

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

4 UNITED STATES OF AMERICA * Criminal Action
 5 No. 06-50164
 6 VERSUS *
 7 Shreveport, Louisiana
 8 TOMMY K. CRYER * July 11, 2007

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 10

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

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MORNING SESSION

JULY 11, 2007

(Court called to order at 8:35 a.m. with
defendant present, jury absent.)

FIRST CHARGE CONFERENCE

THE COURT: All right. We are convening before the
9:00 a.m. start time of the trial for the purpose now of
looking at jury instructions. Each counsel was provided a set
of the so-called working copy of these instructions.

Mr. Campbell, you've had an opportunity to review them
overnight?

MR. CAMPBELL: Yes, your honor.

THE COURT: And Mr. Becraft, likewise?

MR. BECRAFT: Yes, Your Honor. I think we've got a
few things that we're in agreement on.

THE COURT: Okay. Who wants to voice the agreement
this morning, Mr. Campbell or Mr. Becraft? Go ahead
Mr. Becraft.

MR. BECRAFT: Your Honor, all we did is we both
noticed that pages 9 and 11, Jury Instruction 14 has the
dates -- first -- on the second paragraph in No. 14, this draft
has "Counts 3 and 4." "3" should be changed to "1" and --

MR. CAMPBELL: Correct.

MR. BECRAFT: -- "Count 4" should be changed to
"Count 2."

1 MR. CAMPBELL: And we also talked about the
2 October 15 filing date, since that date was not included in the
3 redacted indictment and, really, it's not relevant.

4 MR. BECRAFT: It isn't.

5 MR. CAMPBELL: So we both agreed that any reference
6 to the October 15 date should be --

7 THE COURT: So the entire paragraph beginning with
8 "3" needs to be eliminated on Jury Instruction No. 14?

9 MR. CAMPBELL: No.

10 MR. BECRAFT: No.

11 THE COURT: Just the dates removed from it?

12 MR. CAMPBELL: Just the dates, and then the correct
13 as far as the counts --

14 MR. BECRAFT: I thought we would put in "April 15"
15 for "October."

16 MR. CAMPBELL: Paragraph?

17 MR. BECRAFT: The third paragraph in 14.

18 MR. CAMPBELL: Instruction 14. Yes. "Three, the
19 defendant willfully failed to file a tax return on or before
20 April" -- right here -- "16, 2001," period.

21 MR. BECRAFT: Yeah. That would be good.

22 THE LAW CLERK: Should it still say "for Count 1"?

23 MR. CAMPBELL: Yeah. "For Count 1," yes.

24 MR. BECRAFT: Right.

25 MR. CAMPBELL: And then period "for Count" -- scratch

1 "4" and then put "Count 2," and then "you must," then it goes
2 towards the end of the sentence, "return, file the required tax
3 return on or before April 15, 2002," period.

4 THE COURT: Period. All right.

5 MR. CAMPBELL: And if you go to page 11, the first
6 paragraph, a period after "April 16, 2001." And then the same
7 under paragraph 2, a period, after "April 15, 2002."

8 THE COURT: All right. Easily made. What's next?

9 MR. BECRAFT: Your Honor, on this draft as corrected,
10 I have no objections. The only objections I have that I'd like
11 to bring up at the charge conference is something I've been
12 requesting in the way of defense instructions.

13 THE COURT: In that instance, the defense
14 instructions -- Becky, do you have that packet, or did we take
15 it upstairs after yesterday?

16 THE LAW CLERK: Hang on. I took it up. I can
17 reprint it for you.

18 THE COURT: Willfully, which was the big instruction,
19 we have taken the instructions that you had suggested.

20 MR. BECRAFT: Understood.

21 THE COURT: Are there additional jury charges that
22 you propose that I don't have a copy of yet?

23 MR. BECRAFT: No. This is out of the, from the set,
24 the revised set that was filed on Friday, June 29. And I've
25 just got about five or six of them that I think may be issues

1 in the case that I'd like to make a record on.

2 THE COURT: All right.

3 MR. BECRAFT: I can kind of summarize it for the
4 Court. I don't think the Court needs to --

5 THE COURT: That'll be fine. After the jury goes to
6 deliberation, if you need to dictate more reasons into the
7 record on those charges, that's fine. But I've now considered
8 those and am not giving those, but you need to make your
9 objections on the record today.

10 MR. BECRAFT: That's what I was going to do, Your
11 Honor. The Court probably doesn't need to have a copy.

12 THE COURT: All right.

13 MR. BECRAFT: Defense requested three -- requested
14 instruction on when the evidence is evenly balanced, the jury
15 can't acquit, that doesn't rise to the level of reasonable
16 doubt, I would think that that's an instruction that needs to
17 be given.

18 No. 10 -- you know, 10 might be something that will
19 probably, as it -- on the record right now, I don't think that
20 we have much of a basis for asking for 10. But 10 dealt with
21 guilt by association, and I have no idea what might come out
22 during cross-examination. There may become a need for an
23 instruction on guilt by association.

24 No. 16, it hasn't been brought up yet. It might come
25 out during cross. It was a request on the instruction on what

1 the Anti-Injunction Act is and who can sue in federal court
2 regarding taxes. I would say probably right now there is no
3 need for that instruction, but it might come up during cross.

4 One of the things that has come up during direct is
5 what I requested on No. 17, reliance on Supreme Court cases.
6 The Supreme Court -- and this is an issue that was covered in
7 the trial brief. The Supreme Court in the Fisher case said you
8 can rely upon Supreme Court cases, and there's evidence in this
9 case about reliance on Supreme Court cases.

10 20, Your Honor, is an effort to define -- you know,
11 we've got two issues in this case, you know, what is the belief
12 about unconstitutional under the law, what is the belief about
13 disagreement with the law, and 20 simply attempts to define
14 both of those terms, what constitutes a belief that laws are
15 unconstitutional, what constitutes a disagreement with the law.

16 And 21 is a theory of defense in this case, you know,
17 just comes right to the front. You know, if you find these
18 certain facts, you know, you should find the defendant not
19 guilty. And it simply states that, you know, for both counts,
20 if the defendant believed that he wasn't required -- it says --
21 it was structured for both an evasion count and willful failure
22 to file. It says, you know, if he didn't have any tax. I
23 would like to suggest an amendment to that one that would
24 include language to the effect, you know: "If you find that
25 the defendant believed in good faith that for the year 2000 his

1 income was not taxable or he was not required to file returns,
2 it should be your duty to acquit him for Count 1." Same thing
3 for Count 2. You know, I think that's a theory of defense jury
4 instruction that kind of hits the nail on the head without any
5 further explanation.

6 Then, lastly, this -- again, this may not come up.
7 There hasn't been much evidence on that point, but if during
8 cross there's some effort, evidence elicited regarding speech
9 activities, I would think that Requested Instruction No. 22
10 should be given. But again, that's dependent upon cross.

11 That's all I have, Your Honor.

12 THE COURT: And that basically tracks the information
13 that you provided in those instructions. Mr. Campbell has
14 filed objections to those. To the extent that I have not
15 integrated into the working set of charges your instructions,
16 they are rejected or overruled, take your pick. I will,
17 however, hold a couple of those open depending upon cross-
18 examination and/or potential redirect. I'm not going to be
19 trying to predict what the crystal ball says about those two
20 instructions. I will agree with you, Mr. Becraft, at this time
21 it does not appear that they are relevant at all to anything
22 that's been brought out in testimony. But we will -- once the
23 testimony is finished, we will have a brief conference in order
24 to review these. We will then, or I guess I'll issue a final
25 ruling of what's in and what's out on the requested

1 instructions. You will then begin your closing arguments while
2 we print the copies for the jury so that they can read along as
3 I read them out loud.

4 MR. BECRAFT: So the Court is going to give the jury
5 copies so they can read along?

6 THE COURT: Yes. They will be permitted to take them
7 in to the deliberations with them.

8 MR. BECRAFT: Can we use the instructions in closing?

9 THE COURT: No.

10 MR. BECRAFT: We can mention them?

11 THE COURT: Yes. And you can say what you think I
12 might do.

13 MR. BECRAFT: Okay, good enough.

14 THE COURT: But not what I'm going to give.

15 MR. BECRAFT: I gotcha.

16 THE COURT: And if you pick it up and read it and
17 drop it, beware.

18 MR. BECRAFT: I'll summarize, Judge.

19 THE COURT: As always, Mr. Becraft.

20 Are there any other housekeeping matters we need to
21 address before -- we are still short jurors. It's still only a
22 quarter till 9:00 this morning. But are there any other
23 details we need to address before we commence?

24 MR. BECRAFT: I think we're ready for cross, closing,
25 and instructions, Judge.

1 MR. CAMPBELL: Same here.

2 THE COURT: All right. We will then be in recess
3 till 9:00 or until we get a full complement of jurors so we can
4 begin today's proceedings. We're in recess.

5 (Recess 8:46 - 9:01 a.m.)

6 THE COURT: Good morning. You may be seated. We in
7 fact have all of our jurors. Let's go ahead and get the jury
8 in at this time.

9 Mr. Cryer, if you'd come back up and place yourself
10 on the stand.

11 Mr. Campbell, you are prepared at the podium.

12 Mr. Becraft, you had asked a couple of questions
13 about procedure during closing, and we have the podium leash
14 law in effect here.

15 MR. BECRAFT: I understand, Your Honor.

16 THE COURT: Within an arm's length can touch it,
17 can't cross in front of it.

18 MR. BECRAFT: Okay.

19 THE COURT: It's not a "Matlock" kind of situation.

20 All rise for the jury.

21 (Jury enters courtroom.)

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

23 Mr. Campbell, your cross-examination of Mr. Cryer.
24 You may proceed when ready.

25 CROSS-EXAMINATION

1 BY MR. CAMPBELL:

2 Q. Mr. Cryer, yesterday you told the jury during questioning
3 from Mr. Becraft that you didn't feel that the Internal Revenue
4 Code was unconstitutional?

5 A. That's correct. I don't believe it's unconstitutional.

6 Q. You don't believe it's unconstitutional?

7 A. Well, it certainly -- there's been no declaration that
8 it's unconstitutional.

9 Q. I'm asking as far as what you believe.

10 A. I do not believe the Internal Revenue Code to be
11 unconstitutional.

12 Q. Now, let me ask you this before we delve into the
13 substance of your testimony from yesterday. What you told the
14 jury yesterday as far as your views of what is income and that
15 income is not what you take in, but it's your gain when you
16 minus the work that you put in and so forth, do you still
17 believe that?

18 A. Yes, sir.

19 Q. So do you believe that your belief's a mistake?

20 A. No, sir.

21 Q. It's not a misunderstanding?

22 A. No, sir.

23 Q. That's what you believe?

24 A. This is what I believe.

25 Q. Okay. Now, the IRS been coming after you for a while as

1 far as for your failure to file taxes, correct?

2 A. I understand, yes.

3 Q. They have been sending you delinquency notices, correct?

4 Delinquency notice, they sent you a delinquency notice?

5 A. No, sir.

6 Q. You saw in the file where it indicated that a delinquency
7 notice was sent based on the testimony from Ms. Jackson?

8 A. I do not recall ever having received a delinquency
9 notice.

10 Q. Let me ask you: Would it be fair to say that you know
11 that the IRS has been coming after you because you have failed
12 to file your income tax returns?

13 A. Since January of 2001.

14 Q. Right. And they have been coming after you because you
15 have failed to file federal taxes, correct?

16 A. I don't know what you mean by "coming after me" --

17 Q. Well, they've been --

18 A. -- but we've been --

19 Q. Well, they've been inquiring into you and your law
20 practice regarding your failure to file income taxes, correct?

21 A. They've been inquiring into me and my law practice, yes,
22 sir.

23 Q. And at some point the U.S. Attorney's Office got
24 involved, correct?

25 A. That's correct, sir.

1 Q. All right. Now, you know -- so when George McGovern did
2 his calculations as far as income, he didn't use your theory to
3 calculate what income was, correct?

4 A. That's correct, he didn't.

5 Q. Matter of fact, he said that he referred to the Code,
6 correct?

7 A. That's what he said.

8 Q. And matter of fact, when Agent Sandefur did his
9 calculation as far as what is income, you remember him saying
10 that he referred to the code, correct?

11 A. He made a reference to the Code, one or two sections of
12 it, yes.

13 Q. So Agent Sandefur and Mr. McGovern's sort of theory of
14 what is income is not consistent with yours, correct?

15 A. I believe something different from what they believe.

16 Q. Okay. Now, you stated that income is not what you take
17 in but it's the gain that you realize once you subtract all of
18 the work and effort that you put into it, correct?

19 A. That's correct. That's according to what I found when I
20 researched the law.

21 Q. Now, the IRS, would it be fair to say that the IRS is not
22 coming after you just for what you gain after your work and
23 effort has been put in, correct?

24 A. That's -- my understanding is that they --

25 Q. They want the whole thing; basically, whatever your firm

1 took in, that's what they're coming after, correct?

2 A. Whatever I took in.

3 Q. Took in, correct. Sorry. And would it be fair to say
4 that based on your beliefs, for the IRS to tax as gross income
5 everything your firm took in for what -- let me put it this
6 way: Let's say you charge a client \$2,000 to do some legal
7 work. Okay?

8 A. All right, sir.

9 Q. And the IRS says: Well, that \$2,000 -- subject to
10 deductions, but that \$2,000 is subject to taxation. Would that
11 be consistent with the IRS position?

12 A. Say that last again? I couldn't understand you.

13 Q. The \$2,000 that you took in --

14 A. Yes, sir.

15 Q. -- from performing the work on that client, that \$2,000,
16 based on the IRS view, is subject to taxation?

17 A. I think that's their -- but you --

18 Q. That's all. That's their view. Okay.

19 Now, so, under your theory, wouldn't that be
20 unconstitutional for the IRS to go after the full \$2,000 if the
21 full \$2,000 is not considered to be income as you defined it?

22 A. Well, now, I haven't mentioned any theories.

23 Q. No, I'm asking you.

24 A. But you're asking me under my theory and this isn't a
25 theory on my part. Now, what you're describing here is that I

1 have -- I understand what the IRS is telling me, and then, on
2 the other hand, I've got what I have seen in the statutes, the
3 regulations, and the Supreme Court --

4 Q. I'm just --

5 A. Let me -- may I finish?

6 Q. I'm just --

7 A. They're not --

8 Q. It's going outside the framework of my question.

9 A. These two -- if I can finish my answer?

10 Q. You're a lawyer; you know how this works. I ask --

11 A. No, but I also --

12 Q. -- the questions, you answer?

13 A. -- need to tell you that --

14 Q. Let me stop you right there?

15 THE COURT: Gentlemen, hang on.

16 Mr. Cryer, I want you to confine your responses to
17 the questions that are asked. You will have an opportunity
18 with your lawyer on redirect. You may deliver a narrative
19 explanation, if necessary, but not beyond that. Clear?

20 THE WITNESS: Yes, sir.

21 THE COURT: Mr. Campbell?

22 BY MR. CAMPBELL:

23 Q. Let me ask you --

24 THE COURT: You're both having a tendency to talk
25 over one another and Ms. Runyon has an impossible task of

1 taking down on the same line two different people talking at
2 the same time.

3 THE WITNESS: Would you restate your question?

4 BY MR. CAMPBELL:

5 Q. Let me put it to you this way -- let me ask another
6 question. You stated that you have a fundamental right to
7 pursue a profession and make a living?

8 A. Yes, sir.

9 Q. Okay. And that it is not consistent with the
10 Constitution to tax that?

11 A. No. What I'm saying is, is that based upon the Code, the
12 regulations, and then Supreme Court, when the Code and
13 regulations tell me to exclude, exempt any exempt property or
14 income from that property, then I've done that, I've followed
15 your procedure.

16 Q. Okay. Now, so you're saying that basically the \$2,000
17 that you took in is property derived from your fundamental
18 right to pursue a profession?

19 A. It's my gross receipts, yes.

20 Q. And that's not taxable?

21 A. No, sir. And that's taxes only imposed on taxable
22 income.

23 Q. Now, before the trial date, you wrote a memorandum. You
24 remember the memorandum?

25 A. Yes, sir.

1 Q. And that memorandum has been published on the internet?

2 A. Yes, sir.

3 Q. And it says this is the memorandum of Tommy Cryer --

4 A. That's correct.

5 Q. -- you're familiar with it?

6 Now, I'm referring to page 87 of your memorandum, and I'm
7 just going to paraphrase, and tell me if you agree what you --
8 this is what you read, what you wrote: It is respectfully
9 submitted that the income tax, as applied, to wages or fees
10 personally earned, without exercise of corporation privileges,
11 without manufacture and sale of commodities and without the
12 lawful jurisdiction of the federal government is clearly in
13 violation of the Fifth Amendment in that it deprives and
14 abridges an inviolable, fundamental right, and a violation of
15 Article I, Section 9, Clause 4 of the constitution?

16 A. Can I see that?

17 Q. Sure. (Hands document to witness.)

18 A. Here we go.

19 Yes, sir. And the key words in that phrase or in that
20 sentence is "as applied." In other words, as the IRS contends
21 the law to be. If they do not -- under the law, I'm entitled
22 to exclude exempt income, and if the IRS contends and taxes
23 that, then they're taxing something they're not allowed to tax
24 and that the law doesn't allow them to --

25 Q. That's un --

1 A. -- tax, in my opinion --

2 Q. In your opinion --

3 A. -- my belief.

4 Q. -- that's unconstitutional?

5 A. As applied. But as you well know, there's a big
6 difference between unconstitutional as written and
7 unconstitutional as applied.

8 Q. I understand that --

9 A. As the law stands I believe it to be constitutional.

10 Q. Okay. But based on what you just -- but the IRS, they're
11 coming after you for what your firm took in, right?

12 A. Yes, sir. They're saying one --

13 Q. And they're not going to apply the theory that you
14 espouse as to what income is, correct?

15 A. They obviously have a different belief of what the law
16 says, or a different version of it.

17 Q. So basically what the IRS is doing is unconstitutional
18 based on your beliefs?

19 A. If I permit them to do it, it would be, yes.

20 Q. Okay. Now let's move on.

21 Now, you did not file a petition in tax court to
22 challenge the IRS's position as far as them wanting you to file
23 income tax returns. You did not go file a petition in tax
24 court, correct?

25 A. No, sir.

1 Q. And the Code provide that forum, tax court, where you
2 could file a petition to challenge the IRS as far as them
3 coming after your taxes, correct?

4 A. I could have put one in, I suppose, but --

5 Q. That's all right. That's -- but you didn't do it?
6 That's all I want to know.

7 A. No.

8 Q. Now, also, in federal court, isn't it true that you could
9 pay the tax and if you feel that the tax is unjust, that you
10 could file a suit in federal court against the federal
11 government for refund of the tax that you feel was collected
12 unjustly, correct?

13 A. In which case I would not be trying the case before a
14 jury.

15 Q. No, but that forum is available, correct?

16 A. That is available, yes, sir.

17 Q. But you did not pursue that forum?

18 A. No, sir. I had to take my choices and my options, and I
19 knew that you had your options --

20 Q. No, all I asked is --

21 A. -- you could've come sued me as well.

22 Q. -- did you pursue the forum. And the answer is no?

23 A. The answer is no.

24 Q. And you chose to fail to file the tax return?

25 A. I chose to refuse to waive my constitutional rights by

1 filing a return that called exempt income gross income.

2 Q. And you didn't pay federal taxes, correct? You didn't
3 pay federal taxes since nineteen ninety --

4 A. I didn't owe any federal taxes.

5 Q. Okay. Let's talk about your theory about income and that
6 it has to be a gain.

7 A. I don't have a theory on what is income.

8 Q. Well, in your opinion, your opinion.

9 A. My belief.

10 Q. Your opinion, your belief, whatever you want to call it,
11 that basically if, the \$2,000 example, you charge \$2,000 to
12 perform a legal service and there is no gain because the value
13 you put in that work to perform the legal service equal what
14 you got, which is the \$2,000, correct?

15 A. That's the formula I believe that the law provides for me
16 to apply.

17 Q. So, basically, that's sort of like a zero sum
18 transaction?

19 A. I can't say zero sum, because -- and I disagree with
20 those that argue the zero sum, although there is a basis for it
21 in your basis regulations and statutes. But I do know that I
22 cannot assign a particular value, but I know there is value
23 there and that you cannot tax the whole without taxing the
24 property that was exchanged for that fee.

25 Q. Now, you researched this area of law, correct?

1 A. Yes, sir.

2 Q. And you say you looked at Supreme Court cases?

3 A. I looked at Supreme Court cases because that was my
4 understanding of what the, what your organization's procedure
5 was in the event --

6 Q. Let me ask you this: But you're a lawyer -- you're a
7 lawyer, obviously. And in your law practice, isn't it true
8 that the Supreme Court does not address every issue out there
9 known to man?

10 A. No. But they've addressed this one.

11 Q. No. Okay. And there are some issues that Supreme Court
12 do not address that circuit courts address, correct?

13 A. Circuit courts can address those. They can --

14 Q. Okay, that's --

15 A. -- render opinions on cases that are before them, yes.

16 Q. Right. And circuit court law is binding based if you
17 live in that particular circuit, correct?

18 A. No, sir. I think that the federal law, whatever the law
19 is, is the same no matter what circuit you're in, and if --

20 Q. Okay. Let me ask you this. Let me ask you this. Isn't
21 it true that in the -- we live in the Fifth Circuit, correct?

22 A. Yes, sir.

23 Q. And as long as there's no Supreme Court law that conflict
24 with Fifth Circuit law, the Fifth Circuit law would be binding;
25 wouldn't that be a correct statement?

1 A. Only on the parties to that case, and only in that
2 instance. That's merely a decision of one case. But the Fifth
3 Circuit --

4 Q. Whoa, whoa, whoa, whoa, whoa.

5 A. We have eleven circuits. We don't have eleven federal
6 laws.

7 Q. Okay. Let's -- I would ask for a limited instruction,
8 but I'm not going to go there.

9 Now, let's just say -- now, isn't it true that there have
10 been some courts that have -- let me go back. This theory or
11 your opinion, that's not your original, correct?

12 A. I didn't -- nothing originated from me.

13 Q. Okay, and --

14 A. I merely --

15 Q. You answered --

16 A. -- found the law --

17 Q. You answered my question.

18 And isn't it true that others espouse the same or similar
19 opinion that you have espoused?

20 A. Not that I know of exactly the -- you know, because I, I
21 didn't get what I got from others. I got it from the statutes,
22 from the regulations, and from the Supreme Court.

23 Q. Well, did you read cases?

24 A. Yes, sir.

25 Q. Now, in your research of cases, did you come across the

1 case of Lonsdale v. Commissioner of Internal Revenue?

2 A. I ran across Lonsdale --

3 Q. I just want to ask you did --

4 A. Yes.

5 Q. And in that case --

6 A. May I refer to my notes?

7 Q. I'll put it up so you can see it. No, I just want you to
8 look at it right here. You don't need your notes right now.

9 Close that. You don't need your notes.

10 A. All right.

11 MR. CAMPBELL: Can you pop this up for the witness to
12 see this?

13 (Document displayed to witness only.)

14 BY MR. CAMPBELL:

15 Q. I'm going to read this and I want you to read along with
16 me. I'm going to read the highlighted portions.

17 A. All right, sir.

18 Q. "This is so, appellate's first argument, because the
19 exchange of services for money is a zero sum transaction, the
20 value of wages being exactly that of the labor exchanged for
21 them, and hence, containing no element of profit." That's
22 their argument. The court's response: "This contention is
23 meritless. The Constitution grants Congress full power to tax
24 incomes from whatever source derived." Do you agree that
25 that's what the court said there?

1 A. I agree that's what the court said, yes, sir.

2 Q. All right. And that's Fifth Circuit. This is a Fifth
3 Circuit opinion?

4 A. Yes, sir, it is.

5 Q. And it's a 1981 opinion?

6 A. Yes, sir it is.

7 Q. And that opinion was out there, obviously, in 1993 and
8 1994 when you was forming your views about what income is,
9 correct?

10 A. That's correct.

11 Q. All right. Now, the Fifth Circuit is not the only
12 circuit that chimed in on this, correct?

13 A. There are others, yes, sir.

14 Q. Okay. Matter of fact, I know -- I'll withdraw that.

15 Are you familiar with the case of United States v.

16 Koliboski?

17 A. Yes, sir.

18 Q. And that is an opinion from the Seventh Circuit?

19 A. That's correct.

20 Q. And are you familiar the infamous footnote No. 1?

21 A. Yes, sir. I'm familiar with the footnote.

22 Q. I want to read that: "Although not raised in his brief
23 on appeal, the defendant's entire case at trial rests on the
24 claim that he in good faith believes that wages are not income
25 for taxation purposes. Whatever his mental state, he, of

1 course, was wrong, as all of us already are aware.
2 Nonetheless, the defendant still insists that no case holds
3 that wages are income. Let us now put that to rest: WAGES ARE
4 INCOME. Any reading of tax cases by would-be tax protesters
5 now should preclude a claim of good faith belief that wages or
6 salaries are not taxable." Now, you are familiar with that,
7 correct?

8 A. Yes, sir, I am.

9 Q. And this is a 1984 opinion?

10 A. Yes, sir.

11 Q. And that opinion was around during the time that you was
12 doing all your research and forming your views about what, your
13 opinions as to what income is?

14 A. Yes, sir. That opinion was there. I read it.

15 Q. Now let's move on. Let's talk a moment about your visit
16 to George McGovern. During this time, the IRS was looking at
17 your business to determine whether or not you owed taxes,
18 correct?

19 A. That's correct.

20 Q. And during this time, the U.S. Attorney's Office was
21 investigating you as well?

22 A. Yes, sir, the U.S. Attorney's Office was becoming
23 involved at this particular point.

24 Q. And during this time, you go to George McGovern, correct?

25 A. Yes, sir.

1 Q. And so this is not a visit that out of the blue I'm just
2 going to go to George McGovern just to see what my losses and
3 profits are, correct? That's not -- it wasn't in that context?

4 A. No. It was directly as a result of a conversation with
5 the U.S. Attorney's Office.

6 Q. And so it was -- so it had to do with trying to figure
7 out what your tax liability was, correct?

8 A. No, sir. They wanted to know what my financial records
9 would disclose, and I told them they were welcome to have
10 whatever information there was to be had. And they sent over a
11 couple of folks to my office. We couldn't agree on how that
12 was going to be, so I just took everything down to George and I
13 said, "Here, you do P&L's the way however you do P&L's and
14 disclose whatever; make a spreadsheet, give them the whole
15 spreadsheet." But I would not give them my original
16 documentation. I wasn't going to turn over all my check stubs
17 and my bank records, the originals, to a third, you know, to
18 somebody else and leave it in their care or whatever. So I
19 picked a middleman to translate those into data that were then
20 provided in my agreement to cooperate with disclosure of
21 whatever information there was.

22 Q. And this was in the context of a tax investigation?

23 A. This is a conflict -- in the context of a dispute, yes.

24 Q. Okay. And Mr. McGovern worked up the figures for you,
25 correct?

1 A. He worked up the numbers of what came in and what went
2 out.

3 Q. And he worked up the numbers as far as what came in as
4 far as taxable income. He did not apply -- you already
5 testified he did not apply your theory, your belief as far as
6 what is gain or --

7 A. He didn't, nor did I tell him to. Matter of fact, I told
8 him just the opposite. I said, you know, just -- as a matter
9 of fact, I said, "If there's a question in your mind as to what
10 column it goes in, put it in what they call income."

11 Q. So you knew what they called income. You just said "what
12 they call income."

13 A. I know what the IRS tells me over here --

14 Q. Okay, that's --

15 A. -- and I know what the law tells me over here, and I just
16 have to decide which to believe.

17 Q. Okay. All right. But you know what the IRS call income,
18 and you just said based -- and George McGovern did what the IRS
19 call income, correct?

20 A. That's right.

21 Q. Okay.

22 A. We do differ on that.

23 Q. Okay, differ. I'm glad you say that, you differ. All
24 right. Let's move on.

25 Now, let's just kind of get this out of the way. You're

1 aware that people file taxes on April 15, correct? Tax
2 returns.

3 A. I'm aware. I did it for years and years.

4 Q. Did it for years. Matter of fact, you stated when you
5 was growing up, it was just known that that's what you do
6 April 15, you file taxes?

7 A. Yeah. That's correct.

8 Q. So there's no confusion about that?

9 A. There was no confusion. I didn't at the time know, sir.
10 As a matter of fact, in 1993 I was just as ignorant as I was
11 when I was 16 and filed my first one, 17, however old I was. I
12 didn't know any more about the tax law at that time than I did
13 when I was a child.

14 Q. Now, with Ms. Worthey, she's been employed by you for 30
15 years?

16 A. Yes, sir.

17 Q. And you heard her when she said that your law office did
18 submit the 941 quarterly returns?

19 A. Yes, sir.

20 Q. And matter of fact, you stated during direct you even
21 still continue to do it till this day?

22 A. I do it to this day, at her request, yes, sir.

23 Q. Okay. All right. At her -- all right. Well, we'll get
24 to that later.

25 Now, Ms. Worthey, she's not a lawyer, is she?

1 A. No. And that's why I did that, because she's not sworn

2 --

3 Q. I just want -- she's not what?

4 A. Sworn to uphold the law as I am and to fight for it.

5 Q. But hold on. Every citizen has a duty to follow the law,
6 correct?

7 A. Every citizen has a duty to obey the law practice, me
8 included.

9 Q. That's all I --

10 A. But in my case --

11 Q. That's all I asked, every citizen has a duty to obey the
12 law.

13 Now, Ms. Worthey, she's not a lawyer -- you said that
14 she's not -- and she's not a CPA?

15 A. No, sir. She isn't.

16 Q. When she did the quarterly filings and she -- she filled
17 them in, correct? She's the one that did all the computations
18 and everything, correct?

19 A. She does everything with respect to payroll: pays
20 herself, withholds on herself, she -- she files and she makes
21 deposits. Yes.

22 Q. But before she does that, she gives the 941 to you for
23 you to sign, correct?

24 A. That's right. I sign whatever she puts in front of me.

25 Q. Do you look at them?

1 A. No.

2 Q. Do you even look at it to determine if it's accurate or
3 correct or complete?

4 A. No. I trust her.

5 MR. CAMPBELL: Madam Clerk, can you pull up
6 Government Exhibit 15 already been admitted in evidence.
7 Page 2, please. And can you highlight the signature block or
8 blow up the signature block.

9 Can you go a little lower than that? Just that
10 whole, just say the bottom forth of the page. Thank you.

11 BY MR. CAMPBELL:

12 Q. Now, that's your signature there?

13 A. Yes, sir.

14 Q. What I want you to do is read that (indicating) to the
15 jury.

16 A. It says, "Sign here. Under penalties of perjury, I
17 declare I have examined the return, including accompanying
18 schedules and statements, and to the best of my knowledge and
19 belief, it is true, correct and complete."

20 Q. That would be false based on your testimony, correct?

21 A. I'm sorry?

22 Q. That would be false based on your testimony --

23 A. It would be false to the extent that I have examined the
24 return --

25 Q. But wait a minute. Wait a minute. You just testified

1 you didn't examine it, you didn't look at it, didn't check the
2 figures; you just signed it.

3 A. That's right.

4 Q. So basically, when you say I have a -- basically when you
5 attest here that I have examined the return, including the
6 accompanying schedules and statements, and to the best of my
7 belief, it's true and accurate, you didn't look at it?

8 A. That's what I said.

9 Q. That part --

10 A. It was true to the extent --

11 Q. -- you didn't --

12 A. But it was, to the best of my knowledge, true, accurate
13 and correct, because I -- I mean --

14 Q. Okay. So that's your practice that you sign stuff under
15 penalties of perjury where you have to affirm that you examined
16 it when in fact that you didn't examine it?

17 A. To the best of my knowledge, yes --

18 Q. But you --

19 A. -- it's true.

20 Q. -- didn't examine it. It says that you examined it, but
21 you didn't examine it, did you?

22 A. Of course not. I believed --

23 Q. Okay.

24 A. -- everything she put down.

25 Q. All right. Let's move on.

1 MR. CAMPBELL: Thank you, Madam Clerk.

2 (Exhibit G-15 removed from display.)

3 BY MR. CAMPBELL:

4 Q. Now, in the 940 returns for 2000 and 2001, Ms. Worthey
5 did those as well, correct? As far as the annual that you have
6 to do that summarize everything that --

7 A. Yes, sir. She did the whole, whole thing.

8 Q. And in the 940 return, for example, for 2001, basically
9 based on testimony that you indicated -- the entry there was
10 that her gross salary was \$21,000, roughly \$21,000?

11 A. I don't even know what I paid her.

12 Q. Okay. Well, I tell you what --

13 A. So I'm taking that on faith.

14 Q. No, you don't have to take my word for it. Let's pull up
15 Government Exhibit 23.

16 A. I do.

17 MR. CAMPBELL: And the second page.

18 BY MR. CAMPBELL:

19 Q. That figure right there is \$21,275, correct?

20 A. Yes, sir.

21 Q. That's the total gross income what you paid her for the
22 tax year of 2000, correct?

23 A. I would accept that number because she put it there.

24 Q. And based on the figures that Mr. McGovern and
25 Mr. Sandefur worked up, you made somewhere between, as far as

1 gross income, \$205,000 and \$210,000, somewhere around that
2 ballpark, just as far as --

3 A. Gross receipts?

4 Q. Gross receipts, what your firm took in.

5 A. What I took in?

6 Q. Yeah. Based on -- based on --

7 A. See, I don't have a firm.

8 Q. Okay. Based on what you took in.

9 A. Yeah, what came in on fees generated or whatever.

10 Q. And taxes were withheld from Ms. Worthey's \$21,000,
11 correct?

12 A. Yes, sir.

13 Q. But nothing was withheld as far as federal taxes from
14 roughly your \$200,000?

15 A. No. No federal taxes were owed --

16 Q. Okay.

17 A. -- on them. And the \$200 is gross anyway.

18 Q. Okay. Now, okay. You answered my question.

19 And the same is true for 2001 where she made the same
20 gross salary \$21,275, correct?

21 A. I would assume, yeah.

22 Q. And your firm or you took in gross roughly between \$155
23 and \$173,000 based on what Mr. McGovern and Agent Sandefur
24 worked up gross?

25 A. I don't argue with the facts. No, sir.

1 Q. And taxes were withheld on her \$21,000 for tax year 2001,
2 correct?

3 A. Yes, sir. She said she did.

4 Q. But nothing was taken from yours?

5 A. Well, no.

6 Q. No, okay. Now --

7 MR. CAMPBELL: Thank you, Madam Clerk.

8 (Exhibit G-23 removed from display.)

9 BY MR. CAMPBELL:

10 Q. Now, you talked to Ms. Worthey -- well, when you were
11 forming your views about your income and coming to the opinion
12 that, as applied, the Code does not apply to you, did you
13 express those views to Ms. Worthey?

14 A. Yes, I did, but --

15 Q. That's all I want to know, you expressed your views to
16 Ms. Worthey. And did you express an opinion to her as far as
17 your views or your belief to her that her salary, what you paid
18 her, was not taxable?

19 A. Yes, because I certainly get something in exchange for
20 what I pay her.

21 Q. So you expressed that to her, that her salary is not
22 taxable?

23 A. Yes.

24 Q. And she's worked with you for a long time?

25 A. Yes, sir.

1 Q. And you state she's not a lawyer? I mean, she's not a
2 lawyer; you stated that earlier, correct?

3 A. That's correct.

4 Q. And pretty much whatever she learned about the law to
5 some extent probably comes from working in your firm on the
6 different cases and so forth, correct?

7 A. That's correct.

8 Q. So after you told her that, in your opinion, her wages
9 were not income, were not taxable income, she still continued
10 to file those 941's, correct?

11 A. I gave her that option, yes.

12 Q. So yes, she --

13 A. And she --

14 Q. That's right. You gave her the option. You gave her the
15 option --

16 A. That's correct.

17 Q. -- and she continued to file the 941 returns, right?

18 A. That's correct, and I honored that.

19 Q. And, also, she continued to get the W-2's from you, or
20 she did them, but, nevertheless, she continued to do the W-2's,
21 correct?

22 A. Whatever it was that, you know, that was involved in her
23 withholding and sending in and depositing, yes.

24 Q. And she continued to file her federal income taxes,
25 didn't she?

1 A. As far as I know, yes. I don't have knowledge of that.

2 Q. But you heard that she filed (inaudible), correct?

3 A. I'm sorry?

4 Q. You heard her yesterday when she said that she filed
5 federal income taxes, right?

6 A. If she said she filed them, she filed them.

7 Q. This is after you explained to her that it's not taxable,
8 correct?

9 A. This was after I told her that, yes, I made that
10 discovery.

11 MR. CAMPBELL: No further questions.

12 THE COURT: Your redirect?

13 MR. BECRAFT: One moment, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BECRAFT:

16 Q. Mr. Cryer, you are aware of the position of the IRS, its
17 consideration that what you make constitutes gross income,
18 correct?

19 A. I'm aware of its -- yes, sir.

20 Q. And your view is opposite, your view and belief is
21 opposite of that?

22 A. Yeah. My belief of what the law says is one thing and
23 what they say is another. I've got to believe one or I've got
24 to believe the other. I can't believe both, because they
25 differ. And so I believe the law.

1 Q. Now, when you were doing your research, did it descend to
2 this point --

3 MR. CAMPBELL: Objection. Leading.

4 THE COURT: Don't lead your witness. Sustained.

5 BY MR. BECRAFT:

6 Q. How do you account for or explain the difference between
7 your belief and the position asserted by the IRS as to whether
8 or not that might constitute a disagreement on your part about
9 the tax laws?

10 A. Well, you have to remember, when I started this research,
11 I wasn't researching to establish a difference. I was
12 researching to establish that the IRS's understanding of the
13 law was correct. I was trying to find that there was a
14 liability provision that applied to me. I was trying to believe
15 what the claim was that I had heard. I also applied the same
16 approach to the issue on income as to establish whether or not
17 the IRS's description of income and that personal earnings,
18 gross receipts are all income, and, you know, what I ended up
19 finding differed from the law. And that -- so I had --
20 basically, I started then back over. But, originally, I set
21 out to verify the IRS's version of the law, and I not only
22 couldn't verify it, but I found out that the law tells me to
23 believe something entirely different. At that particular
24 point, I had to choose who to believe, whether to believe the
25 IRS or whether to believe the Code, the regulations, and the

1 Supreme Court. And I followed that process exactly as the Code
2 and exactly as Mr. Sandefur described in deducting, excluding
3 those items that are not income and those items that are
4 exempt, are outside the tax, not taxable, and the only
5 conclusion that I could reach for me was that: (A) I wasn't
6 liable for the tax; (B), what I brought in was not exchanged
7 for nothing, I gave up something for that, and that it didn't
8 meet the definition of, the constitutional definition of
9 income; and (C), that if it were income, even if it were
10 income, that it is not taxable income. And the income tax is
11 imposed on taxable income, and I don't believe I have either,
12 income nor -- that it would be taxable if it were income.

13 Q. Mr. Campbell brought up some cases. How long have you
14 been doing legal research?

15 A. Counting law school, I'd say pretty close to 40 years, 37
16 years.

17 Q. And statutes become part of a litigated case. Parties
18 appeal.

19 MR. CAMPBELL: Your Honor, the question --

20 BY MR. BECRAFT:

21 Q. Mr. Campbell pulled out this case from the Fifth Circuit
22 called the Lonsdale case. Do you remember that?

23 A. Yes, sir. Yes, sir.

24 Q. When was the first time that you would have encountered
25 or run across any reference to the Lonsdale case?

1 A. In the Lonsdale case, that would've probably been in
2 about 1995, latter, mid-part of '95 when I was working on the
3 issues concerning what is income and what is not income, and I
4 would have picked that case up in -- because each time that I
5 would research them and read a case, I would always bring that
6 case forward, either Shepardizing in the beginning or doing a
7 global cite, I think is what I'm using now with the service
8 that I've got, that lists out all the cases in which that case
9 was cited and relied upon or in which it was overturned in
10 order to make sure that each of those cases is still the
11 controlling, last word, and law of the land from the Supreme
12 Court.

13 Q. Now, so you read before -- I been using on Greg
14 December 31 of '99. You read before that date this Lonsdale
15 case?

16 A. Yes, sir.

17 Q. In fact, you read it a couple of years before the date I
18 just gave you?

19 A. Yes, sir.

20 Q. What went through your mind when you -- you saw on that
21 occasion the words Mr. Campbell pointed out to you on the
22 screen, correct?

23 A. Yes, sir.

24 Q. What did you believe about what constituted income after
25 you read the Lonsdale case?

1 A. I believed the Supreme Court.

2 Q. Was there a difference in your view or opinion or belief
3 in what the Supreme Court said and what the court said in
4 Lonsdale?

5 A. Yes, sir.

6 Q. Explain the inconsistency.

7 A. Well, the inconsistency in Lonsdale -- there are a couple
8 of inconsistencies. In the first place, Lonsdale did not deal
9 with what is income. It wasn't before the court. And that
10 issue not being before the court, it wasn't ruled upon by the
11 court. It was --

12 MR. CAMPBELL: Objection.

13 A. -- talked about.

14 MR. CAMPBELL: This is a lot of legal interpretation
15 as far as what Lonsdale -- I just asked him to read Lonsdale,
16 not to interpret it, not to embellish on it, and that's beyond
17 the scope of my cross.

18 MR. BECRAFT: In reply, Your Honor, the case was
19 brought up, and I think the defendant is entitled to testify
20 about his belief and --

21 THE COURT: Then ask him what his belief is instead
22 of the legal interpretation exercise you're putting all of us
23 through.

24 BY MR. BECRAFT:

25 Q. Tell us your belief.

1 A. My belief regarding Lonsdale is that, first off, Lonsdale
2 did not rule on that issue because it wasn't before it. The
3 second is that Lonsdale is an appellate court case that applies
4 to the parties and the case before it and none other. And
5 third is that Lonsdale is an appellate court case and cannot
6 overturn or countermand the formulas and the definitions, the
7 constitutional formulas and definitions that the Supreme Court
8 has given me that I have applied in formulating my belief.

9 Q. Okay. There was another case that Mr. Campbell brought
10 out, the Koliboski case. Do you remember the year that that
11 case was decided?

12 A. No, sir. I don't remember the year.

13 Q. Okay. Do you remember what circuit it was?

14 A. I think he said it was Seventh Circuit. I believed him.

15 Q. Okay. What's your opinion or belief about the Koliboski
16 case?

17 A. Again, in Koliboski, it was my belief that -- well, as a
18 matter of fact, if you look at that footnote, the first thing
19 the footnote says, you know, is also not raised in brief. The
20 issue wasn't before the court. It was a proclamation. It
21 wasn't a decision. And it cited no authority, and all of the
22 law I had before, it didn't countermand it or counteract or
23 overturn anybody. You can't -- an appellate court can't
24 overturn the Supreme Court. Only the Supreme Court can
25 overturn a Supreme Court decision.

1 Q. Now, there was a -- when this case got started, there was
2 a motion to dismiss you had prepared and filed in this case,
3 correct?

4 A. That's correct.

5 Q. And that was pointed out to you by Mr. Campbell?

6 A. Yes, sir.

7 Q. You made a distinction in your cross-examination with him
8 as to whether or not something is unconstitutional directly or
9 unconstitutional as applied. What type of an argument were you
10 asserting in that motion?

11 A. I was asserting an argument that the charges should be
12 dismissed because to apply the Internal Revenue Service's
13 interpretation of what is and is not income and what is and is
14 not taxable, to apply -- their interpretation of that would be
15 unconstitutional if it were applied that way. But it had
16 nothing to do with how the law was written. I believed
17 Internal, the Internal Revenue Code to be constitutional. It
18 only is imposed on taxable income. It's only imposed on
19 income, and then it's only imposed on that income that is
20 taxable. I don't find an constitutional problem with that. I
21 do find a constitutional problem with their version of it,
22 which differs from what the law says to me, and then I
23 formulated my belief on what the law is. And I had to choose
24 between the two. I believed the law. I believe the Supreme
25 Court, I believe the statutes, and I even believe the

1 regulations promulgated by the Secretary of the Treasury. And
2 I applied that process right down the line. I started with
3 their starting point and I ended with their ending point, and I
4 have no income and I have no income -- and if it were, if
5 there's any net in there, it's not taxable under the law,
6 according to my belief, as to me.

7 Q. Mr. Campbell brought up tax court and refund suits. Let
8 me ask some questions about that. Are you a student of the
9 procedures? Have you studied the procedures for protesting
10 taxes?

11 A. I know virtually nothing about administrative law. It's
12 an area -- although my practice is pretty broad, administrative
13 law is an area that I have succeeded in avoiding. I've never
14 handled a Social Security claim. I've never handled a tax
15 dispute claim until just recently I assisted with one. It was
16 an area I didn't want to know about. Matter of fact, just like
17 taxes, I didn't want to know about.

18 No, I don't know how you get a case before the tax court.
19 I don't know how you establish or exhaust administrative
20 remedies, whatever. I don't know the administrative process of
21 the tax code. I was studying the tax code in its substance,
22 and that -- at that point, when I reached my conclusions and I
23 exhausted every single avenue where I could get that law to
24 reach me, then I stopped. And the only thing I've done since
25 then is to update and make sure that all of the cases, all of

1 the laws, all of the statutes and regulations are still
2 substantively the same, and they are as far as I've been able
3 to find.

4 Q. Did you ever receive from the IRS a 90-day letter
5 regarding any year after 1993?

6 A. No, sir. I received -- the only thing -- they don't --
7 they didn't even send me forms each year like they used to. I
8 mean, they quit doing that some time ago. I had to get my own
9 forms when I was still as ignorant as a 16-year-old. I
10 received no notices from them until January of 2001.

11 Q. And that's when Ms. Bullock contacted you, right?

12 A. That's correct. Yes, sir.

13 Q. So to make perfectly clear, you never received any type
14 of letter from the IRS that said: Well, we assert for this
15 year, for example, 1997, that you owe so much in the way of
16 taxes and you can go to tax court?

17 A. No. It was never, never even really considered. All --
18 I know it now, because I've recently learned in assisting in
19 another case that tax court is available to appeal an adverse
20 finding by the IRS itself making its own rulings on deficiency
21 or on taxes due. But that's still -- that's an internal
22 process and kind of like asking the fox for a hen count.

23 Q. Were you aware of -- well, let me ask you this: When was
24 the first time you've been aware of this legal proposition that
25 you can file a refund lawsuit in federal court?

1 A. I became aware of that probably in the last few years,
2 in -- well, maybe even last year, because in re-reading some of
3 the cases, I came across cases that referred to that as far as
4 the process that was concerned. But even then I determined
5 that, you know, I wouldn't be able to obtain a jury trial. And
6 again, that's, you know, that was a key element. But at that
7 particular point, the die was cast; I had made my decision that
8 I had to do something. As I pointed out, I'm not only
9 obligated to obey the law, I've got -- that's only half the
10 job. I'm obligated to fight for it.

11 Q. Were you aware of this proposition that you could pay
12 your taxes and then institute a lawsuit to recover the money
13 that had been paid in?

14 A. I'm aware now. I wasn't necessarily aware -- I don't
15 think I was aware in 2000 and 2001 of that particular process,
16 no, sir. Because, again, I wasn't looking in that vein.

17 Q. These -- you've had your secretary working for you for
18 some 30 years, correct?

19 A. Yes, sir.

20 Q. And about 14 years ago was when you started digging in,
21 or 13 years ago, you started digging into these tax topics?

22 A. Right.

23 Q. Before that time, you were withholding from your
24 secretary, Gloria?

25 A. Yes, sir.

1 Q. And at some stage after you started doing your research,
2 did the question come up between the two of y'all as to whether
3 or not you would continue withholding?

4 A. Yes, sir.

5 Q. And after mutual discussions about withholding, what
6 decision was made?

7 A. She decided that she did not want, and wasn't willing, to
8 take on the government on this issue, that she wasn't in a
9 position to mount that fight, and --

10 MR. CAMPBELL: Objection. Hearsay.

11 THE COURT: It is. Sustained.

12 THE WITNESS: The election --

13 MR. BECRAFT: I'll withdraw the question. Okay?

14 BY MR. BECRAFT:

15 Q. Now, you filed -- after a discussion with her about
16 withholding, you continued to file the 940's and the 941's,
17 right?

18 A. I continued to sign them, yes, sir.

19 Q. Okay. And it's under -- those signatures are under
20 penalty of perjury, correct?

21 A. Yes, sir.

22 Q. Now, you reported on those forms that what you paid her
23 as salary was income, correct?

24 A. I reported I paid her a salary.

25 Q. Okay. Now, George McGovern, he's testified in this case

1 that he put -- we've seen the charts, we don't need to pull
2 them out -- that he put down, in essence, the net that you made
3 as income, right?

4 A. He put it down that way, yes.

5 Q. All right. Under your view -- now, as to both your
6 secretary and yourself, what is your view about whether or not
7 there are further deductions that can be taken that would be
8 asserted by a putative taxpayer?

9 MR. CAMPBELL: Objection. Beyond scope.

10 THE COURT: Sustained.

11 BY MR. BECRAFT:

12 Q. In reference to your signature on the 940's and 941's --
13 remember, I think we had one exhibit up there, it might have
14 been either 15 or 23, where the number was \$21,000, right? Do
15 you remember that?

16 A. Right.

17 Q. In your view, would that entire \$21,000 be taxable?

18 MR. CAMPBELL: Objection. Beyond the scope.

19 MR. BECRAFT: Opinion then.

20 THE COURT: Sustained.

21 MR. BECRAFT: It was in -- Your Honor, it was . . .

22 THE COURT: You're now going into an area having him
23 calculate gain, profit, all the subtractions that he testified
24 to in Direct, not on Cross.

25 BY MR. BECRAFT:

1 Q. Mr. McGovern, remember the charts?

2 A. Yes, sir.

3 Q. Okay. Mr. Campbell made a, or posed a question to you as
4 to whether or not you agreed or disagreed with the way that
5 Mr. McGovern calculated that. Do you remember the questions on
6 that?

7 A. I'm sorry, I'm --

8 Q. Okay, bad question. Mr. Campbell was asking you about
9 Mr. McGovern and what he did for you.

10 A. Right.

11 Q. Mr. McGovern was requested by you to -- when you first
12 approached him, did he -- was he directed by you to prepare tax
13 returns?

14 A. No, sir.

15 Q. Was he directed by you to prepare profit and loss
16 statements?

17 A. Yes, sir.

18 Q. Okay. Now, of that amount that he calculated in the way
19 of profit, is it your understanding based upon either what he
20 said on that occasion or even now that Mr. McGovern would
21 believe that that would be some type of income?

22 A. I believe that Mr. McGovern believes that.

23 Q. Do you believe that?

24 A. No, sir. But --

25 Q. Why?

1 A. Because I've looked at what the law, the statutes, the
2 regulations, and the Supreme Court tell me is the law, and
3 Mr. McGovern is believing the Internal Revenue Service and, as
4 far as I know, he hasn't looked at all that.

5 MR. CAMPBELL: Speculation.

6 THE WITNESS: I certainly haven't shown him.

7 MR. BECRAFT: That's correct, it's speculation.

8 THE COURT: It is speculation. Sustained.

9 MR. BECRAFT: Nothing further, Your Honor.

10 THE COURT: All right, sir. You may step down.

11 Call your next witness.

12 DEFENSE RESTS

13 MR. BECRAFT: The defense rests, Your Honor.

14 THE COURT: At this time, any rebuttal case to be
15 presented by the Government?

16 MR. CAMPBELL: No, sir.

17 THE COURT: All right, ladies and gentlemen. This
18 concludes the evidentiary portion of this particular trial. We
19 have a few things to tune up. I had the lawyers in court at
20 8:30 this morning working on your jury instructions, and we
21 have a couple of details to complete in that regard. We're
22 going to give you a 15-minute morning break, till about 10:15,
23 we hope, if we can get this done as quickly as I think we can.
24 And then we'll bring you back in. You will be given copies of
25 the jury instructions to read along with me as I read them out

1 loud to you.

2 Would you prefer that this go in ordinary fashion,
3 counsel, that is, that the closing arguments be given before
4 the jury instructions?

5 MR. BECRAFT: Yes.

6 THE COURT: Mr. Campbell?

7 MR. CAMPBELL: Yes.

8 THE COURT: All right. You won't get to read those
9 jury instructions until after they do their closing arguments.

10 All right. We'll be in recess. All rise for the
11 jury.

12 (Jury exits courtroom.)

13 THE COURT: Thank you. Please be seated.

14 SECOND CHARGE CONFERENCE

15 THE COURT: Mr. Becraft, now having heard the rest of
16 the testimony, do you want to address the, I guess the tail end
17 of your jury instructions on the --

18 MR. BECRAFT: Yes, Your Honor.

19 THE COURT: -- Anti-Injunction Act?

20 MR. BECRAFT: On this occasion, in light of the
21 cross-examination, the defense hereby withdraws No. 10, the
22 requested defense instruction No. 10 covering the topic of
23 guilt by association. We withdraw 16 that dealt with the
24 substance of the Anti-Injunction Act; I don't think that's
25 really important. And we would withdraw No. 22 on protected

1 speech. Those matters just simply didn't come up on cross.

2 THE COURT: All right. The rulings that the court
3 entered earlier, Mr. Becraft, with respect to your submitted
4 instructions remain as is and essentially for the reasons
5 contained in the objections filed by the Government which I'm
6 not going to restate in a separate opinion.

7 In this instance -- and we have the changes to the
8 jury instructions made this morning, to Jury Instruction 14 and
9 No. 15. There were no other changes to the instructions that
10 we discussed. Are there any to be discussed or proposed now?
11 Mr. Campbell?

12 MR. CAMPBELL: Outside of what we discussed earlier
13 as far as the dates and the counts and so forth, no changes
14 recommended by the Government.

15 THE COURT: Those were made by stipulation between
16 the parties, with the Court's approval.

17 Mr. Becraft, any further changes to the instructions
18 as submitted to you?

19 MR. BECRAFT: None, Your Honor.

20 THE COURT: All right. We're going to make the
21 changes as discussed. Let's get to the verdict form. That has
22 just been handed to you. It doesn't take a lot to review it.
23 Mr. Campbell, any objections to the proposed verdict form?

24 MR. CAMPBELL: No, sir.

25 THE COURT: Mr. Becraft?

1 MR. BECRAFT: No, Your Honor.

2 THE COURT: That will then be adopted as the verdict
3 form that will be given to the jury.

4 Gentlemen, you have until 10:15 in order to finish
5 any preparation for closing arguments. To repeat,
6 Mr. Campbell, you will have 45 minutes. You will apportion it
7 between your argument and any rebuttal as you see fit. And
8 Mr. Becraft, you have the full 45 minutes. Let me ask you,
9 Mr. Campbell, do you want a two-minute warning?

10 MR. CAMPBELL: Yes.

11 THE COURT: Mr. Becraft?

12 MR. BECRAFT: I would like one, Your Honor.

13 THE COURT: All right. We'll give you a two-minute
14 warning as you get close to your respective times.

15 Any other items to be considered before we recess
16 this morning, either side?

17 MR. CAMPBELL: No, sir.

18 MR. BECRAFT: No, sir.

19 THE COURT: All right. We are in recess.

20 (Recess 10:02 - 10:18 a.m.)

21 THE COURT: Thank you. Please be seated. Gentlemen,
22 you're ready with your closing arguments?

23 MR. CAMPBELL: Yes, Your Honor.

24 THE COURT: Let's get the jury, please.

25 (Jury enters courtroom.)

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

2 All right. Mr. Campbell, are you prepared with your
3 closing argument?

4 MR. CAMPBELL: Yes, I am, Your Honor. And may I
5 request 15 minutes to reserve for rebuttal?

6 THE COURT: All right.

7 MR. CAMPBELL: May I begin?

8 THE COURT: You may begin when ready, sir.

9 CLOSING ARGUMENT BY THE GOVERNMENT

10 MR. CAMPBELL: Please the Court. Defense table.
11 Ladies and gentlemen of the jury.

12 I'm going to get straight to the point as to what
13 this case is about. As you are aware, we have to prove
14 elements, and there are elements to every offense charged, a
15 criminal offense. But the only element in dispute is whether
16 the defendant acted willfully, so let's talk about that. In
17 other words, was he aware of a duty that the law imposed on him
18 and did he choose to disobey that duty?

19 Now, the defendant told you on the stand he's not
20 mistaken, this is not some misunderstanding, this is not some
21 misinterpretation. This is what it is. So it's not a
22 situation where, "Oh, I made a mistake," or, you know, "I was
23 looking at the Code and I misinterpreted it." That's not what
24 he's saying, so let's not -- so that's not how we're going to
25 look at this case in determining whether he was willful.

1 And the defendant's words kind of really put this
2 case into context: "IRS versus the law, and I had to make a
3 decision and I chose to go with the law." And I submit to you
4 that the appropriate context is the IRS and the law versus the
5 defendant's version of the law and the defendant made a
6 decision, he made a decision to go with his version of the law.
7 That way enures to his benefit, because under his version of
8 the law, he gets to keep all of his money in his pocket as far
9 as federal taxes are concerned.

10 Now, you have the defendant here on one side and on
11 the other side you have the IRS, you have George McGovern, his
12 tax accountant, you have the IRS as far as represented by Jimmy
13 Sandefur, and even his own secretary. So you have the
14 defendant: "It's not income. It's not taxable. I'm not
15 liable on anything." Then you have the IRS: "Yeah, you've got
16 to pay taxes." George McGovern: "You have to pay taxes."
17 Jimmy Sandefur: "You have to pay taxes." And even his own
18 secretary, she has to pay taxes on her wages.

19 Now, there's an important concept in this willfulness
20 and it comes to trying to determine whether it is genuine,
21 whether it's a sincere belief or misunderstanding, or whether
22 it's just a disagreement. Because if you disagree with the
23 law, that is not a basis for good faith. And you can't turn a
24 blind eye to certain things. The way I look at it as far as
25 for this particular case is that, let's say, for example,

1 someone says that the world is flat, and despite all of the
2 scientific studies and all of the evidence to show that the
3 world is round as far as the observations that were made by the
4 Greeks and all of those astronomers from then and you go out in
5 space and you take a photograph of the world and, look, it is
6 round, despite all of that, someone still espouses that the
7 earth is not round, it's flat. And let's say they, you know,
8 they don't have -- they're not -- it's not bad faith as far as,
9 you know, they have some evil intent or, you know, they're
10 trying to do something bad; they believe the world is flat.
11 But the question is: Despite all of this evidence saying that
12 the world is round, you're still out there saying the world is
13 flat. And that's what we have here. And so the question is:
14 Are you going to excuse his conduct, let him off the hook
15 because he's virtually telling you that the world is flat when
16 everybody knows the world is round?

17 Now let's look at some of the things that the
18 defendant was aware of when forming his views. He is aware of
19 the fact that the IRS disagreed with his perception of what
20 income is. He told you that. He knew the IRS disagreed with
21 him on that, even while he was doing his research. He came
22 across those cases that basically and flatly rejected his views
23 about wages are not income and that, you know, what someone
24 pays me is not income. He read those cases, and I've read some
25 of those to him and he said yeah. And even during his Redirect

1 he said, "I was aware of those during '94 and '95." So this is
2 not a situation where after he was indicted he came across
3 these cases that challenged his views. He knew those cases
4 exist, but he chose to dis -- he chose to ignore them and not
5 pay his taxes.

6 All of his research, all of the cases, and yet he
7 chose not to pay his taxes, not to file a return. Another way
8 to look at it as far as good faith versus misunder -- mis --
9 excuse me, versus disagreement, let's say there's a law out
10 there that says that it shall be illegal to sell someone
11 alcohol who is under the age of 21 and a bartender is charged
12 because he sells alcohol to a minor. Okay? The bartender's
13 defense is that: "Well, when the minor came in, the minor
14 showed me an ID. It looked like a valid ID, it didn't look
15 false, and based on the year of birth that was indicated on the
16 ID, it said that, indicated to me this person was over 21. The
17 picture looked like the person. There was nothing on that ID
18 that suggested that it was false or that it was forged or
19 anything like that. So, I mean, I thought the person was 21,
20 over 21, so I served him alcohol." Now, assuming that there's
21 no strict liability, anything like that, that's good faith.
22 What is not good faith is: "Well, I looked at the statute and,
23 first of all, the statute uses the term 'person under 21.'
24 Now, what is a person? Well, let me just see if the statute
25 defines a person. It doesn't define a person, so, hmm, is this

1 person a person?" Or I'll say individual. Statute doesn't
2 define what it is to sell a, a individual, someone, alcohol, to
3 21. So what is an individual? So he wants you to believe that
4 when he read the Internal Revenue Code and it uses those terms
5 individual, person, that it didn't apply to him? Who they
6 apply to? A cat? A dog? A mouse? Everybody, come on, you
7 read it. Common sense. It use individual. Unless there's a
8 definition that defines it contrary, common sense, we're
9 talking about you, a person. They use the term person. What
10 do they mean? You're a person. But yet he wants you to buy
11 that so that you can let him off the hook for not paying his
12 taxes. That's not good faith. That's not good faith.

13 Now, when I asked him about other avenues that he
14 could have pursued as far as tax court, as far as filing a
15 refund claim in federal district court or federal claims court,
16 what did he tell you? He said, "Well, as far as the federal
17 district court, I wouldn't have a jury." So let's explain
18 that. Why he want a jury? I have to convince 12 of you beyond
19 a reasonable doubt that he's guilty. He only has to reach one
20 of you to have a question about reasonable doubt. One. I have
21 to convince all 12 of you. And that's a burden on the
22 Government and we have to meet that burden. That dynamic
23 doesn't exist there. He knows that. He's hoping that he can
24 reach one of you, that maybe one of you will buy what he's
25 saying, maybe one of you will let him off the hook for not

1 paying taxes on roughly \$200,000. Don't be that one person.
2 Don't let him get away with it. That's why he wants this
3 forum. Make no mistake about it. Those courts, those forums,
4 tax court, that's what it's there for, to litigate those
5 claims. Federal claims court. Like I say, you pay the refund,
6 you sue to get it back. That's what it's there for. But, no,
7 he want to reach that one person. Don't be that one person.
8 Don't buy it.

9 I think, also, I submit to you what is very telling
10 in this case, the actions of Ms. Worthey, his secretary. Now,
11 here's a woman that's worked for the defendant for 30 years.
12 Pretty much virtually everything she learned about the law or
13 she know about the law is through her experience working for
14 the defendant. She's not a lawyer. She's not a CPA. And the
15 defendant during this time, '94-'95, did all of this research
16 and came to these conclusions, and even, based on the
17 testimony, expressed those opinions to her, his views that her
18 wages are not taxable, his earnings are not taxable, you don't
19 have to file those returns. He told her that.

20 Now, to Ms. Worthey, this is not just some guy off
21 the street. Okay? This is not some kook on television. This
22 is not some guy who's trying to sell, you know, sell you
23 something off some info commercial. This is somebody she works
24 for, someone she developed a working relationship with. And
25 after that, what did she decide to do? Her choice? Her

1 choice. What did she decide to do? "Huh-uh, I'm going to keep
2 filing my 941's. I'm going to keep filing those 940's.
3 April 15, I'm going to file that tax return." She kept doing
4 it. And like the defendant said, till this day, she keeps
5 doing it. Even after all of that, she keeps doing it. She
6 made a choice, and her choice was to follow the law.

7 The defendant made a choice. Now, he tries to dress
8 it up: "Well, it's my interpretation, my beliefs, and I looked
9 at the law, and I looked at the Supreme Court." And let me say
10 something about that. Don't let him hide behind the Supreme
11 Court. Don't give that to him. Don't let him try to, "Oh,
12 I'll hide behind the Supreme Court, and the Supreme Court
13 says . . . and I'll hide behind the Supreme Court." Don't let
14 him get away with that. Don't let him try to hide behind the
15 Supreme Court to excuse him not paying taxes on all the money
16 he's earned.

17 It's about choices. We all make choices, and we have
18 to be accountable to those choices. Ms. Worthey made a choice
19 and her choice was to obey the law and file returns. The
20 defendant also made a choice and he chose not to file his
21 returns, he chose not to pay federal taxes. And his words:
22 "I'm not misunderstanding this, I'm not making mistake." This
23 is his choice. Hold him accountable for his choice. Do not
24 excuse it. Do not excuse it. Again, don't be that one person.
25 Thank you.

1 THE COURT: All right, sir. You may proceed,
2 Mr. Becraft.

3 CLOSING ARGUMENT BY DEFENDANT

4 MR. BECRAFT: May it please the Court.

5 Ladies and gentlemen of the jury, on Monday when you
6 came in here, on Monday afternoon, and sat through a procedure
7 called jury selection -- and there were a couple of people that
8 were excused -- some of you could have probably thought on that
9 moment -- and I think we've heard stories, y'all all want to
10 get out of jury duty, but I noticed that each and every one of
11 you did not assert any type of an excuse to get out of service.
12 And the Court made a comment that if you get selected in this
13 case, your purpose is to decide a dispute between the
14 government and Tommy Cryer. And you swore on that occasion
15 that that was your purpose and function and that you would do
16 this duty. Let me just tell you, ladies and gentlemen,
17 everybody on this side of the bar, the Court, the prosecution,
18 and the defense, thanks you for your service.

19 In a criminal case in America, we have a burden of
20 proof that is different from other countries. You
21 might think that some other countries -- we think we've had --
22 you know, we had this situation involving some noteworthy
23 individuals down in the Caribbean islands. I think we all
24 heard a little bit about how justice is carried out down there.
25 But here in America, when a criminal charge is brought against

1 somebody, and that includes Tommy Cryer, under our system the
2 government must prove its case beyond a reasonable doubt. And
3 that is different from a civil case. In a civil case -- you
4 know, you've seen lady's scales of justice. She holds up those
5 scales. And in a criminal -- in a civil case, the party that
6 wins, the ones that get the verdict, is the one that has the
7 more predominant weight of the case. But here in America, with
8 the burden of proof on the government being reasonable doubt,
9 what it has to do is, it has to tip the scales of justice in
10 its favor. And, when you weigh each side, the
11 weightier side, the scales are going to fall down and the
12 lighter side is going to go all the way to the top. That is an
13 example of the burden of proof that the government must
14 demonstrate in order to find the defendant in this case guilty.

15 But the Court in a moment is going to be giving you
16 some instructions on what reasonable doubt is. And let me kind
17 of summarize for you, if I can, what I think is a real good
18 example of what reasonable doubt is. The Court's going to tell
19 you, I anticipate, that you've got to determine reasonable
20 doubt and use a standard -- you can't take a decision
21 like this in a criminal case for flighty reasons or
22 insubstantial reasons. You've got to look at this
23 case as you would in the most important affairs of your own
24 life. Could I suggest to you what are some of those most
25 important affairs in your own life? Let me give you an

1 example. What if you were a parent and had an 8- or 9-year-old
2 child that got hit by a car when riding on a bike out in the
3 middle of the street and you're called by the hospital. You
4 rush down there to the hospital, and the decision that is
5 confronted to you when you get down to the hospital is this.
6 This is the most important affair in your life. Do you pull
7 the plug on your child or not? And that, ladies and gentlemen,
8 is what I suggest to you is how important this case is. And it
9 is that important to Tommy Cryer. And having observed you
10 throughout this trial and considering the fact you took an oath
11 when you were sworn to sit on the jury in this case, I have
12 full confidence that that is exactly what you will do in this
13 case.

14 As the Court mentioned when we started this case, and
15 as Mr. Campbell has said, we are looking at two
16 simple charges. The charges here, what he's accused -- what
17 you've got to decide in this case is whether or not for the
18 years 2000 and 2001 Tommy Cryer violated the law, and this is
19 the law in question: He didn't file federal income tax
20 returns.

21 Now, in the law, we say -- well, we like to
22 tell you what are elements or facts that have got to be shown
23 in order to prove either the commission or noncommission of
24 this offense. First, the government's got to show that Tommy
25 Cryer -- this is the first fact. This is the first element:

1 Tommy Cryer was required to file income tax returns. The
2 second fact that the government must show is that he didn't.
3 And the third fact is that he acted willfully.

4 Now, let me kind of tell you what the dispute is in
5 this case to a degree. One thing is crystal clear. When the
6 government started this -- the lady that came from the Atlanta
7 service center, she came in and offered these documents. I
8 think it's Government Exhibit 1. Said Tommy Cryer hadn't filed
9 a return from '93 through 2004, 2005; I forget which. Ladies
10 and gentlemen, that wasn't disputed. The Government had a
11 whole bunch of documents, 1 through, I think, 36, that were
12 uncontested in this case. When Mr. Campbell offered them, "No
13 objections, Your Honor." One of the facts in this case is not
14 disputed. It's the second one I just mentioned a while ago:
15 Tommy Cryer didn't file.

16 Now, a third -- a second point that is kind of in
17 dispute in this case is the requirement to file. And that's
18 the first element: Did Tommy Cryer make so much money that he
19 had to be required to file a return? What we're dealing with
20 in this case is a factual dispute, something that you've got to
21 decide. And, of course, whether he's required to file a
22 return, that is also related to the third element, which is, I
23 think, the most important element in this case, as Mr. Campbell
24 said moments ago. Really, what is at issue in this case is, as
25 I told you when I gave my opening statement, that criminal

1 state of mind.

2 Now, I think that the Court will be giving you
3 instructions on this point, kind of describing what is at
4 issue. Mr. Campbell was talking about, you know,
5 there are certain offenses like traffic offenses or some other
6 types of offenses that you could analogize to, but this type of
7 case is different from traffic offenses or something else, a
8 drug case, or anything else. This case is different because
9 that criminal state of mind is very, very particular. What is
10 it? And the Court will tell you what that criminal state of
11 mind is. You've got to look through the evidence and
12 do you find, do you see evidence of acting willfully, or do you
13 look through the evidence in this case and find that Tommy
14 Cryer was not acting willfully. In order to find something in
15 this case, I think you have to have something like a
16 definition.

17 Now, this criminal state of mind, this element of
18 willfulness, has these types of characteristics: First and
19 foremost, it has to be a belief that Tommy Cryer has that he
20 wasn't required to file income tax returns. And if you find in
21 your deliberations that Tommy Cryer truly and sincerely
22 believed, right or wrong, reasonable or unreasonable, if he
23 believed what he told you on your stand -- on the stand, it
24 will be your duty to acquit him. Now, this -- there's a
25 corollary or subset of this principle. It's also a burden on

1 the part of the government that it's got to be shown and proven
2 to you that he didn't believe this. And, of course, the
3 evidence in this case, may I suggest on the part of the
4 defense, is that Tommy Cryer simply did not act with the
5 requisite intent. He did not act willfully. He did not have
6 that criminal intent.

7 Let's examine the facts. Was Tommy Cryer acting in
8 good faith or was Tommy Cryer acting in bad faith? Now, the
9 Government's theory in this case, which you can find in the
10 evidence, the Government's position is, now, look, since the
11 '70s, all the way through the '80s, all the way into the '90s,
12 all the way into this century, Tommy Cryer has been a lawyer.
13 And up until 1992 or 1993, Tommy Cryer was filing federal
14 income tax returns. But there came a point when
15 Tommy Cryer is still doing legal work, still engaged in the
16 practice of law, just like when he was filing returns, but lo
17 and behold, starting in '94, things kind of changed. Tommy
18 Cryer dropped off the screen in reference to filing income tax
19 returns. Now, that, ladies and gentlemen, is the essence, the
20 heart of the government's position that Tommy Cryer acted
21 willfully.

22 Now let's look at the other side of the coin, the
23 defense. Tommy Cryer's position is that "I sat down in '94, I
24 studied the law," something he hadn't done before, "and reached
25 a conclusion that did not apply to me." Let's examine some of

1 this evidence. Let's examine why somebody like Tommy Cryer
2 would do such a thing.

3 We know that he was born in 1949 down in Lake
4 Charles. We know that he grew up on a farm. Those are facts
5 that I think you should consider. A young lad growing up on a
6 farm, working his way through high school. A dad that's an
7 electrician. Ultimately, he goes to college. He attends the
8 local college. And what does he say? He paid for his own
9 expenses to go through college. He lived at home during that
10 period of time and he rode back and forth to work with his dad.
11 His dad would get up in the morning, go to work, Tommy is
12 riding along with him to go to school.

13 Tommy Cryer was interested in becoming a lawyer. At
14 an early age, I think the evidence shows that, "Oh, I want to
15 become a lawyer. I'm very interested in this topic." The law
16 is real important. You know, a lot of people, perhaps in your
17 experience, people -- a lot of Americans really don't know a
18 whole lot about the law. But once you get into it, it's much
19 like any other endeavor. In your own jobs, you are
20 probably interested in what you do. And Tommy Cryer at an
21 early age said, "I want to be a lawyer and I find this very
22 interesting." And once he gets in college and once he gets in
23 law school, it becomes probably something that is like what you
24 are like: You like your job.

25 And law is important. It's the fabric of American

1 society. It deals with the rules of conduct. And that, ladies
2 and gentlemen, is very important. It helps American society.
3 And Tommy Cryer took his oath as a lawyer very, very seriously.

4 And in law, we -- it's obvious to I think
5 all Americans that, you know, you have situations in which
6 people don't know about the law, they come to see a lawyer for
7 advice. There are other types of situations where somebody
8 gets into a dispute, civil or criminal, well, you go see a
9 lawyer to get advice or representation. That's what he
10 (indicating) does. He deals with the law on a practical,
11 everyday level. He reads cases that relate to his cases, he
12 reads statutes that relate to his cases, and he's very
13 interested in doing this.

14 But one area in which he neglected for a long period
15 of time was tax. In law school, his testimony is that he could
16 care less about taxes. He's filing returns when he's working
17 back -- what'd he say? It's either high school or college.
18 From that time forward, Tommy Cryer is doing what everybody
19 else did, until a day in the summer of 1994. In about a
20 two-week span of time, Tommy Cryer had a complete change. You
21 know, we have those changes in life, like, for
22 example, let's say that -- we have American events.
23 We have -- our society's involved in world events right now,
24 and you can follow one side of these world events and then
25 suddenly you'll just have, kind of an epiphany, if

1 you will, a change of heart, and now you have changed
2 the way that you believed before to something completely
3 opposite. And you know what, I think that's going on across
4 American society today. With the events of the world that
5 confront us, I think a lot of us have been through those: Oh,
6 you know, I agree with this, and then I changed. So
7 this is something that is typical and it's completely
8 understandable that in this situation Tommy Cryer could come
9 along, crack open some books that he had never really studied
10 and based upon what a lawyer would do, sit down and read the
11 black and white, and he can go through an epiphany, like we all
12 have.

13 Now, how did this get started off? Well, there was
14 a -- sometime in the summer of '94, there's this dinner, a
15 luncheon meeting. Tommy Cryer, as we do every day,
16 depending on what type of work you do -- a lot of
17 people that are in the -- lawyers, we go to lunch. So he goes
18 to lunch and runs into a man by the name of Jan Holland. Jan
19 Holland lays out an argument for him, a tax argument. How is
20 Tommy Cryer's -- what is his reaction to that? He pooh-poohs
21 the idea: "Oh, this is preposterous. Where did you come up
22 with those wild ideas?"

23 And then a couple days later, maybe a week later,
24 Tommy Cryer is getting out of court, you know, 2:00, 3:00 in
25 the afternoon, walks by a law library: "Oh, I want to show

1 this guy he's wrong." Runs upstairs. "I know I can find a
2 statute that makes somebody liable for the federal income tax."
3 Starts looking. "Oops. It's not as easy as I thought, but
4 it's there. Maybe it's hidden."

5 So he gets the Internal Revenue Code, which, you
6 know, a lot of people -- we saw George McGovern in this case,
7 hold up the books, and he can recognize it from
8 probably across the room. Other people wouldn't. But he gets
9 the Internal Revenue Code, something he's never looked at
10 before, and he's got this little task: "I know that there must
11 be a section in the Internal Revenue Code that makes me liable
12 for the federal income tax, and I want to find it because Jan
13 Holland says it doesn't exist." And he looks. You heard the
14 testimony. He spent a considerable amount of time looking
15 through the Code. Where is it?

16 The ultimate conclusion: "I think it should be there
17 and I don't find it." Is that an epiphany? Is that a change?
18 Certainly it is. And that, ladies and gentlemen, is the event
19 that begins to push Tommy Cryer on down the road.

20 What does he do next? Well, he would do what a
21 lawyer would do: "Well, I'm going to start digging around."
22 What's the testimony? '94-'95 he starts reading into areas of
23 the law that he's really never explored before. What
24 is income? His view is, is that from what he read, what he
25 believed was that the Constitution uses this word

1 income and therefore it's left up to the courts to define what
2 income is. Makes sense.

3 Then Tommy Cryer gets into these cases. I
4 asked him on the stand: "Well, tell us the cases you read."
5 He listed them all. Then I asked him to kind of summarize it,
6 and Tommy's summary is -- this is what he believes
7 based upon his readings of these Supreme Court cases. He says
8 the Supreme Court -- "based on what I read, I believe that
9 income is a profit or gain."

10 Tommy Cryer continues his studies. He looked into
11 areas that he hadn't looked into before. You know, after you
12 find out you're -- he believes he's not liable, and when he
13 gets down into this research that says all income's a gain or a
14 profit, is there something there that's going to
15 change his mind about this epiphany that he had probably in
16 August or September of '94? No. What he's finding is, is just
17 simply further confirmation of his beliefs. What did he tell
18 you? He was looking for -- "I just wanted to see what's there
19 in black and white, good, bad, or indifferent." So he finds
20 out what income is.

21 Then he -- at some stage, maybe it's around
22 the same time -- you remember what the testimony was -- he's
23 flipping through the Code. I look at Section 1 of the Code
24 imposes the tax, there's this party known as individual. And
25 then he goes over and looks at the definitions part of the Code

1 and he finds that an individual is identified under
2 a definition of person.

3 Let me just tell you, ladies and gentlemen, it's real
4 important, you would think, that if you're dealing with a law
5 and there's definitions in it, the definitions that are in the
6 act would control. And what Tommy -- imagine, if you
7 will, that there's a law that says don't cross the streets,
8 individuals shall not cross the street against a red
9 light. Well, what if you looked at the law and it said,
10 "Individuals are hereby defined as people born on even number
11 days." Well, don't you think that that statutory definition
12 would control how that law operated? Of course it does.

13 And Tommy Cryer comes along, he says, "Hey, what I'm
14 looking for is -- I'm a citizen." He was born in
15 Lake Charles in 1949. "I'm a citizen. Where is citizen talked
16 about in this Code?" So he finds it: Tax is imposed upon
17 individuals. Individuals are required to file income tax
18 returns.

19 And he looked over there in 7701 of the Internal
20 Revenue Code and says, "Well, a person is defined as an
21 individual." But then remember what he said? "I looked
22 farther down the same page." And I think I remember him
23 saying, "I looked at 7701(A)30." Well, that's a little
24 subsection, apparently, of the Code. He looks at it and says,
25 "Whoa. Now I am a U.S. person."

1 Well, isn't it understandable if somebody like a
2 lawyer is looking at definitions and comes along and finds this
3 distinction, he can say: "Wait. It's not me. I'm a citizen,
4 I'm in a class known as U.S. persons, but we've got this law
5 talking about persons and individuals, which is, the way I find
6 it, is not me." What's wrong with that?

7 Tommy Cryer also -- he continued his studies. He's
8 looking at: What's the taxing power? What's this
9 belief in -- in this respect, he says that, you know,
10 sovereignty of a government is the authority to reach over and
11 regulate and control you. Well, his conclusion was, is that,
12 "Well, I'm really controlled not by the federal
13 government but by the State of Louisiana." It's logical. He
14 reaches the conclusion that, "Well, since I'm not within the
15 reach of the taxing power, it doesn't apply to me."

16 Tommy Cryer also engages in some more detailed
17 studies. What'd he say? You know, he had three --
18 two good periods of time in which he's really sat down and
19 looked at the law. What was -- his testimony, as I recall, was
20 '94 or '95, he's spending his nights and weekends
21 when he gets off work, going -- you know, I don't
22 know; I didn't count. But, when I would ask the
23 questions, "Well, on this proposition of law that you just
24 summarized for us, how many cases did you read?" He
25 listed off a string of them. But don't you know that that

1 takes some work? And when you sit down and read Supreme Court
2 cases, you can reach conclusions. Isn't that exactly what
3 Tommy Cryer has done?

4 Let me ask you this question: in our
5 lifetime, we've had on many occasions the Supreme Court of the
6 United States engaged in -- making changes that have
7 fundamentally affected American society. I'm going to bring
8 one up, and I'm not going to say good, bad, or indifferent
9 about it. But we all know about Roe v. Wade. Did Roe v. Wade
10 change American society? Doesn't this -- don't Supreme Court
11 decisions, just on that one example alone -- and there are
12 countless others that we can all remember we've had
13 some in recent, recent times. More and more Supreme Court
14 cases come out. When the Supreme Court speaks, we know, ladies
15 and gentlemen, that's the top, we can't go any further. And
16 when the Supreme Court makes a decision, it has an effect upon
17 American society.

18 So what did Tommy Cryer find out in reading some of
19 the Supreme Court cases? There was a proposition he
20 kind of summarized. He says, "You know, I have fundamental
21 rights." What was his illustration? Oh, I think, you know,
22 if -- I don't have a fundamental right -- if a fundamental
23 right can be taxed just 1 percent, it can be taxed 100 percent.
24 If that be the case, it is no longer a fundamental right but a
25 privilege. And it is also, as I recall from his testimony, the

1 power to destroy.

2 Now, what's wrong with reading some Supreme Court
3 case, reading profound opinions of the Supreme Court that
4 ultimately result in that type of a summary that he expressed
5 to you? Would it not have an effect -- would it not have an
6 effect upon him that is as profound as some of these decisions
7 of the United States Supreme Court that we're all aware of? If
8 those decisions of the Supreme Court can affect American
9 society profoundly, how can we say that Supreme Court decisions
10 did not affect Tommy Cryer profoundly?

11 So, ultimately, Tommy Cryer's view is this: "I've
12 got rights." Maybe it was yesterday afternoon. Maybe it was
13 this morning. I forget. You can remember. Tommy Cryer says:
14 "I don't get my rights from the U.S. Constitution.
15 Those come from God. All the Constitution does is protect
16 those rights." So Tommy Cryer is of this view: "I've studied
17 income. It's a gain or profit. It's not property. And I read
18 these Supreme Court cases and it declares that my labor is
19 property. And my labor is something that's a fundamentally
20 protected constitutional right coming from God." Now, what's
21 wrong with the ultimate conclusion here that that can't be
22 taxed? Is that not Tommy Cryer's position? Is it not
23 something that's based upon decisions of the Supreme Court?
24 Yes, it is, ladies and gentlemen.

25 And what's Tommy Cryer's ultimate position? That

1 this is at least -- if you listen to his testimony,
2 he contends that it's not income, but he also said that -- you
3 know, when I was -- and I was asking him on direct examination,
4 said, "Well, you've got nonexempt income and you've
5 got exempt income." And I remember him reading off or telling
6 us what he believed was not exempt income and he listed off
7 certain items. Then he said, "Well, what is exempt
8 income is not something that is provided for by the
9 regulations." And so if you don't know what it is --
10 Tommy Cryer has reached over to fundamental law. He said, "I
11 don't believe it's income, but even if it should be income,
12 it's exempt income as a result of fundamental law." Now, that,
13 ladies and gentlemen, right there explains everything in this
14 case.

15 We've had three people here that the Government tries
16 to -- that testified in this case -- that tries to
17 say, "Well, considering these facts, you know, this
18 conflicts with what Tommy Cryer says." Well, we've
19 got Mr. Sandefur. Mr. Sandefur, he has a position,
20 that what Tommy made was gross income. We've got George
21 McGovern. George McGovern, the accountant, comes along and
22 says, "Oh, you know" -- we know what his calculations were.
23 And we also have his secretary, Gloria. You know, she's
24 approached: "Well, do you want to have withholding or not?"
25 Tommy Cryer's view is it's not income or it's exempt income.

1 She decides not to have or get out of withholding.

2 Now, considering these facts with what Mr. Sandefur
3 said, with what George McGovern said, or Gloria Whatley (sic)
4 said, is that consistent with the position taken by Tommy
5 Cryer? May I suggest to you that it is consistent, and that
6 consistency boils down to this: Tommy Cryer believes that
7 you've got to look at yourself. Are you going to assert that
8 you have fundamental rights? Are you going to assert that
9 you've got exempt income? That's Tommy Cryer's position.

10 Now, while Mr. Sandefur might say -- might not know
11 about, probably doesn't, while George McGovern whose practice
12 is devoted 60 percent to preparing returns, while Mr. McGovern
13 and Gloria Whatley may not sit there and think, "Well, gee,
14 my -- what if my labor is not profit, it isn't income, or it
15 falls in the classification of exempt income," therein, ladies
16 and gentlemen, is the difference between Tommy Cryer and those
17 other three people. And all Tommy Cryer has done is this:
18 "Well, all these other people, including my secretary, may
19 think that what they get is income, but upon further
20 consideration of the facts, I think, I believe, according to
21 the law, that that's exempt income, it's not taxable." So then
22 it's left up to people like Tommy Cryer to make that decision,
23 and that's exactly what Tommy Cryer thinks.

24 What we have here, ladies and gentlemen, is what I
25 would say is kind of a conflict. And how do we resolve a

1 conflict? Let me give you an example. A young boy -- a house
2 on a busy street, maybe even a corner, and in that house is a
3 young boy 8 or 9 years old. His friend lives across the
4 street. Mom's at home. She has a rule: "Tommy, you can't
5 cross the street without my permission." So here it is
6 summertime. Tommy knows that that's the rule. One Saturday
7 Dad's out in the front yard mowing the grass. Tommy comes up
8 and says, "Dad, can I go across the street?" Dad gives
9 permission. Mom's in the living room or kitchen, looks out the
10 window and sees Tommy crossing the street. What goes through
11 her mind? "He's violated my rule." So when Tommy comes back,
12 maybe after she's told him to come back -- she's got
13 that stern finger that she's shaking in Tommy's face: "You
14 broke my rule." What's Tommy's defense? "Ask Dad." So you
15 have two different versions here. And may I suggest to you
16 what we have here in reference to two different versions, just
17 like that situation, is present in this case. There's a
18 conflict. But the presence of that conflict does not mean that
19 Tommy Cryer acted with the essential criminal intent in order
20 to be found guilty. And that, ladies and gentlemen, is the
21 defense.

22 You know, here in America, a lot of people think
23 we've only got three branches of government. May I suggest
24 that there are four. A lot of people think we've got Congress
25 as one branch of government. Well, Congress has an effect in

1 this courtroom, because, see those books over there?
2 They're work product. Congress is sitting here. That's one
3 branch of government. Another branch of the government is the
4 courts. We have a very capable jurist presiding over this
5 trial. He represents the judicial branch. And I'm honored to
6 be here with part of the executive branch, which is
7 Mr. Campbell. I like trying cases with people like him. Good
8 lawyer. So there might be a lot of good people on this side of
9 the courtroom. There might be three branches of the government
10 that are represented by this side of the courtroom, but let me
11 just tell you, ladies and gentlemen, there's a fourth branch of
12 the government, it's mentioned in the United States
13 Constitution, and that's the jury. And that's you. And what
14 we do here in America is, we present disputed cases like this,
15 conflicts over the facts. You know what the facts are. You've
16 heard them. You've been sworn to decide this case fairly. The
17 fourth branch of government in America is people pulled like
18 you from the community to come in and sit on a case like this.
19 The fourth branch of government goes into the jury room, takes
20 a case much like this, a disputed case, you decide the facts
21 and you apply the law to the facts. And that's your duty.

22 I'm firmly convinced that you know how to do your
23 duty. And I'm firmly convinced that you see very clearly that
24 in this case Tommy Cryer did not act willfully, that he held a
25 good faith belief that he was not required to file income tax

1 returns, and that is crystal clear. Consequently, the verdict
2 that must be returned in this case, that which is fair, that
3 which is just, that which is reasonable, is not guilty verdicts
4 against Tommy Cryer for both counts. Thank you, ladies and
5 gentlemen.

6 THE COURT: Mr. Campbell, you have a total of 33
7 minutes out of your 45 available.

8 GOVERNMENT'S REBUTTAL ARGUMENT

9 MR. CAMPBELL: Mr. Becraft just gave you an analogy
10 about young Tommy running across the street when his mother
11 told him not to and then the excuse he gave was that, "Well,
12 Dad told me." The problem -- and I'm going to apply that
13 hypothetical or analogy to this case, and by applying this, I
14 certainly do not mean any disrespect to any men in the jury or
15 in this audience. But the problem with that hypothetical as it
16 applies to this case, in this case what mom says is the law.
17 IRS, those cases that we talked about, that binding Fifth
18 Circuit case, that's the law. And just because someone else
19 says that's not the law, that you could do A, B, C, and D, that
20 doesn't mean that you have a good faith exception or that
21 doesn't mean that you are excused from disobeying the law.
22 Now, as applied to this case -- and certainly I'm not
23 suggesting that fathers do not lay down the law in their house.
24 I'm not suggesting that. But as it applies in this case, mom
25 is the law in this case based on that hypothetical he gave.

1 The IRS. George McGovern. Sandefur. Even his own secretary,
2 Gloria Worthey. He told her what everybody else said, what his
3 opinion was, but she chose to obey the law. That's a choice.

4 Now, when Mr. Becraft was talking about Mr. Cryer's
5 views and what he believed in all this research, did it sound
6 to you like someone who had some kind of misunderstanding or
7 some kind of mistaken belief of what the law is, or does it
8 sound like somebody who disagreed with the law? I submit to
9 you that Mr. Cryer's defense is a disagreement with the law.
10 It's not about some mistaken understanding or misunderstanding
11 and so forth. And a disagreement with the law is not a basis
12 for a good faith exception. You cannot disobey the law because
13 you disagree with it. That cannot excuse your conduct. For
14 example, Mr. Becraft said that this case kind of boils down to
15 what Mr. Cryer believes is his fundamental right and his
16 fundamental right is to be able to work, earn money, and not
17 have the federal government tax it because it's his property
18 and you can't tax that. That's his belief.

19 Now, Mr. Cryer is aware that the IRS, that's not
20 their view and that they are relying on what? The Internal
21 Revenue Code. And the IRS, based on what's in the Internal
22 Revenue Code, taxes what he gains, what his money, what he took
23 in. So he's attacking that and he's saying it's
24 unconstitutional. And again, a belief that it's
25 unconstitutional is not good faith. Disregard it.

1 This case boils down to, and I said it over and over
2 again, it's a choice. And what you have to decide and what's
3 your choice, you have to determine whether or not he made a
4 sincere, honest mistake or whether he looked at the law,
5 understood what the law said, understood what the law demanded
6 of him, understood what was required of him, but for some
7 reason decided to disobey it. That's what you have to decide.

8 And let's think about it. Who benefits from this?
9 You know what the old saying is? Sometimes to figure out
10 what's really going on, follow the money. Now, based on Tommy
11 Cryer's views, he keeps all his money. That \$200,000 that he
12 made in 2000 and then that \$175,000 he made in 2001, and all of
13 that money he made before that, he keeps all that in his
14 pocket. Follow the money. He don't want to give none of that
15 up as far as to the federal government. But yet he signs forms
16 taking money out of Ms. Worthey's check, who only makes
17 \$21,000. So sometimes when you get through all of the legal
18 principles and all of these broad concepts about fundamental
19 rights and what's constitutional and what is my God-given
20 right, sometimes, ladies and gentlemen, it's just as simple as
21 who gets the money; and according to his theory, he gets all of
22 that money.

23 Under the law, whether you like it or not, under the
24 law, if you meet certain thresholds, you have to pay taxes. He
25 doesn't agree with that. And now he wants you to excuse him.

1 Don't be that one person. Do not let him get away with it. We
2 all have to follow the law and we all have to make a choice to
3 follow the law. He did not make that choice and now he should
4 be held accountable for it. Thank you.

5 THE COURT: Thank you, Mr. Campbell. At this time,
6 ladies and gentlemen, we are going to provide you with copies
7 of the jury instructions. We'll hand those out momentarily and
8 you'll read along with them as I read them out loud to you.

9 (Clerk hands documents to Jury.)

10 THE COURT: We ended up with one extra copy?
11 Everybody have one? Okay. All right.

12 JURY INSTRUCTIONS

13 THE COURT: Members of the jury, in any jury trial
14 there are, in effect, two judges. I am one of the judges. The
15 other is the jury. It is my duty to preside over the trial and
16 to decide what evidence is proper for your consideration. It
17 is also my duty at the end of the trial to explain to you the
18 rules of law that you must follow and apply in arriving at your
19 verdict.

20 First, I will give you some general instructions
21 which apply in every case; for example, instructions about
22 burden of proof and how to judge the believability of
23 witnesses. Then I will give you some specific rules of law
24 about this particular case. And finally, I will explain to you
25 the procedures you should follow in your deliberations.

1 You, as jurors, are the judges of the facts. But in
2 determining what actually happened, that is, in reaching your
3 decision as to the facts, it is your sworn duty to follow all
4 of the rules of law as I explain them to you. You have no
5 right to disregard or give special attention to any one
6 instruction or to question the wisdom or correctness of any
7 rule that I may state to you. You must not substitute or
8 follow your own notion or opinion as to what the law is or
9 ought to be. It is your duty to apply the law as I explain it
10 to you, regardless of the consequences. It is also your duty
11 to base your verdict solely upon the evidence, without
12 prejudice or sympathy. That was the promise you made and the
13 oath you took before being accepted by the parties as jurors,
14 and they have the right to expect nothing less.

15 The indictment or formal charge against the defendant
16 is not evidence of guilt. The indictment is simply the
17 description of the charge against the defendant. The defendant
18 is presumed by the law to be innocent. The law does not
19 require a defendant to prove his innocence or produce any
20 evidence at all, and no inference whatever may be drawn from
21 the election of a defendant not to testify.

22 The presumption of innocence means that the defendant
23 starts the trial with a clean slate. In other words, I
24 instruct you that the defendant is presumed by you to be
25 innocent throughout your deliberations until such time, if

1 ever, that you as a jury are satisfied that the government has
2 proven him guilty beyond a reasonable doubt. Unless you are
3 satisfied beyond a reasonable doubt that the defendant is
4 guilty, the presumption of innocence alone is sufficient to
5 find the defendant not guilty. The government has the burden
6 of proving the defendant guilty beyond a reasonable doubt.
7 Unless the government proves beyond a reasonable doubt that the
8 defendant has committed every element of each of the offenses,
9 you must find the defendant not guilty.

10 While the government's burden of proof is a strict or
11 heavy burden, it is not necessary that the defendant's guilt be
12 proved beyond all possible doubt. It is only required that the
13 government's proof exclude any reasonable doubt concerning the
14 defendant's guilt.

15 A reasonable doubt is a doubt based upon reason and
16 common sense after careful and impartial consideration of all
17 the evidence in the case. Proof beyond a reasonable doubt,
18 therefore, is proof of such a convincing character that you
19 would be willing to rely and act upon it without hesitation in
20 the most important of your own affairs.

21 As I told you earlier, it is your duty to determine
22 the facts. In so doing, you must consider only the evidence
23 presented during the trial, including the sworn testimony of
24 the witnesses and the exhibits. Remember that any statements,
25 objections, or arguments made by the lawyers are not evidence.

1 The function of the lawyers is to point out those things that
2 are most significant or most helpful to their side of the case
3 and in so doing to call your attention to certain facts or
4 inferences that might otherwise escape your notice. In the
5 final analysis, however, it is your own recollection and
6 interpretation of the evidence that controls in the case. What
7 the lawyers say is not binding upon you.

8 During the trial I sustained objections to certain
9 questions and exhibits. You must disregard those questions and
10 exhibits entirely. Do not speculate as to what the witness
11 would have said if permitted to answer the question or as to
12 the contents of an exhibit. Also, certain testimony or other
13 evidence has been ordered stricken from the record and you've
14 been instructed to disregard this evidence. Do not consider
15 any testimony or other evidence which has been stricken in
16 reaching your decision. Your verdict must be based solely on
17 the legally admissible evidence and testimony.

18 Also, do not assume from anything I may have done or
19 said during the trial that I have any opinion concerning any of
20 the issues in this case. Except for the instructions to you on
21 the law, you should disregard anything I may have said during
22 the trial in arriving at your own findings as to the facts.

23 While you should consider only the evidence, you are
24 permitted to draw such reasonable inferences from the testimony
25 and exhibits as you feel are justified in the light of common

1 experience. In other words, you may make deductions and reach
2 conclusions that reason and common sense lead you to draw from
3 the facts which have been established by the evidence.

4 I remind you that it is your job to decide whether
5 the government has proved the guilt of the defendant beyond a
6 reasonable doubt. In doing so, you must consider all of the
7 evidence. This does not mean, however, that you must accept
8 all of the evidence as true or accurate. You are the sole
9 judges of the credibility or believability of each witness and
10 the weight to be given to the witness' testimony.

11 An important part of your job will be making
12 judgments about the testimony of the witnesses, including the
13 defendant who testified in this case. You should decide
14 whether you believe all or any part of what each person had to
15 say and how important that testimony was. In making that
16 decision, I suggest that you ask yourself a few questions: Did
17 the person impress you as honest? Did the witness have any
18 particular reason not to tell the truth? Did the witness have
19 a personal interest in the outcome of the case? Did the
20 witness have any relationship with either the Government or the
21 Defense? Did the witness seem to have a good memory? Could
22 the witness clearly see or hear the things about which he
23 testified? Did the witness have the opportunity and ability to
24 understand the questions clearly and answer them directly? Did
25 the witness' testimony differ from the testimony of other

1 witnesses? These are a few of the considerations that will
2 help you determine the accuracy of what each witness said.

3 The testimony of the defendant should be weighed and
4 his credibility evaluated in the same way as that of any other
5 witness.

6 Your job is to think about the testimony of each
7 witness you have heard and decide how much you believe of what
8 each witness had to say. In making up your mind, in reaching a
9 verdict, do not make any decisions simply because there were
10 more witnesses on one side than on the other. Do not reach a
11 conclusion on a particular point just because there were more
12 witnesses testifying for one side on that point.

13 Because a particular witness may be a law enforcement
14 officer, such as an investigator or an employee of any other
15 government agency, that does not mean that his or her testimony
16 is deserving of any special consideration or any greater weight
17 by reason of that fact.

18 The testimony of a witness may be discredited by
19 showing that the witness testified falsely concerning a
20 material matter or by evidence that at some other time the
21 witness said or did something or failed to say or do something
22 which is consistent with the testimony the witness gave at this
23 trial. Earlier statements of a witness were not admitted in
24 evidence to prove that the contents of those statements are
25 true. You may consider the earlier statements only to

1 determine whether you think they are consistent or inconsistent
2 with the trial testimony of the witness and, therefore, whether
3 they affect the credibility of the witness. If you believe
4 that a witness has been discredited in this manner, it is your
5 exclusive right to give the testimony of that witness whatever
6 weight you think it deserves.

7 During the trial you heard the testimony of George
8 McGovern, III, a certified public accountant who has expressed
9 opinions concerning taxes and accounting. If scientific,
10 technical or other specialized knowledge might assist the jury
11 in understanding the evidence or in determining a fact in
12 issue, a witness qualified by knowledge, skill, experience,
13 training, or education may testify and state an opinion
14 concerning such matters. Merely because such a witness has
15 expressed an opinion does not mean, however, that must accept
16 this opinion. You should judge such testimony like any other
17 testimony. You may accept it or reject it and give it as much
18 weight as you think it deserves considering the witness's
19 education and experience, the soundness of the reasons given
20 for the opinion, and all other evidence in the case.

21 You will note that the indictment charges that the
22 offense was committed on or about a specified date. The
23 government does not have to prove that the crime was committed
24 on that exact date so long as the government proves beyond a
25 reasonable doubt that the defendant committed the crime on a

1 date reasonably near the date stated in the indictment.

2 You are here to decide whether the government has
3 proved beyond a reasonable doubt that the defendant is guilty
4 of the crime charged. The defendant is not on trial for any
5 act, conduct, or offense not alleged in the indictment.
6 Neither are you concerned with the guilt of any other person or
7 persons not on trial as a defendant in this case, except as you
8 are otherwise instructed.

9 A separate crime is charged in each count of the
10 indictment. Each count, and the evidence pertaining to it,
11 should be considered separately. The fact that you may find
12 the defendant guilty or not guilty as to one of the crimes
13 charged should not control your verdict as to any other.

14 If a defendant is found guilty, it will be my duty to
15 decide what the punishment will be. You should not be
16 concerned with punishment in any way. It should not enter your
17 consideration or discussion.

18 You have heard evidence of acts of the defendant
19 which may be similar to those charged in the indictment but
20 which were committed on other occasions. You must not consider
21 any of this evidence in deciding if the defendant committed the
22 acts charged in the indictment. However, you may consider this
23 evidence for other very limited purposes. If you find beyond a
24 reasonable doubt from other evidence in this case that the
25 defendant did commit the acts charged in the indictment, then

1 you may consider evidence of the similar acts allegedly
2 committed on other occasions to determine whether the defendant
3 had the state of mind or intent necessary to commit the crime
4 charged in the indictment, or whether the defendant had a
5 motive or the opportunity to commit the acts charged in the
6 indictment, or whether the defendant acted according to a plan
7 or in preparation for commission of a crime, or whether the
8 defendant committed the acts for which he is on trial by
9 accident or mistake. These are the limited purposes for which
10 any evidence of other similar acts may be considered.

11 The crime of willful failure to file a tax return as
12 charged in Counts 1 and 2 of the superseding indictment has
13 three essential elements. The government must prove beyond a
14 reasonable doubt that: One, the defendant was required to file
15 a federal income tax return for tax years 2000, Count 1, and
16 2001, Count 2; two, the defendant knew that he was required to
17 file such a tax return; and three, the defendant willfully
18 failed to file such a tax return on or about April 16, 2001 for
19 Count 1. For Count 2, you must find beyond a reasonable doubt
20 that the defendant willfully failed to file the required tax
21 return on or before April 15, 2002.

22 I instruct you as a matter of law a single person
23 under 65 years old was required to file a federal tax return
24 for the year 2000 if he had gross income in excess of \$7,200.
25 A married individual was required to file a federal income tax

1 return for the year 2000 if he had separate gross income in
2 excess of \$2,800, and a total gross income when combined with
3 that of his spouse in excess of \$12,950 where both are under 65
4 years old.

5 I further instruct you as a matter of law a single
6 person under 65 years old was required to file a federal income
7 tax return for the year 2001 if he had gross income in excess
8 of \$7,450. A married individual was required to file a federal
9 income tax return for the year 2001 if he had a separate gross
10 income in excess of \$2,900 and a total gross income when
11 combined with that of his spouse in excess of \$13,400 where
12 both are under 65 years old.

13 Gross income includes the following: Compensation
14 for services, including fees, commissions, and other similar
15 items, gross income derived from business, gains derived from
16 dealings in property, interest, rents, royalties, dividends,
17 alimony and separate maintenance payments, annuities, income
18 from life insurance and endowment contracts, pensions, income
19 from discharge of indebtedness, distributive share of
20 partnership gross income, income in respect of a decedent,
21 income from an interest in an estate or trust.

22 The fact that a person may be entitled to deductions
23 from income in sufficient amounts so that no tax is due does
24 not affect that person's obligation to file.

25 The government is not required to show that a tax was

1 due and owing or that the defendant intended to evade or defeat
2 the payment of taxes, only that he willfully failed to file a
3 return.

4 If you find beyond a reasonable doubt that the
5 defendant had the required gross income in 2000, then the
6 defendant was required to file a tax return on or before
7 April 16, 2001.

8 If you find beyond a reasonable doubt that the
9 defendant had the required gross income in 2001, then the
10 defendant was required to file a tax return on or before
11 April 15, 2002.

12 The word knowingly, as that term has been used from
13 time to time in these instructions, means that the act was done
14 voluntarily and intentionally, not because of mistake or
15 accident.

16 You may find that a defendant had knowledge of a fact
17 if you find that the defendant deliberately closed his eyes to
18 what would have been otherwise obvious to him. While knowledge
19 on the part of the defendant cannot be established merely by
20 demonstrating that the defendant was negligent, careless or
21 foolish, knowledge can be inferred if the defendant
22 deliberately blinded himself to the existence of a fact.

23 To act willfully means to act voluntarily and
24 intentionally in violation of a known legal duty. Mere
25 negligence, even gross negligence, does not constitute

1 willfulness under the criminal law.

2 A defendant does not act willfully if he believes in
3 good faith that he is acting within the law or that his actions
4 comply with the law. A good faith belief is one which is
5 honestly and genuinely held. Therefore, if the defendant
6 subjectively believed that what he was doing was in compliance
7 with the tax statutes, he cannot be said to have the criminal
8 intent required to willfully fail to file federal income tax
9 returns.

10 In proving willfulness, it is the government's burden
11 to prove beyond a reasonable doubt that the defendant did not
12 act with a good faith belief as to what the law required of
13 him. If you find that the defendant believed in good faith he
14 was acting in compliance with the law as to any count, you must
15 find him not guilty as to that count.

16 A belief need not be objectively reasonable to be
17 held in good faith. Nevertheless, you may consider whether the
18 defendant's stated belief about the tax statutes was reasonable
19 as a factor in deciding whether the belief was honestly or
20 genuinely held.

21 In considering the defendant's good faith
22 misunderstanding of the law, you must make your decision based
23 upon what the defendant believed in his own mind and not upon
24 what you or someone else believes or think the defendant ought
25 to believe. Whether the defendant's beliefs about the legality

1 of his actions were right or wrong, reasonable or unreasonable,
2 it is irrelevant to the issues of willfulness. The only issue
3 is whether those beliefs were in fact held by the defendant.
4 It should be pointed out, however, that neither a defendant's
5 disagreement with the law nor his own belief that the tax
6 statutes are invalid, no matter how earnestly held, constitutes
7 a defense or good faith misunderstanding or mistake. It is the
8 duty of all citizens to obey the law whether they agree with it
9 or not.

10 MR. CAMPBELL: Your Honor, may we approach?

11 THE COURT: You may.

12 (At sidebar.)

13 THE COURT: Did I miss something?

14 MR. CAMPBELL: Everything is fine. I apologize, Your
15 Honor; I should have caught this as far as the unanimity
16 instruction as far as failure to pay. There is no substantive
17 instruction for what constitutes failure to pay. Because the
18 judge gave willful failure to file, and I think, my
19 understanding, failure to pay is different because you do have
20 to show that the defendant did fail to pay, where that's not a
21 requirement for failure to file, and so either --

22 THE COURT: How do you want to correct it?

23 MR. BECRAFT: Leave it alone.

24 MR. CAMPBELL: What I can do is say don't submit an
25 instruction on failure to pay and we'll just proceed on failure

1 to file and all of this stuff, and you can basically omit the
2 unanimity, because there's no alternative.

3 MR. BECRAFT: Okay. I'll do whatever the court wants
4 to do.

5 MR. CAMPBELL: I mean, because to go back and try to
6 reinstruct failure to pay would kind of --

7 MR. BECRAFT: Yeah.

8 MR. CAMPBELL: And so I say just forget about failure
9 to pay. As far as unanimity, there's no need, because there's
10 only one now, failure to file.

11 MR. BECRAFT: I'll go along with whatever the
12 Government wants to do. I'll leave it up to you, Judge.

13 THE COURT: Let me see your instruction.

14 MR. CAMPBELL: Sure.

15 THE LAW CLERK: One or two paragraphs you'd have to
16 strike.

17 MR. CAMPBELL: And I should have caught that.

18 THE COURT: Well, here Counts 1 and 2 of the
19 indictment accuse the defendant of violating 26, U.S. Code,
20 7203 in two different ways. The first is on taxable income and
21 willfully failed to file a tax return. The second one is the
22 defendant owed the tax liability and willfully failed to pay
23 his tax liability. That picks it up.

24 MR. CAMPBELL: If you're fine with it, I'm fine.

25 THE COURT: It picks it up adequately, in my opinion.

1 Do you have an objection?

2 MR. BECRAFT: No. Whatever --

3 THE COURT: I'm going to read the instructions as is.

4 MR. BECRAFT: Okay. Good enough.

5 (End of sidebar.)

6 THE COURT: We'll pick up with Jury Instruction 18 at
7 the bottom of page 12.

8 To reach a verdict, whether it is guilty or not
9 guilty, all of you must agree. Your verdict must be unanimous
10 on each count in the indictment. Your deliberations will be
11 secret. You'll never have to explain your verdict to anyone.

12 You have been instructed that your verdict, whether
13 guilty or not guilty, must be unanimous. The following
14 instruction applies to Counts 1 and 2 of the superseding
15 indictment.

16 Counts 1 and 2 of the indictment accuse the defendant
17 of violating 26, U.S. Code, Section 7203 in two different ways.
18 The first is that the defendant had taxable income and
19 willfully failed to file a tax return. The second is that the
20 defendant owed a tax liability and willfully failed to pay his
21 tax liability.

22 The government does not have to prove both that the
23 defendant: One, failed to file a return; and two, failed to
24 pay his tax liability. Proof beyond a reasonable doubt of one
25 is enough. But in order for you to return a guilty verdict,

1 all 12 of you must agree that the same failure or failures have
2 been proved. All of you must agree that the government proved
3 beyond a reasonable doubt that the defendant failed to file a
4 tax return, or all of you must agree that the defendant (sic)
5 proved beyond a reasonable doubt that the defendant failed to
6 pay his tax liability.

7 It is your duty to consult with one another and to
8 deliberate in an effort to reach agreement, if you can do so.
9 Each of you must decide the case for yourself, but only after
10 an impartial consideration of the evidence with your fellow
11 jurors. During your deliberations, do not hesitate to
12 reexamine your own opinions and change your mind if convinced
13 that you were wrong, but do not give up your honest beliefs as
14 to the weight or effect of the evidence solely because of the
15 opinion of your fellow jurors or for the mere purpose of
16 returning a verdict.

17 Remember at all times you are judges, judges of the
18 facts. Your sole duty is to decide whether the government has
19 proved the defendant guilty beyond a reasonable doubt.

20 When you go to the jury room, the first thing that
21 you should do is select one of your number as your foreman, who
22 will help guide you -- who will help guide your deliberations
23 and will speak for you here in the courtroom.

24 A form of verdict has been prepared for your
25 convenience. The foreman will write the unanimous answer of

1 the jury in the space provided for in each charge of the
2 indictment, either guilty or not guilty. At the conclusion of
3 your deliberations, the foreperson should date and sign the
4 verdict.

5 If you need to communicate with me during your
6 deliberations, the foreperson should write the message and give
7 it to the marshal. I will either reply in writing or bring you
8 back into court to answer your message.

9 Bear in mind that you are never to reveal to any
10 person, not even to the Court, how the jury stands, numerically
11 or otherwise, on any count of the indictment until after you
12 have reached a unanimous verdict.

13 Ladies and gentlemen, one of the order of -- on your
14 order of business when you adjourn for your deliberations will
15 be to select what you want to eat for lunch from a menu that
16 will be provided to you. Lunch will be provided since it is
17 now 20 minutes of 12:00 and your deliberations most likely will
18 extend into the noon hour.

19 At this time, I need to announce the alternates that
20 have been placed on the jury. In this particular instance,
21 they occupy Seats 13 and 14. Ms. Mixon, Mr. Harris, you are
22 the alternate jurors. Nobody has gotten ill or had a family
23 emergency out of the original 12, so your exercise as potential
24 jurors on this case is now at an end. I'm going to ask that
25 you stay behind as I dismiss the jury to begin their

1 deliberations.

2 You are hereby to begin them now. You are released
3 from my order not to talk. You are now ordered to talk about
4 what you heard in the case.

5 All rise for the jury.

6 (Jury exits courtroom at 11:41 a.m.)

7 THE COURT: All right. Court is in recess pending
8 return of the verdict by the jury.

9 MR. BECRAFT: Your Honor? Can I just add on the
10 record that we had last week -- at the conference I delivered
11 all the defense exhibits to the clerk. Of course, none of them
12 have been offered or admitted in evidence. But, you know, I
13 think the only thing we've got here is his (indicating)
14 evidence, and I think it's in order.

15 THE COURT: And your question or comment --

16 MR. BECRAFT: No. My comment, I was just simply
17 informing the Court that I put into the ID category our
18 exhibits.

19 THE COURT: Correct. Any exhibit that was introduced
20 that they ask for can be provided without clearing it from the
21 Court. Anything further Mr. Becraft?

22 MR. BECRAFT: None, Your Honor.

23 THE COURT: Mr. Campbell?

24 MR. CAMPBELL: No, Your Honor.

25 THE COURT: All right. We are in recess.

1 (Jury deliberations begun at 11:43 a.m.,
2 and court reconvened at 4:06 p.m.
3 with defendant present.)

4 JURY NOTE

5 THE COURT: Thank you. You may be seated. All
6 right. We have a question from the foreman, and it's in the
7 form of a question that says: "Your Honor, clarification of
8 jury instruction dealing with reasonable doubt & #17. How to
9 determine what is in the defendant's mind. If unable to
10 determine what is in defendant's mind? What."

11 All right. Let's go to the instructions first.

12 With respect to the request by the jury for a
13 clarification of jury instruction dealing with reasonable
14 doubt, there are actually several different instructions
15 containing that as a requirement for the government's burden of
16 proof. That includes -- let's start at the beginning.

17 MR. CAMPBELL: It starts at Instruction 3.

18 THE COURT: Yes. The second paragraph of 3 mentions
19 it first. Actually, Instruction 3, period, paragraphs 1 and 2.

20 MR. BECRAFT: Well, Your Honor, the very last
21 paragraph through 2.

22 MR. CAMPBELL: Yes.

23 THE COURT: Yeah. It's the whole -- well, it's at
24 the bottom of page 2, the third paragraph. I'm sorry. Second
25 paragraph mentions it. Okay, what I'm going to do is refer

1 them to Instruction 3, but only after indicating that pursuant
2 to Instruction No. 2, that they are not to disregard or give
3 special attention to any one instruction.

4 It pops up again in Instruction 6. Is that the next
5 time it's mentioned? Do you concur, counsel?

6 MR. BECRAFT: What did the Court say?

7 THE COURT: Talking about beyond a reasonable doubt,
8 clarifying the instruction, and it actually pops up in several
9 of the instructions. It next appears in Instruction 6,
10 paragraph 1.

11 MR. CAMPBELL: I agree.

12 THE COURT: And No. 10.

13 MR. CAMPBELL: I think it appears in No. 9, too.

14 THE COURT: 9 as well? Oh, true, as to the dates, on
15 or about. Pops up again in 14, 15.

16 MR. BECRAFT: Actually, 17 on page 12.

17 THE COURT: 17. 18.

18 As to the presumption of innocence, burden of proof,
19 and reasonable doubt, the instruction included as No. 3 is
20 essentially the pattern instruction out of the Fifth Circuit
21 pattern jury instructions for criminal cases, Instruction 1.05.
22 In researching that, I am not seeing that there is alternative
23 language that's either recommended or authorized beyond the
24 pattern. Mr. Campbell, do you have any comment on that?

25 MR. CAMPBELL: I concur, Your Honor.

1 THE COURT: Mr. Becraft?

2 MR. BECRAFT: I think if the Court is going to do
3 something like direct their attention to something like
4 reasonable doubt, we should just simply direct their attention
5 to Instruction No. 3.

6 THE COURT: Denise, do you have a form jury note that
7 I can have. The reply is going to be longer than what's
8 contained on the note.

9 THE CLERK: I can print another one.

10 THE COURT: All right. Let's deal with the first
11 segment of the jury's note to the Court. The proposed response
12 that I drafted is this, and only with respect to their request
13 for clarification of the jury instruction dealing with
14 reasonable doubt and No. 17, as it's phrased: "The phrase
15 reasonable doubt occurs in several instructions, Nos. 3, 6, 9,
16 10, 14, 15, 17, and 18. While the primary definition of
17 reasonable doubt is set forth in Instruction No. 3, you should
18 not ignore its use in the other numbered instructions. As
19 stated in Instruction No. 2, the jury has no right to disregard
20 or give special attention to any one instruction."

21 That takes care, I think, of the reasonable doubt
22 issue for a reply. Any objection, Mr. Becraft?

23 MR. BECRAFT: None, Your Honor.

24 THE COURT: Mr. Campbell?

25 MR. CAMPBELL: No, sir.

1 THE COURT: All right. That will be Part 1. Let's
2 go now to, quote, Instruction No. 17, end quote. That is the
3 willfully definition.

4 MR. CAMPBELL: Your Honor, when I read the question,
5 I was -- I asked to get a copy of my proposed instruction for
6 good faith to see if there was anything that kind of addressed
7 the issue of state of mind, and the only thing that I see in my
8 instruction that is not included in the instruction that was
9 given by the Court is the sentence -- and I don't know if it
10 adds anything to address the issue or not, but it says: "The
11 issue of intent as to whether the defendant willfully failed to
12 pay tax or willfully filed, willfully failed or willfully
13 filed, failed to file income tax returns is one in which you
14 must determine from a consideration of all the evidence in the
15 case bearing on defendant's state of mind."

16 I don't know if that really adds anything to the
17 instruction seeing that the instructions taken as a whole that
18 you gave certainly give the jury that kind of direction, that
19 they should look at the evidence bearing on the defendant's
20 state of mind.

21 THE COURT: That particular sentence does tend to
22 link, however, state of mind with willfully, but I don't
23 know -- let's see.

24 The language . . .

25 (Off-the-record discussion between the Law

1 Clerk and the Court.)

2 THE COURT: Mr. Becraft, do you have the Government's
3 proposed jury instruction for good faith instruction in front
4 of you?

5 MR. BECRAFT: Well, a minute ago I drifted over to
6 him and said it was -- it sounds like a good solution to me,
7 Your Honor.

8 THE COURT: The third paragraph under proposed
9 instructions submitted by the Government -- and I understand
10 that the Government acceded to the actual wording submitted by
11 the defendant for that specific jury instruction, but in this
12 one paragraph 3 --

13 MR. BECRAFT: It might need to be modified in some
14 respects, but I think this was at a time before we had the --
15 while we had evasion in the case. But if that third paragraph
16 is what the Court's looking at --

17 THE COURT: It is. And in this instance, "required
18 to pay tax and/or file a return and did not do so, the issue of
19 intent as to whether the defendant willfully failed to pay tax
20 and/or file an income tax return is one in which you must
21 determine from a consideration of all the evidence in the case
22 bearing on the defendant's state of mind," that particular
23 paragraph is absent from the instruction as given by the Court,
24 but that is a correct statement of the law based on Simkanin.

25 MR. BECRAFT: I understand, Your Honor. All I'm --

1 THE COURT: And it doesn't have anything to do with
2 evasion. The word evasion doesn't appear anywhere in that
3 paragraph.

4 MR. BECRAFT: In reference to the pay issue. And I
5 don't want to complicate anything further. I like that last
6 sentence, "willfully failed to file an income tax return."
7 That was my suggestion.

8 THE COURT: In this instance, we have already
9 accounted for -- and now I'm just using the Government's
10 proposed jury instruction as a templet just so that we can show
11 for the record what's already included in the instruction.
12 Paragraph 1 of the Government's proposed instruction is
13 covered. Paragraph 2 is covered. Paragraph 3 is not.
14 Paragraph 4 is covered. Is that your reading of this,
15 Mr. Becraft?

16 MR. BECRAFT: I would agree with that, Your Honor.

17 THE COURT: All right. What I am going to do with
18 respect to paragraph 17 is to include by way of further
19 explanation paragraph 3 in the Government's proposed jury
20 instructions. Do you have an objection to that, Mr. Campbell?

21 MR. CAMPBELL: No, sir.

22 THE COURT: Mr. Becraft?

23 MR. BECRAFT: None, Your Honor.

24 THE COURT: All right. What we will do is print out
25 paragraph 3 on one copy, and I'll add a prefatorial remark and

1 then sign it. We'll actually submit these on three separate
2 pages, in all probability, to the jury.

3 The second sheet in reply to Jury Note No. 1 will
4 contain the prefatory statement as follows: "The Court
5 provides the jury with the following paragraph in reply to the
6 inquiry regarding Instruction No. 17."

7 The second paragraph of Jury Note No. 1 includes the
8 question, "How to determine what is in the defendant's mind."
9 And then the follow-up question, "If unable to determine what
10 is in defendant's mind?" Followed by the word "what." I
11 assume that means then what? That's how I interpret that.
12 Mr. Campbell, you have any suggestions on how to word the
13 response?

14 MR. CAMPBELL: Well, I kind of guess I got kind of
15 ahead of myself, because the instruction that you included in
16 the good faith exception or the willfulness I was --

17 THE COURT: The same paragraph.

18 MR. CAMPBELL: The same paragraph. I was really
19 addressing that to at least the first part of the question, how
20 to determine what's in the defendant's state of mind, and I
21 believe there is some language that talks about some --
22 basically, look at all the evidence bearing on the
23 defendant's --

24 THE COURT: It does, and that's the link that I was
25 talking about.

1 MR. CAMPBELL: And that's what I was addressing.
2 Now, as far as the "what," I'm perplexed by that, as to what --
3 how to answer that. I would say, just my opinion, just
4 reinforce the instructions that the Court has already given as
5 far as reasonable doubt and if not being able to make a
6 reasonable doubt determination, what their duties are as far as
7 acquittal and so forth. But I don't think there ought to be
8 any additional or supplemental instructions to that. I think
9 the instructions are pretty clear as to if they cannot reach
10 any resolution as far as beyond a reasonable doubt what their
11 duties are.

12 THE COURT: Mr. Becraft, would you speak to that,
13 please.

14 MR. BECRAFT: Your Honor, I don't have a whole lot to
15 disagree with Mr. Campbell.

16 THE COURT: It looks like to me, upon further
17 reflection, that the reply that we just read into the record
18 answers both the question about No. 17 as well as paragraph 2
19 of the jury note, and "if unable to determine what is in D's
20 mind," that's an issue for the jury to consider that does not
21 get a reply from the Court. That's part of their deliberative
22 process.

23 MR. BECRAFT: Understood, Your Honor.

24 THE COURT: And that would be, I think, also
25 effectively answered by the last statement or the last clause

1 in the reply, "the issue of intent is one which you must
2 determine from a consideration of all of the evidence in the
3 case bearing on the defendant's state of mind." I think that
4 that is an appropriate response without getting into a thicket
5 of legal issues.

6 MR. BECRAFT: I'm not disagreeing with the Court.

7 (Off-the-record discussion between the
8 Court, Courtroom Clerk, and Law
9 Clerk.)

10 THE COURT: There's a subsidiary issue that we're
11 dealing with having to do with court security provided after
12 5:00 p.m., since it's now 4:35, and I am dispatching the
13 courtroom deputy clerk to the jury with a CSO to ask the
14 question if they want to continue today; if so, for how long,
15 or make a decision to return tomorrow at either 8:30 or 9:00 in
16 order to continue their deliberations. And Denise will also
17 tell them that if they're going to stay tonight, that we will
18 order dinner and provide that to them at the Marshal's expense.
19 But that will be up to them. And we need it for staffing
20 purposes tonight, and it will be the jury's decision as to how
21 long into the evening they decide to go or not go. That's up
22 to them.

23 Denise, would you take care of that, please.

24 (Courtroom Clerk exits courtroom, then
25 returns.)

1 THE COURT: Denise, would you allow the lawyers to
2 read that before we give it to the jury, please.

3 Any concern or problem with that, gentlemen, either
4 counsel?

5 MR. BECRAFT: None, Your Honor.

6 MR. CAMPBELL: Nothing.

7 THE COURT: All right. I'll put the time on it and
8 then we'll copy it and provide it to the jury.

9 We'll wait here for a few more minutes to see if they
10 have a reply to the Court's question about how long they intend
11 to stay.

12 (Courtroom Clerk exits courtroom, then
13 returns.)

14 THE COURT: All right, the reply from the jury is
15 that they are going to stay and work a while and that they will
16 notify us if they make the decision to eat dinner in the
17 courthouse. So, counsel, you are released until we receive
18 another communiqué from the jury. Thank you very much. We're
19 in recess.

20 (Recess had 4:06 - 5:05 p.m. Defendant
21 present when court called to order.)

22 VERDICT

23 THE COURT: Thank you. You may be seated. Ladies
24 and gentlemen, we have been informed that the jury has reached
25 a verdict.

1 Let's get the jury and bring them in at this time,
2 please.

3 (Jury enters courtroom.)

4 THE COURT: Our jury has returned. Please be seated.
5 Mr. Davis, you were elected foreman?

6 THE FOREMAN: Yes, sir.

7 THE COURT: I understand the jury has reached a
8 verdict?

9 THE FOREMAN: Yes, sir.

10 THE COURT: Would you hand a copy of the signed
11 verdict form to the court security officer, please.

12 (The Foreman complies.)

13 THE COURT: The verdict form is signed and properly
14 dated. Denise, would you publish this verdict, please.

15 THE CLERK: In the matter of the United States of
16 America versus Tommy Cryer, we, the jury, unanimously find the
17 defendant, Tommy Cryer, as to Count 1, not guilty; as to
18 Count 2, not guilty. Dated and signed in Shreveport,
19 Louisiana, this 11th day of July, 2007. Signed by the foreman.

20 THE COURT: Ladies and gentlemen, in a few moments I
21 will dismiss you from your jury service. I'm going to ask that
22 you return to your jury deliberation room. Please be sure to
23 take off your juror buttons before you depart. And please wait
24 for me; I have a couple of things to provide to you as a
25 memento of your service to us.

1 All rise for the jury.

2 (Jury exits courtroom.)

3 THE COURT: All right. Please be seated. Based on
4 the jury's verdict of not guilty as to the sole two counts, the
5 defendant is free to leave.

6 Do we have any follow-up, last-minute business before
7 we depart today from the Government, Mr. Campbell?

8 MR. CAMPBELL: No, sir.

9 THE COURT: From the Defendant?

10 MR. BECRAFT: None, Your Honor.

11 THE COURT: Very well. We are adjourned.

12 (Proceedings concluded at 5:09 p.m.)

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WITNESSES FOR THE DEFENDANT:

	Dir	Cross	Re-Dir	Re-Cross
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C E R T I F I C A T E

I, Marie Moran Runyon, Official Court Reporter, do hereby certify that the foregoing pages numbered 296 through 405 do constitute a true and correct record of proceedings had in said trial to the best of my ability and understanding.

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

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

Marie Moran Runyon, RMR, CRR
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