do you agree you told Mr. Kelly that you were not
7 receiving any funds from Arrow during that same period?

8 A. No, I did not tell Mr. Kelly that.

9 Q. Do you agree you told the employees of Arrow that you are
10 a slave if you pay taxes?

11 A. In a sense I've made comments to the fact that people
12 become tax slaves. Yes, I did mention that.

13 Q. By the way, Mr. Simkanin, how many years of research?
14 Seven or eight years?

15 A. Yes.

16 Q. During that seven or eight years, did you ever attend any
17 law classes, accounting classes, or anything like that?

18 A. No. I was busy also running a business.

19 Q. Other than Mr. Rivera, have you been able to find any
20 other attorney in the entire United States that will come into
21 the courtroom and back you up?

22 A. Yes.

23 MR. McCOLL: Your Honor, that's shifting the burden
24 of proof. We object.

25 THE COURT: I overrule that objection.

1 Your answer was what, yes?

2 THE WITNESS: I believe that Hamilton McMenamy would
3 agree with my conclusions.

4 BY MR. JARVIS:

5 Q. So Hamilton McMenamy is available to testify. Is that
6 what you're saying? He's a Dallas attorney, right?

7 A. He's a Dallas attorney, yes.

8 Q. Do you know of any example of a firm that was held civilly
9 liable if they withheld the taxes from the wages of their
10 employees?

11 A. I don't think I understand your question.

12 Q. Well, I think --

13 THE COURT: He's trying to find out if you're aware
14 of any company or person being held liable to an employee or a
15 group of employees because of having withheld taxes from the
16 wages of that employee or group of employees.

17 A. I believe there was a court case, EEOC versus Computer
18 Systems. I'm not real sure of the name. But that suit
19 involved an employee that demanded that he did not have to give
20 the company a social security number.

21 MR. JARVIS: Your Honor -- Excuse me, Mr. Simkanin.
22 We object.

23 A. And it was settled out of court.

24 THE COURT: Let him finish his answer. It may not be
25 responsive, but let's see what he says.

1 A. The lawsuit was settled out of court. The IRS did not
2 come to the aid of the EEOC.

3 MR. JARVIS: Object, nonresponsive.

4 THE COURT: Is that all you know of? In response to
5 his question, is that the only thing you know of?

6 THE WITNESS: Other civil companies?

7 THE COURT: Okay. His question -- You've told us
8 about a suit that involved the EEOC. Is that what you said?

9 THE WITNESS: That's correct.

10 THE COURT: His question was: Are you aware of any
11 case where a person or company has been held liable for
12 withholding taxes from an employee or employees. That was his
13 question.

14 THE WITNESS: No.

15 BY MR. JARVIS:

16 Q. Did you ask Mr. Rivera to provide you with the name of one
17 of those companies?

18 A. No.

19 Q. By the way, is Mr. Rivera the one who told you that you're
20 subject to civil liability if you continue to withhold taxes?
21 Who told you that?

22 A. Nobody told me that.

23 Q. Where did you come up with that?

24 A. I don't know. Where did you come up with it? That I'm
25 subject to civil liabilities?

1 Q. I believe your testimony on direct is that if I continue
2 to withhold, there was a concern on my part that I could be
3 subjecting myself or my firm to civil liability if I continue
4 to withhold taxes from my employees.

5 A. Okay. Now I know what you're talking about.

6 Q. Okay. Who told you that, sir?

7 A. That is a tentative conclusion that I came up with reading
8 the law, and then I also had that confirmed by both Mr. Rivera
9 and Wayne Paul.

10 Q. Did you ask Mr. Rivera to give you the name of a company
11 that had been sued in that fashion?

12 A. No.

13 Q. Let me direct your attention, sir, to Government's Exhibit
14 149, 150, 151, and 152. Let me know when you're there.

15 A. All right.

16 Q. Now, do you consider yourself, in your extensive research,
17 that you checked and made a good faith search, you looked
18 everywhere to find out what the law was, is that right, sir?

19 A. As well as I could, yes.

20 Q. Left no stone unturned.

21 A. I can't say that we go that far.

22 Q. As part of your search, did you look at the IRS website
23 and consider the IRS news releases that are depicted in
24 Exhibits 149, 150, 151, and 152?

25 A. I have on occasion, and for the most part this information

1 pertains to schemes and scams where people use the Internal
2 Revenue Code to make money.

3 Q. Part of the schemes and scams mentioned in those exhibits
4 are refusing to withhold taxes from your employees.

5 A. What is the scheme or scam?

6 MR. JARVIS: Your Honor, at this time --

7 A. I don't know.

8 BY MR. JARVIS:

9 Q. But you're saying you saw these but you just discounted
10 them; is that correct?

11 A. No, I did not discount them. I wasn't involved in any of
12 them.

13 Q. My question is: Did you see the news release as part of
14 your extensive research?

15 A. Yes, I have seen those news releases.

16 MR. JARVIS: We would offer 149 through 152.

17 MR. McCOLL: Object under 403.

18 THE COURT: They're received.

19 BY MR. JARVIS:

20 Q. Direct your attention, Mr. Simkanin, to Exhibit 152. Let
21 me know when you're there.

22 THE COURT: If you want to read from it, Mr. Jarvis,
23 just read from it. You don't need to go through him.

24 MR. JARVIS: All right, sir.

25 BY MR. JARVIS:

1 Q. Mr. Simkanin, is one of your -- another way to express
2 your position is that only foreign source income is taxable.
3 Is that part of your position, relating to Section 61 of the
4 Internal Revenue Code?

5 A. No.

6 Q. Your position has nothing to do with Section 61 of the
7 Internal Revenue Code -- Section 861?

8 A. Well, I believe that you asked me if my position was that
9 only foreign-earned income was taxable, and, no, that's not my
10 position. Foreign-earned income is taxable, yes, it is. But
11 it's not the only thing that's taxable.

12 Q. Is part of your research of the law dealing with Sections
13 861 and 911, defining sources of income?

14 A. Yes. 861 is located under subsection (n) of Title 26.

15 Q. And page 9 and 10 of Government's Exhibit 152 deal with
16 that section; isn't that right, sir? 861?

17 A. Not that I can see.

18 Q. Page 9, letter (b), first paragraph --

19 A. Exhibit 152?

20 Q. Yes, sir. Are you there?

21 A. Yes. Page 9?

22 Q. Yes, sir. The first paragraph under sub (b), doesn't it
23 mention that the -- the premise of this argument is a
24 misreading of Sections 861, and then below that, "The law: As
25 stated above, for federal income tax purposes, 'gross income'

1 means all income from whatever source derived and includes
2 compensation for services," citing Internal Revenue Code
3 Section 61. "Further, Treasury Regulation Section 1.1-1(b)
4 provides, 'In general, all citizens of the United States
5 wherever resident, and all resident alien individuals are
6 liable to the income taxes imposed by the Code whether the
7 income is received from sources within or without the United
8 States.' Internal Revenue Code Sections 861 and 911 define
9 sources of income for such purposes."

10 And then under that on page 10, there are a number of
11 cases listed that support what I just said. Did you check out
12 any of these cases?

13 A. Yes, I did. And that's another one of the fallacies here
14 that the IRS is misrepresenting that particular section in the
15 Code.

16 Q. Well, are you saying that you disagree with the courts of
17 the United States and the tax courts and the court of claims
18 that hold positions adverse to yours?

19 A. No, I'm not disagreeing with any of these cases at all.
20 They don't pertain to the 861 area of that Code, and this is an
21 area that I relied heavily on an individual by the name of
22 Larken Rose who did extensive study that ties this area into
23 the Constitution. If it wasn't for subtitle (n), or subchapter
24 (n), and 1.861 of the Internal Revenue Code, the Code would be
25 unconstitutional.

1 Q. Mr. Simkanin, you're saying that all of the relevant case
2 law here on page 10, you just disagree. You say all those
3 cases support your position.

4 A. All these cases do not pertain directly to the 861 issue.
5 They are mentioned in the cases, but those cases were not about
6 861, Section 861. And I could be wrong about that, but to the
7 best of my reading ability, I determined that they weren't.
8 And this is why I sought the help of other attorneys and CPAs
9 to read these cases.

10 Q. That would be Mr. Rivera, would be the only attorney
11 that's going to appear today; is that right?

12 A. And there were other paralegals, also, that I consulted
13 with. In other words, I'm trying to get at the truth.

14 Q. Mr. Simkanin --

15 A. The truth.

16 Q. Mr. Simkanin, as part of your -- By the way, as part of
17 your effort to get to the truth, did you cause your
18 disbursements through Dianne Clemonds to be identified on the
19 ledger under your name so it would be clear you were getting
20 the money as opposed to just remuneration?

21 A. It was my company. I owned all the stock.

22 THE COURT: He wants to know if -- Restate the
23 question. I don't think he answered the question. Restate the
24 question.

25 BY MR. JARVIS:

1 Q. Do you agree it was at your direction that all the funds
2 that you received through Arrow bank account, the corporate
3 account, were listed, for the most part, under remuneration
4 without any further identifying information showing that the
5 money actually went into your pocket? That was done at your
6 direction, right?

7 A. The whole corporation, sir, was in my pocket.

8 THE COURT: He wants to know --

9 A. The whole corporation --

10 THE COURT: Pardon me, Mr. Simkanin. Listen close to
11 his question. Was it at your direction that the money that
12 went to you was shown as remuneration on the books of the
13 corporation?

14 THE WITNESS: Yes.

15 THE COURT: Okay. I think that answers the question.

16 BY MR. JARVIS:

17 Q. Now, when you talked to Mr. Kelly in the summer of '99,
18 you told him that the reason you didn't pay taxes is because as
19 a free man you had no obligation to pay taxes or file tax
20 returns; isn't that correct?

21 A. That's not correct. I did not tell Mr. Kelly that I did
22 not pay taxes. I pay all lawful taxes.

23 Q. But just these particular taxes, the federal income taxes,
24 don't have any application to you because you're a free man, a
25 free and sovereign citizen. Isn't that what you told Kelly?

1 A. No, that's not what I told Mr. Kelly. I told Mr. Kelly
2 that I pay all lawful taxes, and if he can show me in the Code
3 where I'm liable for a tax that he thinks that I'm liable for,
4 I will write him a check or write the IRS a check on the spot.
5 Where is the law?

6 Q. Mr. Kelly, with 38 years of experience, disagreed with
7 your position about liability; isn't that right, sir?

8 THE COURT: That's an argument. Let's don't make
9 arguments, Mr. Jarvis. Let's get on with questions.

10 BY MR. JARVIS:

11 Q. Do you agree Mr. Kelly disputed your position?

12 A. (Pause.)

13 Q. He said you were liable.

14 A. Yes.

15 Q. Now, in addition to the reasons you have stated here about
16 -- I think you said you would withhold taxes if you were
17 properly designated through an application to be an agent and,
18 secondly, if you understood what tax to pay; is that right? If
19 you could figure out what the tax was on.

20 A. Yes.

21 Q. Okay. There were other reasons in addition to that,
22 weren't there, sir, for your decision to not withhold taxes?

23 MR. McCOLL: Objection. Vague, Your Honor.

24 THE COURT: I'll overrule the objection.

25 BY MR. JARVIS:

1 Q. In addition to that position, isn't it also clear, isn't
2 it also true, that part of the basis of your position to refuse
3 to file income tax returns and to withhold taxes is that you
4 have, in the past, rejected the jurisdiction of the federal
5 government and challenged the constitutionality of the tax
6 laws.

7 A. I believe I made the statement earlier that I believe that
8 the tax laws are totally constitutional.

9 THE COURT: No, he's asking you if in the past you
10 had done certain things, not what you said today, but what you
11 had done in the past.

12 Restate your question.

13 MR. McCOLL: Object, beyond the scope.

14 THE COURT: No. I think his reasons for doing things
15 is directly on the scope of the direct.

16 Restate the question.

17 He's not asking you about what you said today. He's
18 asking about what you might have said in the past.

19 BY MR. JARVIS:

20 Q. Isn't it true in the past you have stated other positions
21 to explain why you have refused to withhold taxes and refused
22 to file tax returns?

23 A. I don't know what you're referring to.

24 Q. Isn't it true in the past, part of the basis of your
25 position to not withhold taxes and not file tax returns is that

1 you have rejected the jurisdiction of the federal government in
2 the field of taxation and challenged the constitutionality of
3 the tax laws. Isn't that, in the past, been your position?

4 A. That's the same question. No.

5 Q. Let me direct your attention, sir, to Exhibits 172 and
6 173.

7 A. Okay.

8 Q. 172 and 173 are two, full-page ads, USA Today, March of
9 2001; is that right, sir?

10 A. That's correct.

11 Q. And the first one there on 172 has your picture on it,
12 right, sir?

13 A. Yes, sir.

14 Q. And doesn't this, part of this full-page ad, contest or
15 maintain the Sixteenth Amendment, the income tax amendment was
16 fraudulently ratified by the Secretary of State?

17 A. Well, I believe just because my picture is on this
18 particular ad doesn't mean that I 100 percent totally agree
19 with everything that's printed on that page.

20 MR. McCOLL: It's also beyond the scope, Your Honor.

21 THE COURT: I think his motives are within the scope,
22 past and present.

23 BY MR. JARVIS:

24 Q. Haven't you presented both of these ads, these We The
25 People ads, to support your position in the past, particularly

1 in August of 2002 in prior testimony?

2 MR. McCOLL: Objection, Your Honor. I think there's
3 only one in question.

4 THE COURT: I'll overrule the objection.

5 BY MR. JARVIS:

6 Q. So your answer is, yes, you did present these in August of
7 2002 for consideration?

8 A. Well, there's actually five individuals on there that did
9 the same thing that I did and stopped withholding all
10 withholding from their workers, yes.

11 MR. JARVIS: Your Honor, may I approach the bench?

12 THE COURT: Yes. Mr. McColl, would you like to join
13 us?

14 MR. McCOLL: Oh, I beg your pardon. I thought he
15 wanted to approach the witness. Excuse me.

16 (Bench conference with lead attorneys:)

17 MR. JARVIS: Your Honor, going to his credibility I
18 would like to show that he is changing his position, taking an
19 inconsistent position; and I would like to direct his attention
20 to his appearances in the grand jury when he presented --

21 THE COURT: No, we're not going to get into the grand
22 jury.

23 MR. JARVIS: Okay.

24 (End of bench conference.)

25 BY MR. JARVIS:

1 Q. So you're agreeing in the past you did present these
2 articles from USA Today to support your position; is that
3 right, sir?

4 A. The articles themselves were not my articles. Those
5 articles came from an organization called We The People
6 Congress in New York.

7 Q. But you had presented them in the past to support your
8 position, particularly in August 2002; isn't that right?

9 A. Only some of them.

10 Q. Well, that would include Exhibit 172 and 173, right, sir?

11 A. Well, I told you now, that all of the article, the whole
12 printing, the text on these pages, I don't necessarily agree
13 with. Some of them I do, yes, sir.

14 Q. Okay. And you presented both of them to support your
15 position in August of 2002.

16 A. Presented to who?

17 THE COURT: Why don't we go on to another phase.

18 MR. JARVIS: All right. Your Honor, I would offer
19 172 and 173.

20 THE COURT: They're received.

21 BY MR. JARVIS:

22 Q. Directing your attention to Exhibit 108, Mr. Simkanin.
23 Let me know when you're there. Are you there, sir?

24 A. Yes.

25 Q. This is the Notice of Expatriation that you mentioned

1 before?

2 A. Yes, it is.

3 MR. JARVIS: Your Honor, we would offer 108.

4 THE COURT: It's received.

5 BY MR. JARVIS:

6 Q. Now, when did you decide this was a mistake, Mr. Simkanin?

7 By the way, it's dated February 12, 2002. When did you decide

8 it was a mistake for you to send that to the Secretary of

9 Treasury of the United States?

10 A. (Pause.) I don't know, probably three or four months

11 after that. Maybe longer.

12 Q. So at the earliest it would be about May of '02?

13 A. Well, it was sometime after the entire process was

14 finished, yes. There was the initial documentation and then

15 there was the follow-up in 30 days and then another follow-up

16 in 30 days.

17 Q. Well, why was it a mistake, in your judgment, to file

18 this?

19 A. This has to do with U.S. citizen. The Supreme Court said

20 there's three definitions of United States, and I believe this

21 is in a court case called Hogan versus Evack (phonetics).

22 Q. I'll withdraw the question. Let me phrase it a different

23 way. Why did you file this? Based upon your own research, or

24 is this something Rivera told you to file or Wayne Paul?

25 A. No. This is basically on my own research.

1 Q. In January of 2000, did you hold the views reflected in
2 this Notice of Expatriation?

3 A. No, I did not.

4 Q. When did you develop these views?

5 A. Between then and February of 2002.

6 Q. February, March, April, can you give us a time frame of
7 when you embraced the views reflected in 108?

8 A. No, I cannot.

9 Q. Can you give us a year?

10 A. (Pause.) Probably 2002.

11 Q. And how long did you hold these views? Thirty minutes?
12 Thirty days? Six months?

13 A. This is a mistake that I made. I should have never done
14 this.

15 THE COURT: He just wanted to know how long you held
16 those --

17 A. I don't know where you're going. I don't know what you
18 mean.

19 THE COURT: Pardon me, Mr. Simkanin. He wanted to
20 know how long you held those views.

21 THE WITNESS: I can't honestly say. From sometime in
22 2000 until the time that I went ahead with the documents.

23 BY MR. JARVIS:

24 Q. What part of your research told you that you were a
25 stranger to the laws of the United States?

1 A. I'm not a stranger to the laws of the United States or any
2 of the laws within the states.

3 Q. On page 2 of 108, it states that your status is a
4 nonjuristic stranger to the Fourteenth Amendment as well as the
5 laws of the United States.

6 A. One of the reasons why I made a mistake, Mr. Jarvis --

7 THE COURT: He's just reading from it, Mr. Simkanin.
8 He's not asking a question.

9 BY MR. JARVIS:

10 Q. Let me direct your attention to Exhibit 109, sir. Was
11 this Notice of Severance attached to your Notice of
12 Expatriation?

13 A. Yes.

14 Q. Was that also a mistake?

15 A. The entire document.

16 Q. Was your answer the entire document is a mistake?

17 THE COURT: I think that was his answer.

18 A. Yes.

19 BY MR. JARVIS:

20 Q. And did you decide that was a mistake about the same time
21 you decided 108 was a mistake, the Notice of Expatriation?

22 A. That's all one document.

23 THE COURT: He wants to know if you decided
24 everything in those two documents was a mistake.

25 THE WITNESS: No. That's one document, sir.

1 THE COURT: Did you decide that everything in that
2 one document was a mistake, I think is what he's trying to find
3 out.

4 THE WITNESS: I should have never executed those
5 documents.

6 THE COURT: He wants to know if you decided that
7 everything in that document or those two documents, however
8 they're characterized, was a mistake.

9 THE WITNESS: I would have to go back through and
10 read everything if I said "everything." So I can't say
11 everything.

12 THE COURT: Okay.

13 BY MR. JARVIS:

14 Q. Let me direct your attention to page 9 of Exhibit 109.
15 Let me know when you're there.

16 A. Okay.

17 Q. The statement that the private property of yourself and
18 your wife, the entire property, are no longer subject to
19 taxation and control by the United States, also known as the
20 District of Columbia and its instrumentalities and/or the
21 corporate State of Texas. Are you now saying that statement is
22 wrong and it was a mistake for you to say that, right above
23 your signature?

24 A. That statement is correct. Actually, that statement has
25 always been correct.

1 THE COURT: Are you offering Exhibit 109? Apparently
2 you're reading from it.

3 MR. JARVIS: I thought I had already offered it, Your
4 Honor. If not, I would offer 109 into evidence.

5 THE COURT: Okay. It's received.

6 BY MR. JARVIS:

7 Q. So are you saying that parts of these documents are
8 mistakes, or all of it? Which?

9 THE COURT: He has said that he agrees -- still
10 thinks that's right. So his answer be would that at least part
11 of some of those documents he does not think are mistaken.

12 BY MR. JARVIS:

13 Q. Directing your attention, sir, to Exhibit 110. It's an
14 affidavit you filed on February 18 of 2002 with your signature;
15 is that right, sir?

16 A. That's correct.

17 Q. Is this document accurate, or is it a mistake, also?

18 A. This document pertains to being a Fourteenth Amendment
19 citizen of the United States.

20 THE COURT: He wants to know if it's accurate or a
21 mistake.

22 A. I would say that I would probably be foolish in sending
23 it. I should have never sent it.

24 BY MR. JARVIS:

25 Q. My question, Mr. Simkanin, is: Do you continue to embrace

1 the statements of Government's Exhibit 110, or are you
2 rejecting them as inaccurate and wrong?

3 A. Depends on the statement. That document includes many
4 statements.

5 Q. All right.

6 A. Some are true, some are not.

7 MR. JARVIS: Your Honor, we would offer 110.

8 THE COURT: It's received.

9 BY MR. JARVIS:

10 Q. Do you agree the affiant is not a Fourteenth Amendment
11 citizen of the United States? Is that true?

12 A. Say that again. I'm sorry.

13 Q. Paragraph one under statement of facts: Affiant is not a
14 Fourteenth Amendment citizen of the United States.

15 A. That's true.

16 Q. You still maintain that's true?

17 A. Yes.

18 Q. Paragraph four: Affiant is not within the jurisdiction of
19 the corporate United States and its instrumentalities. Do you
20 still embrace that as true?

21 A. That's a complicated question.

22 THE COURT: He wants to know if you still think
23 that's true.

24 THE WITNESS: Which requires a complicated answer.
25 The statement by itself is not true.

1 THE COURT: That was the question.

2 BY MR. JARVIS:

3 Q. On Exhibit 110 you swore that it was true before a notary,
4 is that correct, in February of 2002?

5 A. On February -- Yes.

6 Q. Direct your attention to Exhibit 111.

7 A. Yes.

8 Q. Was this statement posted on your website during the
9 relevant time period of 2000, 2001, '99, in that area?

10 A. Yes, it was.

11 Q. Is this part of what you testified, your religious
12 convictions and beliefs?

13 A. Yes.

14 MR. JARVIS: Your Honor, we would offer Exhibit 111.

15 MR. McCOLL: Object under 403, Your Honor.

16 THE COURT: Pardon?

17 MR. McCOLL: Objection under 403.

18 THE COURT: It's received.

19 MR. McCOLL: Your Honor, may we approach?

20 THE COURT: How much more do you have by way of
21 cross-examination, Mr. Jarvis?

22 MR. JARVIS: Probably another 30 or 40 minutes, Your
23 Honor.

24 THE COURT: Well, let's take about a 15-minute
25 recess.

1 And y'all can approach. We're going to take a 15-minute
2 recess. We'll probably work until about 12:30.

3 (Jury out, 11:20 a.m.)

4 THE COURT: Y'all can approach.

5 MR. McCOLL: Judge, I did not go into the area -- I
6 decided not to go into the area about --

7 THE COURT: You can speak up a little so I can hear.

8 MR. McCOLL: I just asked one limited question.

9 THE COURT: You asked a lot of questions about why he
10 did certain things, and now Mr. Jarvis is allowed to
11 cross-examine as to what his true state of mind was, and that's
12 what this is all about.

13 MR. McCOLL: Yes, sir, but as to religion, I thought
14 it was -- my understanding from the Court that I could ask one
15 question, and that would be it.

16 THE COURT: On religion. But you asked no telling
17 how many questions as to why he did what he did or failed to do
18 what he should have done.

19 MR. McCOLL: But this is that proclamation about
20 fire --

21 THE COURT: Let's don't argue, Mr. McColl. If you're
22 making an objection, I'll overrule your objection.

23 MR. McCOLL: All right, sir.

24 THE COURT: And, Mr. McColl?

25 MR. McCOLL: Yes, sir.

1 THE COURT: Take all these things and put them
2 someplace.

3 MR. McCOLL: Yes, sir.

4 (Court in recess, 11:21 a.m. until 11:39 a.m.)

5 THE COURT: You may proceed, Mr. Jarvis.

6 MR. JARVIS: Thank you, Your Honor.

7 BY MR. JARVIS:

8 Q. Mr. Simkanin, the individuals that you relied upon --
9 Rivera, Banister, Vicki Osborn, Wayne Paul -- is there anyone
10 I'm missing, or is that pretty well the four main ones?

11 A. Larken Rose.

12 Q. And Larken Rose, okay. Isn't it true that you and all
13 these people are linked together through an organization called
14 We The People?

15 A. I don't know if they all are. I believe they are all
16 familiar with the organization.

17 Q. And that's an organization that kind of shares information
18 with like-minded people?

19 A. Yes.

20 Q. As a matter of fact, Exhibit 173, the We The People -- Do
21 you see it there, 173, dated March 23rd, 2001? Are you there,
22 sir?

23 A. Yes.

24 Q. The three individuals depicted in that We The People ad
25 are Larken Rose, John Kotmair, as well as a guy named Bill

1 Benson, author of The Law That Never Was.

2 A. Yes.

3 Q. As a matter of fact, this is a copy of that book, right,
4 sir, The Law That Never Was?

5 A. Yes.

6 Q. And didn't you present this in August of 2002 to support
7 your position?

8 A. Yes. That book represents 17,000 certified documents from
9 every capital state -- every capital city and all of the states
10 that proves unequivocally that the Sixteenth Amendment was
11 never ratified.

12 Q. And that's part of what these newspaper ads say, that it
13 was fraudulently ratified. That's part of what We The People,
14 their position is, that the amendment was fraudulently
15 ratified.

16 A. Well, I don't know if you could say it was "fraudulently
17 ratified." It was simply not ratified. It takes three
18 quarters of the states to ratify an amendment, 75 percent.

19 Q. Referring you to Exhibit 173, paragraph four, "However,
20 Bill Benson's research shows, conclusively, that the Sixteenth
21 Income Tax Amendment is a fraud, it was fraudulently ratified."
22 Are you disagreeing with that?

23 Q. That's Bill Benson's view. I don't really agree with that
24 wholeheartedly, because the Sixteenth Amendment really did not
25 give Congress any more power to tax than it already had.

1 Q. How did you find Rivera, Banister, and Rose? Through the
2 We The People and through their website, or how did you find
3 them?

4 A. (Pause.) I don't really recall. It might have been
5 through talking with someone or it might have been over the
6 internet. But I do know that we developed a very good
7 relationship.

8 Q. Direct your attention to Exhibit 91, the letter you sent
9 on your claim for refund January 28, 2000, page 2. Let me know
10 when you're there.

11 A. All right.

12 Q. All right. The bottom paragraph about six lines from
13 the bottom it says, "Despite the claims of one rogue federal
14 Judge" --

15 A. What page are you on, sir?

16 Q. I'm on page 2 of your letter. Page 1 is dated 28 January
17 2000. Page 2 at the bottom.

18 THE COURT: If you want to read something into the
19 record, Mr. Jarvis, just go ahead and read it. He doesn't need
20 to follow along while you read it.

21 BY MR. JARVIS:

22 Q. "Despite the claims of one rogue federal Judge," what is
23 the -- could you identify the rogue federal judge you're
24 referring to, sir?

25 A. Well, my page 2 of two is just a signature page, more or

1 less.

2 Q. I'm on Exhibit 91.

3 A. Ninety-one.

4 Q. Excuse me. I guess it's -- Well, it's page 2 of your
5 letter that says the certified mail number; U.S. Department of
6 Treasury; attention, Mr. Director. Are you with me? It's page
7 2 of the actual letter.

8 A. I'm not sure.

9 THE COURT: Hand it to me, Mr. Simkanin, and let me
10 see.

11 MR. JARVIS: It's page 4 of the exhibit. I think
12 that will help him, Your Honor.

13 THE COURT: You mean the fourth page?

14 MR. JARVIS: Fourth page in the exhibit, yes, sir.

15 THE COURT: Start counting with the first page, and
16 it's the fourth page as you count the pages, according to
17 Mr. Jarvis.

18 A. Do I say at the top, "This is an effort to help the
19 individuals"?

20 BY MR. JARVIS:

21 Q. Yes, sir. You're on the right page. Now, toward the
22 bottom you make a comment, "Despite the claims of one rogue
23 federal Judge." Could you identify which rogue federal judge
24 you're referring to there?

25 A. (Pause.) No, I cannot.

1 Q. And you go on about four lines down, you say "to the
2 consternation of the Federal Judiciary." You consider the
3 federal judiciary as a whole to be hostile to your position?

4 A. As a whole, no.

5 Q. Just the one rogue federal judge?

6 A. Obviously this information came from something that I -- I
7 would have to go back and see where it came from to identify
8 that particular individual. The Supreme Court has many cases
9 favorable to what I'm talking about.

10 THE COURT: Mr. Simkanin, wait until a question is
11 asked.

12 BY MR. JARVIS:

13 Q. Let me direct your attention, sir, to Exhibit 143.

14 A. 143?

15 Q. Well, first of all, I direct your attention to Exhibit
16 137, sir. Are you there?

17 A. Yes.

18 Q. Excuse me, Exhibit 139. Pardon me.

19 A. All right.

20 Q. Now, did you believe that -- The statement at the last of
21 that first paragraph, you say: Although your letter contains
22 the heading "Department of Treasury," it does not indicate the
23 entity of which it is the treasury of. It could be the
24 Department of Treasury of Puerto Rico. Was that -- were you
25 really confused about the letter, Exhibit 138, about whether

1 that was from the Department of Treasury of the United States,
2 Internal Revenue, Austin, Texas?

3 A. Yes. I simply asked the question. Don't I have a right
4 to ask a question?

5 THE COURT: His question was, were you confused? Did
6 you think you had received that from the Department of Treasury
7 of Puerto Rico, for example. That was his question.

8 A. The Department of Treasury could be any department of a
9 treasury to anything. It doesn't --

10 THE COURT: His question was, did you think you had
11 received that from some department of treasury other than the
12 Department of Treasury of the United States of America?

13 THE WITNESS: The letter came from the IRS.

14 BY MR. JARVIS:

15 Q. And you dispute that they're part of the Department of
16 Treasury, is that correct, sir?

17 A. They're not listed as the Department of a Treasury in
18 Title 31.

19 Q. So your answer is, yes, you do dispute that?

20 A. If I look for proof that the IRS is an agency of the
21 Treasury Department, they should be listed under the Treasury
22 Department as an agency, and they're not listed.

23 THE COURT: He simply is asking you if you deny that
24 the Internal Revenue Service is an agency of the Department of
25 Treasury. He's simply asking you if you dispute that.

1 MR. McCOLL: Your Honor, we'd object. He's not an
2 expert.

3 THE COURT: I'm going to overrule your objection, and
4 I ask that -- tell the witness to answer the question. Do you
5 dispute that?

6 THE WITNESS: They are not listed in Title 31.

7 THE COURT: Mr. Simkanin --

8 THE WITNESS: They're not there.

9 THE COURT: -- I'm ordering you to answer my
10 question: Do you dispute that the Internal Revenue Service is
11 an agency of the Department of Treasury of the United States of
12 America?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 BY MR. JARVIS:

16 Q. And Exhibit 143 and 147, you make the statement at the end
17 of your letters -- let me know when you're there, 143.

18 A. Okay.

19 Q. The second to the last paragraph you state, "Please do not
20 include authority under the Corporation known as the 'United
21 States', 'United States of America', 'USA', or 'U.S.'." So
22 what authority -- how can the IRS provide authority to you
23 unless it's from the United States federal law?

24 A. I'm looking for authority from the de jure federal
25 government, not a corporation.

1 Q. Well, is the current United States of America, the
2 government of the United States, you consider that a
3 corporation and not the true government or not the true source
4 of authority?

5 A. (Pause.) That's a complicated question.

6 Q. Well, you've actually referred to the government of the
7 United States as the "present insurgent government," haven't
8 you, sir?

9 A. No. Oh, are you talking about in the expatriation papers?

10 Q. Yes, sir.

11 A. That was a mistake. I think I've clarified that. Now, if
12 you want to keep beating me over the head with it. That was a
13 mistake.

14 Q. I want you to turn back to 108. Let me ask you about that
15 phrase "present insurgent government." Was that from We The
16 People, or did you come up with that on your own, that phrase,
17 "this present insurgent government" on page 2 of your notice of
18 expatriation.

19 A. All of the dialogue in this particular document was not --
20 did not come from me, no.

21 THE COURT: He wanted to know if that came from We
22 The People.

23 THE WITNESS: No, it did not.

24 BY MR. JARVIS:

25 Q. Where did you get it from, sir?

1 A. I got it from another private individual. As a matter of
2 fact, it was a cosmetic surgeon out of Houston.

3 Q. Well, the statement in the last paragraph on page 2 --
4 Actually, it's about the third or second from the last
5 paragraph: Our private property and the products of our labor
6 -- to impose excise taxes on our private property and the
7 products of our labor is a violation of the Constitution.

8 So back in February of 2002 you did challenge all tax laws
9 as being unconstitutional; isn't that correct, sir?

10 A. No.

11 Q. Well, did you sign that without agreeing with that last
12 statement?

13 A. All tax laws are constitutional.

14 Q. This surgeon, is he the one that told you that the United
15 States was the present insurgent government?

16 A. Yes. This was a form that he had put together.

17 Q. Your allegiance -- What do mean, "My allegiance is only to
18 the Republic and I will not support enemies of or be in
19 rebellion to the Republic." What does that mean, sir?

20 A. You know, I wish I had never signed this document, because
21 it doesn't mean anything.

22 Q. Well, I thought -- Didn't you tell us --

23 THE COURT: He said it doesn't mean anything,

24 Mr. Jarvis. Let's don't argue with him about it.

25 BY MR. JARVIS:

1 Q. Direct your attention to Exhibit 159. Can you identify
2 that, sir?

3 THE COURT: Let me have the lawyers come up here just
4 a second.

5 (Bench conference with lead attorneys:)

6 THE COURT: Mr. Jarvis, according to the exhibit list
7 that's a grand jury statement, and I've tried to avoid getting
8 into things related to the grand jury sessions.

9 MR. JARVIS: Yes, sir. I'm not going to make any
10 reference to the grand jury.

11 THE COURT: And this is at your objection; it
12 shouldn't be gone into when Mr. McColl sought to develop
13 testimony about his appearances before -- or what the grand
14 jury did or something like that. What is the purpose of this?

15 MR. JARVIS: Well, it's to show his prior
16 inconsistent position where he's consistently objected to
17 jurisdiction.

18 THE COURT: Haven't you shown that enough?

19 MR. JARVIS: Well, this would be very brief, Your
20 Honor. My concern about --

21 THE COURT: Well, aren't we going to end up talking
22 about what he did before the grand jury?

23 MR. JARVIS: No, because he posted this on his
24 website independent of any grand jury appearance.

25 THE COURT: This was something that was posted on a

1 website?

2 MR. JARVIS: Yes, sir.

3 THE COURT: Let me see the exhibit.

4 MR. JARVIS: Okay.

5 (Brief pause.)

6 THE COURT: This didn't come off of a website.

7 MR. JARVIS: Yes.

8 THE COURT: This particular document?

9 MR. JARVIS: What he would do is he would prepare
10 those and then he would go home and post them on his website.

11 MR. McCOLL: But, Judge, he withdrew his expatriation
12 thing in the grand jury. If he's going to go into that with
13 that document, then I'd ask, under optional completeness, to be
14 able to show that he made a prior consistent statement with his
15 statement today in the grand jury under oath. He said it was a
16 mistake back then.

17 THE COURT: What part of this do you consider to be
18 relevant?

19 MR. JARVIS: Just the part where he's talking about
20 the sole jurisdiction of the federal government is within the
21 District of Columbia and federal enclaves, and things like
22 that, Judge. I won't offer it. Let me do that.

23 THE COURT: Do what?

24 MR. JARVIS: I will not offer it into evidence.

25 THE COURT: Let's just forget about that.

1 MR. JARVIS: All right, sir.

2 (End of bench conference.)

3 BY MR. JARVIS:

4 Q. Now, Mr. Simkanin, concerning your driver's license, when
5 did you decide to surrender that?

6 A. I think it was 1996.

7 Q. Now, as part of the -- I think Exhibit 109, the Notice of
8 Severance, doesn't it speak to surrendering driver's licenses
9 and marriage licenses --

10 THE COURT: Mr. Jarvis, if that's in evidence, read
11 from it instead of asking him what it says. If there's
12 something you want the jury to be aware of, just read it.

13 MR. JARVIS: Yes, sir.

14 Page 6 on Exhibit 109: We, Richard Michael Simkanin and
15 Carole Simkanin, give respondents, in their private capacity,
16 that the benefits from this unrevealed and invisible contract
17 or commercial agreement referred to above include, but are not
18 limited, to the following: Any past use of social security
19 numbers -- and I'm just reading this in part -- federal reserve
20 notes, bank accounts, all licenses, including but not limited
21 to driver's licenses, professional licenses, registration for
22 motor vehicles, and so on.

23 BY MR. JARVIS:

24 Q. So you're saying in 1996 -- Why did you surrender your
25 driver's license in '96 when you didn't file the Notice of

1 Severance until 2002, or are they totally unrelated?

2 A. They're unrelated.

3 Q. The fact is you had -- Direct your attention to Exhibit
4 158. Let me know when you're there.

5 A. Okay.

6 Q. All right. Does that reflect the document that you had in
7 your possession in June of 2003?

8 A. Yes.

9 Q. And that was in lieu of a regular Texas motor vehicle
10 license?

11 A. No.

12 Q. Anyway, you were not -- you did not have in your
13 possession a Texas motor vehicle license in June of 2003.

14 A. That's correct.

15 Q. As a matter of fact, you haven't had one for seven years;
16 isn't that right?

17 A. That's correct.

18 Q. And when you were stopped on --

19 MR. McCOLL: Objection, beyond the scope.

20 THE COURT: I think barely, but it's within the
21 scope.

22 BY MR. JARVIS:

23 Q. The fact is, Mr. Simkanin, didn't you admit in July of
24 this year that you lied initially when you said that you did
25 not use this international motor vehicle qualification card as

1 a license. Initially you said no and then later you said yes.

2 MR. McCOLL: Objection, Your Honor. That's a
3 misstatement of the record. Beyond the scope.

4 THE COURT: Well, let me just ask you this: Did you
5 ever show this item that's marked Exhibit 158, or some version
6 of it, as your driver's license when you were stopped by a
7 police officer?

8 THE WITNESS: No.

9 THE COURT: Okay.

10 MR. JARVIS: Your Honor, we would offer 158 into
11 evidence.

12 THE COURT: It's received.

13 THE WITNESS: The document was offered as ID.

14 BY MR. JARVIS:

15 Q. Where did you get 158, that international motor vehicle
16 qualification card? Where did you find that?

17 A. Actually, I found it -- I ordered it by mail. I believe
18 it came out of Connecticut.

19 Q. At the bottom of that on page 1 of Exhibit 158 it says
20 "Form 23018, Office of Foreign Assistance." What government
21 issued this motor vehicle qualification card?

22 A. Now, which one are you looking at? You said the very
23 bottom picture?

24 Q. I'm looking at the front side of the international motor
25 vehicle qualification card.

1 A. All right.

2 Q. They both say the same thing. Right below your signature,
3 it gives a form number and then it says "Office of Foreign
4 Assistance." My question is: What government issued that
5 document?

6 A. I don't know of any government that issued the document.
7 I received it from an organization out of Connecticut, and it's
8 merely an ID.

9 THE COURT: What did you show to a police officer if
10 he stopped you during those years when you didn't have a
11 driver's license?

12 THE WITNESS: Well, in fact, all of those years I was
13 only questioned three times.

14 THE COURT: What did you show the officer?

15 THE WITNESS: This ID. It's an ID.

16 THE COURT: You showed an officer this ID three
17 different times?

18 THE WITNESS: Yes, sir.

19 THE COURT: And it purports on its face to be a
20 driver's license?

21 THE WITNESS: No.

22 THE COURT: Let me see that.

23 THE WITNESS: It's the top two pictures, sir.

24 THE COURT: What is the bottom picture on Exhibit
25 158?

1 THE WITNESS: That's an ID card.

2 THE COURT: Is that part or the back side of what's
3 shown above it?

4 THE WITNESS: No, sir. The next page is the back
5 side.

6 THE COURT: The one that says "international driver
7 license" on one side and says on the other side "international
8 motorist qualification under the British West Indies"? What is
9 that?

10 THE WITNESS: The first page you looked at is the one
11 on the bottom, so the second page is the one on the bottom, the
12 reverse side.

13 THE COURT: Okay. So you're saying the one that says
14 international driver's license, and shows to be issued by the
15 International Governmental Affairs Agency, and then on the back
16 side has a thumbprint, where did you get that?

17 THE WITNESS: I made it.

18 THE COURT: And put your photograph on it?

19 THE WITNESS: Uh-huh.

20 THE COURT: Pardon?

21 THE WITNESS: Yes, I did. It's just an ID, sir.

22 (Brief pause; Court looks at exhibit.)

23 THE COURT: Where did this language come from at the
24 bottom of the front of that below your photograph where it
25 says, "Warning. Some law enforcement agency jurisdictions do

1 not understand the international licensing under Article I,
2 Section 10, United States Constitution. In the USA, if agency
3 threatens to issue citation or tow auto, call the United States
4 Federal Marshall for an immediate appearance with arresting
5 officer before a Federal Magistrate under authority of the
6 United States Code, Title 18, 28, and 42." Where did that
7 language come from?

8 THE WITNESS: The law.

9 THE COURT: Did you devise that language?

10 THE WITNESS: Yes. But I've never showed that
11 document to anyone.

12 THE COURT: Here you go, Mr. Jarvis.

13 MR. JARVIS: Thank you.

14 BY MR. JARVIS:

15 Q. Now, Mr. Simkanin, so where did you come up with the term
16 "International Governmental Affairs Agency," that ID card?

17 A. It just sounded good.

18 Q. It just sounded good? And it was expired -- the
19 expiration date was December 31 of '99, right, sir?

20 A. Uh-huh, yes.

21 Q. And you were still carrying it around in June of 2003.

22 A. Just happened to be in my wallet.

23 Q. Now, just to be clear. The top two cards are the back
24 side on page 2 of Exhibit 158 are basically the reverse side of
25 those international motorist qualification cards, right, sir?

1 It's got your picture on one side, and then the back side has
2 the language "British West Indies."

3 A. Yes.

4 Q. Did you get this card through an office of the British
5 West Indies located in Connecticut?

6 A. No.

7 Q. Well, how did you come up with the British West Indies
8 part of this, or did it just sound good?

9 A. They came up with it.

10 Q. Who is "they"?

11 A. The people that I got it from out of the state of
12 Connecticut, and it's been such a long time ago I can't tell
13 you the name or anything about them anymore.

14 Q. But did you do any extensive research about the
15 credibility of this office that issued these cards?

16 A. No, I did not.

17 Q. And it states on there that the person appearing has
18 passed all rating tests necessary and qualifications. Did you
19 pass any --

20 MR. McCOLL: Objection. That's way beyond the scope.

21 THE COURT: I'll overrule the objection.

22 BY MR. JARVIS:

23 Q. Did you pass any of the tests that claim you have passed
24 on the face of that card?

25 A. All of the tests that I have passed in my past has been

1 getting a Texas driver's license, Ohio driver's license, so I
2 have passed tests for driver's licenses, yes.

3 Q. The question, sir --

4 THE COURT: Let me get some clarification. On this
5 Exhibit 158, there are three images on the first page, each of
6 which shows your photograph. You've explained what the bottom
7 one is. What are the top two images on? What are they of, the
8 top two?

9 THE WITNESS: They're basically the cards that I got
10 out of Connecticut. There's two cards there.

11 THE COURT: And they're the ones you say you showed
12 to the officers when they stopped you?

13 THE WITNESS: Yes, as an ID, not as a driver's
14 license. Only as an ID.

15 THE COURT: And it says on the back that you've been
16 found to be qualified as a motorist. "Ratings: Motorcar,
17 motortruck, motorcycle, and motorized home." Was that on those
18 when you received them from Connecticut?

19 THE WITNESS: That was already on the card.

20 THE COURT: And was that on them when you showed them
21 to the police officers?

22 THE WITNESS: Yes.

23 THE COURT: Okay. I'm sorry to interrupt you. Go
24 ahead. I just wanted to clarify what those were.

25 BY MR. JARVIS:

1 Q. So when the officer stops you, the first thing he says is,
2 license please, right, sir?

3 A. No.

4 Q. So you're saying none of the times the police stopped you
5 they've never asked you for your license.

6 A. That is correct. They asked for ID. They stopped me for
7 no reason. There was no violation. I did not receive a ticket
8 for anything.

9 Q. Did you consult with any of -- Mr. Rivera or any of your
10 other legal advisers on whether or not it was lawful to drive a
11 motor vehicle in Texas without a valid operator's permit?

12 A. No.

13 Q. Do you think that might be important in --

14 THE COURT: Let's don't argue. Let's go on to some
15 other subject, Mr. Jarvis. I think that's been dealt with
16 enough.

17 MR. JARVIS: Could I just have a moment?

18 (Government counsel confer.)

19 BY MR. JARVIS:

20 Q. How much did you pay Mr. Rivera for any advice he gave
21 you?

22 A. (Pause.) I paid him several amounts of money.

23 Q. How much in total have you paid to Mr. Rivera to support
24 -- to give you legal support for your position?

25 A. I don't remember.

1 Q. Just give us a ballpark, Mr. Simkanin.

2 A. (Pause.) Maybe 4- or \$5,000.

3 Q. Have you given any money to any of those other people --
4 -- Larken Rose, Joe Banister -- any of these other folks?

5 A. No.

6 Q. Have you been paid to attend any seminars or anything like
7 that to present your position?

8 A. No.

9 Q. When you decided to stop withholding in January of 2000,
10 that allowed you to put at least 175,000 additional dollars
11 into your pocket that you normally wouldn't have.

12 THE COURT: That's an argument, Mr. Jarvis. It's
13 just an argument. Let's don't make arguments. You can make
14 those after the evidence is concluded.

15 (Government counsel confer.)

16 BY MR. JARVIS:

17 Q. Mr. Simkanin, did you know Mr. Rivera's position through
18 his website even before you consulted with him?

19 A. Yes.

20 MR. JARVIS: That's all we have. Pass the witness.

21 THE COURT: Okay. Do you have any redirect?

22 MR. McCOLL: Just briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. McCOLL:

25 Q. Mr. Simkanin, are you a member of any organization

1 regarding the organized information or opposition or support of
2 any particular tax or legislation related to tax?

3 A. Well, not any particular organization.

4 Q. Are you -- do you belong to We The People? Do you pay
5 dues to We The People?

6 A. No.

7 THE COURT: Does We The People collect dues?

8 THE WITNESS: I believe that there's a membership,
9 yes.

10 THE COURT: Do they collect dues?

11 THE WITNESS: I believe so.

12 THE COURT: Have you ever paid dues to We The People?

13 THE WITNESS: No, I have not.

14 THE COURT: Okay. What, if any, affiliation do you
15 have with We The People?

16 THE WITNESS: I know of them. I've been to
17 Washington, D.C. at the National Press Club. I've spoke there
18 twice now to an audience of 4- to 500 people trying to get --

19 THE COURT: Were they We The People members?

20 THE WITNESS: They sponsored the program, yes.

21 THE COURT: We The People did?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay. I think that was what he was
24 trying to find out, what is your connection with We The
25 People. You've gone to their conventions and spoken at their

1 conventions?

2 THE WITNESS: Yes, I have.

3 THE COURT: Okay. Well, I think that was what he was
4 trying to find out.

5 BY MR. McCOLL:

6 Q. Were you a guest speaker for their convention -- for their
7 seminar?

8 A. Yes, I was.

9 Q. Does your position here today have anything whatsoever to
10 do with the ratification or non-ratification of the Sixteenth
11 Amendment?

12 A. No.

13 Q. And why is that?

14 A. Well, because the Sixteenth Amendment is basically
15 immaterial to the income tax as applied under the Constitution.
16 The Sixteenth Amendment, the only thing that it did, was keep
17 the income tax within the classification as an indirect tax.

18 Q. That's what the Supreme Court cases say?

19 A. That's what Brushaber versus Union Pacific says, that's
20 what Stanton versus Baltic Mining says, that's what Eisner
21 versus Macomber says, that's what Tracy versus -- Flint versus
22 Stain Tracy (phonetics) says. They all say that.

23 Q. So the amendment didn't enlarge Congress's power to tax.
24 It just clarified it.

25 A. Say that again?

1 Q. The amendment did not enlarge Congress's power to tax,
2 income tax.

3 A. No, it did not.

4 Q. It just clarified it. Did you have tugboats in the Middle
5 East?

6 A. I had one tugboat in the Persian Gulf.

7 MR. JARVIS: I'd object. That's beyond the scope.

8 THE COURT: That's beyond the scope.

9 MR. McCOLL: Your Honor, I'm explaining why --

10 THE COURT: Pardon me. That's beyond the scope of
11 the cross.

12 BY MR. McCOLL:

13 Q. Did you feel -- Did you have your international driver's
14 license for one reason, so that you wouldn't have to reveal
15 yourself as an American in the Middle East?

16 A. Well, yes. I mean, this is the only reason that I
17 actually got this IMQ from Connecticut, was because I was
18 spending months at a time over in the Persian Gulf, and as an
19 American in the Persian Gulf you don't want to flaunt the fact
20 that you're an American. I mean, you could walk down the
21 street and be a -- whatever, but not an American.

22 MR. JARVIS: Your Honor, we'd object. It's a
23 nonresponsive answer.

24 THE COURT: You've answered the question. Which one
25 of these three are you talking about that you used in the

1 Persian Gulf, the one on the top of the exhibit?

2 THE WITNESS: Yes, the two on the top.

3 THE COURT: In Exhibit 158?

4 THE WITNESS: Yes.

5 THE COURT: Okay.

6 BY MR. McCOLL:

7 Q. Of any of the CPAs that you contacted, did you contact any
8 of them -- or have you contacted any of them with regard to the
9 insolvency of Arrow Custom Plastics?

10 MR. JARVIS: Your Honor, we'd object, relevance.

11 THE COURT: Go ahead and answer the question.

12 A. Can you repeat -- rephrase that?

13 BY MR. McCOLL:

14 Q. Yes. With regard to the insolvency of Arrow Custom
15 Plastics, have you consulted with any of your CPAs, the same
16 CPAs, that you have consulted with regard to your tax position?

17 A. Well, yes. I've consulted with Wayne Paul, Charles Beall,
18 and, of course, my own CPA, Bryan Malatesta.

19 Q. Are you planning to file bankruptcy?

20 MR. JARVIS: Your Honor, we'd object.

21 A. Not at this time.

22 THE COURT: Obviously, that's an inappropriate
23 question, Mr. McColl.

24 I'll instruct the jury to disregard the question, and if
25 the witness answered it, disregard the answer.

1 BY MR. McCOLL:

2 Q. On the Form 1040, what do the instructions say with regard
3 to reporting one's income?

4 A. Well, in the instructions to the 1040 says that all
5 foreign income must be --

6 MR. JARVIS: Object, Your Honor.

7 THE COURT: Mr. McColl, let's don't start all over
8 again. You're entitled to respond to the government's
9 questioning but not to go beyond the subject of that. And I
10 don't believe --

11 MR. McCOLL: He asked that, Your Honor, on cross.

12 THE COURT: I don't recall that. Go on to another
13 subject. I sustain the objection.

14 MR. McCOLL: If I can refresh the Court's memory?

15 THE COURT: I sustain the objection, Mr. McColl. We
16 can discuss it at a later time if you want to discuss it.

17 BY MR. McCOLL:

18 Q. In all of your research regarding the income tax, did you
19 think you were making a good faith effort to find a specific
20 law that made you or your workers at Arrow Custom Plastics
21 liable for the withholding of the social security/Medicare?

22 A. Well, I always thought that I could make a mistake. I
23 mean, anybody could be wrong. But that's why I did such
24 extensive research and talked to so many people about it,
25 looking --

1 MR. JARVIS: Object, Your Honor, nonresponsive.

2 A. Looking for answers.

3 THE COURT: I'll let him go ahead and answer, but it
4 has been answered.

5 Do you have anything else, Mr. McColl?

6 BY MR. McCOLL:

7 Q. Just with regard to compliance, if you had been able to
8 find a law that made you subject to that --

9 THE COURT: You've already asked that question on
10 direct, and it's already been answered.

11 MR. McCOLL: Yes, sir.

12 BY MR. McCOLL:

13 Q. Was there anything in your reading that you found that
14 gave you -- that you relied on for your authority to insist
15 that you got an answer from your government that made sense to
16 you?

17 A. What I was looking for was a law that clearly states --

18 THE COURT: He wants to know if you had any authority
19 to support your belief that you were entitled to such a
20 response. That was his question.

21 THE WITNESS: I could not find any law that gave me
22 the authority.

23 THE COURT: Okay. I think that answers the question.

24 BY MR. McCOLL:

25 Q. To pay the tax? To withhold?

1 A. That's correct, yes.

2 Q. My question was: Did you find any authority that gave you
3 the right to have your government answer you in a way that made
4 sense to you?

5 A. (Pause.)

6 Q. Or was this just a fundamental sense of fair play?

7 A. I mean, obviously, I was looking for --

8 THE COURT: Did you find any authority, Mr. Simkanin?

9 THE WITNESS: To do what?

10 THE COURT: Okay. Go on to some other subject.

11 THE WITNESS: I don't know what you're referring to.

12 MR. McCOLL: I think that's all we have, Your Honor.

13 Thank you.

14 MR. JARVIS: Very briefly, Your Honor.

15 THE COURT: And only respond to things he's asked.

16 MR. JARVIS: Absolutely, Your Honor.

17 THE COURT: To which objections were not sustained.

18 MR. JARVIS: I understand, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. JARVIS:

21 Q. As far as financial support to We The People, didn't you
22 give them a lump sum donation of \$3600?

23 A. Yes, I did.

24 Q. And as far as using the motorist qualification card, when
25 did you return from the Middle East? Roughly, just a ballpark.

1 A. It was in that time period, middle of '95 -- or, excuse
2 me, the '90s, '96/'97.

3 Q. So your last visit was sometime in '97?

4 A. I think so.

5 Q. All right. So did you turn in your motor vehicle
6 qualification card after you returned from the Middle East?

7 A. No, I did not.

8 MR. JARVIS: That's all we have, Your Honor.

9 THE COURT: Okay. You can step down.

10 Call your next witness.

11 MR. McCOLL: Your Honor, we call Joseph Banister.

12 May I go get him?

13 (Brief pause.)

14 THE COURT: Come up and be seated.

15 Let me have the attorneys come up here a minute.

16 (Bench conference with lead attorneys:)

17 THE COURT: I'm going to allow you to permit him --

18 I'm going to permit him to testify what he told Mr. Simkanin,

19 but not to his justifications of reaching those beliefs.

20 MR. McCOLL: I don't follow you, Your Honor.

21 THE COURT: You can ask him what he told

22 Mr. Simkanin, but we're not going to hear from him as to how he

23 came to the conclusion of what he told Mr. Simkanin is correct.

24 MR. McCOLL: Okay. Then please give me a minute to

25 go through my notes, because I don't want to violate the

1 Court's order.

2 THE COURT: Okay. But you're going to be limited to
3 him saying what he told Mr. Simkanin.

4 MR. McCOLL: Okay.

5 THE COURT: Not why he believes it.

6 MR. McCOLL: Okay. We would object, so am I
7 overruled? I assume I'm overruled. We would object to that
8 limitation, because we think it goes to --

9 THE COURT: I've ruled on it.

10 MR. McCOLL: Okay. I think I have to object for the
11 record, Your Honor.

12 THE COURT: Okay. You've objected.

13 MR. McCOLL: And I'm overruled?

14 THE COURT: I don't think you need to get a ruling
15 once you're overruled. You're overruled by virtue of the fact
16 that I'm telling you, you can't do it.

17 MR. McCOLL: Okay.

18 (End of bench conference.)

19 JOSEPH BANISTER,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. McCOLL:

23 Q. Could you please state your name and spell your last name
24 for the court reporter.

25 A. Joseph Banister, B-A-N-I-S-T-E-R.

1 Q. And are you a former IRS agent?

2 A. Former IRS special agent with the criminal investigation
3 division of the IRS.

4 Can I move -- I have all these binders in front of me.

5 Q. Yes.

6 (Brief pause.)

7 A. Thank you.

8 BY MR. McCOLL:

9 Q. Would you please give us a brief description of your
10 education and work experience?

11 A. I have a bachelor's degree from San Jose State University
12 in accounting; approximately 17 years of accounting and tax
13 experience; approximately 12 of those 17 years is in the
14 private sector; and approximately five of those years was spent
15 as a special agent, or criminal investigator, for the IRS
16 criminal investigation division. I'm a certified public
17 accountant and have been so certified since 1991.

18 Q. And that's what you do now?

19 A. Yes.

20 Q. Okay. So you used to put people in jail for violating the
21 income tax laws?

22 A. I investigated criminal violations of the income tax and
23 money laundering laws.

24 Q. That was the result of your investigation, sometimes?

25 A. That was the intention, was to present enough evidence to

1 show that someone had intentionally violated the laws and
2 deserved punishment, generally resulting in prison time.

3 THE COURT: Let me have the attorneys come up here a
4 minute again.

5 (Bench conference with lead attorneys:)

6 THE COURT: Included in what you're not allowed to do
7 is developing how and why he reached the conclusions he
8 reached.

9 MR. McCOLL: Yes, sir. Okay.

10 THE COURT: Also included is any statement by him as
11 to his reaction to punishment of people for violating tax laws.
12 In other words, stick to the subject I told you, you can go
13 with.

14 MR. McCOLL: Could you send the jury out and let me
15 talk to him for two minutes, because I don't want to violate
16 the Court's order. But I've already, you know --

17 THE COURT: You can ask the right questions.

18 MR. McCOLL: Well, I'm not sure you're going to get
19 your right answer. I don't want you to get mad.

20 THE COURT: Well, you can ask the right questions.

21 MR. McCOLL: I will ask the right question, but bear
22 with me if it's not the right answer.

23 THE COURT: Okay. Well, if you ask the right
24 question then we won't have a problem.

25 MR. McCOLL: Yes, sir.

1 (End of bench conference.)

2 BY MR. McCOLL:

3 Q. Do you know Dick Simkanin?

4 A. Yes, I know Mr. Simkanin.

5 Q. When did you first meet him, please.

6 A. I met him in November of 1999.

7 Q. And what was the occasion?

8 A. There was a conference or symposium called the Citizens
9 Summit to end the unlawful operations of the Internal Revenue
10 Service.

11 Q. Were you a speaker there?

12 A. I was asked to speak at that event.

13 Q. And did you speak?

14 A. Yes, I did.

15 THE COURT: Was that a We The People group?

16 THE WITNESS: The sponsoring -- Well, it was at the
17 National Press Club. The sponsoring organization was We The
18 People Foundation For Constitutional Education.

19 THE COURT: Is that what's commonly referred to as We
20 The People?

21 THE WITNESS: Well, sir, there's other groups that
22 are called We The People.

23 THE COURT: Okay.

24 THE WITNESS: So I didn't want to mix up this
25 particular group with other groups called We The People.

1 BY MR. McCOLL:

2 Q. Now, Mr. Banister, without going into any specifics
3 whatsoever as to your thinking and how you arrived there, could
4 you tell us generally what you spoke about at the event?

5 A. Yes, I can.

6 MR. JARVIS: Your Honor, we'd object to the relevance
7 unless it's tied to the facts of this case.

8 BY MR. McCOLL:

9 Q. Mr. Simkanin was there at this event and he spoke to you
10 immediately afterwards; is that correct?

11 A. He spoke to me all day -- during the event. I mean, it
12 was an ongoing event throughout the day, and he would have been
13 in the audience, heard me speak --

14 THE COURT: You can ask him what he directly told
15 Mr. Simkanin, but what he said generally at the event will not
16 be acceptable.

17 MR. McCOLL: We would respectfully object to the
18 Court's ruling.

19 BY MR. McCOLL:

20 Q. After you spoke as a guest speaker, did you approach
21 Mr. Simkanin, or did he approach you?

22 A. He approached me.

23 Q. All right. And did you speak about the things that you
24 had spoken about publicly as well as other things?

25 A. Yes, I did.

1 Q. All right. And what did you two speak about?

2 A. Well, we spoke -- There were a number of people that
3 approached me that day. People always approach me because
4 my --

5 THE COURT: He wants to know specifically what you
6 said to Mr. Simkanin, not what you might have said to other
7 people.

8 THE WITNESS: Yes, sir.

9 A. We would have spoken about the circumstances --

10 THE COURT: Do you recall what you spoke about?

11 THE WITNESS: In general terms, Judge, yes.

12 THE COURT: Okay. Don't say what "we would have
13 spoke about." We want to know what you actually spoke about.

14 THE WITNESS: Okay. Yes, sir.

15 A. We spoke about the circumstances of my resignation from
16 the IRS, general circumstances about Mr. Simkanin's -- the word
17 that comes to my mind is enlightenment, you know, encounter
18 with particular information that was the topic of the
19 symposium.

20 BY MR. McCOLL:

21 Q. And was the topic of the symposium the enforcement
22 measures and the validity of the enforcement measures that the
23 IRS takes?

24 A. Yes, the unlawful -- they were termed the unlawful
25 operations of the IRS.

1 Q. So you and Mr. Simkanin spoke about that.

2 A. Yes.

3 Q. All right. And did he ask you questions and you gave
4 answers? Is that how it worked?

5 A. Yes.

6 Q. Did you base that both on your experience with the IRS as
7 well as your training as a CPA?

8 A. All of my personal experiences, both in the IRS, outside
9 the IRS, all of it.

10 Q. All right, sir. Could you describe Mr. Simkanin's
11 demeanor during your conversation? Was he attentive or not?

12 A. He was calm, soft-spoken, smiled a lot. His concerns
13 seemed genuine to me.

14 Q. And is the basis of your being there as a speaker that you
15 basically shared a similar concern that he had and that's what
16 you spoke about?

17 A. My own personal experience was such that I shared --

18 MR. JARVIS: Your Honor, again, we'd object --

19 MR. McCOLL: I'll withdraw the question.

20 MR. JARVIS: -- to the relevance of this witness's
21 experience with the IRS.

22 MR. McCOLL: The relevance of his experience --

23 THE COURT: Pardon me, Mr. McColl. No comments from
24 you. And you say you withdraw the question, so let's see where
25 you go now.

1 BY MR. McCOLL:

2 Q. In other words, did Mr. Simkanin appear to you to be a
3 person who was simply looking for a way to reduce his taxes?

4 A. He was definitely not a person that was looking to reduce
5 his taxes.

6 Q. Did it appear to you that he was a person who was
7 primarily concerned with his own financial --

8 MR. JARVIS: Your Honor, again, we object. It calls
9 for speculation into the state of mind.

10 THE COURT: I'm going to sustain the objection as to
11 what appeared to him.

12 BY MR. McCOLL:

13 Q. Following your meeting with him in November of 1999, did
14 you all keep in contact and have several other contacts?

15 A. Yes, I did.

16 Q. Okay. Was the next contact -- or was one of the next
17 contacts you had with him during a telephone conversation about
18 his being prosecuted here today?

19 A. No. There were earlier contacts.

20 Q. I know, but was one of those that purpose and that topic?

21 A. Yes.

22 Q. And did you provide him advice and -- again, based on your
23 personal experience and your knowledge of the income tax laws
24 on that occasion?

25 A. Yes, I did.

1 Q. All right, sir. And then did you prepare an affidavit for
2 him on April 22nd, 2001, for use in that proceeding?

3 A. I did prepare the affidavit on or about the 22nd. I
4 believe I got it notarized on the 23rd, but it was that
5 approximate time frame.

6 Q. All right, sir. And you've stayed in touch with him since
7 that time, correct?

8 A. Yes, I have.

9 Q. And have you noticed any change in his demeanor from the
10 first time you talked to him to the current time?

11 MR. JARVIS: Your Honor, we'd object. Relevance.

12 THE COURT: I sustain the objection.

13 BY MR. McCOLL:

14 Q. Do you file tax returns, sir?

15 THE COURT: That's not relevant to what we're doing
16 here.

17 MR. McCOLL: No further questions. Thank you,
18 Mr. Banister.

19 THE COURT: Do you have any questions, Mr. Jarvis?

20 MR. JARVIS: Yes, Your Honor, very briefly.

21 May I approach the witness, Your Honor?

22 THE COURT: Yes. How long do you think your
23 cross-examination will take?

24 MR. JARVIS: Very brief. Just two or three minutes,
25 Your Honor.

1 THE COURT: Okay. I said we were going to recess at
2 12:30, so let's move on.

3 MR. JARVIS: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. JARVIS:

6 Q. Mr. Banister, let me direct your attention to an
7 advertisement that's been placed in front of you there, USA
8 Today, dated February 16, 2001. It's been marked as
9 Government's Exhibit 182. Do you see it, sir?

10 A. Yes, sir, I do.

11 Q. And that's your photograph on that ad?

12 A. Yes, it is, on the far left.

13 Q. All right. Does this explain, in part, your position and
14 what you advised Mr. Simkanin?

15 A. I don't know that I could say without reading it.

16 Q. Well, let me just put it another way: Isn't part of your
17 position, when you advised Mr. Simkanin to stop withholding, is
18 that the Sixteenth Amendment was fraudulently ratified and the
19 law that requires withholding is unconstitutional?

20 A. Well, sir, you just said that I advised Mr. Simkanin to
21 stop withholding, and I've never done that.

22 Q. Well, you support his legal position, isn't that correct,
23 his understanding of the law?

24 A. I testified that I share his concerns and that I
25 understand a lot of the same subject matter about the income

1 tax and its application.

2 THE COURT: I think he was trying to find out if you
3 subscribe to the statement that the Sixteenth Amendment is
4 unconstitutional.

5 THE WITNESS: If you could repeat the question, I'll
6 try to answer it.

7 THE COURT: I just asked the question. Do you
8 subscribe to the statement made in that article that the
9 Sixteenth Amendment is unconstitutional?

10 THE WITNESS: The Sixteenth-- I do not believe that
11 the Sixteenth Amendment is unconstitutional.

12 MR. JARVIS: Your Honor, we would offer into evidence
13 Exhibit 182.

14 THE COURT: It's received.

15 BY MR. JARVIS:

16 Q. Mr. Banister, on the left column there, right under your
17 photograph, doesn't it make several statements? One, "There is
18 no law that requires most Americans to file a tax return, pay
19 federal income tax nor have the tax withheld from their
20 earnings." Paragraph two, the Nineteenth, Thirteenth, and
21 Sixteenth Amendment, income tax amendment, was fraudulently
22 illegally declared to be ratified. And then it has another
23 paragraph, and the next sentence after that is, "This is all in
24 clear violation of the United States Constitution." That's
25 right below your photograph, isn't it, sir?

1 A. Well, but I believe you're mischaracterizing what is said
2 there. If I may, number two states, "In 1913 the Sixteenth
3 Amendment, the income tax amendment, was fraudulently illegally
4 declared to be ratified by a lame-duck Secretary of State days
5 before leaving office." If that, in fact, is what happened,
6 that could be a violation of the U.S. Constitution. That
7 doesn't necessarily mean the Sixteenth Amendment is
8 unconstitutional, but the language "fraudulently and illegally
9 declared to be ratified" would certainly be an unconstitutional
10 act, I would think.

11 MR. JARVIS: That's all we have of this witness.

12 MR. McCOLL: May we approach, Your Honor?

13 THE COURT: What was that exhibit number?

14 MR. JARVIS: It was 182, Your Honor. It's not on the
15 government's exhibit list.

16 (Bench conference with lead attorneys:)

17 MR. McCOLL: That's what he asked about right there,
18 his position. He has opened the door, I respectfully submit,
19 to at least one question about his position and what his
20 thinking is. He's asked him --

21 THE COURT: What is your question going to be?

22 MR. McCOLL: Could you please -- Why did you have
23 your picture put in that paper?

24 THE COURT: Okay. Well, I'll let you ask him that
25 question, and that's the only one. Okay?

1 MR. McCOLL: Well, let me ask you this, Judge. See
2 the number one statement under there?

3 THE COURT: Yes.

4 MR. McCOLL: Mr. Jarvis asked him, isn't it true
5 that your picture is right above the first sentence there that
6 says --

7 MR. JARVIS: It's above all that.

8 MR. McCOLL: It's above all that, but there is no law
9 that requires most Americans -- why do you subscribe to that
10 first sentence.

11 THE COURT: No, we're not going to get into all that.
12 You can clarify that that is the first sentence if you want to.
13 But we're not going to ask him why.

14 MR. JARVIS: The whole thing explains it. It's in
15 evidence.

16 MR. McCOLL: I'll just ask him why he allowed his
17 picture to be used.

18 THE COURT: This could go on forever. You can ask
19 him if it's the first statement under his picture.

20 MR. McCOLL: That's already in evidence, Judge. He's
21 opened the door to at least one question as to why he allowed
22 his picture to be there.

23 THE COURT: Okay. You can ask him that.

24 MR. McCOLL: Thank you.

25 (End of bench conference.)

1 REDIRECT EXAMINATION

2 BY MR. McCOLL:

3 Q. Mr. Banister, why did you allow your picture to be used
4 above that statement, "There is no law that requires most
5 Americans to file a tax return, pay the federal income tax, nor
6 have a tax withheld from their earnings"?

7 A. Because I believed that the primary impediment to having
8 Americans believe that this information is true is the kind of
9 people who are saying so, or agreeing to be -- agreeing to be
10 part of the message, I guess. And based on my prior experience
11 with the IRS and my own experiences, I believe that it was
12 something, in general terms, people needed to know. I
13 certainly did not review every word of the ad. I believed in
14 the people who were sponsoring the ad, that they would be
15 honorable about the language.

16 THE COURT: Who was sponsoring that ad?

17 THE WITNESS: Again Judge, the We The People
18 Foundation For Constitutional Education.

19 BY MR. McCOLL:

20 Q. So, in general, you trusted them to be accurate, and when
21 they put that statement in there, you believed, by allowing
22 your picture to be above it, that it is an accurate statement.

23 A. Yes. I mean, I --

24 Q. Statement number one, sentence number one, under your
25 picture.

1 A. Well, if I can read sentence number one and. . .

2 (Brief pause.)

3 THE COURT: He asked you if you agree with sentence
4 number one, is all I think he's asking.

5 A. I would say because it says "most Americans" I would say
6 that I agree with statement one.

7 THE COURT: Okay. He's answered your question.

8 MR. McCOLL: Thank you, Judge.

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

10 MR. JARVIS: Could I have just a couple quick, very
11 quick, Your Honor?

12 THE COURT: As long as they're responsive to what
13 Mr. McColl asked, that's fine.

14 MR. JARVIS: Thank you, Your Honor.

15 RECROSS-EXAMINATION

16 BY MR. JARVIS:

17 Q. Did you advise Mr. Simkanin or just tell him you agreed
18 with him that he didn't --

19 THE COURT: I don't think that's responsive to what
20 Mr. McColl asked.

21 BY MR. JARVIS:

22 Q. Were you paid for your appearance here today, sir?

23 A. No.

24 MR. JARVIS: That's all we have, Your Honor.

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

1 You're excused as a witness. You can step down. We're
2 going to take a lunch recess. We'll be back at 1:40.

3 THE WITNESS: Your Honor, can I clarify? When he
4 says "paid," I received a per diem amount.

5 MR. McCOLL: For expenses only?

6 THE WITNESS: For expenses. But as far as
7 compensation for my time, that has not been discussed.

8 THE COURT: I think the next question is going to be
9 how high are you living off the hog? How much are you getting?

10 THE WITNESS: Well, I'm from California, and I should
11 have at least bought a coat because it's pretty cold here in
12 Fort Worth. But other than that --

13 THE COURT: I think they want to know how much you're
14 getting.

15 THE WITNESS: Per diem for expenses?

16 MR. McCOLL: Yes, sir.

17 THE WITNESS: There was \$200 for my time here, which
18 was supposed to be around two or three days.

19 THE COURT: Okay. I think that answers the question.
20 You can step down. You're excused.

21 THE WITNESS: Thank you, sir.

22 (Jury out, 12:41 p.m.)

23 THE COURT: Before we leave the courtroom, let me try
24 to find out about where we are from a time standpoint. How
25 many more witnesses do you think you'll have, Mr. McColl?

1 MR. McCOLL: Well, in light of -- Judge, I think I've
2 got about five more witnesses, but some are pretty short.

3 THE COURT: Let me find out which ones they are. Let
4 me find the list. Why don't you just go down the list and
5 indicate which ones you plan to call.

6 MR. McCOLL: Mr. Larken and Ms. Osborn and -- I'm
7 going from memory here, Judge.

8 THE COURT: Well, I don't find a Larken. Oh,
9 Ms. Rose (sic)?

10 MR. McCOLL: Yes, Larken Rose.

11 THE COURT: And Ms. Osborn?

12 MR. McCOLL: Yes, sir.

13 THE COURT: Anyone else?

14 MR. McCOLL: Yes, I have a character witness.

15 That's --

16 THE COURT: Mr. Stadtmiller?

17 MR. McCOLL: Yes, sir. Can I have just a minute,
18 please?

19 (Mr. McColl confers with Mr. Beall.)

20 MR. McCOLL: And Bob Schulz.

21 THE COURT: Schulz, Rose, Osborn, and Stadtmiller?

22 MR. McCOLL: Yes, sir.

23 THE COURT: And how long do you think all of that
24 will take?

25 MR. McCOLL: An hour and a half, Judge.

1 THE COURT: Okay. Now, I'm going to give each of you
2 15 minutes' argument. Do you want any warning on your opening?

3 MR. JARVIS: Yes, Your Honor. I would like a warning
4 after I've used nine minutes and then again a warning when I
5 have one minute left on my final.

6 THE COURT: Okay. And do you want a warning?

7 MR. McCOLL: Yes, sir. I would like a three-minute
8 warning. And consistent with having more strikes, we would ask
9 for just a little bit more time. Since the government is in
10 the position they are with the resources they have, we would
11 request 18 minutes for final.

12 THE COURT: Well, you had more exhibits. You had lot
13 bigger boxes. I think you ought to have about the same time.
14 You out-boxed them.

15 MR. JARVIS: Your Honor, excuse me.

16 THE COURT: Okay. I'll warn you at three minutes.

17 MR. McCOLL: Could we talk about the charge at some
18 point? Not now. I haven't read it.

19 THE COURT: Well, it's the one I gave you this
20 morning.

21 MR. McCOLL: Judge, we've been in trial. I just
22 haven't seen it.

23 THE COURT: Okay. Well, read it over the lunch hour,
24 and if you want to comment on it when you get back, we will.

25 MR. JARVIS: Your Honor, could we have permission for

1 Mr. Dean, who is a government witness, to be in the courtroom
2 and excused from the rule when Ms. Osborn testifies in case we
3 choose to call him in rebuttal?

4 THE COURT: You want who to be in the courtroom?

5 MR. JARVIS: Mr. Dean as an expert witness to
6 possibly testify on rebuttal to what Ms. Osborn says. We may
7 not call him, but we would like him to be present and excused
8 from the rule.

9 THE COURT: Let me see who you're talking about.

10 MR. JARVIS: Robert Dean.

11 THE COURT: And what do you anticipate that
12 Mr. Schulz will be giving information about that Mr. Dean would
13 respond to?

14 MR. JARVIS: It's Vicki Osborn, Your Honor.

15 THE COURT: Osborn, what do you anticipate she would
16 be giving information about?

17 MR. KEMINS: If I could answer that for Mr. Jarvis,
18 Your Honor?

19 THE COURT: Yes.

20 MR. KEMINS: From our research, it's our belief that
21 Ms. Osborn is someone who presents herself as an expert in
22 decoding IRS codes about an individual and therefore through
23 her decoding of these computer entries --

24 THE COURT: What computer entries are you talking
25 about?

1 MR. KEMINS: In what's called an individual master
2 file. They get a copy of this file and there's little numbers
3 next to every entry and those numbers mean something within the
4 IRS Code.

5 THE COURT: Well, let me ask Mr. McColl: What is
6 Ms. Osborn going to testify about?

7 MR. McCOLL: What Mr. Simkanin testified to, that the
8 IRS owes him money.

9 MR. KEMINS: But that would probably, I'm assuming,
10 unless it's something different, would be based on her review
11 of his master file.

12 MR. McCOLL: In part, I think that's true, so we
13 don't object to Mr. Dean sitting in.

14 THE COURT: Pardon?

15 MR. McCOLL: We do not object to Dean sitting in.

16 THE COURT: That's fine. Then he can sit in. I'm
17 still a little bit puzzled as to what she's going to testify,
18 that she's reviewed what to determine that the IRS owes him
19 money?

20 MR. McCOLL: The IRS has certain files on each of us,
21 Judge, and under a recent law that was passed after the Senate
22 had hearings about IRS abuses, they now made that available for
23 the Court and for each of us to see our own. You can now hire
24 an accountant, you know, to look at that, and that was done and
25 she has an opinion about it and --

1 THE COURT: For what period of time does the IRS owe
2 him money? That's what I'm trying to get an understanding of.

3 MR. McCOLL: Currently.

4 THE COURT: For what period of time?

5 MR. McCOLL: Going back -- She reviewed his entire
6 file back to the beginning.

7 THE COURT: Well, how is that relevant to this
8 particular case?

9 MR. McCOLL: Well, it's relevant to the period of not
10 filing. He might not have had a liability.

11 THE COURT: He had an obligation to file if he had
12 gross income over a certain amount, no matter what his IRS
13 balance sheet might have showed.

14 MR. McCOLL: Not if he had offsets, Judge.

15 THE COURT: He had an obligation to file if he had a
16 certain gross income, without regard to offsets or some overall
17 accounting between him and the IRS. He had an obligation to
18 file a return. So what you're telling me she's going to say is
19 totally irrelevant to this case.

20 MR. McCOLL: Well, Judge, he relied on information --
21 she started off and she did these radio programs.

22 THE COURT: Okay. I can only deal with one thing at
23 a time. What I'm dealing with now is what you say she's going
24 to testify to, and I say she's not going to testify to that
25 because that's not relevant to this case. Now, is there

1 something else she's going to testify to?

2 MR. McCOLL: Yes. That she -- yes. They had -- she
3 was on radio programs, and based on knowledge of the Code and
4 these Senate hearings, she got involved with doing, as an
5 accountant, basically doing the checking and the accounting
6 work that the IRS was doing and finding -- and she's done this
7 for years, and she's found -- been hired by pretty famous
8 people here in Fort Worth, Judge.

9 THE COURT: What's she going to testify to other than
10 what you told me? That's what I'm trying to find out.

11 MR. McCOLL: That's the primary thing, that she found
12 mistakes.

13 THE COURT: Is that all she's going to testify to?

14 MR. McCOLL: Well, and she found mistakes in the way
15 that the IRS was accounting Mr. Simkanin's file.

16 THE COURT: Income tax?

17 MR. McCOLL: Yes, sir.

18 THE COURT: Okay. I don't think we have any issue in
19 this case as to whether he properly filed his tax returns.
20 It's simply a matter of whether he failed to file tax returns
21 for a certain period of time, four years; and that's determined
22 by what his gross income was.

23 MR. McCOLL: But what she --

24 THE COURT: And you haven't told me anything she's
25 going to say that has any relevance to that issue.

1 MR. McCOLL: In 1995 he overpaid the IRS \$100,000.

2 THE COURT: So what?

3 MR. McCOLL: Well, that's the year that he thought,
4 and he got to thinking that he had overpaid them, according to
5 his testimony.

6 THE COURT: Well, so what?

7 MR. McCOLL: Well, that's consistent with --

8 THE COURT: That doesn't have anything to do with
9 whether he was obligated to file tax returns.

10 MR. McCOLL: May we approach the bench just for a
11 minute, Judge?

12 THE COURT: No, we don't have a jury in here.

13 MR. McCOLL: Okay.

14 THE COURT: Maybe I'm missing the point. Do you
15 perceive something I don't see?

16 MR. KEMINS: No, Your Honor. In fact, he's admitted,
17 the defendant has admitted, that he had gross income in the
18 amounts we allege in the indictment for the years included in
19 the indictment. He's admitted to that, and that's what
20 triggers the filing obligation. He's not charged with evasion
21 or anything. He's charged with failure to file and he's
22 admitted, as I understand his admission that he submitted to
23 the Court --

24 THE COURT: Okay. Well, I don't know that what you
25 told me so far about Ms. Osborn causes any of her testimony to

1 be relevant to this case.

2 MR. McCOLL: Your Honor, she would additionally
3 testify that the IRS's calculations as to the gross income are
4 incorrect.

5 MR. KEMINS: He's admitted to them already, Your
6 Honor.

7 MR. McCOLL: I admitted that he had sufficient gross
8 income to file.

9 THE COURT: That's the only issue, whether he should
10 have been filing.

11 Okay. Well, I'm ruling if that's all she's going to
12 testify to, that's she's not going to testify.

13 MR. McCOLL: Judge, what if there's a huge, huge
14 mistake in the calculation that's in front of the jury?

15 THE COURT: I'm ruling that if her testimony is going
16 to be what you said it's going to be, that she will not
17 testify.

18 MR. JARVIS: Your Honor, we would also request if
19 there are any experts like that, that have given reports or
20 studies, we have been given no discovery, no notice, or
21 anything, and we would object on those grounds.

22 THE COURT: Well, what are you saying, Mr. Jarvis?

23 MR. JARVIS: Well, of course, I agree it's not
24 relevant, but if it becomes relevant and there is a report
25 that's been generated due to her analysis, we would like that

1 to be turned over pursuant to Discovery Rule 16, and it has not
2 been.

3 THE COURT: Well, have you seen all of the exhibits
4 they have on their exhibit list?

5 MR. JARVIS: It's not there. I haven't seen a report
6 dealing with those.

7 THE COURT: Have you seen all of the exhibits shown
8 on their exhibit list?

9 MR. JARVIS: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. McCOLL: Judge, in addition, the importance of
12 this, because it's a good faith defense, is that his suspicion
13 of the IRS was confirmed by her, because she told him they made
14 -- you've overpaid in 1995. And he said, bingo, that's the
15 year --

16 THE COURT: Mr. McColl, you've already explained to
17 me what she's going to testify to, and that's not relevant to
18 this case. If it has something to do with his suspicion, that
19 slight bit of potential relevance is far outweighed by the
20 confusion that could be created by that testimony, which really
21 doesn't have anything to do with this case. So I'm ruling
22 she's not going to testify based on what you told me about her
23 testimony.

24 Now, maybe we'd better find out about these others. What
25 is it Robert Schulz is planning to testify to?

1 MR. McCOLL: Basically similar -- He's not a CPA, but
2 it's basically similar testimony to Mr. Banister. Different
3 but along the same lines.

4 THE COURT: Is he just going to say what he told
5 Mr. Simkanin? That's all I'm going to allow.

6 MR. McCOLL: Yes, I understand that's all you're
7 going to allow.

8 THE COURT: Okay. We'll play that by ear, then. How
9 about --

10 MR. McCOLL: Mr. Larken Rose, he's just going to
11 testify as to what he told --

12 THE COURT: Mr. Simkanin?

13 MR. McCOLL: -- Mr. Simkanin.

14 THE COURT: Okay. Is there anything else we need to
15 deal with before we break?

16 MR. KEMINS: One quick question, Your Honor.
17 Regarding these other witnesses, and if I'm recalling it
18 incorrectly, I apologize. Mr. Banister, if I recall, said he
19 shared the defendant's view, but I'm trying to remember whether
20 he ever said he actually advised the defendant on the law.

21 THE COURT: Well, I don't know whether he did. I
22 don't recall specifically. I would have to review the notes,
23 but what's your point?

24 MR. KEMINS: Well, my point is, is that if he didn't
25 specifically advise Mr. Simkanin on the law, then

1 Mr. Simkanin's, in effect, defense that he relied on him is not
2 there, and that Mr. --

3 THE COURT: Well, that's something you can argue to
4 the jury, it seems to me like. I don't know what you're asking
5 me to do.

6 MR. KEMINS: We were going to ask that Mr. Banister's
7 testimony be stricken.

8 THE COURT: Oh, I think that would be a little bit
9 more aggressive than you really want to be.

10 MR. KEMINS: Okay, Your Honor.

11 THE COURT: Okay. I think we -- Is there anything
12 else we need to deal with?

13 MR. KEMINS: No, sir.

14 THE COURT: We'll talk about the charge for just a
15 minute or two before the jury comes back in after we return
16 from lunch.

17 MR. McCOLL: Yes, Your Honor.

18 THE COURT: So both of you study it very carefully so
19 if you have any comments on it we can deal with them at that
20 time.

21 MR. McCOLL: Yes, Your Honor.

22 (Court in recess, 12:55 p.m. until 1:53 p.m.)

23 MR. JARVIS: Your Honor, Mr. McColl --

24 THE COURT: Just a minute. The jury is entering.

25 Mr. Jarvis, you can come get this exhibit book.

1 Okay. Mr. McColl, you may proceed. Where is Mr. McColl,
2 Mr. Jarvis?

3 MR. JARVIS: Your Honor, I don't know.

4 THE COURT: Well, see if he's out in the hall.

5 MR. JARVIS: Somebody is checking.

6 UNIDENTIFIED SPEAKER: The marshal said he's not out
7 there.

8 (Brief pause.)

9 MR. KEMINS: I think he might be on his way up, Your
10 Honor. I thought I heard one of the walkie talkies from one of
11 the security guys saying he was on his way up.

12 (Court confers with court security officer.)

13 THE COURT: Okay. Maybe he'll be here before long.

14 (Brief pause; Mr. McColl enters courtroom, 1:57 p.m.)

15 MR. McCOLL: Your Honor, ladies and gentlemen, I
16 apologize to the Court.

17 THE COURT: Pardon me, Mr. McColl. Come up here.

18 MR. McCOLL: Yes, sir.

19 (Bench conference with lead attorneys:)

20 MR. McCOLL: I apologize --

21 THE COURT: What is the reason for this?

22 MR. McCOLL: I telephoned your Chambers, and a
23 ten-minute effort to go get a document at a witness's hotel
24 room turned into 30 minutes. She disappeared and we couldn't
25 find her. See, she had my jacket. I had given her my jacket

1 because it was cold. I was ready to leave to be back here on
2 time. But I said I can't. Then we called. She didn't answer
3 her cell phone. It was off. She was looking for documents.

4 THE COURT: Who are you talking about?

5 MR. McCOLL: I'm talking about Ms. Osborn. I was
6 going to resubmit her. She went to get a document that was an
7 IRS document that says you can't charge criminal fraud when
8 they've already paid the money. You can't do it.

9 I'm sorry. I'm very sorry.

10 THE COURT: It's inexcusable.

11 MR. McCOLL: I would have been back.

12 THE COURT: Okay. Well, does anybody have any
13 comments on the Court's Charge?

14 MR. McCOLL: Judge, I haven't seen it.

15 MR. JARVIS: Your Honor, I provided this. Those are
16 the two we would like to have. I just put them on Mr. McColl's
17 chair.

18 THE COURT: Okay. What is your reaction to their two
19 requests for instruction?

20 MR. JARVIS: I don't think he's -- You haven't been
21 able to see them.

22 MR. McCOLL: I haven't seen it, Judge, but I can tell
23 you in the next ten minutes.

24 THE COURT: Okay. How about -- what comments do you
25 have on the charge?

1 MR. McCOLL: I haven't had a chance because I was
2 trying to get back over here and find her. It was a fiasco.
3 It was going to be a ten-minute walk.

4 THE COURT: Okay. Go to your seat.

5 MR. McCOLL: Thank you. I apologize, Judge. It
6 certainly wasn't intentional.

7 (End of bench conference.)

8 THE COURT: Okay. Call your next witness.

9 MR. McCOLL: Your Honor, call John Stadtmiller.

10 THE COURT: You may proceed.

11 JOHN STADTMILLER,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. McCOLL:

15 Q. Your name is John Stadtmiller; is that correct?

16 A. Yes, sir.

17 Q. Could you please spell your name for the court reporter?

18 A. Yes. Spelling the last name, S-T-A-D-T-M-I-L-L-E-R.

19 Q. And how old a man are you, please, sir?

20 A. Fifty.

21 Q. All right, sir. And what do you do for a living?

22 A. I'm a radio talk show host.

23 Q. And where do you do that?

24 A. Just north of Austin, Texas, in Round Rock.

25 Q. All right. Is that also where you live?

- 1 A. Yes, sir.
- 2 Q. And how long have you lived there, please?
- 3 A. Six years.
- 4 Q. And how long have you been a radio talk show host?
- 5 A. Oh, about ten years now.
- 6 Q. All right. Do you know the defendant, Dick Simkanin?
- 7 A. Yes, I do.
- 8 Q. And how long have you known him, please?
- 9 A. I've known Dick for at least several years. I think at
- 10 least five or six years.
- 11 Q. All right. And have you interviewed him on your radio
- 12 show?
- 13 A. Yes, I have.
- 14 Q. And do you remember when the interviews were,
- 15 approximately?
- 16 A. There was at least two interviews, I believe, in 2000, and
- 17 at least two interviews subsequent to that centered around the
- 18 time of his grand juries.
- 19 Q. Okay. And you met with him on many other occasions -- or
- 20 several other occasions other than your radio show; is that
- 21 correct?
- 22 A. Yes, sir, that's correct.
- 23 Q. And could you tell the jury what the subject of the
- 24 interview was, please.
- 25 THE COURT: Restate your question.

1 MR. McCOLL: Yes, sir.

2 MR. JARVIS: Excuse me, Your Honor.

3 THE COURT: And what is the objection?

4 MR. JARVIS: My understanding was that this witness
5 was --

6 THE COURT: The witness is not to testify on this
7 subject. Do you want to get to the subject you represented to
8 the Court he was here to testify on?

9 MR. McCOLL: Yes, sir.

10 THE COURT: Well, let's get to it.

11 BY MR. McCOLL:

12 Q. Do you know Mr. Simkanin's reputation in the community on
13 the subject of being a truthful and honest person?

14 A. Yes, sir.

15 Q. What is that reputation, please.

16 A. Pretty solid in his business and personal dealings with
17 people.

18 THE COURT: He's asking what his reputation is on
19 those specific subjects.

20 BY MR. McCOLL:

21 Q. On the question of being truthful and honest, what is his
22 reputation, please.

23 A. A solid, by-the-book kind of individual, sir.

24 Q. Okay. Such that you would believe him under oath?

25 A. Yes, sir.

1 MR. McCOLL: Pass the witness.

2 THE COURT: Do you have any questions of this
3 witness?

4 MR. JARVIS: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. JARVIS:

7 Q. Sir, do you share the defendant's views as far as the tax
8 laws in the United States?

9 A. What specifically, because there's a lot.

10 Q. Do you share any of his views as far as wages are not
11 taxable income. Let's start with that.

12 A. Yes, I suppose so, yes, sir.

13 MR. JARVIS: Pass the witness.

14 THE COURT: Okay. You can step down.

15 Can he be excused as a witness?

16 MR. McCOLL: He may, Your Honor.

17 THE COURT: Call your next witness.

18 MR. McCOLL: Could I have just a minute with my
19 client?

20 THE COURT: Yes.

21 (Defendant and counsel confer.)

22 MR. McCOLL: Call Ed Rivera, Your Honor.

23 THE COURT: Come on up here. Be seated over here.

24 You may proceed.

25 MR. McCOLL: Thank you, Your Honor.

1

EDUARDO M. RIVERA,

2

having been duly sworn, testified as follows:

3

DIRECT EXAMINATION

4

BY MR. McCOLL:

5

Q. Sir, could you please state your name and spell your last

6

name for the court reporter.

7

A. Eduardo M. Rivera, R-I-V-E-R-A.

8

Q. And are you a lawyer, sir?

9

A. I am.

10

Q. How long have you been a lawyer?

11

A. I've practiced for 31 years.

12

Q. And where do you practice?

13

A. California.

14

Q. And you're licensed by the State Bar of California?

15

A. I'm admitted to the State Bar of California.

16

Q. All right, sir. And have you given --

17

THE COURT: I didn't understand. Are you licensed by

18

the State Bar?

19

THE WITNESS: No. I'm admitted to the State Bar of

20

California.

21

THE COURT: How is that different from being

22

licensed?

23

THE WITNESS: There's no license. We pay an annual

24

fee.

25

THE COURT: Okay. I wanted to know what the

1 distinction was.

2 BY MR. McCOLL:

3 Q. And during the time of being a lawyer in California, have
4 you given opinions in the tax area?

5 A. Yes, I have.

6 Q. And did you give an opinion, a tax opinion, to
7 Mr. Simkanin?

8 A. Yes, I did.

9 Q. Did he fly out to California to consult with you?

10 A. I believe he did fly.

11 Q. Okay. And was it your opinion that --

12 THE COURT: Let me have the attorneys come up here.

13 (Bench conference with lead attorneys:)

14 THE COURT: The same rule applies. You can get him
15 to say what he told Mr. Simkanin, but that's it.

16 MR. McCOLL: You got it.

17 (End of bench conference.)

18 BY MR. McCOLL:

19 Q. He flew out to California to consult you with regard to
20 his legal question about whether he had the right -- not to
21 withhold Medicare and social security from his workers; is that
22 correct?

23 A. That is correct.

24 Q. And did you advise him on that?

25 A. I did.

1 Q. And what was your opinion that you gave to him?

2 A. Well, I told him -- I explained to him how the law was
3 constructed, its origins, its history, why his workers had no
4 legal duty to make returns or to pay a tax, and that only if he
5 contracted with them to withhold on their authority was he to
6 have an obligation to send that money to the Treasury of the
7 United States.

8 Q. And absent that contractual agreement, he had no authority
9 to do so.

10 A. That's right. The authority is provided by the employee.

11 Q. All right. And the W-4 is one of those ways that the
12 employee can provide that authority; is that correct?

13 A. That's correct. That's the form the government uses.

14 Q. And that is a voluntary matter between the employer and
15 employee.

16 A. That's correct.

17 Q. Okay.

18 MR. McCOLL: Thank you, Your Honor.

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

21 MR. JARVIS: Yes, Your Honor. May I approach the
22 witness?

23 THE COURT: Yes.

24 CROSS-EXAMINATION

25 BY MR. JARVIS:

1 Q. Mr. Rivera, let me direct your attention to Government's
2 Exhibit 180. Do you see it there, sir?

3 A. Yes.

4 Q. Is that a file-stamped copy of a permanent injunction that
5 was issued against you by the District Court of the United
6 States, Central District of California?

7 A. That's correct.

8 Q. That was effective July of this year?

9 A. I believe so.

10 Q. You received a copy of this order and have been told by
11 court order to shut down your website and stop making false
12 statements; isn't that correct?

13 A. No. I was told to -- there are specific things that are
14 in the order that says I'm not to tell people that the law is
15 voluntary, that only federal employees have an obligation to
16 pay taxes. There's a dozen things toward the back and in the
17 body of the injunction itself, things that the government
18 doesn't want me to tell people.

19 MR. JARVIS: Your Honor, we would offer Exhibit 180.

20 THE COURT: It's received.

21 BY MR. JARVIS:

22 Q. Directing your attention, sir, to page 7.

23 A. Page 7 of 180?

24 Q. Yes, sir. Paragraph 19.

25 A. I'm there.

1 Q. And I'll read from the exhibit: "In his website and
2 letters, Rivera makes at least the following false and
3 fraudulent statements concerning the internal revenue laws and
4 the effectiveness of his tax schemes: (a) only federal
5 employees are subject to federal income tax; (b) private-sector
6 employers are not required to withhold federal taxes from their
7 employees' wages; (c) federal taxes are voluntary or
8 consensual; (d) filing federal tax returns is voluntary." And
9 it goes on.

10 That's part of the false statements covered in the order,
11 right, sir?

12 A. That's correct.

13 Q. And on page 19 of the order you are instructed to cease
14 and desist your operation, including your website, issuing
15 books, letters, and so on. Is that right, sir?

16 A. That's what it says.

17 Q. All right. Direct your attention, Mr. Rivera, to
18 Government's Exhibit 181. Do you see it there, sir?

19 A. Yes.

20 Q. And is that a letter that you send out to various
21 individuals who want to know what your position is, vis-a-vis
22 the jurisdiction of federal courts?

23 A. Well, I don't know. I'd have to read the entire document.

24 Q. Well, sir, direct your attention --

25 THE COURT: He wants to look at it a minute before

1 you ask him about it.

2 Is that what you're saying?

3 THE WITNESS: Well, see, I don't recognize the
4 letterhead. The letterhead is a little bit different.

5 BY MR. JARVIS:

6 Q. On page 13, is that your signature, sir?

7 A. That's an electronic signature.

8 Q. Are you saying that you cannot identify this letter as
9 your work product or a letter that you send out?

10 A. Not without taking the Court's time to examine it
11 thoroughly.

12 THE COURT: Let me see what you're looking at.

13 (Brief pause.)

14 THE COURT: Look at it long enough to see if you
15 wrote the letter.

16 Mr. McColl, come get these books off the ledge so I can
17 see the witness.

18 MR. McCOLL: Yes, sir.

19 MR. JARVIS: Your Honor, may I approach and give the
20 Court an extra copy of that exhibit?

21 THE COURT: Yes.

22 (Brief pause.)

23 MR. McCOLL: Your Honor, may we approach?

24 THE COURT: Yes, you can.

25 (Bench conference with lead attorneys:)

1 MR. McCOLL: Judge, he's asking him about the
2 jurisdiction, and his legal opinion wasn't about the
3 jurisdiction of courts. It's about this, and this is
4 three-and-a-half years after he consulted him. So, I mean,
5 we're going way, way beyond the scope.

6 THE COURT: What is the purpose of the offering?

7 MR. JARVIS: Judge, I think it just goes to the
8 credibility of the witness.

9 MR. McCOLL: You're introducing Supreme Court
10 opinions. You know, if we can introduce Supreme Court
11 opinions --

12 THE COURT: Well, the Supreme Court is not on the
13 witness stand. Mr. Rivera is.

14 MR. McCOLL: That is a good distinction.

15 THE COURT: And this does go to his credibility.
16 It's absolute nonsense.

17 (End of bench conference.)

18 THE COURT: Have you looked at it, Mr. Rivera?

19 THE WITNESS: Yes, I have.

20 THE COURT: Okay. Go ahead, Mr. Jarvis.

21 BY MR. JARVIS:

22 Q. Is that your letter, Mr. Rivera?

23 A. I believe it substantially is. There are a few blanks,
24 but I believe it's a letter that was sent to a reporter for a
25 local paper.

1 Q. Is this a letter that you -- it says "Dear friend and
2 client." Is this just a form letter that you send out to
3 different clients that ask for your views?

4 A. Yeah, I think so.

5 MR. McCOLL: Object to relevance, Your Honor.

6 THE COURT: I'll overrule the objection.

7 MR. JARVIS: And, Your Honor, if we haven't already
8 offered, we'd offer Exhibit 181.

9 THE COURT: It's received.

10 BY MR. JARVIS:

11 Q. On Exhibit 180, the default judgment, findings of fact,
12 page 2, it reads as follows: "Rivera sells opinion letters
13 consisting of frivolous arguments such as that the federal
14 income tax is voluntary, that Americans employed in the private
15 sector are exempt from federal income tax and do not need to
16 file federal returns, and that the IRS has no authority to
17 assess or collect taxes."

18 MR. McCOLL: Your Honor, may we ask for an
19 instruction to the jury?

20 THE COURT: If you have something you want to take up
21 with the Court, do it at an appropriate time, but don't
22 interrupt his questioning now.

23 MR. McCOLL: May we approach please, Your Honor?

24 THE COURT: Wait until he gets through with his
25 questioning, and then if there's some instruction you want me

1 to give we'll talk about that at an appropriate time.

2 Go ahead. You can start over, Mr. Jarvis.

3 BY MR. JARVIS:

4 Q. Rivera -- paragraph four, page 2, of the findings of fact:

5 "Rivera sells opinion letters consisting of frivolous arguments

6 such as that the federal income tax" --

7 A. Excuse me. I lost you.

8 Q. Page 2 under findings of fact on Exhibit 180 --

9 THE COURT: That's in evidence, isn't it, Mr. Jarvis?

10 MR. JARVIS: Yes, Your Honor.

11 THE COURT: He doesn't need to follow. You just go

12 ahead and read it.

13 MR. JARVIS: All right. Paragraph four, page 2:

14 "Rivera sells opinion letters consisting of frivolous arguments

15 such as that the federal income tax is voluntary, that

16 Americans employed in the private sector are exempt from

17 federal income tax and do not need to file federal returns, and

18 that the IRS has no authority to assess or collect taxes."

19 BY MR. JARVIS:

20 Q. Now, Mr. Rivera, you didn't even show up to contest this

21 litigation; isn't that correct, sir?

22 A. What do you mean by "show up"?

23 Q. Well, it's a default judgment. You didn't even answer it,

24 did you?

25 A. That's correct. I'm admitted to that Court, and under the

1 rules of that Court, I must obey the government. So when the
2 government -- The government was represented by the --

3 THE COURT: He wants to know if you showed up. Is
4 your answer you didn't show up or you did?

5 THE WITNESS: Well, I let it go by default.

6 THE COURT: Okay. Well, then I take it he means that
7 he didn't show up.

8 BY MR. JARVIS:

9 Q. Continuing with paragraph four: "He charges five
10 different rates for his opinion letters: \$100 for a single
11 letter delivered via e-mail, if paid for electronically; \$150
12 for a single letter delivered via mail, if paid for by postal
13 money order; \$500 for four letters, including research and a
14 motion to dismiss a federal indictment; \$1,000 for four letters
15 with research and a motion to dismiss a federal indictment,
16 plus documents 'to establish business and personal
17 nonliability'; and \$2,000 for 'a complete package of his
18 opinion letters, agent letters, lien, levy, law suit, and
19 employer kit.'"

20 How much of that did you give to Mr. Simkanin? How much
21 did he -- which package did you sell to him?

22 A. Well, Mr. Simkanin met with me early in 1999.

23 THE COURT: He wants to know if you sold him any of
24 those packages?

25 THE WITNESS: No.

1 THE COURT: Okay. That was his question.

2 MR. McCOLL: Excuse me, Your Honor. May we approach
3 the bench, please?

4 THE COURT: Yes.

5 (Bench conference with leads attorneys:)

6 MR. McCOLL: Could you please give an instruction to
7 the jury at this time that this was three-and-a-half years
8 after Mr. Simkanin consulted with this witness.

9 THE COURT: Well, the testimony will show that and
10 you can argue that to the jury.

11 MR. McCOLL: But, Judge, they're getting all this
12 taint and it should come at the same time as the evidence.
13 There's case law --

14 THE COURT: Okay. You can ask him on redirect.

15 (End of bench conference.)

16 BY MR. JARVIS:

17 Q. Paragraph five, page 3 of the order: "Rivera markets his
18 opinion letters for use in avoiding criminal charges, for
19 submission to the IRS, and for persuading bankers to resist
20 collection efforts. He advises customers to rely on his
21 opinion letters in deciding to 'opt out' of payroll withholding
22 taxes. He further explains that the purpose of his opinion
23 letters is to provide a reliance defense for the recipient
24 should there be a need to establish that the matters of fact
25 and law expressed in his opinion letter were relied on by the

1 person for whom the letter was written."

2 Now, Mr. Rivera, referring you to page 13 of Exhibit 181,
3 that would be the letter that you signed. On the same page of
4 your signature, you state under recommendations: "Since the
5 federal courts in your state are, just that, federal courts,
6 you are cautioned again not to enter United States territory
7 lest you be taken into custody on a trumped up administrative
8 tax, evasion, or similar charge."

9 Is that why you didn't show up for your default judgment,
10 because you thought you would be taken into custody on a
11 trumped-up charge?

12 A. No. I was admitted to that court shortly after I became
13 an attorney in 1972. And --

14 THE COURT: He's trying to find out if that's the
15 reason you didn't show up.

16 THE WITNESS: No, it isn't.

17 THE COURT: Okay. He's answered the question.
18 That's not the reason he didn't show up.

19 MR. JARVIS: May I approach the witness, Your Honor?

20 THE COURT: Yes. Hand him everything you're going to
21 be asking him about this time so we won't keep going back and
22 forth.

23 MR. JARVIS: This is it, Your Honor, just the one
24 binder.

25 BY MR. JARVIS:

1 Q. Mr. Rivera, let me direct your attention to Exhibits 149,
2 150, 151, and 152. But before I ask you about those, how many
3 years have you been researching this and come up to these
4 conclusions that you have?

5 A. Well, since law school, actually. I studied --

6 Q. That would be how many years, sir? Just an approximate.

7 A. That would be about 34 years, 35 years.

8 Q. And you're aware of Exhibit 149 where the IRS is warning
9 citizens about schemes, including no taxes being withheld from
10 wages, depicted in Exhibit 149 there about two-thirds of the
11 way down the page?

12 A. What is your question?

13 Q. Are you aware the IRS is warning people about people like
14 you?

15 A. People like me, sir?

16 Q. Who take this legal position -- Well, let me back up.
17 Exhibit 149, are you there, sir?

18 A. Yes, I can see it.

19 THE COURT: Mr. Jarvis, I think you're just winding
20 up for an argument. Save that for the appropriate time.

21 MR. JARVIS: Yes, sir.

22 BY MR. JARVIS:

23 Q. Sir, let me direct your attention to Exhibit 152. Let me
24 know when you're there.

25 A. Page 152 of your document?

1 Q. Tab 152, yes, sir.

2 A. I'm at your tab.

3 Q. Let me just ask this, sir: Do you have -- Well, let me
4 direct your attention to page 9 and 10 of that exhibit, under
5 Tab 152.

6 A. Nine and 10.

7 Q. Are you at Exhibit 152?

8 A. I'm at Exhibit 152. I'm looking for 9 and 10.

9 Q. Well, keep turning until you find a page of contents,
10 which is going to be about the fourth or fifth page. Let me
11 know when you're there.

12 A. Now you got me thoroughly confused, because I'm looking at
13 your page 9 and 10. I find no table of contents. Maybe if you
14 turn these pages for me. You're familiar with it.

15 THE COURT: Let me see the exhibit. Maybe I can help
16 you find it.

17 THE WITNESS: Maybe you can find it, Your Honor.
18 Thank you.

19 THE COURT: Now, what is it you want him to turn to,
20 Mr. Jarvis? Do you want him to turn to the page that has at
21 the top the number 9 and then starts with the line "part, that
22 the trial judge"?

23 MR. JARVIS: Yes, Your Honor.

24 THE COURT: Is that the one you want him to be
25 looking at?

1 MR. JARVIS: Yes, Your Honor.

2 THE COURT: That's Exhibit 152?

3 MR. JARVIS: Yes, Your Honor.

4 THE COURT: Here's what he wants you to be looking
5 at. Start on that page right there.

6 BY MR. JARVIS:

7 Q. Mr. Rivera, as part of your research -- Are you there,
8 page 9?

9 A. Yes.

10 Q. And go ahead and turn to page 10, please. Do you see the
11 cases listed there, relevant case law?

12 A. Yes.

13 Q. Part of your position is basing your --

14 MR. McCOLL: Objection, Your Honor. This is way
15 beyond the scope. This man didn't consult --

16 THE COURT: I think he's going to credibility.

17 MR. McCOLL: But we would also object --

18 THE COURT: I overrule the objection.

19 BY MR. JARVIS:

20 Q. As part of your research, sir, could you find any case law
21 to support your position and to rebut the cases listed on page
22 10.

23 A. This is talking about source income?

24 Q. Yes, sir.

25 THE COURT: Mr. Jarvis, I think you are getting into

1 the merits of his opinions, and I don't intend for that to
2 occur.

3 MR. JARVIS: I'll withdraw the question.

4 BY MR. JARVIS:

5 Q. And, by the way, how much did Mr. Simkanin pay you through
6 the years for your legal opinions, sir?

7 A. Oh, I don't have a record -- I have a record of it, but I
8 don't remember. It's several thousand dollars. I'm not cheap.

9 Q. And how much were you paid today to come and testify, air
10 fare, per diem, whatever?

11 A. I think the air fare was \$500, one way with a return
12 ticket, and I was given \$200 for meals.

13 Q. And, by the way, when you say "several thousand," are you
14 talking over 10,000? Can you give us a ballpark.

15 A. I think it was over \$10,000, yes.

16 MR. JARVIS: Thank you. Pass the witness.

17 THE COURT: Do you have any redirect?

18 REDIRECT EXAMINATION

19 BY MR. McCOLL:

20 Q. Now, as I understand, my client came to visit you in 1999.

21 A. That's correct.

22 Q. The judgment was in 2003.

23 A. That's correct.

24 Q. This injunction that the prosecutor was asking you about.

25 A. That's right.

1 Q. It's issued by a District Court, Federal District Court,
2 in California like this one, correct?

3 A. That's right. That's the one I'm a member of.

4 THE COURT: Mr. Jarvis, is that 152 that you were
5 asking the witness about, was that offered as an exhibit?

6 MR. JARVIS: Yes, Your Honor, through the defendant
7 on cross-examination.

8 THE COURT: Okay. Well, I didn't have it marked.
9 It's received in case I didn't say it was received.

10 BY MR. McCOLL:

11 Q. And he consulted you about a specific matter of
12 withholding social security and Medicare from his workers;
13 isn't that correct?

14 A. That's correct.

15 Q. Not anything about the jurisdiction of the United States
16 courts; isn't that correct?

17 A. That's right.

18 Q. So this letter --

19 THE COURT: Let's don't make an argument, Mr. McColl.

20 MR. McCOLL: Yes, sir.

21 BY MR. McCOLL:

22 Q. But these two documents were not involved in your
23 consultation with my client.

24 A. It had nothing to do with it. These were created years
25 later.

1 Q. Thank you.

2 A. You're welcome.

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

4 MR. McCOLL: Yes.

5 THE COURT: You can step down. You're excused as a
6 witness.

7 Call your next witness.

8 MR. McCOLL: Could I have just a minute, Your Honor?

9 (Brief pause.)

10 MR. McCOLL: Excuse me, Your Honor.

11 THE COURT: Mr. McColl, who are these people on this
12 side of the rail? Are they attorneys in this case?

13 MR. McCOLL: They're my legal assistants, Your Honor.

14 THE COURT: Okay. Have them go on the other side of
15 the rail.

16 MR. McCOLL: Yes, sir. Thank you. If you can just
17 give me one minute, please, Your Honor, I'll retrieve the
18 witness.

19 (Brief pause.)

20 MR. McCOLL: Your Honor, we call Bob Schulz.

21 THE COURT: Come over here and be seated.
22 You may proceed.

23 MR. McCOLL: Thank you, Your Honor.

24 ROBERT SCHULZ,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. McCOLL:

3 Q. What is your name, please, sir.

4 A. Roberts Schulz.

5 Q. Would you please spell your last name for the court
6 reporter.

7 A. S-C-H-U-L-Z.

8 Q. And how old a man are you?

9 A. Sixty-four.

10 Q. And what do you do for work?

11 A. I am a founder and CEO of a research and educational
12 foundation known as the We The People Foundation For
13 Constitutional Education, Inc.

14 Q. All right, sir. And considering the predecessor
15 organization that was prior to that, how long have you been
16 involved with that work?

17 A. Since 1979.

18 Q. All right, sir. And do you know my client Mr. Richard
19 Simkanin?

20 A. I do.

21 Q. All right, sir. And when did you first meet him?

22 A. Mr. Simkanin first called me following our C-Span
23 broadcast for the National Press Club in July of 1999.

24 Q. All right, sir. And that was a broadcast of a debate with
25 professionals on tax questions; is that correct?

1 A. It was meant to be a --

2 MR. JARVIS: Your Honor, object to --

3 A. -- discussion --

4 MR. JARVIS: -- to the relevance of the content of
5 that.

6 THE COURT: Oh, I'm going to overrule that objection,
7 but do bear in mind the issues we're dealing with.

8 MR. McCOLL: Yes, sir.

9 A. It was meant to be a debate, discussion of questions
10 regarding the validity of the income tax laws.

11 THE COURT: Why don't you just stick to what it was,
12 not what it was meant to be.

13 A. And --

14 THE COURT: Stick with what it was, not what it was
15 meant to be.

16 BY MR. McCOLL:

17 Q. What was it that happened that day?

18 A. We brought to the National Press Club --

19 THE COURT: He wants to know what happened that day,
20 not the background but what happened that day.

21 BY MR. McCOLL:

22 Q. Y'all had a debate about the tax issues, correct?

23 A. Correct.

24 THE COURT: Mr. McColl, when I ask a question, let
25 the witness answer the question before you ask another one.

1 MR. McCOLL: I beg your pardon.

2 THE COURT: The question is: What happened that day.

3 THE WITNESS: There was a debate and discussion of
4 the income tax laws, the federal income tax laws, yes.

5 BY MR. McCOLL:

6 Q. And the IRS was invited.

7 A. We had sent research reports and invited the government to
8 send their most knowledgeable people.

9 THE COURT: Mr. McColl, this has no relevance to this
10 case, now that I see where you're headed. It has absolutely no
11 relevance. Go to some other subject.

12 BY MR. McCOLL:

13 Q. Was it after this broadcast that Mr. Simkanin contacted
14 you?

15 A. It was.

16 Q. All right, sir. And did he explain his concerns about the
17 taxes and the issues of withholding?

18 A. He did.

19 Q. All right, sir. And did he ask you for information,
20 education, et cetera, anything that you may have, that would
21 help educate him about his concerns and about how to get
22 answers, for example, from the government?

23 A. Yes.

24 Q. And what did you advise him?

25 A. We told him that we had reviewed the research reports and

1 everything that the federal government had published on the
2 subjects and that we had posted a rebuttal to everything the
3 government had said on these issues and that he had every right
4 to -- we had a right and he had a right to request answers to
5 questions from the federal government, and the government had
6 an obligation to respond to those questions.

7 Q. And did you use tax professionals and lawyers to assist
8 you with this rebuttal that's posted on the website that you
9 told him about?

10 A. Yes, we did.

11 Q. All right, sir. And was there posted on the website that
12 you directed him to any course of action that he could take to
13 enforce getting an answer?

14 A. Yes. And the advice we gave Mr. Simkanin was to continue
15 to press for an answer to his questions, as we were doing.

16 That he had every right to petition the government for a
17 redress of grievance. It's a right guaranteed by the First
18 Amendment, and that government has an obligation to respond.

19 Q. And if they don't respond, was there something posted on
20 your website to which --

21 MR. JARVIS: Your Honor, again, we object to the
22 relevance of the government responding to something we have no
23 idea what it is.

24 THE COURT: Why don't we -- I sustain that objection.

25 BY MR. McCOLL:

1 Q. Was there any other information you gave him or advice
2 that you gave him?

3 A. Yes. We advised him to review Senator Inouye's letter on
4 the subject, which related directly to the questions he was
5 asking us.

6 Q. All right, sir.

7 A. And it was a letter that Senator Inouye had sent -- he was
8 a senator, U.S. Senator from Hawaii. He had sent it to one of
9 his constituents, a tax consultant, and the letter said --

10 THE COURT: I don't believe he asked you for the
11 contents of the letter.

12 MR. McCOLL: May we know the contents?

13 THE COURT: No, I don't think we're going into the
14 contents of the letter.

15 BY MR. McCOLL:

16 Q. Was there any other advice that you gave him with regard
17 to payment of the taxes that were being requested by the IRS,
18 in general?

19 A. The advice was, as our advice was to many other people,
20 familiarize yourself with various research reports,
21 specifically the report by Bill Benson, the research report by
22 Joe Banister, the research by Bill Conklin, and also
23 familiarize yourself with the content of the website of
24 constitutional attorney Larry Becraft.

25 Q. All right, sir. And that was on the subject of payment or

1 withholding, among other things, with regard to not paying
2 taxes on specific issues.

3 A. Yes. We said that the body of research supported three
4 propositions.

5 THE COURT: He was simply asking you what the subject
6 was, and I think you answered that by your "yes."

7 BY MR. McCOLL:

8 Q. What three propositions did you tell my client that the
9 research supported?

10 A. The three primary findings of our foundation were, (a),
11 there is no law that requires most Americans to file and pay an
12 income tax, or most companies to withhold the income tax from
13 the paychecks of the men and women working for them.

14 Q. From the wage earner.

15 A. Yes.

16 Q. Okay.

17 A. Right. And also that the second proposition was that the
18 Sixteenth Amendment had not -- there were two major questions
19 about the Sixteenth Amendment. The proposition was that, (a),
20 it was fraudulently declared to have been ratified, but more
21 importantly it dealt with income -- the constitutional -- the
22 constitutional definition of "income" is different than the
23 definition of income most Americans have. And, third, that
24 when people file a 1040 form, that they are voluntarily -- they
25 don't know this, it's unknowingly voluntarily waiving their

1 Fifth Amendment right not to be a witness against themselves,
2 because the government frequently uses --

3 MR. JARVIS: Your Honor, we object. It's beyond the
4 scope of what the defendant testified he relied upon.

5 THE COURT: Go ahead. I'm going to let him finish
6 his answer.

7 BY MR. McCOLL:

8 Q. Could you finish your answer about what the constitutional
9 definition is of "income"?

10 THE COURT: Well, we're not going to have him state
11 what his constitutional definition is. I believe he's already
12 said what he told the defendant, and, of course, we've already
13 heard from the defendant what he relied on. So why don't we go
14 on to something else. I think he's fully dealt with that
15 subject.

16 A. The third proposition --

17 THE COURT: You've dealt with that enough.

18 A. -- which I didn't quite get to finish --

19 BY MR. McCOLL:

20 Q. So following your advice -- and that was in July that he
21 contacted you after the C-Span debates?

22 A. Yes. We had a number of conversations between July and
23 November of 1999, yes.

24 Q. All right. And during those conversations you gave him
25 other recommendations, places to look for information, and

1 advice regarding his rights to get an answer from his
2 government.

3 A. Yes. We said it's fundamental.

4 Q. And did you advise him that there was anything he could do
5 to ensure that he got an answer?

6 A. We said he has every right to enforce his rights. For
7 instance, in the words --

8 MR. JARVIS: Object to the relevance of this entire
9 line of questioning about demanding answers.

10 MR. McCOLL: Well, I just want --

11 THE COURT: Pardon me, Mr. McColl. Let him finish
12 his objection.

13 Go ahead with the question. I'll overrule the objection
14 for the time being.

15 BY MR. McCOLL:

16 Q. Did you advise him as -- What specific course did you
17 advise him to take with regard to the enforcement of his
18 request for an answer?

19 A. I said if he properly petitions the government for a
20 redress of grievances, properly petitions the government for an
21 answer to his questions, if he has evidence that government is
22 operating outside the boundaries that have been drawn around
23 its power by, we, the people, and he has properly confronted
24 the government, asked the government for answers to certain
25 questions regarding the government's allegedly improper
26 behavior, then government has an obligation to respond. And if

1 they don't respond, then it is the right, it's part of the
2 right to petition for redress of grievances, to retain your
3 money until the government does respond and redress the
4 grievances. And I told him those weren't my words. Those were
5 the words of the founding fathers.

6 Q. Thank you. And you pointed him to the authority.

7 A. I did. I quoted them, yes.

8 Q. Thank you.

9 THE COURT: Do you have any questions, Mr. Jarvis?

10 CROSS-EXAMINATION

11 BY MR. JARVIS:

12 Q. Mr. Schulz, were you with We The People starting what
13 year, sir? I'm sorry.

14 A. The foundation was incorporated in November of 1997. Its
15 predecessors go back to 1979.

16 Q. Directing your attention, sir, to Government's Exhibits
17 172 and 173. Let me know when you're there.

18 A. I have 172, 3, and -- I have 172 and 173.

19 Q. Before I get into that, did you -- You went through your
20 pillars, or your main points. Did you advise the defendant,
21 Richard Michael Simkanin, not to withhold taxes from the wages
22 of his employees?

23 A. No.

24 Q. Did you advise the defendant in this case not to file
25 individual federal income tax returns?

1 A. No.

2 Q. To your knowledge, does anybody connected with We The
3 People make such advice?

4 A. Not until -- the answer is we are now advising people if
5 the government is not responding, they have the right to retain
6 their money until the government does respond. If they have
7 evidence that government is infringing on your rights and
8 operating outside, abusing its power in any way, and if you
9 properly petition them, as we have done and as other people
10 have done --

11 Q. Mr. Schulz --

12 A. -- and government refuses to justify its behavior, the
13 people have the right to retain their money until the
14 government does.

15 MR. JARVIS: Your Honor, we would object,
16 nonresponsive.

17 THE COURT: Mr. Schulz, why don't you listen to the
18 questions and answer the questions and don't just keep going
19 on.

20 THE WITNESS: Okay.

21 THE COURT: Ask the question again if you want to try
22 to get him to answer it.

23 BY MR. JARVIS:

24 Q. So your answer is you've never specifically advised --
25 Well, you've never specifically advised this defendant to do

1 any of the things that he's done in this indictment, such as
2 fail to file individual federal income tax or fail to withhold
3 taxes on his employees. You've never advised him to do that;
4 is that correct?

5 A. No, we have not. We've encouraged him to continue
6 educating himself.

7 THE COURT: He just asked you if you had done that,
8 and you've answered that question.

9 BY MR. JARVIS:

10 Q. By the way, how many payments or contributions in any way
11 has the defendant made to your organization, financial support?

12 A. I cannot -- I could only speculate. I could only guess at
13 that answer. I have no concrete --

14 Q. Just give us a ballpark.

15 A. We ran a series of four US --

16 THE COURT: Just try to come up with an amount. You
17 don't need to think out loud. Think to yourself and then give
18 an answer.

19 THE WITNESS: I recall an amount about \$5,000 to help
20 pay for one of our USA Today ads.

21 BY MR. JARVIS:

22 Q. Was that the one that he appeared in, Government's Exhibit
23 172?

24 A. I can't answer that. I don't recall. It was on one of
25 them, but I don't know that it was this one.

1 Q. By the way, on the ad that he appeared in there, 172, as a
2 matter of fairness, do you show Mr. Simkanin and the others a
3 proof or a copy of that before it's printed?

4 A. I'm sorry. Could I make a correction? I recall a \$5,000
5 donation to the foundation. It was -- we were publishing ads
6 between July 7th of 2000 and March 23 of 2001. But we were
7 doing other things at the same time, which were costing us
8 money, of course. I can't answer the question of whether this
9 was to specifically help us offset the cost of any one of these
10 ads or whether there was something else we were asking for
11 money for.

12 Q. I understand. My question is: After this ad came out,
13 172, dated March 2nd of 2001, did Mr. Simkanin ever call and
14 tell you that he was concerned that any part of this ad was
15 inconsistent with his views? Did he ever tell you that, sir?

16 A. I don't think so, no.

17 Q. And, by the way, how much were you paid to come on down
18 today and testify?

19 A. Nothing.

20 Q. Okay. No reimbursement for air fare or anything like
21 that?

22 A. No. I've already told --

23 THE COURT: He just asked if you were being
24 reimbursed.

25 A. I am not being reimbursed, no.

1 BY MR. JARVIS:

2 Q. Sir, let me direct your attention to a conference coming
3 up later this month, January 22nd through 24th in Arlington,
4 Virginia.

5 A. Yes.

6 Q. You have the defendant scheduled tentatively to be a panel
7 member at a panel session on Friday, January 23rd, of this
8 year?

9 A. It says -- the answer is, yes, if acquitted. If he's
10 available to attend, we would like him to speak, yes.

11 Q. And the topic that he would be testifying about would be
12 the fraudulent origin and illegal operation and enforcement of
13 the entire federal income tax system. Is that right, sir?

14 THE COURT: Pardon me, Mr. Jarvis. I need to tell my
15 secretary something.

16 (Court confers with secretary.)

17 THE COURT: I'm sorry, Mr. Jarvis. You may proceed.

18 MR. JARVIS: Yes, Your Honor.

19 BY MR. JARVIS:

20 Q. Mr. Schulz, again directing your attention to that
21 seminar, you said Mr. Simkanin was scheduled tentatively to
22 testify (sic) if he's acquitted. And isn't it true that the --
23 on your website printed out at givemeliberty.org the topics
24 that panel will be discussing would be to examine the
25 fraudulent origin and illegal operation and enforcement of the

1 entire federal income tax system. Isn't that correct, sir?

2 A. That's correct.

3 MR. JARVIS: Pass the witness.

4 THE COURT: Do you have any further questions? Can
5 he be excused as a witness?

6 MR. McCOLL: Yes, Your Honor.

7 THE COURT: You're excused as a witness. You can
8 step down.

9 Call your next witness.

10 MR. McCOLL: Your Honor, we call Larken Rose. Larken
11 Rose.

12 THE COURT: You may proceed.

13 MR. McCOLL: Thank you, Your Honor.

14 LARKEN ROSE,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. McCOLL:

18 Q. Your name is Larken Rose; is that correct?

19 A. Yes.

20 Q. Do you know my client, Dick Simkanin?

21 A. Yes, I do. I have not met him personally before, but I
22 have had contact with him by phone and e-mail.

23 Q. And you've given him advice that he's relied on?

24 A. By my written report and by e-mail.

25 Q. All right. And was that income tax advice?

1 A. Yes, expressing my conclusions about the limited nature of
2 the federal income tax.

3 Q. And can you briefly summarize what you told him regarding
4 that?

5 A. Well, the short -- the punch line of my taxable income
6 report and my explanations to him and others is that according
7 to the law itself the income of the average American is not
8 subject to the federal income tax despite conventional wisdom
9 to the contrary.

10 Q. Did you tell Mr. Simkanin that the tax was -- tax on the
11 incomes of most Americans is invalid or unconstitutional?

12 A. No, not at all. The issue is what the law itself shows to
13 be taxable. This isn't a protest or a complaint. This is --
14 or some loophole to get out of paying our taxes. This is
15 looking at the law itself to determine what is taxable and
16 finding that, according to the law itself, these were never our
17 taxes to begin with.

18 Q. Did you tell Mr. Simkanin that no one owes income taxes?

19 A. No. The law itself -- there are specific sections of the
20 law that describe when domestic income is taxable and specific
21 sections which describe when foreign source income is taxable,
22 or income which originates outside the United States. And
23 while those sections do not show the domestic income of the
24 average American, myself or Mr. Simkanin or the workers of
25 Arrow Plastics, while it does not show their income to be

1 taxable, both domestic income and foreign income can be taxable
2 in certain situations. Primarily what those sections of law
3 show is that --

4 THE COURT: He's trying to find out what you told
5 Mr. Simkanin. Limit the questioning to that subject.

6 A. Right.

7 BY MR. McCOLL:

8 Q. Are you telling us what you told --

9 A. Yes, this is what -- by my report and by e-mail and phone.

10 THE COURT: When did you tell him that?

11 THE WITNESS: What?

12 THE COURT: When did you tell him that?

13 THE WITNESS: Starting in -- I believe it was
14 starting in '98 and throughout '99 by e-mail and phone.

15 THE COURT: Did you tell him that all at one time, or
16 did you piecemeal it?

17 THE WITNESS: No, we had a few discussions. And this
18 is in addition to him getting my taxable income report that I
19 know he received in '99, if not '98. So this is -- that this
20 is discussions in addition to my articles and reports.

21 BY MR. McCOLL:

22 Q. Did you tell him that those people -- Which people did you
23 tell him that have taxable income and they do owe a tax and
24 it's a crime for them to not pay it?

25 A. Okay. As I was saying --

1 MR. JARVIS: Object to the relevance of what taxes
2 should be paid.

3 THE COURT: He's trying to find out what he told
4 Mr. Simkanin. Whether it makes any sense or not, he's trying
5 to find out what he told him.

6 MR. JARVIS: We object to the relevance.

7 THE COURT: I'll overrule the objection.

8 Is that what you're trying to find out?

9 MR. McCOLL: Exactly.

10 A. What I explained to Mr. Simkanin, both by personal
11 correspondence and through my report that I know he got, is
12 that those sections of law show that the tax applies primarily
13 to people engaged in certain types of international or foreign
14 trade, such as U.S. citizens receiving foreign source income or
15 non-resident aliens or foreign corporations getting income from
16 doing business here in the states. And there are a few other
17 issues, but they all relate in some way to international trade.
18 And that, again, the income of the average American citizen
19 living and working here in the 50 states was not shown by the
20 law to be taxable income.

21 THE COURT: I think he's going in circles and saying
22 the same thing over and over again like a broken record. Why
23 don't you focus on something and get on with it.

24 MR. McCOLL: Yes, sir.

25 BY MR. McCOLL:

1 Q. Did he ask you for assistance and advice with regard to
2 how to deal with IRS responses to his inquiries?

3 A. Not in the form of telling him what to file or that sort
4 of thing, but, yes, in -- as far as discussing the issue with
5 him and trying to get the government to answer questions about
6 specific sections of the law where we would --

7 THE COURT: Is the answer to the question yes or no?
8 I never did get the answer.

9 THE WITNESS: I understood the question, it could
10 mean two different things.

11 BY MR. McCOLL:

12 Q. Yes, sir. Did you engage in various debates that you
13 invited Mr. Simkanin to watch and then confer with you about?

14 A. Yes. I know he was a witness to debates between myself,
15 both between myself and private sector tax professionals, tax
16 attorneys, CPAs, and the like, as well as between myself and
17 government employees, IRS mainly.

18 Q. And following those debates with IRS and other tax
19 professionals, did you all have communication and he asked you
20 questions and you gave him answers through e-mail?

21 A. Yes.

22 Q. And did he ask you how, in your opinion, he should respond
23 to various questions when asked by the government, for example,
24 as to regulations that come after the tax -- that come after
25 the statute -- or they are passed along with the statute?

1 A. I'm not entirely sure I understand.

2 Q. That was a poor question. I apologize and I'll rephrase
3 it.

4 A. Sure.

5 Q. Can you give us a specific example that you told Dick
6 about?

7 A. Sure. For -- there are many. I'll do a quick one. The
8 older income tax regulations used to --

9 THE COURT: Now, this is something you told him?

10 THE WITNESS: Yes.

11 THE COURT: When did you tell him that?

12 THE WITNESS: Again, both by my written taxable
13 income report and by e-mails or phone conversations.

14 THE COURT: You don't know which way you told him?

15 THE WITNESS: It was both. There were several of
16 each.

17 THE COURT: You told him the same thing several
18 different ways?

19 THE WITNESS: Right. Discussing the issue on several
20 occasions.

21 THE COURT: When was it you told him in person?

22 THE WITNESS: In person?

23 THE COURT: Yes.

24 THE WITNESS: No, I haven't met him in person before.
25 It was by phone and by e-mail.

1 THE COURT: You've never met Mr. Simkanin?

2 THE WITNESS: Not in person.

3 THE COURT: How did y'all establish this exchange of
4 communications?

5 THE WITNESS: I had published my taxable income
6 report publicly, and he heard about it. Again, I'm not sure if
7 it was '98. It was at least '99. It may have been '98, which
8 is when it first came out. And by the internet, it's easy for
9 him to contact me with questions and e-mail; and we would get
10 into discussions about --

11 THE COURT: You assume he read your internet
12 messages?

13 THE WITNESS: I know he did, because he said so. We
14 had back-and-forth exchanges.

15 THE COURT: Where do you operate out of?

16 THE WITNESS: What?

17 THE COURT: Where do you operate out of?

18 THE WITNESS: I live just outside of Philadelphia,
19 Pennsylvania.

20 THE COURT: Go ahead.

21 MR. McCOLL: I'm almost through, Your Honor.

22 BY MR. McCOLL:

23 Q. What did you tell Mr. Simkanin, please, about which income
24 that -- which income sections of the CFR show to be taxable
25 income?

1 A. Okay. The -- Again, by report and phone and e-mail
2 discussions, what I explained was that these particular
3 sections of law, which are prescribed for "determining taxable
4 income from sources within the United States," what they show
5 to be taxable is income from certain specific sources and
6 activities which are specifically listed in the regulations
7 which all relate, again, in some way, to international or
8 foreign trade or federal possessions, such as Guam or Puerto
9 Rico, foreign income of U.S. citizens, domestic income of
10 foreigners doing business here, all that sort of thing, and
11 that the regulations specifically describe that.

12 Q. And what did you tell Mr. Simkanin about whether he should
13 just assume that his income is taxable so as to not --

14 A. Even though --

15 Q. -- go through this exercise?

16 A. Right. Even though the law doesn't specifically point it
17 out. Right.

18 Q. What did you tell him?

19 A. Just to -- Yeah, the structure of the law is such that it
20 says look here to determine taxable domestic income. My income
21 doesn't show up there, his income doesn't show up, and I
22 pointed out to him Gould versus Gould, a Supreme Court ruling
23 in which they said it is established law when interpreting tax
24 statutes not to assume that they cover "matters not
25 specifically pointed out," as well as the legal principle known

1 as inclusio unius est exclusio alterius.

2 MR. JARVIS: Your Honor, we object to the scope of
3 this as being irrelevant. It's a Latin phrase saying --

4 THE COURT: Oh, I'm going to let him -- the Latin
5 term?

6 BY MR. McCOLL:

7 Q. What does that mean?

8 THE COURT: Well, Mr. Jarvis wants to know what it
9 means, so go ahead and ask him.

10 A. Right. That's what I was about to say, is that that term,
11 that legal principle, dictates that where the law specifically
12 says matters it applies to, an irrefutable inference is to be
13 drawn that what was omitted was intended to be omitted. In
14 other words, if the law says this tax applies to one, two,
15 three, and four, we are not to assume that it meant and five
16 and six and seven, too. That it is to specify what it applies
17 to, and what it does not specify, we are to assume it does not
18 apply to.

19 So when the law says these sections tell how to determine
20 taxable domestic income, if they do not say that my income is
21 taxable, the Supreme Court and that principle of law dictate
22 that I am to conclude that my income is not taxable because --

23 THE COURT: He just wants to know what that Latin
24 phrase means.

25 THE WITNESS: Right.

1 THE COURT: Why don't you tell us what that Latin
2 phrase means.

3 MR. McCOLL: I got the Latin phrase. Thank you, Your
4 Honor.

5 THE COURT: Okay. Well, let's go on to something
6 else now.

7 BY MR. McCOLL:

8 Q. You're the one who told Mr. Simkanin that basically the
9 tie goes to the taxpayer, according to Gould v. Gould?

10 A. Oh, right. The Supreme Court says in case of doubt, the
11 law is to be construed most strongly --

12 THE COURT: Aren't we going in circles again?

13 THE WITNESS: This is a different quote, same case
14 but a different quote from it.

15 THE COURT: Oh, okay.

16 THE WITNESS: Where they say, "In case of doubt, tax
17 statutes are to be construed most strongly against the
18 government and in favor of the citizen."

19 MR. McCOLL: Thank you.

20 THE COURT: That report you're talking about, is that
21 something you send to everybody, or how do people get it?

22 THE WITNESS: I post it publicly on the internet and
23 I send out free, printed copies to whoever asks for one.

24 THE COURT: How do people get that printed copy? How
25 do you know who wants it?

1 THE WITNESS: If they just e-mail me and give me an
2 address, I send them one for free.

3 THE COURT: Do you have to pay for that whole thing?

4 THE WITNESS: I pay for the printing of them.

5 THE COURT: Pardon?

6 THE WITNESS: I pay for the printing of them.

7 Occasionally, I get other people donating to help print copies
8 of it, but I give them away.

9 THE COURT: Do you belong to some organization that
10 does that?

11 THE WITNESS: No.

12 THE COURT: Okay. Go ahead, Mr. Jarvis.

13 CROSS-EXAMINATION

14 BY MR. JARVIS:

15 Q. Direct your attention, sir, to Exhibit 173. Let me know
16 when you're there.

17 A. The We The People ads?

18 Q. Yeah. The one with the three pictures, and you're right
19 in the middle. Is that right, sir?

20 A. Yes.

21 Q. Do you have any connection to We The People organization,
22 or you just kind of share their views?

23 A. I don't even share all of their views, no. No formal
24 connection. I know that they have published things I've

25 written and that they, at least to some extent, subscribe to my

1 conclusions. But that's about it. There's no formal.

2 Q. The content of this ad here in 173, these are the things
3 you told Mr. Simkanin?

4 A. Are you talking about the entire text of the ad?

5 Q. Well, particularly at the top, left corner where you're
6 talking about the -- part of your position is a constitutional
7 argument. You make reference to Benson's report, The Law That
8 Never Was. That's part of what you talked about?

9 A. No, that is not. I do not deal with the Sixteenth
10 Amendment at all. I believe it's legally irrelevant. There
11 are many things that they deal with that I either disagree with
12 or just never get into.

13 Q. Did you call We The People and tell them you didn't like
14 them putting your picture on an ad that made reference to that?

15 A. Well, they aren't quoting me as saying those things there.
16 They are alleging those things, and among the things they talk
17 about are issues I do address. If they had quoted me as
18 talking about that, I certainly would complain.

19 Q. Mr. Rose, do you support yourself by selling your reports
20 and selling videotapes and all kinds of things, is that how you
21 support yourself on these issues?

22 A. I'm not sure what "all kinds of things" is. The only
23 thing I've ever sold related to this was my theft by deception
24 video, which came out in April of 2002. I've never sold the
25 report. I've given it away for free from the beginning, 1998.

1 THE COURT: He's trying to find out if that's how you
2 support yourself.

3 A. My wife and I have a medical transcription business. But,
4 yes, I do -- I have made money since the video came out, off of
5 sales of that video.

6 BY MR. JARVIS:

7 Q. As a matter of fact, isn't your position beyond just a
8 good faith misunderstanding or interpretation of the law, that
9 you believe that there is a deliberate perpetration of a fraud
10 in connection with the tax laws. Isn't that correct, sir?

11 A. I believe that many of the changes over the years in the
12 tax laws, in the arrangement and the wording and the changing
13 of the wording, does indicate to me that somebody that --
14 whichever individual is responsible for making those changes in
15 the wording were intentionally doing it in the way to make it
16 more difficult to find the limited nature of the tax, yes.

17 Q. And, Mr. Rose, have you ever made the statement that there
18 has been perpetrated a fraud of such magnitude that it is
19 without rival in history?

20 A. Absolutely.

21 Q. Are those your words?

22 A. Yes.

23 Q. In connection with the income tax system?

24 A. Yes.

25 Q. All right. Is this also your statement: That the truth

1 is that some individuals inside the United States government
2 orchestrated and successfully executed the most massive fraud
3 and extortion racket in the history of mankind.

4 A. Absolutely.

5 Q. Those are your words, right?

6 A. Those are my words.

7 Q. So would you tell us the names of the individuals in the
8 government who are responsible for this massive fraud and
9 extortion?

10 A. The IRS is currently illegally in default of a Freedom of
11 Information Act request that would get the names of the people
12 who made those changes, and have been for nine months.

13 Q. So these are unidentified individuals.

14 A. They are unidentified because the IRS does not obey the
15 law and comply with the Freedom of Information Act. We know
16 the Treasury decisions, and they will not supply those to us.

17 Q. Mr. Rose, where did you get your law degree from?

18 A. I don't have a law degree.

19 Q. Well, how about your CPA license, where did you get that?

20 A. I'm not a CPA, and I make that clear on my website.

21 Q. And over the period of years since '98 or '99, whenever
22 you first corresponded with the defendant, has he given you
23 financial support?

24 A. Personally I would say no, but there have been -- although
25 he has purchased videos from me, there have been operations

1 we've done trying to get letters out and such or print reports
2 that he may have made donations to. He did not give me money
3 personally to -- just to be my money.

4 Q. How much money did he give you, for instance, on
5 purchasing videos?

6 A. He may have -- I'm not sure if he bought a total of
7 perhaps a case, which would be 50 videos.

8 Q. All right. And how much are you being paid to be here
9 today? Anything?

10 A. Nothing.

11 Q. All right. Just free gratis.

12 A. Yes.

13 MR. JARVIS: One moment, please.

14 (Government counsel confer.)

15 BY MR. JARVIS:

16 Q. That would include no reimburseable expenses, travel,
17 food. You're being paid nothing.

18 A. They did pay for my plane ticket.

19 Q. Now, Mr. Rose, did you ever specifically advise the
20 defendant --

21 THE COURT: Who is "they"? I'm sorry. Who is it you
22 were referring to?

23 THE WITNESS: Mr. Simkanin's legal team. Actually, I
24 don't know whose name is on the check, but they gave me a check
25 to reimburse the flight after I purchased it.

1 THE COURT: Go ahead. I wanted to clarify what he
2 meant.

3 BY MR. JARVIS:

4 Q. Mr. Rose, did you ever specifically advise Mr. Simkanin to
5 stop withholding taxes from the wages of his employees at Arrow
6 Custom Plastics?

7 A. I don't give such specific advice, no.

8 Q. Did you ever advise him to stop filing individual federal
9 income tax returns?

10 A. No, I don't give such advice.

11 Q. As a matter of fact, you tell individuals that they're on
12 their own. If they make decisions, they have to suffer the
13 legal consequences; isn't that right, sir?

14 A. Yes.

15 THE COURT: Is that what you tell them?

16 A. That's not exactly how I characterize it. I do tell them
17 that, one, they cannot rely on me legally because I'm not an
18 attorney or a CPA, that they are responsible to look at the law
19 for themselves, that they should not just accept my conclusions
20 because they sound nice but that they have to go to the law
21 itself and if the law matches what I'm saying then it doesn't
22 really matter where it came from. The law is supreme. That is
23 what matters.

24 MR. JARVIS: Pass the witness.

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

1 MR. McCOLL: Yes, Your Honor.

2 THE COURT: You can step down. You're excused as a
3 witness.

4 Call your next witness.

5 MR. McCOLL: Can we approach, Your Honor?

6 THE COURT: Okay.

7 (Brief pause.)

8 THE COURT: Mr. McColl, you can't approach me going
9 that way. Come this way.

10 MR. McCOLL: I'm sorry, Your Honor.

11 (Bench conference with lead attorneys:)

12 MR. McCOLL: Judge, the reason I was late was that I
13 have this witness who says -- we brought this up at pretrial,
14 which says that when the government has their money, when the
15 IRS has their money, they can't, under the IRS regulations,
16 prosecute for fraud, number one. Because they have their
17 money. It's just like a First Amendment. Okay, I made a
18 stupid mistake. Number two, that --

19 THE COURT: Who is this witness?

20 MR. McCOLL: This is Vicki Osborn, the accountant.
21 Double major in accounting and finance from Colorado
22 University.

23 THE COURT: A double major.

24 MR. McCOLL: A double major.

25 THE COURT: That's impressive. Go ahead.

1 MR. McCOLL: Shame on you. You're making fun of me.
2 Okay. And, secondly, that she says that when -- she will
3 testify that when he converts to a sole proprietorship, which
4 he did in September of 1999, and that he has losses,
5 significant losses each year up to that point, that that could
6 mean, from an accounting standpoint, that he would -- because
7 he was a sole proprietor, not have an obligation to file a
8 return if he has losses sufficient to establish that he has no
9 income because he's a sole proprietor.

10 THE COURT: In other words, she's going to lecture
11 the jury on the law.

12 MR. McCOLL: No, no.

13 THE COURT: And she's going to do it falsely.

14 MR. McCOLL: No.

15 THE COURT: She's not going to testify on those
16 subjects.

17 MR. McCOLL: Well, here's an alternative, Judge.
18 Could I suggest that you question her out of the presence of
19 the jury, and if you're --

20 THE COURT: I'm not going to waste my time.

21 MR. McCOLL: Five minutes, Judge.

22 THE COURT: I'm not going to do that, Mr. McColl.

23 MR. McCOLL: Somebody is going to grade my paper.

24 THE COURT: Mr. McColl, let's don't waste our time.

25 Do you have something you want to put her on that is different

1 from what I've said you can't develop?

2 MR. McCOLL: Here's the thing, Judge. I'll be
3 straight with you. I need you to talk to her three minutes out
4 of the presence of the jury, if you would be willing to. And
5 then if you want to dismiss her as a witness, that's fine.

6 THE COURT: I have no reason to talk to her three
7 minutes or any other time if her testimony is going to be what
8 you said it was. Okay. You can return to your seat.

9 MR. McCOLL: I guess I'm going to say also that --

10 THE COURT: Go ahead and return to your seat.

11 MR. McCOLL: Yes, sir.

12 (End of bench conference.)

13 THE COURT: Do you have other witnesses, Mr. McColl?

14 MR. McCOLL: No, Your Honor. The defense rests, Your
15 Honor.

16 THE COURT: Does the government have any rebuttal?

17 MR. JARVIS: Yes, Your Honor. One moment, please.

18 (Government counsel confer.)

19 MR. JARVIS: We call Special Agent Allan McGowan.

20 One moment please, Your Honor.

21 THE COURT: Okay.

22 (Government counsel confer.)

23 MR. JARVIS: Your Honor, the government closes.

24 THE COURT: Okay. And the defendant closes?

25 MR. McCOLL: Yes, Your Honor.

1 THE COURT: Okay. The evidence is concluded. Each
2 side is going to have 15 minutes to make a closing statement to
3 you, and then I'll give you the legal instructions and you'll
4 start deliberating. But I have to take up something with the
5 lawyers for a minute. It will be a legal matter, so why don't
6 y'all go back to the jury room and I'll have you back in here
7 very shortly.

8 (Jury out, 3:09 p.m.)

9 THE COURT: Mr. Jarvis, I have the government's two
10 additional requested instructions that were handed up -- I
11 guess, right after the lunch hour?

12 MR. JARVIS: Yes, Your Honor.

13 THE COURT: I'm going to incorporate -- You've given
14 those to Mr. McColl?

15 MR. JARVIS: Yes, Your Honor, at the same time I gave
16 them to the Court.

17 THE COURT: Okay. Mr. McColl, refer to those a
18 minute so you can see what I'm talking about.

19 MR. McCOLL: Yes, sir.

20 THE COURT: The one that starts out "filing
21 requirements defined."

22 MR. JARVIS: Yes, Your Honor.

23 THE COURT: I'm going to include that, and I'm going
24 to insert it -- if y'all would look at the charge I gave you
25 this morning or at noon?

1 MR. JARVIS: Yes, Your Honor.

2 THE COURT: I'm going to insert it on page 10, and it
3 will be inserted in the fifth line down before the sentence
4 that starts with the words "For you," on the right-hand side of
5 the page. Do you see that? The fifth line down of the
6 paragraph that starts "Count 28."

7 MR. JARVIS: Got it, Judge.

8 THE COURT: And it will be inserted in that line
9 ahead of the sentence that starts with the words "For you."
10 Do you see where I'm talking about?

11 MR. McCOLL: Yes, sir.

12 MR. JARVIS: Yes, Your Honor.

13 THE COURT: Okay. Now the other instruction you've
14 requested, which is called "gross income defined," I'm not
15 going to give the first two paragraphs of that because the
16 defendant has already stipulated and admitted that he had gross
17 income for each of the years in the amounts alleged in the
18 indictment. So it's pointless to define what gross income is
19 to the jury since the defendant stipulated he had that income,
20 and that it was gross income.

21 I do plan to give the last paragraph, the one that starts
22 with the words "For the willful crime," and that will be
23 inserted as a new paragraph on page 11 of the charge I gave you
24 at noon. It will be the first complete paragraph ahead of the
25 paragraph that now starts, "You are instructed as to all

1 counts." It will be inserted there.

2 MR. KEMINS: Your Honor, if I may. I made a
3 typographical error on the "filing requirements," the find
4 instruction. The very last line where it says 13,400 gross
5 income during the calendar year 2000, that should be calendar
6 year 2001, Your Honor.

7 THE COURT: Okay. I'll take that into account.

8 MR. KEMINS: Thank you, sir.

9 THE COURT: Now, do you have any comment -- Does that
10 take care of all the government's comments on the charge that I
11 delivered at noon today?

12 MR. JARVIS: Your Honor, we had a few other comments.
13 On page 6 there was a typo. The Court may have already caught
14 it, about the middle of the page where it says "If you believe
15 a witness has been discredited, it is your exclusive right to"
16 -- it should be "give" rather than "given" -- "the testimony of
17 the witness."

18 THE COURT: Page what?

19 MR. JARVIS: Page 6, about in the middle, a little
20 bit past the middle, the sentence that begins, "If you believe
21 that a witness has been discredited, it is your exclusive right
22 to given," and I think that should be "give," Your Honor,
23 instead of "given."

24 THE COURT: Take the "N" off?

25 MR. JARVIS: Yes, Your Honor, just a typo.

1 THE COURT: You're right.

2 MR. JARVIS: And page 8 on the elements, element
3 three, line two, at the top of page 8, I think it should read
4 "The defendant caused Arrow Custom Plastics not to withhold
5 and," strike the word "not." So delete that word "not" there.
6 It's the second "not" on the second line of the third element,
7 Your Honor. So it should read "not to withhold and to
8 truthfully account for and pay over."

9 THE COURT: In other words, you want me to tell the
10 jury that they have to find that he truthfully accounted for as
11 an element of the offense?

12 MR. KEMINS: Your Honor, if I could. We would not
13 have to prove all three of those for the defendant to be found
14 guilty. We could prove -- or the jury could decide that we
15 proved just one of them. We don't have to prove all three of
16 them for the jury to find him guilty of that count.

17 THE COURT: If he failed to do anything, he failed to
18 do all three, didn't he?

19 MR. KEMINS: Correct, yes.

20 THE COURT: Why are we wasting time talking about
21 this? We're going to leave it exactly like it is.

22 MR. KEMINS: Yes, sir.

23 MR. JARVIS: And at the bottom of the page -- Well,
24 that's all right.

25 On page 10, Your Honor, the first element under the 7203

1 elements, we would ask the Court to insert the word "gross,"
2 that the defendant received gross income in the amounts stated.

3 THE COURT: On what page?

4 MR. JARVIS: Page 10, Your Honor, on the first
5 element under the 7203 charges, where it says "that the
6 defendant received," we would ask the Court to insert the word
7 "gross" before the word "income."

8 THE COURT: Yes, that should be there.

9 MR. JARVIS: I don't know if it should be year
10 singular or year plural, during the years in question or year
11 in question.

12 THE COURT: It's a singular since it's preceded by
13 the phrase "as to the count of the indictment under
14 consideration."

15 MR. JARVIS: The last thing, Your Honor, on page 13,
16 toward the bottom of the page, the sentence that says, "If
17 you're considering a matter that is favorable to the defendant
18 and you believe that it is true, or if you have a reasonable
19 doubt as to whether it is true."

20 THE COURT: Let me find that. I'm sorry.

21 MR. JARVIS: Page 13, Your Honor, about halfway
22 through that last paragraph that begins --

23 THE COURT: Okay. Well, let me tell you when I've
24 found it. I found it. Now, go ahead and read it.

25 MR. JARVIS: We would ask the Court where it begins,

1 "If you are considering a matter that is favorable to the
2 government and you are satisfied that it is true beyond a
3 reasonable doubt, then that is true in this case." Of course,
4 that's a correct statement. We have no objection with that.
5 But we do think the next sentence is somewhat confusing, and we
6 would ask the Court to either delete that or possibly rephrase
7 it, particularly the last part about "if you have a reasonable
8 doubt as to whether it is true, then it is the truth." And
9 that's all we have, Your Honor.

10 THE COURT: Well, I think that's the standard
11 language. I don't know that anybody else has found it
12 confusing.

13 MR. JARVIS: All right, sir. That's all we have,
14 Your Honor.

15 THE COURT: Okay.

16 MR. McCOLL: Your Honor, we would respectfully object
17 to the lack of this charge of what you put in the prior charge
18 in the prior trial, which gives an explanation to the jury of
19 "willfulness," that willfulness is not -- that an act is not
20 willful if done out of mistake, ignorance, negligence, even
21 gross negligence.

22 THE COURT: Okay. I'm going to let you make your
23 objections after I've read the charge to the jury. I just
24 wanted your comments at this time. Is that one of your
25 comments?

1 MR. McCOLL: That's one of my comments, Your Honor.

2 THE COURT: Okay. Go ahead.

3 MR. McCOLL: I would like another five minutes, if I
4 could, Your Honor.

5 THE COURT: Okay. We'll sit here for another five
6 minutes.

7 MR. McCOLL: But I just thought I would bring that to
8 your attention, because I thought you would like to be
9 consistent.

10 (Brief pause.)

11 MR. McCOLL: Judge, may I approach the bench?

12 (Bench conference with lead attorneys:)

13 MR. McCOLL: I just looked on my workplace --

14 THE COURT: You did what?

15 MR. McCOLL: I just looked up from my workpapers, and
16 I see these two things. I have never seen them before and I
17 don't know how they got here. Am I supposed to have them?

18 Do you know what this is?

19 THE COURT: No, you shouldn't have those.

20 MR. McCOLL: I have never seen them before. I just
21 sat down.

22 MR. JARVIS: I haven't either, Judge.

23 THE COURT: Is the record picking this up?

24 (Court reporter nods head.)

25 THE COURT: What you just handed me -- Well --

1 MR. McCOLL: I just wanted to bring the Court's
2 attention to it.

3 THE COURT: You picked them off the bench. Be
4 careful what you pick up off the bench.

5 MR. McCOLL: I may have. Gosh, I hope I didn't do
6 that.

7 THE COURT: You did. I had them sitting here on the
8 edge.

9 MR. McCOLL: I beg your pardon, Judge.

10 (End of bench conference.)

11 THE COURT: Okay. Your five minutes is up. Tell me
12 what, if any, objections you have to the charge.

13 MR. McCOLL: Your Honor, for the record, we would
14 respectfully object that the theory of the defense is not to be
15 found anywhere in this Court's Charge and therefore denies us
16 due process.

17 THE COURT: What's not to be found in it?

18 MR. McCOLL: The theory of the defense, mainly there
19 was no --

20 THE COURT: Good faith?

21 MR. McCOLL: Good faith, yes, sir. There's no
22 definition of it, and we would respectfully request a
23 definition based on Cheek v. U.S. We would also request a
24 definition that willfulness does not mean someone acted out of
25 mistake or ignorance or negligence, gross negligence, as is in

1 the Fifth Circuit Pattern Jury Charge and in the prior charge
2 in this Court, so it will clarify for the jury.

3 THE COURT: Okay. You don't need to make an
4 argument.

5 MR. McCOLL: Yes, sir.

6 THE COURT: Just tell me what it is you -- your
7 comments is really what -- I'm going to give you an opportunity
8 to make your formal objections after I read the charge.

9 MR. McCOLL: Yes, sir. We would respectfully request
10 on page 6, Your Honor, that in the main big paragraph, right in
11 the middle, beginning with the line, "Given the testimony of a
12 witness who has been impeached," that next sentence we would
13 ask state, "Earlier statements by the defendant can be evidence
14 for or against the defendant of the truth of the statements."

15 THE COURT: What page are you referring to?

16 MR. McCOLL: Page 6, Your Honor, right in the middle.

17 THE COURT: "Earlier statements by the defendant can
18 be evidence for or against the defendant"?

19 MR. McCOLL: Yes, sir.

20 THE COURT: In other words, a hearsay statement can
21 be evidence of the truth of the statement? I've never heard of
22 that rule.

23 MR. McCOLL: No, Your Honor. It says "Earlier
24 statements by the defendant can be evidence against the
25 defendant of the truth."

1 THE COURT: They're admissions is what that says.
2 That's an admission against the defendant. It's not an
3 admission against the government.

4 MR. McCOLL: Right. But it could be a prior
5 consistent statement, Your Honor.

6 THE COURT: Well, that wouldn't be received for the
7 truth of the statement.

8 MR. McCOLL: That's correct. And with regard on page
9 7, Your Honor, it says, "Within the meaning of this law," that
10 paragraph, "during the years 2000 through its responsible
11 officials, Arrow Custom Plastics had a legal duty to collect by
12 withholding from the wages of its employees," et cetera. Now,
13 I have a Fifth Circuit case, Your Honor, that I --

14 THE COURT: Charlie, tell the jury it's going to take
15 a little longer than we thought.

16 MR. McCOLL: It's Tyler Administrators v. U.S.

17 THE COURT: Wait just a minute, Charlie.

18 Mr. McColl?

19 MR. McCOLL: Yes, sir.

20 THE COURT: We're just taking up too much time. I
21 had hoped that you would be able to do this earlier. You now
22 know what charge I propose to give to the jury. I've gone over
23 exactly what it will contain. We're going to go ahead with the
24 arguments, with you having in mind what I intend to give to the
25 jury. And then I'll give you a chance to object to the charge

1 after the verdict has been returned.

2 MR. McCOLL: Yes, Your Honor.

3 THE COURT: Not after the verdict. I mean after the
4 arguments have been made and I've read the charge.

5 MR. McCOLL: We would also request that you give a
6 copy of the jury charge to the jury so they can refer to it in
7 the jury room, Your Honor.

8 THE COURT: And I don't plan to do that.

9 Okay. Go ahead and get the jury in.

10 (Jury in, 3:28 p.m.)

11 THE COURT: Okay. You may proceed, Mr. Jarvis.

12 MR. JARVIS: Thank you, Your Honor.

13 May it please the Court, members of the jury. Good
14 afternoon. I'm going to take a few moments to review with you
15 the case, what charges, what issues, are before you. We
16 basically have an indictment that comes down to intent, state
17 of mind of the defendant.

18 We brought to you a number of witnesses. We brought in
19 Mr. Sharp, who told you about the wages that were earned at
20 Arrow Custom Plastics. We brought you Mr. Dean, who talked
21 about the fact that Mr. Simkanin did not file his 941s, did not
22 withhold his taxes during the periods 2000, 2001, and 2002, as
23 alleged in Counts 1 through 12 of the indictment.

24 We also -- Mr. Dean talked about that the individual
25 income tax returns were also not filed in tax years '98, '99,

1 2000, and 2001. Mr. Cooper testified that taxes were due and
2 taxes were not paid on both Counts 1 through 12 and 28 through
3 31.

4 Mr. Cooper also testified that in January of 2000, at the
5 same time the defendant chose to stop withholding his taxes, he
6 filed a claim for refund trying to recoup three years' worth of
7 taxes that had been paid in the past.

8 Then, of course, Cooper testified that he dropped it,
9 didn't appeal it, didn't pursue it. And I would submit it's a
10 reasonable inference from the evidence the reason he dropped
11 it, he was trying to get a quick bundle of money from the IRS,
12 hoping it would be approved. And once they denied it, he
13 didn't pursue it. If he was such a man of conviction, as he
14 talked about, he would have pursued it if he thought he had a
15 legal basis for that refund. That refund was false,
16 fraudulent, and fictitious as alleged in Counts 13 through 27
17 of the indictment.

18 So what it comes down to is really one issue, and in the
19 Court's Charge the Judge talks to you about willfulness. And
20 what is that? Did Richard Michael Simkanin, Dick Simkanin,
21 knowingly violate a known, legal duty? In other words, did he
22 know the law and disobey the law, or was he confused about the
23 law? That's what this case is all about in a nutshell.

24 And what evidence do we have that he knew the requirements
25 of the law and simply defied and disobeyed the law? We brought

1 a number of witnesses. Dianne Clemonds, who came in here and
2 told you about how he operated at the company, about how he
3 told her to be the president, to be the figurehead, how he
4 wanted to fall out of the system. She told him she was very
5 nervous about it. She consulted an attorney, and based on that
6 advice she left the company. She didn't want to get caught up
7 into it.

8 She testified, "I didn't want to go to jail. I didn't
9 want him to go to jail, either. I tried to talk him out of
10 it." She said, "I took a fax, a copy of that 3402 that said
11 requirements of withholding. I took it right into Dick
12 Simkanin's office. I put it down, hoping he would reconsider.
13 He didn't."

14 Jim Kelly came in and testified, an accountant with that
15 firm for a number of years. Same thing. They're over there
16 waving red flags. The defendant is about to go over the cliff
17 and get in legal trouble, but he deliberately disregards people
18 who do not tell him what he wants to hear and that's what this
19 case is all about. He's very selective in who he relies upon.

20 Fred Taylor came in and testified. This man is an
21 accountant with no axe to grind. As a matter of fact, that
22 accounting firm was retained by Mr. Simkanin from 1993 to the
23 year 2000. For seven years. If you recall, the defendant got
24 up there and testified that when they told him about this
25 cash-to-an-accrual accounting system, when they went from a

1 cash to an accrual, he was real upset. The defendant said,
2 "I'm upset. I don't understand. I owe all this money." And
3 Kelly testified that the taxes were the same. It was just how
4 it was accounted for.

5 But it seems a little odd if he's so upset why he
6 continues to employ the same accounting firm for seven more
7 years, until 2000 when he doesn't fire them. Fred Taylor says,
8 "We've got to disengage because if I continue to represent a
9 man who disregards our advice, deliberately violates the law, I
10 get in trouble. My firm is put at risk. I'm out of here."

11 What does Cooper tell you? In the summer of 2000 -- So
12 all these people are saying don't do it, don't go there. Stop,
13 stop. You're going over the cliff. In August of 2000, Cooper
14 tells him the courts -- this is nothing new, Mr. Simkanin.
15 What you're saying about wages not being taxable income, you're
16 not the first person to think of that argument. And the courts
17 have repeatedly rejected it.

18 Did the defendant say, "Oh, I didn't know that. Tell me
19 the court decisions. I don't want to get in trouble." No, no.
20 he's not interested in that. As a matter of fact, he testified
21 in Exhibit 152 the IRS.gov website, it's right there. All the
22 frivolous tax arguments with the case law that says what he's
23 saying is bogus. It's frivolous. It's nonsense. That's what
24 he does not want to hear. He understands the law. He chooses
25 to disobey it. He's not confused about anything.

1 Louis Morris came in here and testified in February of '01
2 that he was concerned. He got with a friend of his, Richard
3 Warren, IRS agent, forwarded the e-mail, Exhibit 149. Again,
4 they're telling him again, the courts have repeatedly rejected
5 your position, as in Exhibit 152, pages 9 and 10.

6 All this is available to Mr. Simkanin, but he has such a
7 hate relationship about the federal government, he has such a
8 hate relationship based on the evidence from that witness
9 stand, that he has a distrust, that he disregards the truth.
10 He disregards the courts, and the courts, as he indicated in
11 Exhibit 91, the courts are part of the problem. The
12 consternation of federal judiciary, a rogue federal judge.
13 This man is off marching to the beat of a different drummer, I
14 submit from the evidence. He disregards the law and the
15 courts, which, of course, leads us to chaos.

16 He's given another opportunity in March of '01, the target
17 letter, Exhibit 107. He gets a target letter from the United
18 States Attorney's Office saying you better stop and revisit and
19 reconsider what you're doing or you could be indicted. And two
20 years later, of course, he is indicted. This case, members of
21 the jury, is about persistent and willful defiance of the known
22 requirements of the law. There's nothing in here about
23 confusion or misunderstanding.

24 There's also significant evidence in this case about
25 deception by the defendant. You heard Ms. Dianne Clemonds get

1 up there and testify -- First of all, Kelly said, "Can I file
2 your tax returns for you in '96 and '97," because he had done
3 it in '92, '93, '94, and '95 for both the defendant and his
4 wife. He said, "Can I file your individual returns?" That's
5 part of the service they normally provide to their corporate
6 clients. And Mr. Kelly testified the defendant said, "No, no.
7 I have not taken any funds out of Arrow." He lied to
8 Mr. Kelly, we know from the evidence; and from the testimony of
9 Dianne Clemonds he has taking funds out of Arrow in those tax
10 years '95 and '96.

11 MR. McCOLL: Objection, Your Honor. That's not the
12 state of the evidence.

13 THE COURT: I'll overrule the objection.

14 MR. JARVIS: So, again, ask yourself this: Why would
15 the defendant lie to Mr. Kelly about him taking funds out of
16 Arrow? If his position was righteous, if it was consistent
17 with the law, as he claims it is, why wouldn't he just tell
18 Mr. Kelly, "No, you see, I'm not filing my individual tax
19 returns because I don't have to, because I'm a free, sovereign
20 citizen," as he told Kelly. Why didn't he tell Kelly back when
21 they brought up the business about the tax returns at the very
22 beginning? Because the evidence in this case shows the
23 defendant is not a truthful, honest person; that he uses
24 deception. He lies to Kelly, and he also tries to conceal the
25 fact that he's getting money from Arrow by burying it in the

1 general ledger under the line item "remuneration." And we
2 asked Dianne Clemonds, "Is the defendant's name there?" "No."

3 We asked Kelly, "Is there any way you can find out he's
4 getting money from Arrow by looking at the financial
5 statements, by looking at the corporate tax returns?" "No."
6 "Well, Ms. Clemonds, is he getting money?" "Oh, yeah. He's
7 getting about 1500 a week." Now, why isn't he up front about
8 that? It's because he knows he's violating the law and is
9 trying to conceal that.

10 You know, he talks about the extensive research he did,
11 but what we have, as I said before, this man is very selective
12 in his research. He disregards people who don't tell him what
13 he wants to hear.

14 THE COURT: You've used nine minutes.

15 MR. JARVIS: Thank you, Your Honor.

16 What we have here is a man who goes searching on the
17 website and finds a bunch of like-minded people who want to
18 defy the tax laws and gets them on his team. And, of course,
19 the best thing they could do as far as a legal source, an
20 attorney who would get on that witness stand, is Mr. Rivera who
21 came in here and told you that he agreed with the position of
22 the defendant. And we know about Mr. Rivera. He's been a
23 subject of an injunction, his frivolous arguments. This man is
24 making money by putting out false and fraudulent statements,
25 and it's in evidence. You can read that permanent injunction,

1 and that's the best they could do.

2 Now, the defendant testified that Hamilton McMenemy, his
3 attorney right here in Dallas represented him. He could have
4 called McMenemy, but the best they could do is a man like
5 Rivera who advises you not even to go into a federal courthouse
6 because they will take you into custody.

7 His real motivation, folks, as we talked about before
8 here, is not a misunderstanding of the law. It's a rejection
9 of jurisdiction and a constitutional challenge to the law. And
10 the Court tells you in the charge that his views, the
11 defendant's views, about the validity of the law and the
12 constitutionality of the law shall have no bearing on your
13 deliberations on the issue of willfulness. Thank you.

14 THE COURT: Mr. McColl.

15 MR. MCCOLL: Thank you, Your Honor.

16 Ladies and gentlemen, it's been a long two days. Thank
17 you for your attention. I just want to tell you that if I fail
18 to make an argument, I would ask that you make it for me in
19 your deliberations.

20 I think when you listen to evidence like this you look for
21 those little nuggets that really tell the story, the real
22 story. One of them is Lou Morris, the worker. I think he was
23 sincere. "I think Dick Simkanin was sincere." There's a
24 five-million dollar company that's now in insolvency. What
25 financial motive is that? What financial gain? What did the

1 government bring you about financial benefit to this belief?

2 This man is a hard-headed engineer who believes this. The
3 issue is not right or wrong here. This is not a classroom.
4 Nobody gets a paper graded. He doesn't get his paper graded
5 about right or wrong. The question is: Did he believe it in
6 good faith? And, otherwise, you have to determine was he
7 willful. Willful means a violation of a known duty, not by
8 mistake or accident or negligence, or even gross negligence.
9 Maybe you find he's grossly negligent. Maybe you find he's
10 mistaken. But to lose your business, that's sincere. Over
11 what? He's got plenty of money.

12 He could hire all the fancy lawyers that he wanted. He
13 was in a privileged position as a business owner. He hired
14 attorneys, CPAs, you know he could, to exploit the
15 incomprehensible -- and I would submit to you -- negligently
16 misleading language of the IRC that could be written so people
17 could understand it. And he's furious that it's not. And he
18 writes his Congressman that it's not.

19 And he applies the training he had as an engineer, step by
20 step by step, start with the Constitution, go to Supreme Court.
21 What Supreme Court did any IR -- what Supreme Court opinion did
22 any IRS agent or the prosecutors or any expert witness from the
23 government ever bring you that contradicted Mr. Simkanin? Not
24 one. Is that a good faith belief?

25 You have a lot of squeezing going on around here. The

1 accountants get squeezed by the IRS. That's a big part of
2 their practice is appearing for clients in front of the IRS.
3 They can't. They can't if somebody takes this position. Can't
4 represent them. Hands up; hot potato. I'm not going to touch
5 you. You're thinking different. Your thoughts are scary
6 thoughts, and I've got a license to protect and I'm out of
7 here, Charlie. You want to think that way, go think it on your
8 own time.

9 The easy thing to do is stop thinking it. Don't lose your
10 business over it. What's going on? You must really believe
11 this stuff. Why do you have that library?

12 And he pays the money. Part of this claim, which is kind
13 of two sides of a coin, is he stops withholding from his
14 employers (sic), not taxes, just Medicare and social security.
15 Medicare and social security. You've heard the evidence that
16 he believes, and there's evidence to support his belief, that
17 Medicare is voluntary. And he's telling his workers, "I'm not
18 going to do this anymore. Here's your notice. Got a CPA that
19 told me how to do it. I did it. Here's your notice. I'm not
20 going to withhold anymore." It's fair notice. He could be
21 wrong. Right or wrong is not the issue here today, folks.
22 We're talking crime, jail, prison. Does he look like a
23 criminal to you?

24 MR. JARVIS: Your Honor, we would object. Punishment
25 is not for the jury to decide. It's improper argument.

1 THE COURT: That's not a proper argument, Mr. McColl.

2 MR. McCOLL: But we're talking crime, not
3 disagreement. Not some other manner of getting -- doing the
4 collection, but indictment and crime. And I would submit to
5 you that's not appropriate, because he was sincere, he was in
6 good faith, and there are other ways for the IRS to enforce its
7 regulations. He was in good faith, and I think the evidence
8 overabundantly shows it. He risked everything.

9 For his integrity, courage, and determination to get at
10 the truth, his reward is a criminal prosecution. So he stops
11 withholding in 2000 of Medicare and social security, and then
12 he figures, you know, if I'm really right about this, I should
13 get what I paid in, half of it, the workers' half. So he asks
14 for it, and they say no. They got their money, but they say,
15 no, we're going to indict you for asking. For asking, because
16 it was so frivolous that we might have given it to you.

17 Material, a claim is material, three elements, for a false
18 and fraudulent claim. That he knowingly presented to the
19 agency of the United States, that's true. That the defendant
20 knew the claim was false or fraudulent. I don't think so.
21 That's for you to decide. But that the false or fraudulent
22 claim was material, which means that it has a natural tendency
23 to influence or is capable of influencing the agency to which
24 it was addressed, the IRS. How was it capable of influencing
25 them to give back the money?

1 Oh, this is frivolous. Court cases all over says
2 frivolous. It's frivolous. How was it -- Really, seriously,
3 is this a crime? They see this, and they say, well, we get
4 these things from time to time. Were they going to give back
5 the money? Was it a threat to the government? Was it a threat
6 to IRS? This man who gave a five-page, detailed explanation
7 from his heart, was that a threat? Were we about to lose money
8 from the Treasury over that letter? Did you get a sense that
9 they were really worried, about to give the money and then at
10 the last minute they held back? I didn't get that impression
11 from the government's witnesses. To the contrary, I think they
12 treated this like toilet paper. Excuse my language.

13 His thoughtful, well-drafted, well-reasoned, engineer-like
14 approach could have been wrong as hell, but that's not the
15 issue today. It's whether he was in good faith, whether he
16 acted out of mistake, negligence -- gross negligence even, or
17 whether he violated a known duty. And I would suggest to you
18 that he believed his position was correct. You don't sacrifice
19 your whole life that you built up for 20 years unless you
20 believe it's correct. You don't do that unless you're insane.
21 And we're not here to commit him. We're here to determine are
22 you going to condemn him, brand him as a criminal the rest of
23 his life, as a felon, or are you going to let some other
24 procedure take place?

25 MR. JARVIS: Your Honor, again, we would object.

1 It's a totally improper argument.

2 THE COURT: I think it is improper.

3 For the jury's benefit, you'll be guided by the
4 instructions of the Court without any sympathy or prejudice for
5 or against either party.

6 And bear that in mind in your argument, Mr. McColl.

7 MR. McCOLL: Yes, Your Honor.

8 I think he was a victim of a bad lawyer. Good God, do you
9 think he would have gone to this guy had he known the things?
10 I mean, what's worth that opinion? How many bad lawyers have
11 you heard about people going to? Horrible, ruined their lives.
12 Part of the problem here.

13 Was there any notice? Three and a half years later. What
14 do they jump on him for? Did you notice how much
15 cross-examination there was of Mr. Simkanin about the merits of
16 his actual claim? Why do you think, Mr. Simkanin, that section
17 this and that apply and support your position? None of that,
18 not one word. Well, the courts are all against this. Well,
19 the courts aren't all against it. The Supreme Court has not
20 spoken on it, and that was enough for Mr. Simkanin. Lower
21 courts have expressed an opinion against it, but the Supreme
22 Court, as we all know, is the law of the land. You can use
23 your common sense, and the Judge tells you that in the charge
24 here. Use your common sense.

25 We're not talking about right or wrong here, whether his

1 opinion is right or wrong. We're talking about a deliberate
2 crime being committed, and I suggest that you look at motive,
3 because motive tells the secret.

4 I want to talk about proof beyond a reasonable doubt. The
5 Judge will instruct you that it is proof beyond -- it is the
6 kind of thing that gives you hesitation in the most personal of
7 your affairs. Picking a doctor for surgery. That's how
8 careful. If it gives you pause, if the evidence of his good
9 faith gives you pause and hesitation, what would cause you to
10 hesitate, what would cause you to hesitate, the Judge says in
11 his instructions, in the most important of --

12 THE COURT: You've used -- You have three minutes
13 left, Mr. McColl.

14 MR. McCOLL: Thank you.

15 -- of your personal affairs. Selecting a surgeon for your
16 mother. If you heard the evidence from the government, would
17 that give you hesitation about the quality of explanation,
18 about the quality of presentation? If you have a reasonable
19 doubt when you heard the evidence about him and the effort he
20 went to? If you have a reasonable doubt and you hesitate, you
21 have a reasonable doubt; and the Judge says if you have a
22 reasonable doubt, you're acquitted, you're out of here. That's
23 the Judge's concern. You just follow the law as he's given it
24 to you in the instruction, and if you have a reasonable doubt,
25 you're out of here. That's it. Go home.

1 And he defines for you reasonable doubt, which is the
2 hesitation in the most important of your personal affairs. And
3 I suggest to you there is overwhelming evidence that
4 Mr. Simkanin acted like an engineer and ploddingly went through
5 all the steps until he reached a conclusion. He acted on it.
6 He may be dead wrong. That's up on the shelf, not an issue in
7 this case. But whether or not he was willful, whether or not
8 he acted out of mistake, negligence -- even gross negligence
9 means he's not willful. Even gross negligence means he's not
10 willful.

11 And I suggest to you, you can find him grossly negligent,
12 but if you do, that means he's not guilty. You can find him
13 probably guilty, and if you do that means not guilty. Because
14 you have to find him guilty beyond any doubt based on a reason.
15 Beyond any doubt based on a reason. And I suggest to you
16 there's hesitation here. And please do not find him guilty in
17 this case because he doesn't deserve it, he's not a criminal,
18 he wasn't a threat, this was not a material -- the claim was
19 not -- didn't have a natural probability or tendency to
20 influence the government to send the claim.

21 THE COURT: You've used up your time. I'll give you
22 one sentence to wrap up.

23 MR. McCOLL: Thank you so much for your attention.
24 Please find him not guilty.

25 THE COURT: Okay. Mr. Jarvis, you have five minutes

1 left.

2 MR. JARVIS: Thank you, Your Honor.

3 Members of the jury, this case is about a pattern of
4 willful defiance, persistent defiance. This is not about a
5 person that goes in there on his kitchen table, working the tax
6 returns and makes a good faith mistake interpreting a section
7 of the Internal Revenue Code. This is a man that was
8 repeatedly warned, don't go there, don't go there, and he did
9 anyway.

10 It's also a man who shows deception, who Dianne Clemonds
11 said he wanted to "drop out of the system." Now, why would he
12 want to drop out of the system unless he wanted to conceal
13 something? A man who wanted to book expenses as corporate
14 expenses when they were personal things, buying land and so on,
15 bury that under repairs and maintenance. A man who lied to
16 Kelly about receiving funds from Arrow, a man that wanted
17 Dianne Clemonds on the signature card of the bank accounts.
18 Now, what owner of a corporation would not be on the signature
19 cards of its own corporate account?

20 A man that gets a target letter in March of 2001, and then
21 after he gets grand jury subpoenas and the target letter, then
22 he dissolves his corporation. Why would he do that? The
23 timing is more than coincidental.

24 We are a nation of laws. We're not a nation of chaos and
25 anarchy. There's nothing wrong with anyone in this great land

1 having an opinion and wanting to believe anything they want to
2 believe, whether it's We The People or anyone else. That's
3 what makes this country the great land that it is. However,
4 when you step out beyond your opinion and start defying the
5 law, then you must suffer the consequences. Richard Simkanin
6 has made choices. He now must suffer the consequences. This
7 is not about a good faith misunderstanding of the law. This is
8 about Mr. Richard Michael Simkanin defying the law.

9 Page 8 of the charge, the Court will instruct you that a
10 defendant's views on the validity of the tax laws is irrelevant
11 on the issue of willfulness, and you are not to consider any
12 claim that the tax laws are unconstitutional. We've seen over
13 and over and over again that that's what his true spots are.
14 He is challenging the validity of the tax laws, based on
15 jurisdiction and based on the Constitution. That's all
16 throughout the evidence in this case.

17 You see that the driver's license, he turned in the
18 driver's license and plays fun and games with police officers
19 when they stop him on the highway. Of course, the police are
20 going to say, "License, please," and he gives them the
21 international motorist qualification card, which he knows is
22 not a license. That's a perfect example, a perfect example, of
23 what this man, where he is, and where he's coming from. He's
24 somebody that wants to surrender his license and operate a
25 motor vehicle without an operator's license, and yet when he's

1 caught and asked to surrender -- or show his license, he
2 misrepresents it. He hands up this other card that he
3 acknowledges is not a license at all. That's the kind of man
4 he is. He wants to play games with law enforcement and play
5 games with the law of the land.

6 He's the kind of man that says, "I'm a free and sovereign
7 citizen." That means he doesn't acknowledge the tax laws.
8 That's what he told Kelly. And if you look through the various
9 notice of expatriation, these are his true spots. When he
10 finds out that this is a problem, that it's not going to be a
11 defense in a criminal trial, suddenly he says, well, that's a
12 mistake, I made a mistake, when he said he was a stranger to
13 the laws of the United States, when he says that the federal
14 government is a present insurgent government in rebellion to
15 the Texas Republic. It's in evidence, folks, Exhibit 108.
16 Those are his views until he realizes it's going to create a
17 problem for him in a criminal trial. Exhibit 110, the
18 Fourteenth Amendment is unconstitutional. He's not within the
19 jurisdiction of the United States.

20 I've already talked about the driver's license. Also, in
21 the correspondence with those letters, when Mr. Eastman took
22 the witness stand, he talked about those SS-8 letters when the
23 employees were writing to IRS, saying, hey, I'm an employee.
24 Don't make me pay extra self-employment tax. Again, an insight
25 into his attitude, his personality, his sarcasm. He said,

1 listen, I don't know if you're the Department of Treasury from
2 Puerto Rico or IBM or what. This is the kind of insight you're
3 getting into him. He plays games. He is not sincere, he is
4 not in good faith, and one of those letters to Eastman, which
5 is in evidence, he said, "Don't give me any authority under the
6 corporate United States." So even if you give him authority he
7 doesn't recognize it because he doesn't recognize --

8 THE COURT: You have one minute left.

9 MR. JARVIS: Thank you.

10 He doesn't recognize he's under the jurisdiction of the
11 United States.

12 You know, Mr. McColl is a good friend of mine. I've known
13 him a number of years, but no amount of tears and emotion from
14 this podium and argument to this jury are going to change the
15 evidence in this case. The evidence is clear. Richard
16 Simkanin willfully violated the tax laws of the United States,
17 and he did it because he thought the tax laws were invalid and
18 unconstitutional and he concealed repeatedly his acts by the
19 testimony of the witnesses in this case.

20 I ask you to hold him accountable to his willful violation
21 of the tax laws and send a message to Mr. Simkanin that he must
22 follow the rules and play by the rules just like every citizen
23 of the United States. Hold him accountable, find him guilty.
24 You will not be telling him anything that he doesn't already
25 know.

1 THE COURT: You used up your time.

2 MR. JARVIS: Thank you.

3 THE COURT: Mr. Jarvis, while you're there, let me
4 hand you something. Give that to Mr. McColl.

5 Okay. We're to the point in the trial where I give you
6 the legal instructions that will guide you in your
7 deliberations and in making your decision. You will not have
8 the text of these instructions in the jury room with you, so
9 listen very closely. You will have in the jury room with you a
10 verdict form, and I'll explain that in a minute. But listen
11 very closely to the instructions I give you.

12 In any jury trial there are, in effect, two judges. I'm
13 one of the judges; the other is the jury. It is my duty to
14 preside over the trial and to decide what evidence is proper
15 for your consideration. It is also my duty at the end of the
16 trial to explain to you the rules of law that you must follow
17 and apply in arriving at your verdict.

18 First, I will give you some general instructions which
19 apply in every case, for example, instructions about burden of
20 proof and how to judge the believability of witnesses. Then I
21 will give you some specific rules of law about this particular
22 case, and, finally, I will explain to you the procedures you
23 should follow in your deliberations.

24 You, as jurors, are the judges of the facts. But in
25 determining what actually happened, that is, in reaching your

1 decision as to the facts, it is your sworn duty to follow all
2 of the rules of law as I explain them to you.

3 You have no right to disregard or give special attention
4 to any one instruction, or to question the wisdom or
5 correctness of any rule I may state to you. You must not
6 substitute your own notion or opinion as to what the law is or
7 ought to be. It is your duty to apply the law as I explain it
8 to you, regardless of the consequences.

9 It is also your duty to base your verdict solely upon the
10 evidence received during the trial and the law as given and
11 explained to you by the Court, without prejudice or sympathy
12 for or against the defendant. That was the promise you made
13 and the oath you took upon being selected as jurors, and the
14 Court and the parties have the right to expect nothing less.

15 The indictment or formal charge against a defendant is not
16 evidence of guilt. Indeed, the defendant is presumed by the
17 law to be innocent. The law does not require a defendant to
18 prove his innocence or produce any evidence at all. The
19 government has the burden of proving the defendant guilty
20 beyond a reasonable doubt, and if it fails to do so you must
21 acquit the defendant.

22 Now, while the government's burden of proof is a strict or
23 heavy burden, it is not necessary that the defendant's guilt be
24 proved beyond all possible doubt. It is only required that the
25 government's proof exclude any "reasonable doubt" concerning

1 the defendant's guilt.

2 A "reasonable doubt" is a doubt based upon reason and
3 common sense after careful and impartial consideration of all
4 the evidence in the case. Proof beyond a reasonable doubt,
5 therefore, is proof of such a convincing character that you
6 would be willing to rely and act upon it without hesitation in
7 the most important of your own affairs. If you are convinced
8 that the accused has been proved guilty beyond a reasonable
9 doubt, say so. If you are not convinced, say so.

10 As I told you earlier, it is your duty to determine the
11 facts. In doing so, you must consider only the evidence
12 presented during the trial, including the sworn testimony of
13 the witnesses and exhibits. Remember that any statements,
14 objections, or arguments made by the lawyers are not evidence.
15 The function of the lawyers is to point out those things that
16 are most significant or most helpful to their side of the case,
17 and in so doing to call your attention to certain facts or
18 inferences that might otherwise escape your notice. In the
19 final analysis, however, it is your own recollection and
20 interpretation of the evidence that controls in the case. What
21 the lawyers say is not binding upon you.

22 Also, do not assume from anything I may have said or done
23 during the trial that I have any opinion concerning the issues
24 in the case. Except for the instructions to you on the law,
25 you should disregard anything I may have said during the trial

1 in arriving at your own finding as to the facts.

2 While you should consider only the evidence, you are
3 permitted to draw such reasonable inferences from the testimony
4 and exhibits as you feel are justified in the light of common
5 experience. In considering the evidence, you may make
6 deductions and reach conclusions which reason and common sense
7 lead you to make from the facts established by the evidence,
8 and you should not be concerned about whether the evidence is
9 direct or circumstantial.

10 "Direct evidence" is the testimony of one who asserts
11 actual knowledge of a fact, such as an eyewitness.

12 "Circumstantial evidence" is proof of a chain of facts and
13 circumstances indicating that the defendant is either guilty or
14 not guilty. The law makes no distinction between the weight
15 you may give to either direct or circumstantial evidence.

16 Now, I remind you that it is your job to decide whether
17 the government has proved the guilt of the defendant beyond a
18 reasonable doubt. In doing so, you must consider all of the
19 evidence. This does not mean, however, you must accept all of
20 the evidence as true or accurate.

21 You are the sole judges of the credibility or
22 "believability" of each witness and the weight to be given the
23 witness's testimony. An important part of your job will be
24 making judgments about the testimony of the witnesses,
25 including the defendant, who testified in this case. You

1 should decide whether you believe what each person had to say
2 and how important that testimony was.

3 In making that decision I suggest that you ask yourself a
4 few questions: Did the person impress you as honest? Did the
5 witness have any particular reason not to tell the truth? Did
6 the witness have a personal interest in the outcome of the
7 case? Did the witness have any relationship with either the
8 government or the defense? Did the witness seem to have a good
9 memory? Did the witness have the opportunity and ability to
10 understand the questions clearly and answer them directly? Did
11 the witness's testimony differ from the testimony of other
12 witnesses? These are a few of the considerations that will
13 help you determine the accuracy of what each witness said.

14 Inconsistencies or discrepancies in the testimony of a
15 witness, or between the testimony of different witnesses, may
16 or may not cause the jury to discredit such testimony. Two or
17 more persons witnessing an incident or a transaction may see or
18 hear it differently. And innocent misrecollections, like
19 failure of recollection, is not an uncommon experience. In
20 weighing the effect of a discrepancy, consider whether it
21 pertains to a matter of importance or an unimportant detail,
22 and whether the discrepancy resulted from innocent error or
23 willful falsehood. You are to give the testimony of each
24 witness such credibility, if any, as you may think it deserves.

25 The testimony of a witness may be discredited or impeached

1 by showing that he previously made statements which are
2 inconsistent with his present testimony. Except for statements
3 by the defendant, the earlier contradictory statements are
4 admissible only to impeach the credibility of the witness and
5 not to establish the truth of those statements. It is the
6 province of the jury to determine the credibility, if any, to
7 be given the testimony of a witness who has been impeached.
8 Earlier statements by the defendant can be evidence against the
9 defendant of the truth of the statements. If you believe that
10 a witness has been discredited, it is your exclusive right to
11 give the testimony of that witness whatever weight you think it
12 deserves. I remind you that a defendant has the right to not
13 testify. When a defendant does testify, however, his testimony
14 should be weighed and his credibility evaluated in the same way
15 as that of any other witness.

16 In making up your mind and reaching a verdict, do not make
17 any decisions simply because there were more witnesses on one
18 side than the other. Do not reach a conclusion on a particular
19 point just because there were more witnesses testifying for one
20 side on that point. Your job is to think about the testimony
21 of each witness you have heard and decide how much you believe
22 of what each witness had to say.

23 Now, so far I've been giving you instructions generally
24 about how to judge the believability of witnesses and burden of
25 proof and things such as that. I'm to the point now where I'm

1 going to give you the legal instructions applicable to the
2 specific charges against the defendant in this case and will
3 list for you as to each of the counts of the indictment what
4 the government must prove in order for the defendant to be
5 found guilty of the offense. And, also, I'll give you legal
6 instructions here concerning the obligations under the law that
7 the defendant had, or that people generally have.

8 Counts 1 through 12 of the indictment charge that
9 defendant, Richard Michael Simkanin, willfully failed to
10 collect, account for, and pay over taxes due and owing to the
11 United States from the wages of employees of Arrow Custom
12 Plastics for certain quarters. Now, Title 26, United States
13 Code, Section 7202, makes it a crime for any person who is
14 required to collect, to account for, or to pay over any tax to
15 willfully fail to do so. Within the meaning of this law,
16 during the years 2000, 2001, and 2002, Arrow Custom Plastics,
17 through its responsible officials, had a legal duty to collect,
18 by withholding from the wages of its employees, the employees'
19 share of social security taxes, Medicare taxes, and federal
20 income taxes, and to account for those taxes and to pay the
21 withheld amounts to the United States of America.

22 Now, for you to find the defendant guilty of this crime,
23 the crime charged by Counts 1 through 12 of the indictment, you
24 must be convinced that the government has proved each of the
25 following beyond a reasonable doubt as to the tax quarter

1 mentioned in the count of the indictment under consideration.

2 Now, let me explain there that each count, 1 through 12,
3 pertains to a different tax quarter. You'll have the text of
4 the indictment with you in the jury room so you can see which
5 tax quarter is at issue in each count. And this proof has to
6 be made as to each of those counts. And I'm going to list one,
7 two, three, four -- first, second, third, and fourth -- the
8 things the government has to prove as to each of those counts.

9 First, that Arrow Custom Plastics was an employer that
10 paid wages to its employees.

11 Second, that defendant was an official of Arrow Custom
12 Plastics who had responsibility for decisions of Arrow Custom
13 Plastics regarding the withholding from its employees' wages of
14 Medicare taxes, social security taxes, and federal income
15 taxes, the accounting for such taxes, and the payment of such
16 taxes over to the Internal Revenue Service.

17 Third, that defendant caused Arrow Custom Plastics not to
18 withhold and not to truthfully account for and pay over such
19 taxes.

20 And, fourth, that the defendant's conduct in causing Arrow
21 Custom Plastics not to withhold and not to truthfully account
22 for and pay over such taxes was willful.

23 Those are the four things that the government has to prove
24 as to each of the first 12 counts of the indictment. I'm going
25 to review them with you again, and then after I go over these

1 again then I'm going to give you some explanations of what some
2 of the terminology means in that. But, first, that -- These
3 are the four things the government has to prove beyond a
4 reasonable doubt: First, that Arrow Custom Plastics was an
5 employer that paid wages to its employees.

6 Second, that defendant was an official of Arrow Custom
7 Plastics who had responsibility for decisions of Arrow Custom
8 Plastics regarding the withholding from its employees' wages of
9 Medicare taxes, social security taxes, and federal income
10 taxes, the accounting for such taxes, and the payment of such
11 taxes over to the Internal Revenue Service.

12 Third, that the defendant caused Arrow Custom Plastics not
13 to withhold and not to truthfully account for and pay over such
14 taxes.

15 And, fourth, that defendant's conduct in causing Arrow
16 Custom Plastics not to withhold and not to truthfully account
17 for and pay over such taxes was willful.

18 Okay. Now I'm going to explain the meaning of the term
19 "willful," as it was used in that fourth element. With respect
20 to the requirement that the government prove beyond a
21 reasonable doubt that the defendant's failure was "willful,"
22 you are instructed: To act willfully means to act voluntarily
23 and deliberately and intending to violate a known legal duty.
24 For the government to establish willfulness as to Counts 1
25 through 12 of the indictment, it must prove beyond a reasonable

1 doubt as to the count under consideration that defendant knew
2 of the requirements of federal law that Arrow Custom Plastics
3 collect, by withholding from its employees' wages, Medicare
4 taxes, social security taxes, and federal income taxes, and to
5 account for such taxes and pay them over to the Internal
6 Revenue Service, and that he voluntarily and intentionally
7 caused Arrow Custom Plastics to fail to comply with those
8 requirements.

9 A defendant's views about the validity of the tax laws is
10 irrelevant to the claims of -- the issue of willfulness. You
11 are not to consider any claim that the tax laws are
12 unconstitutional.

13 Okay. Now I'm going to go to the next series of counts of
14 the indictment. These are the counts having to do with failure
15 to file. No, these are the refund counts, Counts 13 through
16 27.

17 Counts 13 through 27 of the indictment allege that the
18 defendant, Richard Michael Simkanin, made false claims against
19 the United States. Title 18, United States Code, Section 287,
20 makes it a crime to knowingly make a false or fraudulent claim
21 against any department or agency of the United States. The
22 Internal Revenue Service is a department or agency of the
23 United States within the meaning of the law. For you to find
24 the defendant guilty of this crime, you must be convinced that
25 the government has proved each of the following beyond a

1 reasonable doubt as to the count of the indictment under
2 consideration.

3 And as I did on Counts 1 through 12, I'm now going to tell
4 you as to Counts 13 through 27 what it is the government has to
5 prove beyond a reasonable doubt to cause the defendant to be
6 guilty of those counts of the indictment, and this proof has to
7 be made separately as to each count that you consider.

8 First, that the defendant knowingly presented to an agency
9 of the United States a false or fraudulent claim against the
10 United States. Second, that the defendant knew that the claim
11 was false or fraudulent. And, third, that the false or
12 fraudulent claim was material.

13 Let me go over that again. These are as to Counts 13
14 through 27. These are the things the government has to prove
15 beyond a reasonable doubt. First, that the defendant knowingly
16 presented to an agency of the United States a false or
17 fraudulent claim against the United States. Second, that the
18 defendant knew that the claim was false or fraudulent. And,
19 third, that the false or fraudulent claim was material.

20 Now, a claim is material -- I'm going to give you, I'm
21 going to explain, two of the terms I used in those elements at
22 this time.

23 A claim is "material" if it has a natural tendency to
24 influence, or is capable of influencing, the agency to which it
25 was addressed. It is not necessary to show, however, that the

1 government agency was in fact deceived or misled.

2 The word "knowingly," as that term has been used in these
3 instructions, means that the act was done voluntarily and
4 intentionally, not because of a mistake or accident.

5 Okay. Now I'm going to discuss the last four counts of
6 the indictment, 28, 29, 30, and 31. I'll give you an
7 instruction along the lines I've given you on the others, but
8 directed to these counts of the indictment.

9 Counts 28 through 31 of the indictment charge that
10 defendant, Richard Michael Simkanin, failed to file an income
11 tax return for the years 1998, 1999, 2000, and 2001. Title 26,
12 United States Code, Section 7203, makes it a crime for a person
13 to fail to file a required federal income tax return.

14 The receipt of a specified amount of gross income during a
15 calendar year determines whether a person must file a federal
16 income tax return. A married person who individually earned at
17 least \$2,700 in gross income and, together with his or her
18 spouse, earned at least \$12,500 in gross income during the
19 calendar year 1998 was required to file a federal income tax
20 return.

21 A married person who individually earned at least \$2,750
22 in gross income and, together with his or her spouse, earned at
23 least \$12,500 (sic) in gross income during the calendar year
24 1999 was required to file a federal income tax return.

25 A married person who individually earned at least \$2,800

1 in gross income and, together with his or her spouse, earned at
2 least \$12,950 in gross income during the calendar year 2000 was
3 required to file a federal tax return.

4 A married person who individually earned at least \$2,900
5 in gross income and, together with his or her spouse, earned at
6 least \$13,400 in gross income during the year 2001, calendar
7 year 2001, was required to file a federal tax return.

8 Now, for you to find the defendant guilty of this crime,
9 you must be convinced that the government has proved each of
10 the following beyond a reasonable doubt as to the count of the
11 indictment under consideration.

12 Now I'm going to go first, second, third, and fourth as to
13 what the government has to prove for the defendant to be found
14 guilty of the offenses charged by Counts 28 through 31 of the
15 indictment.

16 First, that the defendant was -- and this proof has to be
17 made separately as to each of the counts of the indictment.
18 First, that the defendant received gross income in the amounts
19 stated in the indictment during the year in question; and
20 you'll recall there was a stipulation or agreement on that
21 subject that I read to you or gave you -- informed you of early
22 on.

23 Second, that the defendant failed to file an income tax
24 return, as required, by the date stated in the indictment.

25 Third, that the defendant knew he was required to file a

1 return.

2 And, fourth, that the defendant's failure to file was
3 willful.

4 Now, I'm going to go over those elements again. This is
5 to Counts 28 through 31 of the indictment and the facts that
6 the government has to prove beyond a reasonable doubt as to
7 each count for the defendant to be found guilty of those
8 counts, any one of those counts.

9 First, that the defendant received gross income in the
10 amount stated in the indictment during the year in question.

11 Second, that the defendant failed to file an income tax
12 return as required by the date stated in the indictment.

13 Third, that the defendant knew he was required to file a
14 return.

15 And, fourth, that the defendant's failure was willful.

16 Okay. I'm going to go ahead and give you two or three
17 instructions that are applicable to those elements. I remind
18 you of my instruction that to act willfully means to act
19 voluntarily and deliberately and intending to violate a known
20 legal duty. For the government to establish willfulness as to
21 Counts 28 through 31 of the indictment, it must prove beyond a
22 reasonable doubt as to the count under consideration that the
23 defendant knew of the requirement of federal law that he file
24 an income tax return, and that he voluntarily and intentionally
25 failed to do so. The Court repeats that a defendant's views

1 about the validity of the tax laws is irrelevant to the issue
2 of willfulness, and you are not to consider any claim that the
3 tax laws are unconstitutional.

4 Now, for willful failure -- Pardon me. For the willful
5 crime of failure to file a tax return, the government is not
6 required to show that a tax was due or owing from the
7 defendant. Nor is the government required to prove an intent
8 to evade or defeat the taxes.

9 Now, you are instructed as to all of the counts of the
10 indictment that, as a matter of law, the Internal Revenue Code
11 has been Constitutionally enacted and is binding law in all
12 states of the United States. The legality of the tax laws of
13 the United States is not an issue to be decided in this case.
14 Congress has, and has had, the authority to tax income and to
15 require the filing of tax returns and the reporting of income;
16 and, likewise, the Internal Revenue Service is, and has been,
17 authorized by law to assess and collect income taxes.

18 You are to decide whether the government has proved beyond
19 a reasonable doubt that the defendant is guilty of the crimes
20 charged. The defendant is not on trial for any act, conduct,
21 or offense not alleged in the indictment.

22 A separate crime is charged against the defendant in each
23 count of the indictment. Each count, and the evidence
24 pertaining to it, should be considered separately. The fact
25 that you may find the accused guilty or not guilty of any of

1 the crimes charged should not control your verdict as to any
2 other crime charged.

3 Now, if the defendant is found guilty, it will be my duty
4 to decide what the punishment would be. You should not be
5 concerned with the punishment in any way. It should not enter
6 into your consideration or discussion.

7 Now, to reach a verdict, all of you must agree. Your
8 verdict must be unanimous on each count of the indictment.
9 Other than the possibility that the Court could make an inquiry
10 into whether the deliberations were conducted properly, your
11 deliberations will be secret and you will never have to explain
12 your verdict to anyone.

13 You are here to decide whether the government has proved
14 beyond a reasonable doubt that the defendant is guilty of the
15 crimes charged. The defendant is not on trial for any act,
16 conduct, or offense not alleged in the indictment. Neither are
17 you concerned with the guilt of any other person or persons not
18 on trial as a defendant in this case.

19 It is your duty to consult with one another and to
20 deliberate in an effort to reach a verdict if you can do so.
21 Each of you must decide the case for yourself but only after
22 impartial consideration of the evidence with your fellow
23 jurors. During the deliberations, do not hesitate to examine
24 your opinions and change your mind if convinced that you were
25 wrong. But do not give up your honest beliefs as to the weight

1 or effect of the evidence solely because of the opinion of your
2 fellow jurors, or for the mere purpose of returning a verdict.

3 Remember at all times, you are the judges, judges of the
4 facts. Your sole interest is to seek the truth from the
5 evidence in the case, to decide whether the government has
6 proved the defendant guilty beyond a reasonable doubt.

7 You are entitled to use your common sense. You are
8 entitled to draw deductions from the evidence by the use of
9 your common sense, and to try to arrive at the truth of the
10 situation in light of the Court's instructions as a whole, and
11 particularly the one as to the burden of proof.

12 The trial of a case is not a game. The outcome of a case
13 is important to the public and it is important to the
14 defendant. Both sides are entitled to have you make your best
15 effort to decide what the truth is in this situation in the
16 light of the evidence that you have heard by the use of your
17 common sense. If you are considering a matter that is
18 favorable to the government and you're satisfied that it's true
19 beyond a reasonable doubt, then that is the truth in this case.
20 If you are considering a matter that is favorable to the
21 defendant and you believe that it is true, or if you have a
22 reasonable doubt as to whether it's true, then that is the
23 truth as far as this case is concerned.

24 In other words, we're getting back to the proposition that
25 you must arrive at the facts from the evidence that you have

1 heard here and draw whatever deductions you think are logical
2 equal and reasonable, but that you must weigh the evidence and
3 evaluate it in the light of the Court's instruction on the
4 burden of proof.

5 Now, when you go to the jury room, the first thing that
6 you should do is to select one of your number as your
7 foreperson, who will help to guide you in your deliberations
8 and will speak for you in the courtroom. A form of verdict has
9 been prepared for your convenience, and I'll discuss that with
10 you in just a moment.

11 The foreperson will write the unanimous answer of the jury
12 in the space provided for in each count of the indictment --
13 provided for as to each count of the indictment, either guilty
14 or not guilty. At the conclusion of your deliberations, the
15 foreperson should date and sign the verdict.

16 Now, if you need to communicate with me during your
17 deliberations, the foreperson should write the message and give
18 it to the court security officer. The court security officer
19 will stay outside the jury room door while you're deliberating,
20 and that's where the message would be handed to him. And I'll
21 either reply in writing or bring you back into the court to
22 answer your message, if you have one, you want to ask.

23 Now, do bear in mind that you are never to reveal to any
24 person, not even to the Court, how the jury stands, numerically
25 or otherwise, on any count of the indictment until after the

1 jury has reached a unanimous verdict.

2 Now, the verdict form that you will have in the jury room
3 with you is a document that has a series of sentences. They're
4 identical except that each has a different number of the count.
5 The first sentence is "We, the jury, find the defendant,
6 Richard Michael Simkanin," then it has a blank space. And then
7 it goes on to say "as to Count 1 of the indictment." Now,
8 that blank space will be completed with the word "guilty" if
9 the jury unanimously finds from the evidence that the defendant
10 committed the offense charged by Count 1 of the indictment.
11 The foreperson will put in that blank space the words "not
12 guilty" if the jury unanimously concludes that the government
13 has failed to prove that the defendant was guilty of the
14 offense charged by the first count of the indictment.

15 And then there are 30 other sentences identical to that
16 except there's a different count of the indictment, each one
17 going 2 through 31. And, of course, the explanation as to how
18 to fill in the blank space applies equally to each of those
19 counts.

20 Now, at the end of the verdict form, the verdict proper,
21 there's a place for the foreperson to sign and to date it when
22 the jury has reached a unanimous verdict and the verdict form
23 has been completed. And then that will be signed by the
24 foreperson. Then it has a place for me to sign once I look at
25 it, and if I satisfy myself it's in proper form and that it is

1 the unanimous verdict of the jury, I'll sign it and order it
2 filed.

3 Now, following that is the text of the indictment in the
4 case. And as I have explained before, that's not evidence; and
5 it's not given to you as proof of anything. It's simply put in
6 here so that when you start going down the counts of the
7 indictment to decide on the issue of guilt or not guilty,
8 you'll know what the charge is on that particular count of the
9 indictment. You'll have this in the jury room with you as well
10 as the exhibits.

11 Let me have the lawyers come up here just a minute.

12 (Bench conference with lead attorneys:)

13 THE COURT: Does the government have any objection to
14 the Charge of the Court and the verdict form as I read and
15 explained them to the jury?

16 MR. JARVIS: No, Your Honor.

17 MR. McCOLL: Yes, I have objections.

18 THE COURT: Does the defendant?

19 MR. McCOLL: Yes, sir. Do you want me to go get my
20 objections?

21 THE COURT: Yes.

22 MR. McCOLL: You want them at the bench?

23 THE COURT: Yes. We're going to do it now out of the
24 hearing of the jury.

25 (Brief pause.)

1 MR. McCOLL: My first objection --

2 THE COURT: You don't need to make arguments with it.
3 I've heard your arguments over and over again. Just state your
4 objections.

5 MR. McCOLL: Okay. I object for the failure on three
6 different occasions with regard to the three groups of charges
7 to fail to instruct on good faith under Cheek v. U.S. I object
8 on the failure to give an instruction of the defendant's theory
9 of the case.

10 THE COURT: What, good faith?

11 MR. McCOLL: Good faith based on effective assistance
12 of counsel under the Sixth Amendment and the right to a fair
13 jury trial under the Sixth Amendment.

14 I object on the way the charge says "known legal duty" on
15 pages 8 and 11 of the charge. I think it's a violation of the
16 intent of Cheek. It should say a violation of a duty "known to
17 the defendant," and I base that on the right to a fair jury
18 trial and -- under the Sixth Amendment and the right to due
19 process under the Fifth Amendment.

20 I respectfully object to not putting this instruction into
21 the trial -- to the jury room, because I think it's humanly
22 impossible, and based on --

23 THE COURT: You don't need to make argument.

24 MR. McCOLL: Right. Because I think -- well, based
25 on the Sixth Amendment right to a jury trial and the due

1 process clause of the Fifth Amendment so that the jury can read
2 the instructions. I think that's all I have.

3 THE COURT: Okay. You can be seated.

4 MR. McCOLL: Thank you. Am I overruled?

5 THE COURT: You're overruled.

6 MR. McCOLL: Thank you.

7 (End of bench conference.)

8 THE COURT: Okay. We're to the point where the jury
9 will start deliberating. Jurors number 13 and 14, numbers 13
10 and 14, are alternate jurors. You two are alternates. That
11 explains why you're 13 and 14.

12 Alternates are selected in every case in case something
13 were to happen that would prevent another juror or other jurors
14 from going forward. We've been fortunate recently in not
15 having to actually use alternates, but there have been times
16 when we have had to use alternates. So you play an important
17 role.

18 However, the law does not contemplate you'll actually
19 participate in the deliberations unless before a verdict is
20 reached something would happen to cause another juror or other
21 jurors to be unable to go forward. In that event, you would be
22 subject to then going in and starting in the deliberations.
23 I'd have to give some special instructions on what steps would
24 be taken then, but that is a possibility.

25 Because of my hope that nothing will happen to any of the

1 other jurors before a verdict is reached, I'm going to let
2 y'all leave the courthouse and go about your activities so long
3 as you leave with the court security officer a telephone number
4 or telephone numbers where you can be reached in case we would
5 need to call you back on short notice.

6 Number 13, will you be able to provide such a telephone
7 number or telephone numbers?

8 JUROR NO. 13: Yes.

9 THE COURT: Number 14, would you be able to do that?

10 JUROR NO. 14: Yes, Your Honor, I will.

11 THE COURT: Okay. I am going to remind you of the
12 instructions I gave earlier, and they will continue to apply,
13 is that you will not discuss this case with anyone until after
14 a verdict has been reached. And, of course, that's because of
15 the possibility that you would be required to come back and
16 participate in the deliberations. And the reasons I gave you
17 before for not discussing the case still apply as far as you're
18 concerned.

19 Of course, as far as the remaining members of the jury are
20 concerned, you will discuss the case with each other because
21 you're now to the point of deliberating on the outcome. But
22 you still will not discuss it with anyone else until a verdict
23 has actually been reached.

24 As to those who are actually going to be starting your
25 deliberations now, let me explain that from this point forward

1 you pretty well set your own schedule as to the timing. In
2 other words, you decide when you want to take a recess, and if
3 for some reason or another you haven't reached a verdict before
4 what you want the end of the business day to be, and the
5 business day can be however you want it to be. You can decide
6 to recess overnight and come back the next day. I'll leave
7 that up to you entirely.

8 All I ask is that when you do those things, decide to take
9 a short recess or an overnight recess or anything like that,
10 let the court security officer know through your foreperson
11 what your plans are so we can plan accordingly. We sort of
12 stand by waiting to hear what you're doing because you're the
13 central focus of our activity now, and we want to always be
14 available. But if you're going to take a 15-minute recess or
15 so, then we want to know that so we can kind of relax, too,
16 while you're relaxing.

17 I think I mentioned that not only will the verdict form be
18 brought to the jury room with you, but all of the exhibits will
19 be brought into the jury room at the same time.

20 Okay. With that, the jury will retire to deliberate, and
21 Numbers 13 and 14 can leave subject to what I said.

22 By the way, before y'all leave. We'll call you, 13 and
23 14, when a verdict is reached so you'll know -- if you're not
24 called in before, then you'll know that you're no longer to be
25 called in. And we'll also, if you would like, tell you what

1 the verdict is at that time.

2 (Jury out, 4:35 p.m.)

3 THE COURT: I'm going to ask the lawyers to get
4 together with the court reporter and be sure that all of the
5 exhibits that should go into the jury room are together to go
6 into the jury room and that nothing is in those documents that
7 should not be there. And I'll ask that you do that right now.

8 MR. JARVIS: Yes, sir.

9 THE COURT: And I'll ask that the lawyers stay in or
10 right around the courtroom until the jury has reached a verdict
11 so we won't be having to look for you.

12 (Court in recess, 4:36 p.m.)

13 (Jury note, 5:55 p.m.)

14 (On record, no jury, no defendant present, 6:01 p.m.):

15 THE COURT: Okay. At 6:00 o'clock we received a note
16 from the jury asking what is the definition of "willful," and
17 I've given you my proposed response.

18 Does the government have any objection to the proposed
19 response?

20 MR. JARVIS: No, Your Honor.

21 THE COURT: Does the defendant have any objection to
22 the proposed response?

23 MR. McCOLL: Yes, sir, two objections. The first is
24 that the instruction on page 1 says you're instructed that
25 willfully means to act voluntarily and deliberately and

1 intending to violate a known legal duty. So it's got three
2 elements: voluntarily, deliberately, and intending to violate
3 a known legal duty.

4 But then down below on the same page it says "and that he
5 voluntarily and intentionally caused Arrow Custom Plastics to
6 fail to comply," et cetera. So, therefore, it needs the third
7 element, that he voluntarily and intentionally violated a known
8 duty and caused. Otherwise, you have two different mental
9 states. One has three elements and the other has two.

10 THE COURT: Okay. I'll overrule that objection. Any
11 others?

12 MR. McCOLL: Yes, sir. And that I think in the full
13 definition of willfulness, just as you gave in the instruction
14 as a whole when you read them, should include the explanation
15 that it's not by mistake.

16 THE COURT: I overrule that objection. Do you have
17 any others?

18 MR. McCOLL: And then I would make the same
19 objection, Your Honor, on page 2 with regard to the paragraph
20 defining willfulness, that you have three elements at the
21 beginning of it and the instruction only has two when you apply
22 it. Namely, it's missing "the violation of a known legal
23 duty."

24 THE COURT: Okay. Do you have any other?

25 MR. McCOLL: No, Your Honor.

1 THE COURT: Okay. He's made a point that I don't
2 think is significant but I don't think it makes -- it will make
3 any difference if the word "deliberately" were added after the
4 word voluntarily each time in the second part of each of those
5 instructions. His point was we first say that you're
6 instructed to act willfully means to act voluntarily and
7 deliberately and intending. The second time it's voluntarily
8 and intentionally. I think adding the word "deliberately"
9 would make it balance.

10 MR. JARVIS: Yes, Your Honor. No objection.

11 THE COURT: So I will add that. I will reverse my
12 first ruling. Both of my rulings as to the "deliberately" I
13 reverse.

14 Now, I'm going to leave it, unless somebody has an
15 objection to it, where I say, "You are reminded of the
16 following instruction." I'm going to leave it that way, which
17 will be not entirely accurate since I did not have
18 "deliberately" in the instruction I gave before. But I am
19 going to accept that objection. It will be voluntarily,
20 deliberately -- That was your point?

21 MR. McCOLL: Yes, sir.

22 THE COURT: -- and intentionally. I'll add that each
23 time.

24 MR. McCOLL: My additional point, Your Honor, was
25 that each should contain something about the violation of a

1 duty, a known duty.

2 THE COURT: Well, I think the second time it says the
3 defendant knew of the requirement and that he intentionally,
4 deliberately, and so on, which I think gets the point.

5 Let me have both of the lawyers come up here a minute.

6 (Bench conference with lead attorneys:)

7 THE COURT: Hand me those. I failed to note that she
8 had put the juror's name on there. I'm instructing each of you
9 not to disclose what you learned from that.

10 MR. McCOLL: Yes, Your Honor.

11 THE COURT: I'm going to redo the first page of that,
12 making the changes we've talked about.

13 MR. McCOLL: Yes, sir.

14 THE COURT: But I'm going to take out the name of the
15 foreperson. Instead of the name of the foreperson, I'll just
16 say "foreperson."

17 MR. JARVIS: Yes, Your Honor. But the note itself,
18 is it just going to be sealed, because with his signature -- I
19 mean, are you just going to seal the notes or what?

20 THE COURT: Well, y'all aren't going to have --
21 you've already had a chance to object to it and you have
22 objected to it. I told you what my rulings are. I'm taking it
23 back. You're not going to have it anymore.

24 MR. JARVIS: I understand.

25 THE COURT: But from now on when I prepare the

1 responses --

2 MR. JARVIS: Just use numbers.

3 THE COURT: -- I'll just say "foreperson" in the
4 note.

5 MR. McCOLL: That's fine.

6 THE COURT: If they write again, I won't give you the
7 note itself. I'll just put the text of the note.

8 MR. McCOLL: Okay.

9 MR. JARVIS: That's not public record anyway, right,
10 the note itself?

11 MR. McCOLL: Yeah, sure.

12 THE COURT: It will be in the file, but we're going
13 to seal them.

14 MR. JARVIS: All right. Thank you, Judge.

15 (End of bench conference.)

16 THE COURT: My proposal is once I make the changes
17 we've indicated is to sign this and have the court security
18 officer deliver it to the foreperson at the jury room door.

19 Does the government agree to that?

20 MR. JARVIS: Yes, Your Honor.

21 THE COURT: Does the defendant?

22 MR. McCOLL: Yes, Your Honor.

23 (Court in recess, 6:08 p.m.)

24 (End of proceedings for the day, 7:00 p.m.)

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25 CERTIFICATE

I certify that the foregoing is a correct transcript from

1 the record of proceedings in the above-entitled matter. I
2 further certify that the transcript fees format comply with the
3 those prescribed by the Court and the Judicial Conference of
4 the United States.

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8 Eileen M. Brewer
9 Official Court Reporter
10 Texas CSR No. 3016

11 _____
12 Date

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