United States of America

versus

Philip E. Roberts

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PROCEEDINGS OF JUNE 23, 2000

PRE-TRIAL CONFERENCE

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THE COURT: Afternoon.

MR. BLACKORBY: Afternoon, Your Honor.

THE COURT: We're here today in connection with a Pre-trial Conference the Court set in United States of America versus Philip E. Roberts. It's rare we do a pre-trial, especially in a criminal case, but I thought it important that we do this to see if we could simplify the issues and hopefully permit this matter to proceed forward to trial and disposition without a great deal of difficulty. Can I have the appearances on behalf of Government, please, sir?

MR. BLACKORBY: For the United States, Your Honor, I'm David Blackorby and I've also got with me Michael Yurkanin.

THE COURT: Mr. Stilley?

MR. STILLEY: Oscar Stilley for Dr. Roberts.

THE COURT: What about Mr. Barringer; is he here?

MR. STILLEY: No. He's not here today.

THE COURT: Is he going to join us then on Tuesday?

MR. STILLEY: Yes, he will. That's the plan.

THE COURT: The trial is set for Tuesday. We're going to begin the jury selection at 9:00. I apologize for the delay today. We're an hour and a half past where I told you we would be. We have had a civil trial that started Tuesday downstairs. Unfortunately, we've been starting early and going late. It went to the jury about ten minutes ago. So if I'm pulled out of here suddenly, I will come back, but I am in hopes that we can make some real progress and hopefully permit this matter to go forward next week. With the jury selection, we're going -- do we have this courtroom, Miss Porter?

MS. PORTER: Yes, sir.

THE COURT: We have reserved this courtroom for the jury selection next week. It holds -- we have I think 75 jurors on call. We will try the case downstairs, once we get the jury selected. But I think it holds probably 50 or 60 at most, so this should be a lot more comfortable for us in connection with the jury selection. So if you would, next Tuesday at 8:30 or so, assemble up here, if you would. There's several issues that have come before the Court that we need to address. No. 1, before we get into anything else, do we know how long this trial is going to last? Mr. Blackorby?

MR. BLACKORBY: Your Honor, I anticipate that if the latest we can start putting the evidence on by Tuesday noon or after, that the Government should be able to rest sometime late Wednesday afternoon, possibly early Thursday morning.

THE COURT: Mr. Stilley, do you have any thoughts in that regard?

MR. STILLEY: I would have thought they could be completed more quickly than that, but I'm not sure in fact what they're going to say.

THE COURT: The first thing, I think the only Motion we have outstanding at this time is a Motion filed by you, Mr. Stilley, on behalf of Dr. Roberts to recuse, force my recusal, as well as that of Judge Shepherd. As I understood it, Judge Jones, the second Magistrate, is going to testify or I think has been listed as a witness, potential witness.

MR. BLACKORBY: We have released her, Your Honor, but she was a witness up until recently; yes, sir.

THE COURT: And with Judge Shepherd, if somehow he should be recused, we're then out of Magistrates. We only have two for the entire Western District. We're not in much better shape for judges. In any event, I have reviewed the Motion in some detail. It's not something that I assure you the Court takes light lightly. I don't believe there's any basis. I find there's no basis to require my recusal. I can assure you there's probably a lot more things I would like to do next week than to have to try another trial, whether it's criminal or civil or whatever. It seems like we've been in litigation since the first of January or something, and we could all use a break. But having said that, while there may be a duty for me to recuse, if I believe the circumstances warrant, I likewise believe that I have a deep responsibility to not disqualify if in fact no basis has been shown. I have read the pleadings you filed, Mr. Stilley. I don't think the Court has refused to require the Government to inform your client of the statutes under which he's accused. We went through that, I thought, at our last hearing. I did -- I believe the Government informed the Court that all of these statutes were available and had been made available to the defense counsel. Also, our order entered on June 14 reflected pretty clearly no news from the Supreme Court, the Eighth Circuit, about some of the arguments that were being advanced. I take it, Mr. Stilley, you've taken exceptions to my -- to our orders citing certain statutes and case law. I'm not real sure what your objection to that was, but we will not attempt with the Court to accuse the Defendant or compound or complicate in any way the Indictment against him. You were insisting that you didn't know what he was charged with, and some of those are simply set out there in a effort to try and assist you with the defense of Dr. Roberts. I don't know what to say about his custody. He's charged with a misdemeanor for failure to file returns in two years. There were some forms that were required by the Government. Mr. Stilley, you and I did have a conversation -- I think the Government was there also. I think what I told you and I'm probably not going to have any more conferences in Chambers with you ever, but I think anytime we discuss anything from here on, it's probably going to be on the record. What I told you was he very well could go to jail and probably would go to jail, if in fact he didn't complete the forms. So somehow you think that's, you know, violating his rights. I appreciate it, but I'm not real sure on why we should treat you or your client any differently than everyone else is treated in this Court. I likewise never required to get Dr. Roberts to forfeit any Fifth Amendment rights. Those very, very valuable rights have been in existence long before I became a judge. Those arguments may be made at trial as long as those arguments are found to be relevant to the issue of willfulness. Again, I refer you back to your our Order of June 14th. I did point out in the Order that you had not cited authority for a lot of the motions you had filed. As I recall, there were no memo, no memorandums in support of those. I didn't make up the local rules either, Mr. Stilley. Those rules have been in effect -- we've had local rules concerning the operation of this Court for as long as I've been a judge, and I assure you, sir, long before, and those rules require citations for your legal authority and the Court was pointing those out as I think they would probably behoove all of us to know what the rules are and what the statutes say. If you've got

something or you think you've got a legal argument or something, you simply must give us a citation to it. I'm also concerned about your objection to the report and recommendation saying that your timeframe was unduly shortened. Mr. Stilley, Judge Shepherd heard these looks like there were four of them. One was filed on June the 7th by you, sir, and then you had a hearing it looks like on June the 15th. The other three motions that you filed were all filed on June 13. There was a response filed by the Government on the 14th and yet there was a hearing on the 15th. I think Judge Shepherd did a yeoman's job in getting those since they were filed that late. Can you tell me, Mr. Stilley, why they were filed so late?

MR. STILLEY: Your Honor, I was having an extremely difficult time determining what needed to be filed because of the lack of the provision of the true, correct and complete list of the statutes that Dr. Roberts was alleged to have violated. That's been the problem throughout this litigation and hinders me.

THE COURT: Do you have those now?

MR. STILLEY: No, I do not.

THE COURT: Do you have my Order of June 14? You read it?

MR. STILLEY: I certainly do. Is that a true and correct and complete list of the statutes thought to require Dr. Roberts to make a return?

THE COURT: Well, it is -- this in -- the Order I think is pretty self-explanatory. And I don't want to delay this trial. And if you don't file any Motions till the 13th, looks like Judge Shepherd had the hearing on the 15th, issued his opinion on the 20th. Was that Tuesday?

MS. PORTER: Yes.

THE COURT: There's one calendar in this courthouse. Apparently it's in the clerk's office on another floor.

MS. PORTER: It's Tuesday. I'm sorry. Do you want me to go get one?

THE COURT: No. That's what I want for Christmas some year. Here again -- I don't know. When did you get that one, Mr. Stilley? Was it faxed to you? I know we faxed it I think on Wednesday which would have been the 21st.

MR. STILLEY: Yes, Your Honor. It was faxed to me on Tuesday evening.

THE COURT: By Judge Shepherd?

MR. STILLEY: That's correct.

THE COURT: Judge Shepherd I think gave you until noon today to file any objections that you had to the Court -- to his report and recommendations and all four motions that you had filed. It's my understanding you called our office and you were concerned and voiced your objection to it. At that point we continued the trial from Monday to Tuesday, and, therefore, I'm giving you until noon Monday, which is June 23, to file any objections that you have. Any reason why you can't do that by noon on Monday?

MR. STILLEY: Your Honor, well, one of the reasons it's going to be very difficult to do that is I still don't have any assurance from anybody that we have a true, correct and complete list of the statutes that Dr. Roberts is alleged to have violated. If that -- if the June 14 order contains the true, correct and complete list of those statutes, and, and I could be assured of that, then I think that I would be prepared to get that out by Monday noon. But without knowing, see, if you don't know what the -- whether the list is complete, whether it's correct, it's going to be very difficult to put these arguments down in that short period of time.

THE COURT: Apparently the arguments have been made to Judge Shepherd and he, Judge Shepherd, has issued a report and recommendation. If you have anything to -- I think the purpose of allowing you time to respond to that is to let you object to his report and his recommendation.

MR. STILLEY: That is correct, Your Honor. But of course, at the same time, if time is a factor, I mean it's not absolutely necessary that the orders be transferred to the Magistrate. If they're directed by the Court, then obviously the Court can make its ruling at any time. And I'm not trying to be critical or anything like that, but my client's substantial rights are affected here and I feel it's important that he get the best representation possible. We have issues and we've got --

THE COURT: I agree with you, and you need to understand, Mr. Stilley, I'm doing -- I don't know that I can give Dr. Roberts a perfect trial, but I assure you, sir, I'm going to do my utmost to see that I give him a fair trial, and I don't know that anyone can do anymore than that. You will need to get filed in what form you can by Monday noon. And then we will make a ruling on that. I have -- the Scheduling Order that went out in this matter said the jury instructions, suggested proposed jury instructions were to be filed 17 days before the trial. I have the Government's jury instructions. I do not have yours.

MR. STILLEY: Your Honor, I've gotten some that, that I've worked up some changes to theirs. Would you like me to approach and bring you a copy of those?

THE COURT: No. If you can just get a set by today, because they were due what, 12 or 14 days ago. If you'll get a set by our office and give it to one of the law clerks, we'll consider it.

MR. STILLEY: Your Honor, on this, on the jury instructions, on most of the jury instructions, we've simply acquiesced to what the Government's put in or we don't have -- we may not object to it based upon what happens at the trial, but there's -- what I have done is to take certain instructions and redraft them in a way that I feel that it correctly reflects the law.

THE COURT: Have you shown those to Mr. Blackorby?

MR. STILLEY: I'm just fixing to do that. They did not, as I recall, I'm not there checking it, but I didn't think they filed theirs 17 days before the trial date, but I haven't checked that. I normally wait, when I'm the defense, normally wait to see what the other side says, because if they say -- if their, if their instructions are satisfactory, obviously there wouldn't be any need for me to do any.

THE COURT: Well, I appreciate the way it's usually done, but and, again, Mr. Stilley, I didn't make this rule either about the 17-day rule. It is a rule I've complied with when I was a practicing attorney, and it's been a rule that's been complied with by everyone but you through this date. So if you can get them in today, sir, we'll do the best we can with them. You also were advised as early as the arraignment that you needed to get in your proposed and suggested voir dire questions by the pre-trial. Do you have those? The Government, I think I've had theirs since this week. They're 34 and 35. I'm not staying, Mr. Stilley, I'm going to give all of those, but at least there's a possibility I may ask some of the questions proposed by the Government. Do you have voir dire questions?

MR. STILLEY: Yes, I've got those and I can -- you want me to bring them now or I'll leave them as I leave out of the building.

THE COURT: Leaving the building will be fine. How many do you have?

MR. STILLEY: I think I've got four copies of everything. You're talking about how many questions? I think it's 16.

THE COURT: With reference to voir dire, it's the Court's intention to do the voir dire because of the nature of this case; however, when I finish what the Court believes to be all of the questions that perhaps that I can think of and I think ought to be asked, I will permit you, Mr. Stilley, as well as you, Mr. Blackorby, to suggest any other questions that you want me to ask. I assure you I'll consider those before we start the selection process. Mr.

Blackorby, are you or Mr. Yurkanin would be the primary or lead attorney or --

MR. BLACKORBY: I will, Your Honor.

THE COURT: How about you, Mr. Stilley? Are you going to do it or is Mr. Barringer?

MR. STILLEY: I will.

THE COURT: We're going to have two attorneys then per side, and that's fine, but I can't have two attorneys for each side handling the same witness, so you can alternate. You can work it out any way you want to, but if Attorney A is handling the direct examination, he then will doing do the objecting and whatever. This is not a tag team event. It's a -- I don't mind you switching on me, but if one attorney starts with a witness, then that attorney needs to finish with that witness before we do switch. We have -- let me talk to you about Exhibits. Mr. Blackorby, did you -- I think you gave us at the last hearing a copy of all the Exhibits, your Exhibits?

MR. BLACKORBY: That's correct, Your Honor. There's been a few additional that will come in from third parties out of state. As I've gotten those, I've sent those to Mr. Stilley, and I have your Exhibits for the Court and I've updated those also.

THE COURT: Are there any Exhibits you have not provided to Mr. Stilley?

MR. BLACKORBY: That I have right now, no, sir. There may be a few that come with the witnesses that I haven't seen, but as soon as I get them --

THE COURT: As soon as you get them, make them available to him. Have you seen Mr. Stilley's Exhibits?

MR. BLACKORBY: No, sir.

THE COURT: Mr. Stilley, do you have exhibits that you can share with us? You don't have to, sir, but do you have some that you intend to introduce that you could share with Mr. Blackorby?

MR. STILLEY: I don't have any right now. I would say that they should expect the possibility that any letter that was sent by Dr. Roberts might be an Exhibit, might be proffered. I can, I can prepare those.

THE COURT: Well, the reason I'm asking about Exhibits, do you know how many you have, Mr. Blackorby?

MR. BLACKORBY: Actual numbered Exhibits, Your Honor, probably -- we have one large one. That's the bank records. And then there's, there's -- which is one cubic box of bank records marked as a bulk exhibit, and then we probably have marked up probably another 50, but a lot of these are -- they won't be that time-consuming, because we were taking total dollar figures from the exhibit, it's a stack of checks from say Prudential, and then there'll be a total, but there's probably 50 marked Exhibits, 50 to 60.

THE COURT: Are there any of these Exhibits, Mr. Stilley, have you seen them? I think they were made available to you in a notebook form, too, were they not?

MR. STILLEY: That's correct.

THE COURT: Can any of those be stipulated to?

MR. STILLEY: Your Honor, in order to save the Court time, what we would propose to do is just stipulate that the figures set forth in the Indictment for the gross receipts of Dr. Roberts be taken, just make that stipulation, that he had gross receipts I believe was it 132,000 for one year and 207 the next.

THE COURT: Well, and I appreciate that. The Government may be willing to accept that, but I'm concerned about the exhibits about how we're going to -- if we can stipulate to the Exhibits, that it may expedite matters. But that's your call, sir. If you all can get together and discuss that and resolve it, fine. If you can't, then you certainly don't have to. I'm not, I'm not going to insist that you do or even suggest anymore that you do, but it if we are going to try this case in two days, I think there's going to have to be some cooperation between the attorneys in this matter. We have a Doar, D O A R, Evidence Presenter downstairs. Mr. Blackorby, you may be familiar with it or at least you know, we can give you a check ride. Have you ever used one, Mr. Stilley? Have you ever seen it?

MR. STILLEY: No. I need to go down and try it out.

THE COURT: Well, we've got, we've got a jury all around down there, but we'll work it -- we'll give you a short course in it this afternoon. It is really sort of like an old overhead projector. It's sort of -- it's really a closed circuit television. You put your exhibit down and then your Exhibit appears on a big screen throughout the courtroom. By the end of December of 99 I was to have installed a big screen on one side and lots of other whistles and bells with it. It must not be December yet of 99 because I don't have it. But they are working on it, but they will not work on it next week obviously in the courtroom. But, so, therefore, we've got the old system of the big TV monitor, but it really works out very well. But any exhibit to which you have not reached a stipulation with the other side, the attorney must not put that on the Evidence Presenter until it's actually been admitted. Once we get our equipment installed, Mrs. Porter will be able to control the exhibition and showing of exhibits from where she sits. But now we have to rely upon the attorneys to place it on the Evidence Presenter. So just make sure that any exhibit that you place on the Evidence Presenter has been admitted either by stipulation or by the old regular way. Yes, sir?

MR. BLACKORBY: Your Honor, we've also brought up to speed another electronic system. I don't know even what you call it. Essentially it's from a laptop. You project it through a projector on to a screen. It's like a transparency, but all of our exhibits are on a disk. And we actually have an operator that -- and it's actually faster than putting it on the Doar.

THE COURT: It's what Power Point or is that what it is. Power Point?

MR. BLACKORBY: It's not Power Point, Your Honor. I don't know what Justice calls it, but --

MR. BLACKORBY: Yes, sir.

THE COURT: It's probably a cheaper version.

MR. BLACKORBY: Yes, sir.

THE COURT: In any event, you'll need to show those to Mr. Stilley this afternoon. Fine. If not, we've got criminal cases, I'm sorry, all day Monday, but if you need further training on the Doar Presenter and whatever, we'll work it out for you Monday. I was never coordinated enough to ask a question and do something mechanical at the same time, but so if you have problems with the Evidence Presenter, Mrs. Porter is available to help you get it on the Evidence Presenter, and focused properly and that sort of thing. Did we discuss -- how many witnesses do you have, sir?

MR. BLACKORBY: Right now in chase-in-chief, Your Honor, I have 20.

THE COURT: Is there any way those can be pared down, you think?

MR. BLACKORBY: Depends upon the stipulations I've offered to Mr. Stilley.

THE COURT: Again, I would encourage you-all to discuss it. But can you tell us how many you have, Mr. Stilley?

MR. STILLEY: I think we've subpoenaed five at this point in time and there might be -- that would be a rough estimate.

THE COURT: Okay, sir. Also, at the start of the trial on Tuesday, you will need to give the Court a list of those witnesses, because during the voir dire I will need to identify -- I'll not say whether they're being called by the Government or by you, Mr.

Stilley, but in any event, I will need to identify the witnesses for the jurors to make sure that we don't get someone's next-door neighbor who is going to be a witness or somebody's spouse or something on the jury panel. I am concerned about the selection of the jury. This case, for whatever reason, I'm not accusing anybody of being especially motivated, the case has generated a substantial amount of publicity. I am fearful that it may make it -- might make it difficult for us to get a jury panel assembled in the timeframe that we ordinarily would. Have you seen, Mr. Stilley, the letter that Mr. Blackorby wrote the Court concerning a potential jury problem this week?

MR. STILLEY: Yes, Your Honor. I saw that.

THE COURT: The letter's dated June 21, 2000. It's addressed to me and signed by Mr. Blackorby, and it shows a copy to you. It indicates that the Defendant has made a call to a local talk show radio show, and in addition to being critical of the Court, and that's -- he certainly had a right to criticize this Court, but what I'm concerned about, he's making critical comments before we select this jury. Were you aware that he was making this call, Mr. Stilley?

MR. STILLEY: Your Honor, I was aware that it's a possibility that he might say something on the radio. I did not -- I didn't know what he was going to say, and I have counseled him though to be careful not to say anything that would be prejudicial in any way. Does that answer your question?

THE COURT: I think it may answer it for now. At least it's something that the Court may want to address later maybe after this trial has been concluded, but I am concerned about it. But I think we all need to do what we can to tone down the publicity until we do get this jury picked. It's absolutely essential that we have a fair and impartial jury and that we all sort of do what we can to not do anything to jeopardize the rights of this Defendant. I'm going to ask at some point -- you don't have to -- I know you've got a case now to worry about, Mr. Stilley, but at some point in the next ten days I would like for you to respond to this letter of June 21. Miss Porter, would you make that a part of the record? We, of course, will have 12 jurors. If we finish this, if we try it in a couple days, I propose to have one alternate. If it goes any longer than that, we probably will need two. Either side have any feelings one way other the other concerning that?

MR. BLACKORBY: Either way is fine with the Government, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: Either way is fine.

THE COURT: We also, I don't know who all is coming for this trial. If that letter is -- that letter may not be true. That may not have been the Defendant that was on the radio, but we are -- we may have disturbances of some sort during the selection process, and I'm hoping we can take steps to assure that that doesn't happen. Once the trial does start and the jury is seated, we do have a rule downstairs, and I don't know who designed that courtroom, but if you've been in there, as you walk in the only door into it, you're really on top of the jury box. For that reason, we limit access, ingress and egress through the courtroom to before court begins and breaks and lunches, and, you know, whatever. I tell you that if you do have someone coming you want to -- wants to be admitted, then he or she will need to get there -- need to get there at a time when we don't have the jurors in the box, because when you walk in, you're two feet from the jury. I think it will cause substantial problems. That, of course, does not apply to attorneys or members of your staff and whatever. You can come and go, but if you do find it necessary to come and go, I'll ask that you use as much discretion as you can, that you not make any noise. Anything else you-all need to address? You have some jury instructions you're going to give me now, Mr. Stilley?

MR. STILLEY: Yes, sir. You want me to bring those up?

THE COURT: No, sir. You can probably give Mr. Blackorby his, and I will need your suggested voir dire questions also. Anything else that either side thinks we need to address at this time? Mr. Blackorby?

MR. BLACKORBY: No, Your Honor. I've filed -- we filed this week some trial memos to direct the Court's attention to certain areas, but I think we've covered those.

THE COURT: Mr. Stilley, any problems you have other than what you've already directed to the Court?

MR. STILLEY: Can't think of them.

THE COURT: Have you received copies of his trial memos?

MR. STILLEY: Yes.

THE COURT: He has made some suggestions or they're making suggestions or at least advising as to how they're proceeding. Do you have any objections to their intended method of proceeding at this point?

MR. STILLEY: Might need to refresh my recollection about what the method of proceeding was going to be. What exactly are you referring to?

THE COURT: Well, in their trial memo they have discussed its intended use of bank deposits, the method of proof concerning Dr. Roberts' income for 93, 94. That is, as I understand it, an Eighth Circuit approved method of proceeding, and if you have an objection to it, you just need to advise us before you do.

MR. STILLEY: We would reserve all of our rights on that.

THE COURT: Well, I want you to reserve all the rights you can, but if you have an objection, I need to hear it. I need to hear it before we start the trial. Anything further we need to take up at this time?

MR. BLACKORBY: Not from the Government, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: No.

THE COURT: If there's any change, let me know. Otherwise, I look forward to receiving any objections to the report and recommendations by noon on Monday and look forward to seeing you in court starting at 9:00 on Tuesday. My suggestion is that we -- Miss Porter, the jury will not be in here, will it? Will they be the jury room?

MS. PORTER: Yes.

THE COURT: Ought to make arrangements to keep the jury out of here, and we will go on the record at 8:30 on Tuesday for any additional motions or any additional problems that we can put on the record out of the presence of the jury panel. Is that agreeable? Does anyone want to come in any earlier than 8:30? You think we can address everything we need to do in 30 minutes? I would like to get started, if we can, promptly at 9:00 o'clock. You think that time is sufficient, Mr. Blackorby?

MR. BLACKORBY: Yes, sir.

THE COURT: Mr. Stilley?

MR. STILLEY: Yes.

THE COURT: Fine. You-all have a good weekend and then I'll see you at 8:30 on Tuesday. (Off the record at this time.)

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PROCEEDINGS OF JUNE 27, 2000

PRE-TRIAL CONFERENCE

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THE COURT: This is a misdemeanor. It would appear that each side will be entitled to three peremptory challenges. However, in a felony case the defense gets ten and the Government gets six. I

propose to go through the panel. We'll hear challenges for cause and when we conclude, if it is possible to give more than three peremptory challenges per side, I intend to do that, Mr. Stilley. If it's possible to give you -- we have more jurors left than say 18 when we end up with challenges for cause and whatever, I intend to probably give you more than three peremptory challenges.

MR. STILLEY: For the Defendant only, is that correct?

THE COURT: Well, the law says three and three on a misdemeanor, three for the Government and three for the defense. If it is a felony, which this is not, it's ten for the Defendant and six for the Government. If we have sufficient jurors, I intend to let the felony rule apply and give you ten strikes, give the Government six. If we do not have 28 left after the challenges for cause, the Court may give you some number in between the 18 and the 28, so I may give you more than three but less than ten. I don't know. It depends upon what our pool says. I propose to conduct the voir dire. There is a statement. Have you seen the statement, Mr. Blackorby?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Do you have any problems with it?

MR. BLACKORBY: No, Your Honor.

THE COURT: Have you seen it, Mr. Stilley?

MR. STILLEY: Yes, Your Honor.

THE COURT: You have any problems with it?

MR. STILLEY: Yes, I do. The Defendant did not plead guilty. The judge pled not guilty and the Defendant would prefer either nothing to be said about it or it to be said what actually happened.

THE COURT: At your request I could take that out. Do you have any problem with that, Mr. Blackorby? I'll just say the burden will be on the Government to prove his guilt beyond a reasonable doubt.

MR. BLACKORBY: No, Your Honor.

THE COURT: I'll delete then from the statement line five, which read the Defendant has pled not guilty to the charges against him and we'll simply pick up with the next line it is the burden of the Government. I have your voir dire suggested questions. The Court's going to conduct the voir dire. When I finish with the Court's questions, if they are additional questions that were not raised in your suggested voir dire, you may approach the Court, may approach the bench. And the Court will consider giving those. I think as a matter of housekeeping I will place of record as Court's Exhibit No. 1 to this hearing before the jury is in, the Government's requested voir dire, it consists of what seven pages. As Court's Exhibit No. 2, I will make a part of the record the suggested and requested voir dire by Dr. Roberts consisting of three pages. If a question is not asked that you have posed, you may assume for purposes of record that the Court considered it, rejected it, and I will give each side an objection because the question was not posed. We're going to start up here. As we discussed last week, we will convene downstairs once the jury is selected. There may -- it may be that we'll want to make -- renew your motions while we're still up here and after the jury has been impaneled, but after they have been excused from the room or we can do it downstairs. It doesn't matter, but it may be easier to do it here with the jury out of the room when we finish. I'm hopeful that we are not going to have to reinvent the wheel and if the Court has made a previous ruling I'll consider all those motions to be renewed and the rulings of the Court can be the same. That way I believe the record is protected once a jury is sworn and it will not be necessary to raise those objections again or at least in the presence of the jury. If you do have objections, you need to rise and state you have an objection. I think the proper way to handle that at least initially will probably be to approach the, approach the bench and let's find out what it is. I'm going to work as hard as I can to prevent a mistrial in this matter, and I expect the attorneys to do likewise. We have a place here for barside conferences. Are we set up for that, Mr. Reporter?

THE REPORTER: Yes, sir.

THE COURT: Where? Right here?

THE REPORTER: Yes, sir.

THE COURT: Barside conferences will be immediately behind him. I propose to examine the jurors and a juror could very well have something to say to the Court, but at that point with the juror here, on the record but out of the hearing of the other jurors, we may inquire further about what the concern of that juror is to the question that was posed. If we do come up, because of the limited space here, it may be wise that we only have one attorney per side, but if either side believes that both need to attend or be present, you certainly can. The Court has also circulated it's proposed opening instructions. I'm not going to give those, of course, until the jury is selected and we're downstairs probably. I would like for you to review those, if you can, in the interim and advise if you have any objections to them and we'll place those objections on the record before the opening instructions are read. I do need to get a witness list from both the Government and the defense. I do that because it's part of the voir dire. I intend to go through each witness. Do you have such a list, Mr. Blackorby?

MR. BLACKORBY: Yes, Your Honor. I've already provided it to the court reporter, and you need a copy?

THE COURT: Do you have one, Mr. Stilley?

MR. STILLEY: Your Honor, I can make one up here for you just real quickly.

MR. BLACKORBY: May I approach, Your Honor?

THE COURT: Yes, you may.

MR. BLACKORBY: Your Honor, that's an old list. I cut it down. I'd like to change that.

THE COURT: Has Mr. Stilley seen this list?

MR. BLACKORBY: No, Your Honor.

THE COURT: Why don't you give him a copy, too? Do you have an extra copy?

MR. BLACKORBY: I believe so, Your Honor.

MR. STILLEY: Your Honor, may I approach?

THE COURT: Yes, you may.

MR. BLACKORBY: Your Honor, may I have a copy of Mr. Stilley's list?

THE COURT: Yes, you may. Did you give him one? (Off the record briefly.) I'm sure the rule is going to be requested, is it not?

MR. STILLEY: That's correct.

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Okay. The rule has been requested which means that any person who will be a witness, will need to exclude him or herself out of the courtroom. I do not know -- I don't think, I don't think I know any of the witnesses, so if they come in, it's going to be responsibility of the attorney involved to make sure that their witnesses get word that they're to be outside the courtroom. Otherwise, if they do inadvertently come in, the Court could very well not let them testify.

MR. BLACKORBY: Your Honor, the Government would move for one exception, Special Agent Tom Bryan, the case agent representative of the Internal Revenue Service.

THE COURT: The Government has requested that Special Agent Tom Bryan be permitted to sit as the Government's representative. Any objection to that, Mr. Stilley?

MR. STILLEY: Yes. We certainly object to that. He's going to be one of the key witnesses and he needs to be kept outside so we'll have the same protection required by the rule.

THE COURT: Well, the Government is entitled to -- the Government is not an individual, Mr. Stilley, and the rules clearly provide for the Government's -- whatever witness they want to select as their representative, and I'm going to permit him to stay, to be the company representative -- to be the Government's representative. I'll give you an exception, continuing objection to the Court's ruling in that matter. (Off the record briefly.)

THE COURT: The Government has provided us with a witness list. How many witnesses are on here, Mr. Blackorby?

MR. BLACKORBY: There's actually 20 witnesses, Your Honor, not counting the self-authenticated, which I do not plan to actually call a witness on.

THE COURT: Other than the self-authenticated, is that what you said?

MR. BLACKORBY: There are 20 real witnesses that we plan to have in court, Your Honor.

THE COURT: Do you have any objection to any of these, Mr. Stilley?

MR. STILLEY: Yes. Your Honor, I just got this list this morning. I tried real hard to get a copy of this yesterday and they wouldn't give it to me, but I do have an objection to any witness who's coming in simply for the purpose of showing gross receipts on the part of Dr. Roberts since Dr. Roberts has already offered to stipulate that he had gross receipts in the amounts shown by the Indictment.

THE COURT: Well, Mr. Stilley, you know the Government gets to try its case and you get to try yours, so it don't take my advice on how to try its and may not take yours, so I'm going to let the Government try their case and you can try yours. Any objection to any witness listed by Mr. Stilley?

MR. BLACKORBY: Yes, Your Honor. We have filed Motion to Quash as far as Laura Blackorby and Tom Bryan. I would also object to Beverly Jones, Magistrate Jones. I don't think there's -- the Defendant has shown any relevancy for clearly for Laura Blackorby and Beverly Jones. The Government will call Tom Bryan and the Defendant's entitled to cross-examine him. But we would object to the calling of Laura Blackorby and Magistrate Jones.

THE COURT: What's the -- what's your reason in calling Mrs. Blackorby? She apparently is the wife of the lead Government attorney. That causes the Court some concern. What does she possibly know about this case and how could she --

MR. STILLEY: She actively participated in this case. She went and actually did interviews of witnesses in this case. So I mean we need to bring her in and ask her questions about that.

MR. BLACKORBY: Your Honor, this has already been argued before the Magistrate. The record was made before the Magistrate that Mrs. Blackorby sat as an assistant to Special Agent Bryan at one interview only and that was her involvement, and I do not think that's enough to show any relevancy to have her in here as a witness.

THE COURT: You don't think we've already decided that issue?

MR. STILLEY: Absolutely not. The United States Constitution guarantees Dr. Roberts the right to call witnesses on his own behalf and compel their attendance.

THE COURT: Well, I agree with that. You know, I read the Constitution, too, Mr. Stilley, many years ago and read it often, but what is Laura Blackorby -- how is her testimony going to be relevant I think is what I meant to ask?

MR. STILLEY: Your Honor, it's going to be extremely relevant to show the pertinent facts in this case and here's something we need to really take this up before we even go into this. What right does the U.S. Government have to even raise this issue on behalf of Laura Blackorby as a witness? What interests of the Government is involved with not allowing Mrs. Blackorby to testify in this case?

THE COURT: It's of interest to the Court. They have raised a question about her testimony that may not be relevant. Have you read their objections to calling her, their Motion to Quash?

MR. STILLEY: Yes, I got that last night and I did read their objections to calling her, and they say that she was not -- she wasn't actively involved very much, or she was not the supervisor very much, but while she wasn't the supervisor for all the time, what -- at part of the time while she wasn't a supervisor, she was actively participating in the investigation, and she's the person through whom this recommendation to prosecute was made. She has all kind -- she has a ton of information about this case. It's extremely critical to Dr. Roberts.

THE COURT: I tell you what. I mean is she in town?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Available? Fine. I'm not going to disclose her name, Mr. Stilley, to the jury panel at this point. At some point during this proceeding, and we may have to do it -- I don't want to hold this jury up -- we may have to do it during the lunch hour or after 5:00 or after 6:00 when we finish, but I will allow you to place her on the stand and then you can develop from her what you believe are appropriate questions and how it's relevant. Then after that you will have made your proof and the Court will issue its final ruling and determine whether she's available or not. Is she in town all week, sir?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Do you know how much notice she's going to need to be here and do you know if she has any commitments either during the lunch hour or after 5:00 or before 8:00 or something?

MR. BLACKORBY: Not that I know of, Your Honor.

THE COURT: Fine. What's your -- that's the Court's ruling with reference to Laura Blackorby. What about Magistrate Stites-Jones? Why are you calling her, sir?

MR. STILLEY: Your Honor, the Government -- I can't imagine the Government's even going to object to her because the Government listed her as a witness to get her --

THE COURT: Well, the Government has objected. I need for you to tell me why you think she's relevant and had relevant testimony. I didn't mean to make it a difficult question.

MR. STILLEY: Well, she has all kinds of relevant testimony because she has known Dr. Roberts for a good time. She knows about his beliefs. She knows about his character. She knows that he's a very honest person. She knows that he's never violated a law deliberately. She went to his -- and worked at his -- didn't work -- she went and obtained services from him for a considerable period of time and then apparently somebody told her not to do any more business with him. So she stopped doing business with him and not because she didn't like the services, but for other reasons. She's an absolutely critical witness. We must have her in this case. I mean if the Government is going to use listing her as witness to get her off as a Magistrate of this case, which I've already flatly accused the Government of doing that for a tactical purpose, they can't now say --

THE COURT: Mr. Stilley, I do not have a hearing problem. There's no need to raise your voice at this point, but I can hear you. You're saying you need her because she did business with Dr. Roberts? Is that what you're saying?

MR. STILLEY: She's a very material witness with respect to his good faith.

THE COURT: With reference to what?

MR. STILLEY: His good faith, his defense of not having knowledge of any law requiring him to make any tax return as alleged to have been required in this case.

THE COURT: Let me ask you, have you visited with her about this? You think that's going to be her testimony?

MR. STILLEY: I have not visited with her specifically about that particular thing. I, of course, when I was trying to get Dr. Roberts out of jail, I did go to her house to try to see if we could get anything done. But I'm satisfied that's going to be her testimony.

THE COURT: I tell you what. And I'm hoping you're correct, Mr. Stilley. I'm going to vote the same rule, the same order of preference with Magistrate Jones, assuming she's here. Miss Porter, do we have any idea what her schedule is?

MS. PORTER: I think she said she would be here this week.

THE COURT: She's here?

UNIDENTFIED SPEAKER: She said give her 15 minutes.

THE COURT: I'm advised that she is here and she is here this week, and I'll allow you the same opportunity on the record to examine her and the Court will then make a final ruling. But failing that, Mr. Stilley, you will have made an offer of proof and your record will be protected, sir.

MR. STILLEY: Your Honor, if I'm going to have to go that route in order to get a witness, even call a witness, that's guaranteed by the Sixth Amendment, can we have the same privilege with respect to witnesses called by the Government? I would really like to have that, because I didn't know anything. I didn't know one of their witnesses except their alleged expert until yesterday and I had to drag that out of them.

THE COURT: Well, which one do you think is going to testify that's not relevant? Apparently they have raised some serious questions about two of yours. Do you have -- and you have said you don't think Mr. Bryan should be in the room, but which of these witnesses should be included and for what reason and why do they have testimony that's not relevant? If you have something along those lines, I'd be happy to hear it.

MR. STILLEY: Your Honor, they just flopped this list on my desk just about five minutes ago, and I can't go through a list of 20 witnesses and know what they're going to say and analyze what they're going to say, especially when seemed like most of them don't have anything. Just got a witness.

THE COURT: Mr. Stilley, I'm going to list them, but you'll have time this morning in between the breaks and whatever, but before a witness is called, if you have specific information or something you want to bring to the Court's attention about why that witness should not be permitted to testify, I assure you, sir, I'll hear you. Right now you said you hadn't enough time to receive the list. This list is here and I think they supplied that list or that list has been supplied and in compliance with the rules of the Court. I think they don't have to do it until now and they have done that. But look it over and I'm going to list those witnesses when I ask the jury if they know them. But by the same token, should you have any objection before they testify, you need to approach the Court and we'll get a jury out of the room and we'll make whatever record it is you want to make. I fully -- I'm going to do everything I can, Mr. Stilley, to see that you have an adequate record in this matter.

MR. STILLEY: Judge, there hasn't been an objection --

THE COURT: Mr. Blackorby?

MR. BLACKORBY: Your Honor, I would make it -- draw attention to the Court Mr. Stilley's had the Government's Exhibits for over three weeks, and if you look at those Exhibits, it's easy to tell who the witnesses are going to be.

THE COURT: Well, as I say, I'm going to listen for purposes of voir dire, but if he has an objection before the witness is called, I'll certainly hear it. And then we may want to revisit that issue.

MR. STILLEY: Your Honor?

THE COURT: Anything else? Yes, sir?

MR. STILLEY: There's one thing. Previously they had raised the issue of the payment of witness fees to these folks, and it seems to me that since they're Government employees and they're on the clock anyway, that that's not a big issue, and I haven't heard anything this morning. I presume that they have waived that. If they haven't, I do have checks for each one of these.

THE COURT: I don't think that's going to be a big issue. The Court's going to have them here. I'm just not going to have them here during when this jury's here. It's either going to be at lunch hour or after 5:00 or before 8:00 or whatever. But we will -- I will, I will assure you that we will have those witnesses here. With reference to the Exhibits, Mr. Stilley has had those, Mr. Blackorby, for some period of time. Have you had a chance to go through them, Mr. Stilley? Are any of those -- have you all made any inroads toward maybe stipulating to the admissibility of some of those records?

MR. BLACKORBY: No, Your Honor. I have on our own initiative reduced -- we cut in half our witnesses, but, no, there's been no agreement or stipulation.

THE COURT: Are a lot of those just -- all of these witnesses being called simply for the purpose of authenticating records?

MR. BLACKORBY: Your Honor, there are approximately eight -- there's correction, seven insurance witnesses that will authenticate records and verify that the payments were for medical services performed by Dr. Roberts. There are approximately four to five that will come in and authenticate records and verify that these checks written by Dr. Roberts were for personal non-taxable or non-deductible expenditures, and then the rest are the two Government summary witnesses and the accountant and two other individuals that knew Dr. Roberts when he was filing his tax returns.

THE COURT: Have you seen any of his Exhibits?

MR. BLACKORBY: No, Your Honor.

THE COURT: Of course, it would make things go faster if, in fact, the Exhibits could be admitted especially if they're authentic or not, but Mr. Tilley has a right to put the Government to its proof on each and every item and apparently he's going to exercise that right and take whatever time it takes then.

MR. STILLEY: Judge, on behalf of Dr. Roberts we would certainly stipulate to the amount of gross receipts.

THE COURT: I understand that.

MR. STILLEY: And --

THE COURT: You apparently have made that offer several times, Mr. Stilley, you've been in court. I think this is the fourth time I've heard it. Apparently, the Government is not willing to accept that stipulation.

MR. STILLEY: Okay. Well, let me make it a little bit better for them. This Court --

THE COURT: Why don't you do that? You don't need to put the Court in the position or posture of maybe negotiating with you, but I will say we'll call a break in a minute before we get the jury in. If you could work something out with Mr. Blackorby, fine. I'll be happy to. Otherwise, let's do it where you call your witness, have it authenticated and introduce them. We'll go that way. We are moving downstairs. There is the Doar, D O A R, Evidence Presenter. I think Mr. Stilley took a check ride I think in it last Friday, did you not, sir? Do you have any problems with it?

MR. STILLEY: I just loved it, Judge. It's great.

THE COURT: You don't have to say you love it, but as long as I know that you know how to operate it. I'm saying to both sides if you have any problem with the Doar machine, Miss Porter is available to help you get it focused or whatever. If we ever get the equipment that I thought we were going to have last December, Miss Porter will actually control the Exhibits from where she sits, and you won't have to worry about trying to get it focused and whatever. It's a little awkward and I apologize for it, and we'll give you whatever time you need. Since we are using the Doar, both sides need to ensure and make doubly sure that any Exhibit you place on that Evidence Presenter has been admitted. If there are objections, we need to hear the objections. Let's make sure that the Court has said that is admitted before that document is placed on the screen. I do that because once it's placed on the screen, the jury sees it. So let's make sure it has been admitted before the jury sees it.

MR. BLACKORBY: Your Honor?

THE COURT: Yes, sir.

MR. BLACKORBY: We also have set up -- we have scanned over here the Government's case-in-chief Exhibits on a disk, and we had a laptop set up at our table that will project those through an overhead onto a screen, which we adhere obviously to the same rule. But it's actually quicker than the Doar that not only is available to us, it's available to Mr. Stilley.

THE COURT: You may use that, but here again, since there has been no stipulation about the admission or authenticity of records, you need to make sure that the records have been authenticated and properly introduced and ruled on any objections and whatever before you punch whatever button you punch to put it on the screen.

MR. STILLEY: Your Honor, I've got a question about that. When we're using things such as law, do you want to us to move to admit that or just simply put the -- for example, the Internal Revenue Code provisions, can we just lay that on there? A

THE COURT: Is that going to be during cross-examination of some sort?

MR. STILLEY: Yes.

THE COURT: Yeah. I think you need to approach the Court before you place anything on the Doar, whether it's law or Exhibit or whatever. Before anything goes on the Doar, I need to know what it is and why you're doing it and see what the other side has got to say, and they will do the same for you, sir.

MR. STILLEY: Okay. Can we handle that just right off the bat, so we don't have to take a break there and just say that the Internal Revenue Code will be placed on the Doar?

THE COURT: I want to see to see what provision, what portion of the Code you're trying the place on it.

MR. STILLEY: So we have the take that up one thing at a time, correct?

THE COURT: I assume you're going to put -- are you going to put a page at a time or the whole Code, or I don't know what you're saying?

MR. STILLEY: Well, it would have to be a page at a time. I don't think.

THE COURT: Well, how many pages are you intending to place on the Doar?

MR. STILLEY: I don't know.

THE COURT: Well, when you do know and when you decide, you know, how many pages you are going to place on it, if you'll approach the Court, that's something I'm sure we can work out. But I don't want anything placed on the Doar, I want to make that perfectly clear, until the Court has said that it's appropriate and that it's proper, with a statute, the Internal Revenue Code, Exhibit, anything in connection with your opening statement or whatever.

MR. STILLEY: Your Honor, I was -- during a preliminary hearing directed to the entire Internal Revenue Code. Is that going to be a problem that I can't ask a witness about a particular provision that we've got without coming up to the bench?

THE COURT: Asking about a provision? I thought you were talking about showing something --

MR. STILLEY: I wanted to show the provision so that everybody could see what we're talking about.

THE COURT: Well, you before you examine on a particular portion of the Revenue Code, before it's shown to the witness, you are going to need to approach the witness, approach the Court. I will handle it, I'm sure expeditiously, but I don't want anything going on the Doar until I've approved it. I've covered the opening instructions we have. We don't need to cover those now, but I assume we'll go ahead and would you-all like me to instruct them once there here. You want to do it when we go downstairs and instruct the jury and have your opening statements there? Do you have any preference, Mr. Blackorby?

MR. BLACKORBY: No, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: I think we could go down and do our opening statements downstairs.

THE COURT: We'll do that, and it's also -- I may want to hear your objections up here, so when we go down there we'll be ready to go. Anything further, Mr. Blackorby, before we yet get the jury in?

MR. BLACKORBY: No, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: Yes, Your Honor. I haven't heard anything about a ruling on the four motions that we had. We had four motions, I mean not -- four objections to the ruling of the Magistrate and I haven't heard any ruling on any of those.

THE COURT: Yeah. You had until noon yesterday to get your objections filed. Late yesterday afternoon we affirmed rulings of the Magistrate in all four cases. You don't have a copy of that?

MR. STILLEY: No, I do not.

THE COURT: Okay. We'll see that you do get a copy. Does the Government have a copy?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Why don't, Erin, if you'll see that they get them and make sure Mr. Stilley has this. Why don't you go get it now, and he can be reviewing that while we're trying to pick the jury. Anything else before we get the jury in?

MR. BLACKORBY: Not from the Government, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: No.

THE COURT: Was that no?

MR. STILLEY: No, Your Honor.

THE COURT: Fine. You don't need to say, Your Honor, or sir, just no and yes will be sufficient. We're going to bring the jury in. Let's again see if we can -- I'm not real sure where the marshal's going to put everybody. Let me say this to the spectators. We're happy to have you. This is a public trial, apparently is going to be an interesting trial and I'm glad you're here, but you are merely witnesses or bystanders and whatever. And we appreciate your interest. We're going to bring in the jury. We're going to conduct a voir dire which will -- it will involve some pretty sensitive questions and answers. I need for you to refrain from making any statements or making any guffaws or expressions that would in any way be

considered to maybe intimidate or something to a juror. If I see any of that, I'll not hesitate to clear the courtroom or make sure that you're excused from the courtroom. We need to keep this playing field at an absolute level as we can in order to give Dr. Roberts a completely fair and impartial trial. Anything else? Let's bring the jury in, please. (Off the record at this time.) (THEREAFTER, A PANEL OF JURORS WAS EMPANELLED AND SWORN TO ANSWER QUESTION REGARDING THEIR QUALIFICATIONS OT SERVE AS JURORS, AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE PROSPECTIVE JURY PANEL:)

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VOIR DIRE EXAMINATION

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THE COURT: Good morning again.

JURORS: Morning.

THE COURT: We are -- we're in the historical courtroom as opposed to my courtroom downstairs. We propose to select the jury here and then once the jury has been selected, we'll probably take a break and then we will adjourn to -- we'll go back downstairs. This courtroom probably has twice the seating capacity of the one downstairs, and I apologize for moving you around, but hopefully it will work. If we have time after we have selected the jury, I'll give you a historical tour of the building, of the room. This is a very historical room. When I started, when I became a judge, I was initially here. That's the good news. The bad news I think there's only one plug on this entire floor, one electrical plug and you have problems using any sort of equipment, and I think you've seen the equipment that we have in place downstairs. They really don't like for me to wear shoes in here, but it is a very special place. It's used for all sorts of ceremonies and historical occasions and whatever, and I'm glad you've gotten to see it. I've received a lot of calls from you. Some of you I know have other things to do, better things to do, and some commitments that you probably can't get out of. However, having said that, this is an important case. It's important for us to get it resolved this week, if we possibly can. I assure you that the Court's going to listen to whatever you have, and if we can possibly work around your schedule, I assure you that we will. I also -- the case today is United States of America versus Philip E. Roberts. We believe this case will last at least two days, but it could go longer. I tell you that because last week -- I see some of the same panel members here -- I told you that trial would last three days. Ended up, that was all of four. That was starting early and going very, very late. But I think this case will probably last at least two days, and perhaps three and could go even into the fourth day. How many jurors do I have?

MS. PORTER: Seventy-one.

THE COURT: And they have been sworn?

MS. PORTER: Yes, sir.

THE COURT: Do I have any first time jurors this time? Yes. Fine. We're glad to have you. I submit to you that America has the best judicial system in the world, and I think it's due in large part, if not in main part depends on the willingness of individual citizens to serve on juries. So we are deeply appreciative of your effort. I want to thank you for being a part of the jury system. We'll select 12 jurors. We will select either one or two alternates. I believe we'll try to start every day at 9:00 and get out by 5:00, but I think I told you that last week and we started sometimes a little earlier and went a little later, and I apologize for that, but we will try to be sensitive to the work problems of your spouse or daycare problems, elder care problems or whatever. When I finish, I'm going to conduct the voir dire, but when I finish, if anyone has something that he or she needs to address to the Court, I'm going not going to say in private, but perhaps at barside, you certainly can. The attorneys will need to be here, but if you have a personal reason or some reason that you're reluctant to disclose out in the courtroom on why you cannot serve, it's important to the Court to do it. The Marines used to have a slogan, "we're looking for a few good men." That's not politically correct anymore. We're looking for 12 good women and men to hear this case. Let me -- I want to read a summary of what this case is about. This is a criminal action brought by the Plaintiff, the United States of America against the Defendant Philip E. Roberts. The Defendant has been indicted for willfully failing to make income tax returns for the years 1993 and 1994. The burden will be on the Government to prove his guilt beyond a reasonable doubt. Does anyone have any knowledge of this case at this point? And if it is necessary for you to answer or stand, Mrs. Porter hopefully will have a portable microphone. We will need your name first. And then we'll need to address you further. Anyone have any knowledge of this case at this point? (No response.) The Government is represented by David Blackorby and Michael Yurkanin. Would you both stand, please? Mr. Blackorby is from Ft. Smith. Mr. Yurkanin is from Washington, DC. Does anyone know either of them personally or have any social contacts with them whatsoever?

THE COURT: Yes, ma'am?

A Janice Martin.

THE COURT: Mrs. Martin?

A I'm not positive, but I believe Mr. Blackorby may have been a soccer coach when my son was playing soccer, and I just recognized his face.

THE COURT: How long ago was that, Mrs. Martin?

A It's been several years.

THE COURT: I won't ask you what kind of coach --

A Thank you.

THE COURT: Do you think, Mrs. Martin, the fact that he coached your son several years ago would have any influence on the way that you feel about this case?

A No, Your Honor, I think that's separate.

THE COURT: You believe you could give Dr. Roberts a fair and impartial trial in spite of the fact that Mr. Blackorby may have coached your son in soccer years ago?

A Yes, sir, I believe I could.

THE COURT: Fine. Thank you very much. Anyone else? The U.S. Attorney is P. K. Holmes. I think he would like nothing better for me to bring him up and introduce him to you. But anyone know Mr. Holmes with the U. S. Attorney's Office. Yes. We have several over here.

A Lee Housewirth and when P K was in private practice he represented Muller Oil and Gas. As an employee of Muller Oil and Gas I worked with P K quite closely.

THE COURT: Okay. And your Lee Housewirth?

A Yes, sir.

THE COURT: Would that fact -- you know how long ago was that, Mr. Housewirth?

A Five, five to ten years. I'm not sure now.

THE COURT: Would the fact that Mr. Holmes represented the company that you're employed by five to ten years ago, would that cause you to favor the Government over the Defendant in this matter?

A No, sir.

THE COURT: You believe you could give Dr. Roberts a fair and impartial trial.

A Yes, sir.

THE COURT: Thank you very much. Mr. Housewirth.

A My name is Larry Lowder.

THE COURT: Mr. Lowder?

A I'm attend church with Mr. Holmes, known him for about six, seven years, I guess.

THE COURT: You attend church is that what you do.

A Yes, sir.

THE COURT: Do you -- are you with him socially other than at church.

A No.

THE COURT: You dine at their home or they dine in yours?

A I've dined at his home once several years ago.

THE COURT: And how long ago was that?

A I'd say about five years ago.

THE COURT: Would that fact make any difference to you in this case and would you be more prone to favor the Government over Dr. Roberts?

A No, sir.

THE COURT: Would it cause you some embarrassment in church, would you have any difficulty facing Mr. Holmes if you returned a verdict in favor of Dr. Roberts?

A No.

THE COURT: Fine. Thank you very much.

A Gail Chamberlin, and P. K. Holmes is a member of my church, and our son dined at his house probably about three weeks ago.

THE COURT: And Miss Chamberlin?

A Chamberlin.

THE COURT: Chamberlin, Miss Gail Chamberlin?

A Uh-huh.

THE COURT: Would that relationship with Mr. Holmes cause you to favor the Government over the Defendant in this matter?

A No.

THE COURT: And would you have any problems if you should meet Mr. Holmes socially or in church after you returned a verdict in favor of Dr. Roberts, would that cause any difficulty at all?

A No, sir.

THE COURT: You believe you could give Dr. Roberts a fair and impartial trial hearing in this matter?

A Yes.

THE COURT: Fine. Thank you very much.

A Janice Martin.

THE COURT: Mrs. Martin, he wasn't your son's soccer coach?

A No. I was his son's den leader and, and I was also -- I forgot the term. I was also a cub leader for his son when he was a bear cub and through Weblos and his wife was my assistant.

THE COURT: Mrs. Martin, how long ago was that? (Pause) Approximate?

A About six years.

THE COURT: Yeah. Would that cause you to favor the Government over the defense in this matter?

A No, I don't think so.

THE COURT: Okay. You believe you could be fair and impartial and you could give Dr. Roberts a fair hearing in this matter despite the fact that you are acquainted with Mr. Holmes?

A Yes, Your Honor, I think I could.

THE COURT: Fine. Thank you very much. Anyone else?

A Norman Lovett.

THE COURT: Mr. Lovett?

A P K and I attend the same church.

THE COURT: Must be a big church. Mr. Lovett, do you have any relationship or any connection with Mr. Holmes other than church attendance?

A I do not.

THE COURT: You believe that that would cause you to favor the Government over the defense in this matter?

A No, sir, I don't believe so.

THE COURT: You think it would cause you any problem in sitting on the same pew next time you're in church with Mr. Holmes, if you ruled against the Government in this matter.

A No, I don't.

THE COURT: Fine. Thank you, sir. Anyone else? (No response.) The Government representative in this matter is Tom Bryan. Mr. Bryan, would you stand, please, and Mr. Bryan is, Mr. Blackorby, with the Internal Revenue Service here in Ft. Smith?

MR. BLACKORBY: That's correct, Your Honor.

THE COURT: Fine. Anyone know Mr. Bryan? (No response.) Fine. Thank you very much. Dr. Roberts is seated at counsel table with Mr. Stilley. Dr. Roberts has been a chiropractor in Ft. Smith for a number years. Let me first of all ask you if anyone's be treated by Dr. Roberts or any of his partners? (No response.) Do you or anyone in your family know Dr. Roberts or any member of his family personally? (Hands displayed.) Fine.

A Lee Housewirth.

THE COURT: Mr. Housewirth?

A My wife Beverly had been a patient of Dr. Roberts probably three, four years ago.

THE COURT: Okay. Mr. Housewirth, would that fact that Dr. Roberts treated your wife, would that cause you to favor Dr. Roberts over the Government in this matter?

A No, sir.

THE COURT: You believe, you believe you could give the Government a fair and impartial hearing, in spite of the fact that your wife sought and received chiropractor treatment from Dr. Roberts.

A No, sir.

THE COURT: Fine. Thank you, Mr. Housewirth.

A Linda May.

THE COURT: Miss May.

A I'm a retired English teacher from Van Buren High School and I do not recall whether I taught Dr. Roberts or not. I know I taught members of his family.

THE COURT: Okay.

A Not to say that he wouldn't have distinguished himself if I -- I'm sure I would have remembered him. I've taught too many people to remember them all.

THE COURT: Ms. May, you have my utmost respect for what you have done. I told someone at the time I'm only intimidated by English teachers. I grew up in Northern Louisiana. My aunt was an English teacher. I used to tell everybody that she's Chairman of the

Northern Louisiana Grammar Patrol. If you were to dangle a participle in her presence would mean failure. Do you think the fact you may have taught Dr. Roberts at some time or you may have had some of his family as students, do you think that would cause you to favor Dr. Roberts over the Government in this matter?

A No.

THE COURT: You think you could give both sides a fair and impartial trial?

A Yes.

THE COURT: Fine. Thank you, Mrs. May. And, again, we appreciate what you've done. There's one over on the right.

A Yes. Skip Steele. I know the doctor over here and I have known him for several years. My daughter has had some treatments from him a few years back. So I probably --

THE COURT: Let me ask you this: Do you think that would cause you to favor him over the Government in this matter, Mr. Steele?

A Well, I've known him for quite a few years. It probably wouldn't be prudent.

THE COURT: It wouldn't be prudent to serve.

A Yes.

THE COURT: Fine. I'm going to excuse you and thank you. Thank you very much, Mr. Steele.

A You're welcome.

THE COURT: Miss Porter, will he receive a letter?

MS. PORTER: By mail.

THE COURT: You'll be notified by mail on when to report next. Fine. You may leave. Thank you very much. Anyone else?

A Ann Akins.

THE COURT: Yes, ma'am, Mrs. Akins.

A My daughter has been a patient of his recently.

THE COURT: Mrs. Akins, do you believe the fact that he was a patient recently would cause you to favor Dr. Roberts over the Government in this matter?

A No, sir.

THE COURT: You believe you could give both sides then a fair hearing?

A (Juror moves head up and down.)

THE COURT: Is your daughter through with that treatment or is it ongoing?

A She's not being treated right now, but her problem still exists.

THE COURT: Okay. How long ago was she treated by Dr. Roberts, Miss Akin?

A A couple months.

THE COURT: But you believe that that fact alone -- what would -- would it cause you any problems if you had to go back in and see Dr. Roberts, the fact that, you know, you ruled for the Government and against him in this matter, is that going to place you in any embarrassing sort of situation or predicament.

A I don't believe so. My daughter is older and could go on her own.

THE COURT: Well, it's just good for mothers to go with daughters, though, regardless of how old they are. Fine. Thank you very much. Anyone else? Yeah. There's one in front, too. Both sides, I think, Miss Porter.

A Stacy Hess. And Phil and I were teenage acquaintances, so it's been some 20 odd years. He probably doesn't even remember me.

THE COURT: Okay, Miss Hess, do you think the fact -- have you seen him since?

A No, no, I have not had personal contact with him.

THE COURT: Would that cause you any problems in serving on this jury the fact that you all went to high school together?

A No, sir.

THE COURT: If you had to rule against Dr. Roberts, would that cause any problem or any difficulties?

A (Juror moves head from side to side.)

THE COURT: Could you give both sides a fair and impartial hearing?

A Yes, I could.

THE COURT: Fine. Thank you, Miss Hess. I think there was another one in front. Is there anyone else? (No response.)

THE COURT: I need to see Mr. Stilley. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH AND OUT OF THE HEARING OF THE PROSPECTIVE JURY:

THE COURT: I'm going to identify you, but is Mr. Barringer going to be here?

MR. BLACKORBY: Yeah, he will be here. He's sick.

THE COURT: He's sick?

MR. STILLEY: Yeah, got sick.

THE COURT: Okay. All right.

MR. STILLEY: He's going to be here.

THE COURT: But he will be? I need to tell jury.

MR. STILLEY: I do have a question. There's a lot people that don't show up on the list. I don't know why.

THE COURT: Really we can address that when the jury's out of the room, but I think we have probably got, we've got pretty good attendance, don't we?

MS. PORTER: I think so.

THE COURT: Probably 70 out of 80 or 85 or something.

MR. STILLEY: Fine. Do you have the information on the other ones so that I can get that?

MS. PORTER: Why they didn't attend?

MR. STILLEY: No, no, no, why they're not on the list. See, if they're not on this list, I don't know what their occupation is. I don't know, I don't know any of that information, and that's what I'm wanting to get.

MS. PORTER: Who's not on your list?

MR. STILLEY: There's several of them. Just a minute. Let me get the list. Maybe I got the wrong one.

THE COURT: Well, let me finish this, but, you can -- you know, you can work -- we'll take a break before we do the strikes.

MR. STILLEY: Okay, fine. (THE FOLLOWING PROCEEDINGS WERE WITHIN THE HEARING OF THE JURY:)

THE COURT: The Defendant in this matter is represented by attorneys Oscar Stilley and Jerry Barringer. Mr. Barringer I've been advised by Mr. Stilley is unfortunately having some health problems. Where is he from, Mr. Stilley?

MR. STILLEY: He's from Illinois.

THE COURT: Well, does he have a town in Chicago, or Illinois?

MR. STILLEY: I think it's Champaign, is that right?

THE COURT: Let me ask you that one. Does anyone know Mr. Jerry Barringer from Illinois? He's one of Dr. Roberts attorneys.

(No response.) Dr. Roberts is also represented by Oscar Stilley. Does anyone know Mr. Stilley personally? Yes.

A Lee Housewirth. And --

THE COURT: Mr. Housewirth, we need to give you a prize. You have answered the most questions. Go ahead. I'm sorry.

A Mr. Stilley has an office down the hall from my wife and I know him on a casual basis.

THE COURT: Is your relationship such that you believe that if you serve on this jury, Mr. Housewirth, that you would favor Dr. Roberts because he's represented by Mr. Stilley over the Government in this matter?

A No, sir.

THE COURT: You believe you could give both parties then a fair and impartial hearing?

A Certainly.

THE COURT: Fine. Anyone else either been represented by or friends with Mr. Stilley? (No response.) Any member of your family friends or closely connected or allied with Mr. Stilley? (No response.) Do you belong to any group or organization that may have been either represented by Mr. Stilley or sued by Mr. Stilley? (No response.) Does anyone have feelings because of Mr. Stilley's representation of certain groups that would cause you to not be fair and impartial both to Dr. Roberts and the Government in this matter? (No response.) As jurors it is your sworn duty to follow the law as stated in the instructions I'm going to give you at the beginning of the trial and at the end of the trial. And you're to follow those whether you agree with the law or not. Knowing this, does anyone feel that they could not for whatever reason or would not follow my instructions on what the law is? (No response.) I'm going to read the witness list in this matter. This will be the witness list on both the Government and Dr. Roberts. If you know any witness, as I reach that name, would you raise a hand or something so we can ask, inquire about that witness? You have met Mr. Bryan, Tom Bryan, and I think you told me that you knew him. Robert Dean, D E A N; apparently he's with the Austin Service Center. Brian Miller, M I L L E R; Jefferee (Franklin) Bolen; Clisdol Ruffin, C L I S D O L, Ruffin, R U F F I N. Yes, sir?

A Gary Mullen. Mr. Ruffin is my tax preparer.

THE COURT: Mr. Mullen, is it Miss or Misses -- is it Miss or Mr. Clisdol?

A Clisdol.

MR. BLACKORBY: It's a mister.

THE COURT: Would you not tell him that I asked? I may have to get him to do my tax stuff. The fact that he does -- does he do your returns every year?

A Every year.

THE COURT: If he testifies in this matter, would you tend to give his testimony more credibility say than another witness?

A No, sir.

THE COURT: Would you be more prone to believe what he said than what someone else said?

A No, sir.

THE COURT: Could you be impartial to both sides despite the fact that Mr. Ruffin may testify?

A (Juror moves head up and down.)

THE COURT: Fine. Thank you. Thank you very much, Mr. Mullen.

A Yes. I'm also acquainted with Jefferee.

THE COURT: Yes, ma'am, and --

A Stacy Hess. I'm sorry.

THE COURT: Yes, ma'am, Miss Hess. Does he do your taxes, too?

A Jefferee Bolen.

THE COURT: Beg your pardon?

A Jefferee Bolen, Jefferee.

THE COURT: Yeah, Jefferee (Franklin) B O L E N.

A Yeah. We're high school acquaintances also and I haven't spoken with her for some 29 years here.

THE COURT: Okay. Do you think that that fact would cause you to favor whatever side called her or would you be more prone to believe her testimony than the other witnesses?

A No, I don't think so.

THE COURT: Okay. Thank you very much. Jefferee Bolen is a female?

A Yes.

THE COURT: Anyone else? Pam Wallace, apparently City National Bank; Amy Yates, Superior. Yes, ma'am?

A Diane McCoubrey. I work for Superior Federal Bank and I do the research for Amy.

THE COURT: You work with her, Miss McCoubrey, every day?

A Yes, sir.

THE COURT: Miss McCoubrey, were you on my jury last week?

A Yes, sir.

THE COURT: I thought you were. Miss McCoubrey, I told the jury last week that I'd give them the benefit of the doubt and I'm going to give you the benefit of the doubt and excuse you. Thank you. Thank you very much. You'll be notified, Miss McCoubrey, by mail on when to report again. Thank you very much.

A Charlotte Watford. And I know Amy Yates.

THE COURT: You know Miss Wallace?

A Amy Yates.

THE COURT: Oh, you know Amy Yates. And how do you know Miss Yates?

A Well, we play tennis together.

THE COURT: Would you -- how often do you play tennis together?

A Oh, on occasion; not on a regular basis.

THE COURT: You have to tell the judge everything.

A Oh, maybe every two months, you know. I sub in on a court that she plays in on occasion.

THE COURT: Let me ask you this: Would it cause you any problems in future tennis games or any relationship with Miss Yates if she should testify and you should rule against her or what you thought, what you thought her testimony was?

A I don't think so.

THE COURT: Okay. Fine. Thank you very much. Is there someone else? I think there's one next to her, too.

A Linda May.

THE COURT: Miss May?

A She was a student of mine, Amy Yates.

THE COURT: Is she presently a student?

A No.

THE COURT: How long -- well -- Miss May, how long was she a student?

A I really don't recall.

THE COURT: Would that cause you any problem if she testified and you had to go the other direction than her?

A No.

THE COURT: All right. Fine, ma'am. Thank you very much. Miss Porter, I think there's one over on this side.

A Daniel McBrayer. I know Amy Yates. I went to school with her.

THE COURT: And you had, Mr. McBrayer, any contact with her in recent years?

A Yes. At the Athletic Club tennis courts.

Q Would that cause you any problem if she should testify and you should either not believe what she said?

A No problem.

THE COURT: Would you be more prone to believe her than you would say some other witnesses?

A Yeah.

THE COURT: Does she beat you playing tennis?

A No. I've never played with her, but --

THE COURT: Okay. Anyone else? Fine. Nora Rijos, and I'm hoping I'm pronouncing that correctly. N O R A, R I J O S. Jay Davidson? Bob -- yes.

A I believe I know Jay Davidson.

THE COURT: What was your name again?

A Larry Lowder.

THE COURT: Yeah, Larry. Would you again, Mr. Lowder, you believe that would cause you any problems in your church relations that if you -- was it Mr. Bookout or Mr. Davidson, you knew?

A Davidson.

THE COURT: Davidson, that would cause you any problems?

A No, sir.

THE COURT: And would you be more prone to believe his testimony than anyone else in this matter. And would you be able to consider all the testimony in arriving at a verdict?

A I can consider all the testimony; yes.

THE COURT: All right. Fine. Thank you very much. We have one, Holly, one back over here, please.

A Gail Chamberlin, and Jay Davidson is a member of my church I'm probably more familiar with his wife than him.

THE COURT: Do you believe that would cause you to favor whatever testimony he gives than you would the other?

A No, sir.

THE COURT: Would you be able to analyze and compare all the testimony before you made up your decision?

A Yes.

THE COURT: Could you give both sides a fair and impartial hearing?

A Yes.

THE COURT: Thank you very much. Anyone else? James Johnson, who apparently is with some insurance company? That's a pretty common name, James Johnson. (No response.) Bill McRae, M C R A E? (No response.) Dominick Furfari, F U R F A R I? (No response.) Martha Campbell? (No response.) Dannette King, K I N G? (No response.) Laura Sampson? (No response.) Kelly Stinson? (No response.) Lee -- it may be Leah, L E A H, Birch, B I R C H? (No response.) Danny Greenfield. (No response.) Dan Hasty. (No response.) Charles Leflar? (No response.) Has anyone read any newspaper account or heard any radio or television account concerning this case? I don't need you to tell me what you heard. I just need to know, first of all, did you hear?

A Kathy Sosa, and I read the paper Saturday with the representation that you made.

THE COURT: Miss Sosa, in spite of the fact that you read Saturday's paper, did that -- anything about that that would cause you to favor one side over the other?

A No, sir.

THE COURT: And could you disregard that newspaper account in arriving at a fair and impartial verdict in this matter?

A To be truthful, when I seen your name --

THE COURT: Miss Sosa? You want to come up with me? I need you to come up here for a second. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Guys, I also sort of wore Miss Sosa out last week, too. So Miss Sosa, tell me about the newspaper account.

A (Juror Sosa) Well, when I saw your name, I guess my jury just went -- and I kind of just -- I didn't really go over it, didn't read it.

THE COURT: Oh, good. You remember the admonition then about not reading anything in that previous case. Well, I appreciate that. Is there anything about that newspaper article that you can recall that would cause you to favor either Dr. Roberts or the Government in this matter?

A No.

THE COURT: You think you could be fair and impartial to both sides?

A Yes.

THE COURT: Miss Sosa, I've lost one of the eight jurors from last week and, again, you know, if we have enough jurors, I'll sure entertain the thought of cutting you guys loose, because I need to tell the attorneys that -- we're having a barside conference -- that they did not make minimum wage last week. We put in some long, hard hours. Thank you very much, Miss Sosa. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Anyone else?

A Gail Chamberlin. And I also read it in the newspaper.

THE COURT: Okay. Miss Chamberlin, is there anything about that article that causes you to, to favor either the Government or Dr. Roberts in this matter? Do you believe you could be fair and impartial.

A I think so. It would be interesting to see what --

THE COURT: Okay. All right. It was an interesting article, but do you think you would be able, Miss Chamberlin, to set it aside and only reach a verdict in this case after you've heard the evidence that's actually presented in this courtroom and disregard anything else you've heard outside? You think you could do that?

A I think so.

THE COURT: Fine. Thank you. Miss Chamberlin.

A Janice Martin. I read the article.

THE COURT: Okay. Mrs. Martin, would you be able to set aside anything that the article may have said or any inference it may have had and render a verdict just on what you've seen and heard in this courtroom?

A Yes, sir. I think I could.

THE COURT: You would not be influenced by what you read in the paper?

A No.

THE COURT: All right. Thank you very much.

A Janice Pennington.

THE COURT: Yes, ma'am, Miss Pennington?

A I also read the article.

THE COURT: Miss Pennington, do you believe that you could set aside any thoughts or opinions you may have had after reading that article and return a verdict in this case just based on the evidence testimony that you hear in this courtroom?

A Yes.

THE COURT: So you would not be influenced by what you read in the paper or what the paper said or whatever?

A Yes sir.

THE COURT: Fine. Thank you very much. Anyone else read or seen or heard any television or radio newspaper? Yes, ma'am.

A Nola Titsworth, and I read the same article.

THE COURT: Miss Titsworth, I'm going to ask you the same questions. Would you be willing to set aside any opinion that you may have had after reading the article and just render a verdict in this case depending upon the evidence that you hear and the testimony that you hear?

A I think I can.

THE COURT: Okay. Fine. All right. Anyone else? (No response.)

THE COURT: Dr. Roberts has been charged by an Indictment of willful failing to make income tax returns for the years 93 and 94. The Indictment is only the means of presenting the charge and is not evidence of any guilt. Are there any jurors present who believe that a person has committed the offense for which he's been charged simply because an Indictment was returned by the grand jury? (No response.) We did have a lengthy civil trial last week, but it was a civil trial and the evidence standard was preponderance of the evidence. You'll remember that. This is not a civil trial. This is a criminal case. And the Government has the burden of proving the Defendant's guilt beyond a reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in accordance with his or her own affairs. Does anyone believe that the Government should not have to prove its case against Dr. Roberts beyond a reasonable doubt? You believe you can follow my instructions in that regard? Does anyone believe that the Government should have to prove the Defendant's guilt beyond all possible doubt? And would you follow the Court's instructions in that regard? Does anyone have a problem in returning either a guilty verdict or not or a not guilty verdict depending upon whether the Government met the burden of proof, this burden of proof of proving his guilt beyond a reasonable doubt? Is anyone including a spouse or close family member employed by the Federal Government either actively or retired. Yes, ma'am?

A Ann Akins. My husband is in the military.

THE COURT: Mrs. Akins, what service is he in?

A National Guard.

THE COURT: National Guard. Army or Air Force?

A Army.

THE COURT: Mrs. Akins, do you think that would cause you to favor the Government over the defense in this matter?

A No.

THE COURT: Because your husband is in the National Guard --

A No.

THE COURT: -- you believe you could give Dr. Roberts a fair and impartial hearing?

A Yes.

THE COURT: And you would not be prone to favor the Government?

A No.

THE COURT: Fine. Thank you very much. Yes, sir?

A Bertie Hinkle and my husband's retired from the Air National Guard.

THE COURT: I'll ask you the same question, Miss Hinkle, would that cause you to favor or favor the Government over Dr. Roberts in this matter?

A No, sir.

THE COURT: You believe you could give Dr. Roberts a fair and impartial hearing.

A Yes, sir.

THE COURT: Fine. Thank you very much.

A Janet Robbins.

THE COURT: Miss Robbins.

A I have two stepchildren that are in the military. One's in the Air Force and one's in the Marines.

THE COURT: Would you spell your -- is it R O B B --

A Yes.

THE COURT: -- I-N-S?

A Yes.

THE COURT: Are you sometimes known as Janet?

A Janet.

THE COURT: All right. Janet. All right. Would that fact that you've got two stepchildren in the service tend to make you favor either the -- favor the Government over the defense in this matter?

A No.

THE COURT: You believe you could give Dr. Roberts a fair and impartial trial?

A Yes.

THE COURT: Fine. Thank you very much.

A Michael Burden.

THE COURT: Mr. Burden.

A I was in the National Guard and my wife works full time for the National Guard, Air National Guard.

THE COURT: What was your last name again?

A Burden.

THE COURT: I've got it. Mr. Burden, do you think that that fact would cause you to favor the Government over Dr. Roberts in this matter?

A No, sir.

THE COURT: Fine. Thank you very much. Yes, sir.

A Jerome Carroll.

THE COURT: Mr. Carroll.

A Navy retiree.

THE COURT: Would that cause you, Mr. Carroll, to favor the Government over Dr. Roberts in this matter?

A No.

THE COURT: You believe you could be fair and impartial and give Dr. Roberts a fair hearing in this matter?

A Yes.

A Marcy Bell. My dad served 20 years in the army.

THE COURT: He also was in addition an English teacher. He also has our appreciation. Would that fact, the fact that he served 20 years, would that cause you to favor the Government over the defense in this matter?

A No.

THE COURT: Fine. Thank you very much.

A John Shorb, army retiree. It wouldn't affect me one-way or the other.

THE COURT: Fine. Sir, would that cause you because are you a retiree, would that cause you to favor the Government over the defense in this matter?

A No.

THE COURT: You believe you could give Dr. Roberts a fair and impartial hearing, trial in this matter?

A Yes.

THE COURT: Fine. Thank you very much.

A I'm Rex Harvell. I'm retired from the military and also from Federal Civil Service, and the wife is also retired from Civil Service.

THE COURT: Do you think that fact would cause you to favor the Government over the defense in this matter?

A No, sir.

THE COURT: You believe you could give Dr. Roberts a fair and impartial hearing in spite of the fact that you and your wife are both retired from Civil Service?

A I'm sorry. I didn't --

THE COURT: Do you think you could give Dr. Roberts a fair and impartial hearing --

A Yes.

THE COURT: -- and trial in this matter --

A Yes.

THE COURT: -- in spite of the fact that both you and your wife are retired Civil Service?

A Yes.

THE COURT: Fine. Thank you very much.

A Larry Lowder.

THE COURT: Mr. Lowder.

A My father's a Federal retiree.

THE COURT: Would that cause you to favor the Government over the defense in this matter, Mr. Lowder?

A No, sir.

THE COURT: Thank you very much. Yes, ma'am?

A I'm Joy Wiley. My sons served, one, 10 years in the Navy and, one, 10 years in the National Guard, and my daughter was in boot camp in the Army, but she got a medical leave.

THE COURT: Mrs. Wiley, do you think that because you've had two children in the service would cause you to favor the Government over the defense in this matter?

A No, Your Honor.

THE COURT: You believe you could be able to give Dr. Roberts a fair and impartial hearing and trial based upon the evidence that is presented in court?

A Yes, Your Honor.

THE COURT: Fine. Thank you.

A Tracy Verkamp and my father is also retired from the Navy and I have a brother-in-law that works for the FAA.

THE COURT: Mrs. Verkamp, do you think that would cause you to favor the Government over the defense in this matter?

A No, sir.

THE COURT: You likewise believe you could give Dr. Roberts a fair and impartial trial and base it just on the evidence that's presented in this courtroom?

A Yes, sir.

A Susan Brown.

THE COURT: Miss Brown?

A My father's a military officer retiree and also 20 years with the Civil Service, and my brother works for the Army Corps of Engineers.

THE COURT: Fine. Miss Brown, do you think that both of those would cause you to favor the Government over the defense in this matter?

A No.

THE COURT: And you believe you could give Dr. Roberts a fair and impartial hearing and trial in this matter?

A Yes.

THE COURT: Thank you, Mrs. Brown.

A Norman Lovett.

THE COURT: Yes, sir, Mr. Lovett.

A And I'm retired from the Air National Guard.

THE COURT: Mr. Lovett, would that cause you to favor the Government over the defense in this matter?

A No, sir.

THE COURT: You believe you could give Dr. Roberts a fair and impartial trial?

A I believe I could.

THE COURT: Anyone else? (No response.) Are any of you, your spouse or close family members employed in law enforcement in any way? (No response.) Have any of you participated in a criminal proceeding in any way, whether state or federal? Yes, ma'am.

A Vicki Fenwick. I'm a State Probation/Parole Officer. I'm a special law enforcement officer.

THE COURT: Miss Fenwick, do you believe that that association that you have with your employer would cause you to favor the Government over the defense in this matter?

A No, sir.

THE COURT: Do you believe you could give Dr. Roberts a fair and impartial trial?

A Yes, sir.

THE COURT: Fine. Thank you. Miss Fenwick. I'm surprised, Miss Fenwick, is speaking to me. She was on the jury last week and lives in Mena, and had by far the farthest to go, so I think she left home every day before sun-up and got back down before sundown, but we are appreciative of it, Mrs. Fenwick. Is there anyone else? (No response.) Have any of you or your family members had dealings with the United States Government or a Government agency from which you and your family might profit other than the employment and retirement from employment you've told me about? Anybody ever had a Government contract or ever had one that you've not told us about that would tend to make you favor

the Government over Dr. Roberts in this matter? Let me ask this: Has anyone ever had a dispute with the Government? Any controversies that may have ended in litigation or threatened litigation or anything of that sort? (No response.) Have any jurors or family members of jurors or close friends or social associates held a personal belief or conviction that the United States should not investigate or audit taxpayers to determine whether a taxpayer has complied with the Internal Revenue Service laws and paid the correct amount of Federal income tax? Does any juror hold any views regarding the Federal Government, Federal spending or the Federal Income Tax System or the Internal Revenue Service that might interfere with your ability to serve as an impartial juror in a case involving alleged income tax violations? Have any -- have any of you either had a return audited or been the subject of tax collection activities by the Internal Revenue Service. (Hands displayed.)

THE COURT: Fine. And I --

A Janet Robbins.

THE COURT: Yeah, Miss Robbins, if you'll come up, too, we'll ask the attorneys to come up. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH OUT OF THE HEARING OF THE JURY:)

THE COURT: Yes, Miss Robbins?

A (Juror Robbins) My husband and I were audited I think two years in a row. I don't think we were audited this last year.

THE COURT: Okay. Is there anything about that audit that would cause you any problem or cause you to favor either Dr. Roberts or the Government?

A Just the irritation of having to find everything.

THE COURT: I understand. Okay. But you have no, you have no bitterness or hostility towards the Government or anything because of that audit?

A No.

THE COURT: Fine. Fine. Fine. And that wouldn't cause you to favor either the Government or Dr. Roberts in this matter?

A No.

THE COURT: Fine. That's fine. Thank you very much.

THE COURT: Yes, sir? What's your name, sir?

A (Juror Carroll) Jerome Carroll.

THE COURT: Yeah, Jerome.

A I was audited.

THE COURT: Jerome, anything about that audit that caused any problems or --

A No.

THE COURT: -- make you have any hostility or bad feelings towards the Government?

A No.

THE COURT: Fine. You think you could be fair and impartial to both the Government and Dr. Roberts?

A Yes.

THE COURT: Fine. Thank you very much. (Pause) Yes, ma'am? What's your name please, ma'am?

A (Juror Wiley) JoAnn Wiley.

THE COURT: Yes, ma'am, Miss Wiley?

A My husband was audited around 1967 or 68. An employee said he didn't pay him enough money, but that was taken care of, so...

THE COURT: Was there anything about that audit that many years ago, Miss Wiley, that would cause you to favor either the Government or Dr. Roberts in this matter?

A No, Your Honor.

THE COURT: No bitterness or hostility left over --

A No.

THE COURT: -- towards either side?

A No.

THE COURT: Fine. Thank you, Mrs. Wiley. (Pause) Yes, sir?

A (Juror Scott) Andrew Scott.

THE COURT: Yes, sir?

A I owe back takes for 97, 98, and some of 99.

MS. PORTER: What is your name?

THE COURT: Andrew Scott.

A I had filed with H & R Block.

THE COURT: Mr. Scott, is there anything about that, would that was cause you to favor the Government or Dr. Roberts in this matter?

A No, sir.

THE COURT: Was it -- I know it was not especially pleasant --

A I know.

THE COURT: -- being audited or whatever, but do you have -- would you have any hostility towards the Government in this matter?

A No, sir.

THE COURT: Okay, sir. And would you -- you think you would be prone to favor Dr. Roberts as far as --

A No, sir.

THE COURT: You think you could give both sides a fair and impartial hearing and trial in this matter --

A I believe so.

THE COURT: -- and just base it on the law and evidence? Fine. That's good. Thank you, sir.

A Thank you. (Pause)

THE COURT: Yes, ma'am?

A (Juror Kupers) Sylvia Kupers.

THE COURT: Yes, ma'am, Mrs. Kupers?

A Okay. We were audited 30 years ago because of my husband's ex-wife on account of two children.

THE COURT: And is it Copenhaver?

A Kupers. It's K U P E R S, Sylvia.

MS. PORTER: K U P E R S.

A Sylvia.

THE COURT: Okay. Okay. Yeah, okay. Mrs. Kupers, anything about that that would cause you to --

A No. We now have an income tax service do it, an income tax service.

THE COURT: Okay, fine. That wouldn't cause you to favor either the Government or Dr. Roberts?

A No.

THE COURT: Okay. Fine. Fine. Thank you very much.

MS. PORTER: Dave brought to my attention one juror had to go to the bathroom. She's out of the room for a minute. Dave, the Marshal?

THE COURT: Okay. Did she hear the last question?

MR. JOHNSTON: Yes, sir.

THE COURT: Okay. So we just shouldn't ask for another question till she gets back in. You may want to help her back in. Is she here? Okay. Let the record reflect she is now back in the room. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Do any of you have any fear or apprehension whatsoever that you might be subjected to retaliation or punishment if you go against the Internal Revenue Service in this case against Dr. Roberts? (No response.) Is there any reason as we sit here today that you can think of why you couldn't be fair and impartial to both sides in this matter. I tell everybody what we're looking for is level playing field, but remember the playing field is not exactly level, because the Government has the burden of proving Dr. Roberts guilty beyond a reasonable doubt. Would anyone like to talk to me in private about why he or she couldn't possibly serve? I know there are several of you that have conflicts and I will address the conflicts on why you may not be able to serve the entire two or three days or four days in a minute, but is there any other reason that anyone would like to talk to me in private understanding that after you do, I may have to have the attorneys come listen in? (No response.) Fine. It looks like I think seven or eight people said that they were going to have difficulty perhaps in being here some of this week, either tomorrow, Thursday or Friday. I think I would like for you-all to come up now. If you wouldn't mind, just wait here and we'll -- Yeah, why don't we -- the attorneys also, Mr. Stilley, Mr. Blackorby, you-all can come. Yes, ma'am? (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH OUT OF THE HEARING OF THE JURY:)

A (Juror Swearingin) Cheryl Swearingin. I'm on jury duty in Franklin County Thursday and Friday.

THE COURT: Okay. Do you think, Miss Swearingin, that would really cause any problem if they knew you were here?

A I didn't know if they would. You know, if they knew I was here, probably not, but I had already asked to be excused from there and they wouldn't excuse me, but --

THE COURT: They wouldn't? Okay, Miss Swearingin, let me, let me do this: If you're on the 12 panel or two alternates, I assure you that we will call and, you know, if you are otherwise selected.

MR. BLACKORBY: What was the problem, Judge?

THE COURT: Her problem was she's on jury duty in Franklin County.

MR. BLACKORBY: Oh!

THE COURT: Apparently there's another state court proceeding this week, too. We apparently have hit the week when everybody is in court. But if you are selected, I assure you we will call and I will --

A As long as I don't get in trouble down there.

THE COURT: Well, I'll square it with Judge Patterson or whatever. Any problem with that? Any problem? Fine. Thank you very much. Thank, ma'am. You called yesterday and --

A Yes.

THE COURT: I appreciate how conscientious you are in this.

A I made arrangements, so...

THE COURT: Thank you very much. Yes, ma'am?

A (Juror Bell) Marcy Bell.

THE COURT: Yes, ma'am, Miss Bell?

A I have to have my husband at therapy three times a week. He fell on his head when he was an electrician.

THE COURT: Oh, my God.

A As a matter of fact, he done some of the wiring in this place.

THE COURT: Oh, please don't tell him that I said we were unhappy because there's only one plug, but...

A Well, he griped about that, too, when he was putting it up.

THE COURT: Listen, but did he work on my courtroom downstairs, do you know?

A Yeah.

THE COURT: Well, that's an excellent courtroom. Tell him he did a good job.

A Okay.

THE COURT: But there's no one else that can take him and you think --

A He can't drive, and his mom and dad don't have anything to do with us.

THE COURT: Well, and it's Marcy Bell?

A Yeah.

THE COURT: What do you all think? Do you-all have any problems with given that she obviously --

MR. STILLEY: Not at all.

THE COURT: Fine. I'll excuse you, Miss Bell.

A Thank you.

THE COURT: I would do this, though. If you would, just remain in the courtroom, you know, until the break on the thing, but I am excusing you. Thank you very much.

A Thank you.

THE COURT: Yes, ma'am?

A (Juror Akins) Ann Akins.

A Yes, ma'am, Miss Akins.

A I'm a Sears Portrait Studio Manager. We're extremely short staffed. The girl that was to work tomorrow was to work yesterday and did not come in, and I haven't been able to get hold of her, so I don't know if she's going to work tomorrow or not. If she is not there, I need to be there.

THE COURT: Okay. Well, I certainly understand. Any objection to any problem with excusing her?

MR. BLACKORBY: No.

MR. STILLEY: Not at all.

THE COURT: Fine. Thank you, Miss Akin. I will excuse you. You'll be notified by mail on when to report back, but if you would, just remain seated in the courtroom and then at the break you then can leave. Thank you very much. Yes, ma'am?

A (Juror Pennington) I'm Janice Pennington.

THE COURT: Yes, ma'am, Miss Pennington?

A I'm only in the state twice a month. I mean, I'm sorry, twice a year. And I'm supposed to leave tomorrow to go back to California to take care of my father.

THE COURT: Okay. Well, we're glad to have you and I wish we could get more of you California transplants back to Arkansas.

A Well, my home is in Arkansas, but my dad's 84 and I stay with him.

THE COURT: You already have plane reservations?

A Well, I'm going by vehicle to New Mexico.

THE COURT: That's fine. Any problem with excusing her?

MR. STILLEY: No.

MR. BLACKORBY: No.

THE COURT: Fine. You're excused.

MR. BLACKORBY: You want her to remain until the break, Judge?

THE COURT: If you will just remain seated until the break...

A Fine. Thank you.

THE COURT: Yes, sir?

A (Juror McBrayer) My name is Daniel McBrayer.

THE COURT: Yeah, Daniel?

A I've got a project that I am working on at work and I've got a deadline that I've got to meet, and I won't be able to meet that deadline if I serve on jury duty this week.

THE COURT: Okay. Well, we do need, if you're here, Mr. McBrayer, we would need your undivided attention and I think that may be disruptive. Any problems excusing him?

MR. STILLEY: Let him go.

MR. BLACKORBY: No.

THE COURT: Fine. I'm going to excuse you. I would ask, though, that you remain in the courtroom until after we take the break.

A Fine. Thank you.

THE COURT: You'll be notified by mail on when to come back.

A Thank you, sir.

THE COURT: Fine. Could we alert the Marshal, please? I'm sorry. Hey, Dorothy, how you doing?

A (Juror Stevenson) Well, mine's a little wimpy. I have 14 people coming to my house Friday.

MR. BLACKORBY: I'm sorry, ma'am. What's your name?

A Dorothy Stevenson.

THE COURT: Dorothy Stevenson. Okay. Miss Stevenson, this may be over by Friday.

A Okay.

THE COURT: Are they coming Friday morning or noon or --

A Well, they will be there Friday evening.

THE COURT: I think we'll be out of here by then, you know.

A You want to have Ann make me a cake or something?

THE COURT: Yeah, you-all would. And for the record, I was in Miss Stevenson's wedding and --

A Forty years ago this August. We're going to Alaska to celebrate it next month, which you-all were kind enough to excuse me for. I'm really not trying to shirk my civic duties.

THE COURT: No, but I think I'm going to leave you on the panel at least for the time being, but I assure you will be out of here by Friday night or Friday at noon.

A Okay.

MR. STILLEY: Judge, I do have a concern about that. I certainly wouldn't want to have anybody feel under pressure to make a decision quickly. And I think we've got plenty of people here, so if it's not objectionable to you, you know, I don't want to put somebody under pressure.

THE COURT: I'm going to excuse you, Miss Stevenson.

A Thank you, sir.

THE COURT: Fine.

A Appreciate it. Thank you.

THE COURT: Yes, sir?

A (Juror Gathright) William Gathright.

THE COURT: Yes, sir, William?

MR. BLACKORBY: What's you're last name? I'm sorry.

A Gathright.

THE COURT: Gathright, William Gathright.

A I'm attending an educational conference.

THE COURT: Where is it being held, Mr. Gathright?

A Hot Springs.

THE COURT: When is it being held?

A It started yesterday and it continues to Wednesday.

THE COURT: Mr. Gathright, it looks like I've got you as what the high school principal in Mena?

A And I have some strong feelings about an amendment that Mr. Stilley has initiated.

THE COURT: Well, Mr. Gathright, I'm going to excuse you with the thanks and appreciation of the Court for -- I'm not going to ask you which way you feel concerning Mr. Stilley's amendments, but I'm going to excuse you so you can go to the Hot Springs conference, but if you would remain seated, sir, until we take a break. Thank you. Yes, sir?

A (Juror Burden) Michael Burden.

THE COURT: Yeah, Mike?

A My wife is real pregnant. If she hasn't had it by Monday, she's supposed to have it by then, so if for some reason this drags into Monday...

THE COURT: Okay. Okay. Mr. Burden, I'm concerned about -- do you know do you there's a possibility she could deliver between now and Friday?

A I don't believe so. I'm not a doctor, so I don't know.

THE COURT: Okay. And you live in Alma?

A Yes, sir.

THE COURT: Okay. Mr. Burden, do you think you could really have your attention on this court, this case with your wife in that predicament, and we've all been there and understand. We haven't had the children, all but Miss Porter, but --

MS. PORTER: He was on your jury last week, too.

A Yeah. All right now, yeah, but if she starts getting feeling bad later on this week, I don't know. Right now I'm fine, but just if it drags into --

THE COURT: I'm inclined to excuse him. Do you-all have any problems with it?

MR. STILLEY: Let's excuse him. What's his name?

THE COURT: Burden, B U R D E N. Fine. Thank you very much. But if you would remain in the courtroom until we take the break...

A Yes, sir.

THE COURT: Thank you very much. You know, while the attorneys are here, are there other questions that you all want me to ask either on behalf of the Government or on behalf of the defense? I will say that I have -- your suggested voir dire lists have been made a part of the record or made a part of the record this morning. We made them what Court Exhibits 1 and 2, as I recall. Any other questions in addition to those that you desire that we ask, Mr. Blackorby?

MR. BLACKORBY: I was just looking, Your Honor. There was a few jurors that we didn't have any info on, but I didn't think they're, they're -- well, they're -- we have two here, Your Honor, and, Your Honor, Scott, Andrew Scott, and Donald Shepard we have no information on them, or even what town. I was wondering if we could get their employment and their spouses' employment.

MS. PORTER: I assume they just didn't fill it out. That's why we don't have it.

THE COURT: Andrew Scott and whose the other one?

MR. BLACKORBY: Shepard, Donald Shepard. Just --

THE COURT: Okay. Anything else?

MR. STILLEY: Yes. The gentleman that just came up here and asked said that he -- very thankfully he was honest about that he had some strong opinions about some initiatives that I have been pushing, and that has been -- I mean the paper has been saturated with this stuff, and I feel it's very important that we ask, and I think it --

THE COURT: The Court did -- I'm not sure exactly how it was phrased, but I did ask if anyone -- it was either had been represented or sued by you or whatever, and I think that's sufficient.

MR. STILLEY: Well, now, obviously it wasn't sufficient for him, because I'm sure you're satisfied he was not being dishonest, but he didn't respond to it, but he had a strong feeling, and I'm satisfied that strong feeling was about the property tax amendment which I spearheaded two years ago, and there's just two that I really think is important that we raise, and this is the property tax amendment. Just tell them that Oscar Stilley is pushing that, and also an amendment to abolish the sales tax on used cars.

THE COURT: I will ask them if they have any strong feelings, but I'm not -- I've already done that I thought.

MR. BLACKORBY: I believe the Court's covered that, Your Honor. I think it's improper to ask them specific --

THE COURT: I do, too. I'm not going to ask them about a specific deal, but I tell you what, I will do a generic deal on strong feelings one way or the other about issues. I'll handle that. Anything else?

MR. STILLEY: Well, can you make sure it's the property tax and the sales --

THE COURT: No. I am not going to mention a specific tax.

MR. STILLEY: Well, that would leave us with somebody that admittedly had strong feelings that if it hadn't of been for the fact that he was honest enough to come up here or that he needed to get off for another reason --

THE COURT: Okay. Any other questions you want to ask other than that?

MR. STILLEY: Well, unless we can even ask the basic question, I don't see how we can find out about the prejudice that's there.

THE COURT: Well, you know, we are not communicating, Mr. Stilley. I'm sure trying. Are there any other issues or questions you wanted to ask of this jury panel?

MR. STILLEY: Okay. Are you going to ask all the ones that I have in my --

THE COURT: No, I'm not to going ask any of -- I've asked some of them, but I'm saying you may consider the questions you posed and the manner you posed them to have not been asked and been considered by the Court. I've now reconsidered it and my ruling is the same. I'm not going to ask them. I'm now at the point I'm asking is there anything else you want to ask, in addition to what you've put on the list and what I've asked?

MR. STILLEY: Okay. Well, I can't think of any particular specific thing --

THE COURT: Okay.

MR. STILLEY: -- besides that, but I do want to find out what kind of question you're going to ask about those two issues.

THE COURT: About the two issues, I'm not going to ask any, Mr. Stilley. I mean are you hearing me?

MR. STILLEY: Well, but that's -- I mean there's no way --

THE COURT: I understand that. I'm letting you make your record that you are objecting about not asking that. Your record is totally covered, but I'm not asking that. The Court's not going to ask it.

MR. STILLEY: Judge, could you not even ask that without mentioning that it's Oscar Stilley that's doing it?

THE COURT: Mr. Stilley, I think we covered that.

MR. STILLEY: Well, if we covered that, this gentleman that just came up here didn't respond to the question, and I don't think we can just assume that he was dishonest.

THE COURT: I am willing to ask does anyone have any strong feelings about any issue in which you may have been involved that would cause them to not give Dr. Roberts a fair and impartial trial? Is that sufficient?

MR. STILLEY: No. I want it specified what I --

THE COURT: I'm not going to ask it then. I will ask that, if you want me to, but I'm not going to ask anything else other than that.

MR. STILLEY: Well, I want, I want to, I want a specific question about that.

THE COURT: Fine. I understand. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE (JURY:)

THE COURT: Mr. Blackorby, do you have any challenges for cause, sir?

MR. BLACKORBY: No, Your Honor.

THE COURT: Mr. Stilley, any challenges for cause?

MR. STILLEY: No.

THE COURT: Ladies and gentlemen of the jury. Holly, how many do we have left?

MS. PORTER: I need to count them.

THE COURT: I'm sorry. (Off the record briefly.) Let me see the attorneys again, briefly. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH OUTSIDE OF THE HEARING OF THE JURY:)

THE COURT: As we discussed before we got the jury in here, it was my thought that I would give the defense ten strikes, peremptory challenges, give the Government six, if we had a sufficient number of jurors on the panel. It appears that we do have those. Any objection to having other than, you know, the misdemeanors, you know, Mr. Stilley, calls for three and three, but I -- you know, I think we'll do the -- probably pull 28 names. You will have ten. He will have six. We will take the first 12. Following that, my proposal is to have two alternates. I propose that we re-draw, draw five names and out of that I will give you, Mr. Stilley, two strikes. I will give you, Mr. Blackorby, a strike, and then we will take the first two names. Any problem with that?

MR. BLACKORBY: No, Your Honor.

MR. STILLEY: Judge, can I have just a minute with my client to talk about the whether or not he wants to take the larger number of strikes?

THE COURT: Oh, sure, sure.

MR. STILLEY: Fine.

THE COURT: But, you know, I am perfectly willing to just give him three --

MR. STILLEY: Okay.

THE COURT: -- and the Government take three. Doesn't matter. I'll do it any way you want it done. Why don't you check with him and come right back, though, as soon as you can.

MR. STILLEY: All right. (Pause. Off the record briefly.) (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE (JURY:)

THE COURT: They're having a discussion, too. While they're doing that, let me give you a visual tour of the courtroom. Back to the right is Judge Parker. Back left is Judge Miller. Judge Miller was the judge who used to sit where I'm sitting now when I first started practicing law. He was a United States Senator from Searcy, was appointed to the Federal Bench by Franklin Roosevelt, served here at this bench for many years. Top left is John Rogers. Mr. Rogers was a Civil War Confederacy Captain from Mississippi, and when the war was over, walked back over a thousand miles to Mississippi. He then came to Ft. Smith, practiced law, was some sort of a circuit judge, state court judge, and served in the Congress. He was succeeded by Judge Parker. Judge Youmans is next to him. Back to Judge Rogers, any of you know Eleanor McCann, Bob McCann's widow? Eleanor is the granddaughter of Judge Rogers. The next is Judge Youmans. Mary Udouj is the granddaughter in Ft. Smith of Judge Youmans. Judge Heartsill Ragon is next. Some of you probably remember Heartsill Reagan's son, who was a fine lawyer here. Judge Lemley is next. And I think he was from Polk or someplace. I think his only connection with this courtroom is he got his picture on this. Oren Harris is next. Oren Harris was a member of Congress for a number years from Eldorado that tried a lot of cases here. Judge Paul X. Williams was from Booneville, a fine, fine state court judge and Federal judge for a long time. Judge Elisijane Roy was a law clerk here for Judge Williams and was appointed to the Supreme Court and then came -- was appointed to the Federal Bench. Judge Richard Arnold, now on the Eighth Circuit Court of Appeals, District Court Judge. Judge Howard. Judge Howard was appointed and he was a swing judge. He was both Eastern and Western, so but we -- we have him or had him a lot. He's still an active judge and he's now primarily based in Little Rock. Judge Frank Waters is next. Judge Waters took senior status two or three years ago. He's from Springdale, but he still comes here some. And Judge Buzz Arnold, who is first of all -- his brother was District Court Judge in this very courtroom and he was appointed to the Eighth Circuit Court of Appeals ten years ago. So some of the knowledge you get when you go through the jury selection process, you got a free history lesson, too, this morning. Mr. Stilley, have you all made a decision?

MR. STILLEY: Yes. If I may approach...

THE COURT: Yes, you may. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH AND OUTSIDE OF HEARING OF THE JURY:)

THE COURT: Yes, sir?

MR. STILLEY: We want three and three.

THE COURT: Okay. He's requesting three and three, and I don't have any problem with that, but I mean that's as long as that your -- you've discussed it with him.

MR. BLACKORBY: Yeah. That's fine, Your Honor.

THE COURT: But you discuss it with him and although we're willing to give you ten and since in this deal, you're willing -- you're requesting that we do just three and three.

MR. STILLEY: That's correct.

THE COURT: Okay. I guess on the alternate then, I think my proposal on the alternate is still good. Let's, let's, let's pick five, and I'm still going to give him two and I'll give you one, and then we will take the first two that have not been struck. Is that fair enough? Fine.

THE COURT: If my Louisiana math is correct, and sometimes it's not, we're going to call 18 names. We're going to -- No. 1 will be on this back right one through seven and then No. 8 will be on the bottom first chair. Eight through 14 and then I hate to ask the first row to move, but you-all may need to move in just a moment over to this side and then we'll have 15, 16, 17, and 18 on the front row. Then we'll have probably a short recess and then I think I will select a couple alternates because someone may get sick or I hope nothing happens to you, but emergencies do arise sometimes. So please give attention to Miss Porter as she calls 18 names.

MS. PORTER: Fred Ernest, Jackie Bangs, Elizabeth House, Tommy Furstenberg, Larry Lowder, Doris Maxwell, Janice Martin, Gail Chamberlin, Mary Cline, Forrest Hoeffer, Susan Wollenberg, Betty Organ, Reba Nagle, Rex Harvell, Sharon Minta, Joann Morse, Joe Melson, Randall Taylor.

MS. PORTER: That's 18.

THE COURT: We're going to be in recess for just a few moments. When we come back in, if you were not one of the 18 chosen, you still can't leave just yet, except those that I did excuse at the bench. You may leave. We're going to reconvene probably in a few moments. We will then probably select 12. Then we will need to go through a similar process on picking the two alternates. We'll be in recess and when you do come back, you can be seated in the courtroom again trying to get what is it the first five rows is that what we're doing, first four rows, if you would. We'll be in recess for probably 10 or 15 minutes. Thank you very much. (Off the record at this time.) (THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE OF THE HEARING AND PRESENCE OF THE JURY:)

THE COURT: Let the record reflect the jury is out of the room. It's 11:01. The attorneys were making their strikes. We have the Government's strikes and I understand you have a problem, Mr. Stilley?

MR. STILLEY: Yes, Your Honor. On behalf of Dr. Roberts, I did come and get the jury list. My jury list didn't have Fred Ernest, Elizabeth House or Tommy Furstenberg, and there are just a couple more at the end that I'm not sure whether they're on or not. And I object. On behalf of my client I object to these people being on the list since we didn't have advance notice and presumably the Government did have advance notice of these people.

THE COURT: I think Mrs. Porter said that I think that both sides got, both you and the Government got the same identical list this morning. The jurors, Mr. Stilley, and hopefully you will know this are from a six or seven-county area. The list is pretty fluid. People call in with different reasons on why they can't serve and whatever. But I -- this particular group, I think, Miss Porter, we have what 71 or two out of a total of 87 that showed for jury service? The Clerk's Office has instructed anybody that did call and had an excuse, they need to show up none the less, you know, let the Court and the attorneys hear why they're not here. Mr. Blackorby, have you had the list any longer than Mr. Stilley's had it?

MR. BLACKORBY: No. I got this list this morning, Your Honor.

THE COURT: That's usual, Mr. Stilley. Maybe they do it differently in other jurisdictions. I don't think so. The jury list isn't assembled and made final until this morning, so...

MR. STILLEY: Judge, I'm not complaining about additional people, I mean about a truncation of the list because somebody couldn't show up. What I'm complaining about is I came down here and got a list and it's not a complete list.

THE COURT: What do you mean not a complete list, Mr. Stilley? If you're going to make an objection, make it where I can understand it.

MR. STILLEY: Okay. Let me put it like this. On the list that I got, and it was dated -- well, it doesn't have a date on it, but I picked it up the 10th or the 15th of June, and on that list that it did not have an entry for the name Fred Ernest or for Elizabeth House or for Tony Furstenberg --

THE COURT: Well, some of those.

MR. STILLEY: -- at least.

THE COURT: Mr. Stilley, I don't know if you could have gotten the list yesterday or not, but there's a two-week time period or 12-day time period that the jurors do change. Some jurors call in and have got legitimate reasons to maybe miss the first week of trial, and then others say they can only be there the second week of trial, and the jury -- and the Clerk does have some discretion at that. We very seldom -- I don't think we've ever had all the same jurors appear in consecutive weeks. It's just not -- problems arise. If you have an objection and if you think you've stated it, we need to move on.

MR. STILLEY: Your Honor, that's the objection. What I want is three more people from the original list that I got, because...

THE COURT: I don't know why -- are you saying they're not here?

MR. STILLEY: No. They're here. They're here, and they're on the new list, but I was given no notice of that. And presumably the Government would be able to get -- they -- I presume that they knew about this, that there were additions to be made to the list, and they had this before today, and for one thing on the very jury form itself it says that they use the Social Security Number to get information on these jurors. Now, they didn't wait until today to get information on these jurors. This is information that I don't have as counsel for the defense.

THE COURT: Well, your objection is duly noted. Do you have your strikes?

MR. STILLEY: No, I don't. But there is one other objection I've got and that is on Gail Chamberlin. Somebody needs to correct me if I'm wrong, but my notes show that P K had lunch with her about three weeks ago and I would think P K would know that she was on this jury list at that point in time.

THE COURT: Well, he may well could have. Was she one of the 18? I don't recall.

MR. STILLEY: Yes.

THE COURT: You were asked if you had any challenges for cause, and as I recall you had none, Mr. Stilley.

MR. STILLEY: Well, I've got a challenge for cause now because I didn't realize that at that point in time and now I do.

THE COURT: Mr. Stilley, we're past the point -- if you want to use one of your peremptory challenges for Miss Chamberlin, you certainly can, but we're past the point where you can challenge for cause. I've already picked 18 people.

MR. STILLEY: Well, Judge --

THE COURT: I've got a court to run -- Mr. Stilley, the same rules that apply to everyone else and have for years and years ought to also to apply to you. I don't know why we need in this trial to do it any differently just because you're involved. I don't understand that.

MR. STILLEY: Judge, I'm not asking for anything any differently than as for anybody else.

THE COURT: Well, tell me how then after 18 people have been selected, after you've now announced there's no challenges for cause, you now can go back and challenge someone for cause?

MR. STILLEY: Because I checked my notes and found out that she had lunch with P K. Presumably P K would know that she's on the jury list. I know the Court would find --

THE COURT: Is this the only one you're objecting to?

MR. STILLEY: No. I'm retaining my objection very strongly to the three that were not disclosed to me.

THE COURT: I've noted the objection and I've overruled it, and we have moved on. Other than that initial objection of the three people you say weren't disclosed to you and Miss Chamberlin, any other objection?

MR. STILLEY: Your Honor, I haven't looked at the end of this, but it would be the same objection of the first three and that is that that the Government has information on these people. They have presumably checked their -- took their Social Security Numbers and checked them out and they know about them well in advance, and the defense didn't, so that puts us at a distinct disadvantage.

THE COURT: The Government have anything to comment about Mrs. Chamberlin?

MR. BLACKORBY: That wasn't her testimony, Your Honor, that she had lunch with P K. I think her testimony was she went to church with him and her daughter recently, two months ago, was around Mr. Holmes. As to the access to this list, we didn't get this list until this morning, the same time Mr. Stilley got it, Your Honor, and we have checked nobody out on this list because we didn't get it until this morning. We have had no --

THE COURT: And that's pretty standard, Mr. Stilley, Maybe other Clerk's offices are better organized than ours, but I don't think so. I think the list is usually finalized on the day of the trial. You can have a general probably 90 or 85 percent of it maybe you can have a heads-up on it, but at least 10 or 15 percent of all jury lists change from week to week. There's nothing I can do about it, because of vacations, conflicts, illnesses, vacations, whatever.

MR. STILLEY: All of those things take people off; they don't add people, isn't that correct?

THE COURT: Well, no, Mr. Stilley. You're not listening to me. What happens sometimes someone will call and say I can't come the first two weeks, but I will come the second week. I can be there starting... So they're excused for the first couple of weeks. So although they're off of the list initially, they really aren't. They're still on the panel. They get put back on the second, the second half. I wish it were more complicated than that, but it's really pretty simple. Do you have your three strikes?

MR. STILLEY: No, I don't. Your Honor, could I have about another five or ten minutes.

THE COURT: Well, you can, but I hope, you know, you're not trying to just unduly delay this, Mr. Stilley, but, you know, we've got -- it's kind of hot up here. We've got 70 some people out in our hall here. You've had about 30 minutes. I'm going to give you about five or ten minutes. Can you do it in that time?

MR. STILLEY: Yes, I can, Judge.

THE COURT: Fine. We're going to remain in session until you do that then. (Off the record at this time.)

THE COURT: You have your strikes?

MR. STILLEY: Yes, Your Honor.

THE COURT: Okay. Let's get the jury in, please, and let's make sure we put them back in the same row as they were in. (Jury panel returns to the courtroom. THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: I apologize for all the musical chairs, but I promise it's a lot easier in this courtroom with the size it is than it would be downstairs. I ask now that you give attention to Miss Porter. She's going to call 12 names. It will be the same as before, but this time one through six on the back row. We'll leave a chair on the back row, and then seven through 12 in the front row.

MS. PORTER: Jackie Bangs, Elizabeth House, Tommy Furstenburg, Larry Lowder, Doris Maxwell, Janice Martin, Gail Chamberlin, Forrest Hoeffer, Betty Organ, Reba Nagle, Rex Harvell, Sharon Minta.

THE COURT: I need to see the attorneys at barside quickly, please. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH AND OUT OF THE HEARING OF THE JURY:)

THE COURT: How long is this going to take to pick the two alternates?

MR. BLACKORBY: Won't take over five minutes, Judge.

THE COURT: You think we can remain in session while you do that? I don't want to put any undue pressure on you, but I hate to turn this jury loose and then get them back in, but I can if you want to.

MR. STILLEY: I don't have any problem.

MR. BLACKORBY: That's fine, Judge.

MR. STILLEY: Won't be a problem for us.

THE COURT: You think you can do it in five minutes or so? If you want longer than that, I'll dismiss them.

MR. STILLEY: I think we can do it pretty quickly.

THE COURT: Fine. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE (JURY:)

THE COURT: The Clerk is now going to call five names and as those five names are called, will you please come around and take a seat on the front row? These will be for the two alternate positions.

MS. PORTER: Kathy Sosa, Nola Titsworth, Michael Salina, Beverly Williams, and Joy Wiley.

THE COURT: Those are the five. I ask the attorneys to discuss them as soon as they can. We're going to remain in session and kind of stretch back. I kind of regret now that we gave you the tour. There's a book coming out -- this is all off the record. (Off the record at this time.)

THE COURT: I ask you now to give attention. We're going to call Alternate No. 1 and Alternate No. 1 will be on the top seat on the back, and Alternate No. 2 will be in the second seat. The alternate jurors serve a very important role. I remember when this Miss America -- what do they all say? In the event that Miss America will not be able to serve, then the alternate will become Miss America. But in the Federal Court Criminal System the juror alternates are here and their sole purpose is to listen and be attentive as a regular juror up until deliberations start. If there has been no disqualifications or no ones been struck by a bus or something on the regular jury panel, then the alternates will be discharged then at deliberation time. So give attention if you would to the calling of the names of the two alternates.

MS. PORTER: Beverly Williams and Joy Wiley.

THE COURT: Is the jury good for the Government?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Good for the defense?

MR. STILLEY: Yes, Your Honor, subject to the things I've said previously.

THE COURT: Will you please stand, raise your right hands and face the Docket Clerk? (Jurors sworn at this time.)

THE COURT: Please be seated. We are going to move in due course downstairs. I don't think we have any juror buttons up here, do we?

MS. PORTER: I've got them all set up down there. I can run and get them.

THE COURT: What we may have to do is we're going to -- the jury assembly room for this floor is just across the hall here. We may need you to go over there for a short period of time. We'll have juror buttons for you before you can leave and you'll need to wear those at all times. We're not doing that to embarrass you or cause you to receive undo attention, but it's important for the attorneys and the witnesses and spectators and whatever to note that you are on the jury so they will not inadvertently talk to you, because often times, most times nothing improper is going on and it's to pass the time of day, but it sometimes gives the appearance of impropriety. And we also -- it's 11:30. We also, you know, get back, we may want -- you may want to talk about lunch and then we may not start till -- we'll probably start downstairs hopefully good to go. There's some things I need to talk with the attorneys about, but we'll probably start promptly at 1:00. For those of you who've served on my juries in times past, you know you will get sick of hearing this, but please do not discuss this with anyone nor allow anyone to discuss it with you. It's important that you not discuss it with each other until you're in the jury room after you've heard the final instructions and the final arguments. The tendency or the trend is to say, well, what did you think of that last witness, or how do you think the case is going? You simply must not do that. Don't discuss it with each other nor allow anyone to discuss it with you. Again, it may be totally inadvertently, but if they do this, you need to report that promptly to the Court. I do not know if there's going to be any publicity whatsoever in this case. I am a poor judge of when they're going to show and when they're not going to show, but I would say if there is something in the newspaper or on the television or radio or whatever, then you need to ignore it, turn it off or walk out of the room. If it's in the newspaper, just save it and read it when this case is over. You also should not discuss it with your spouse or significant other or whatever. You may tell him or her that you're under Court orders to not discuss it, but when this case is over, he or she can take you to dinner and you can discuss it till their heart's content. We're going to remain in session until this panel is in the jury room. Why don't we then -- Everyone remain seated until they're in the jury room, please. (Jury leaves the courtroom at this time.) Listen, we appreciate the service of those of you who showed up but were not selected to serve on a jury. Again, this is a very important process. We are appreciative of your willingness to be a part of it. You'll be notified by mail and we're going to remain in session until you're out of the room. You may stay if you'd like, but you're discharged with the thanks of the Court to be notified by mail when to appear again. Thank you very much. (Off the record briefly.) Okay. We're back on the record. It's 11:30. My suggestion is to reassemble downstairs for the opening -- the jury instructions and opening jury instructions and also opening statements. Is 1:00 o'clock, that give everybody a sufficient time?

MR. BLACKORBY: That's fine, Your Honor.

MR. STILLEY: Yes, Your Honor.

THE COURT: The jury now has been sworn and at this point the Court will consider all motions of every sort, every type to be remade now that the jury has been sworn, and the rulings of the Court will be the same. You will have an exception and a continuing objection to the Court's ruling. Hopefully this will not make it necessary to enter objections again, but you can pose any objections you think you need to make again. And I believe your record is protected now that the jury has been sworn and I consider your motions to have been renewed and the Court's ruling is the same as on those motions. Anything else you want to you put on the record with the jury out of the room, Mr. Blackorby?

MR. BLACKORBY: No, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: Yes. There is one small thing. I'd like the Court to admonish Mr. Bryan not to use headshakes or gestures. It's my understanding there's been some headshakes and gestures about some things. I just want him cautioned.

THE COURT: Okay. Fine. We're all professionals and hopefully we can all keep down to a minimum the head shaking, gestures and whatever. Mr. Stilley, are you planning on using -- looks like you have an American flag that's folded up. Are you using that for evidence or what's the purpose of that in front of Dr. Roberts?

MR. STILLEY: That's not mine. That belongs to Dr. Roberts.

THE COURT: What's the purpose of it? You're his attorney and I assume you authorized its use or permitted it to be the courtroom.

MR. STILLEY: I know that's called a battle flag.

THE DEFENDANT: Burial flag.

MR. STILLEY: Burial flag, and as I'm sure you'll remember at the time that Dr. Roberts was in jail right after the arraignment his father was laying in a hospital bed.

THE COURT: No, I did not know that. You did not bring that to my attention, Mr. Stilley. First I heard about it I think is when the brother wrote a letter to the editor or something, but in any event, does the Government have any objection?

MR. BLACKORBY: Yes, Your Honor. The Court has the flag, the proper flag in the courtroom and would object to any flag or any material like that being at defense table.

THE COURT: Well, I'll tell you what. I'm going to permit him to have the flag in front of him, but just as I've said here there'll be no gestures or animation by and between the Government representative and the Government attorneys, I want the flag to remain in place, Dr. Roberts, and if you feel compelled to move it or anything else you may have over there or whatever, you'll need to advise the Court before you do. I'm going to do the preliminary instructions, once we get the jury back in at 1:00 o'clock. Have you had a chance to review those?

MR. STILLEY: I --

MR. BLACKORBY: Yes, Your Honor.

THE COURT: They're Eighth Circuit. They're pretty -- I mean they're the standard preliminary jury instructions. Have you had a chance to look at them, Mr. Stilley?

MR. STILLEY: Yes, Your Honor, I have and I think the only one that I want to make some changes to was Instruction No. 2. We would like to provide that one to you.

THE COURT: Okay. You can just tell me what it is. I don't think ours are numbered yet. Is that the elements of the offense? Okay.

MR. STILLEY: Yes, it is.

THE COURT: All right. The docket clerk is passing out a seating chart for the jurors and hopefully that way we can keep up. What's your objection to the proposed introduction of Instruction No. 2, Mr. Stilley?

MR. STILLEY: Your Honor, I believe that it was in the second paragraph the change that I want made was that the Defendant was required by a specific statute or statutes and/or a specific regulation or regulations.

THE COURT: That's the same argument you've been making I think all along, have you not?

MR. STILLEY: I think I've been consistent in this, Your Honor, which I really don't see what it would harm. The harm would be in, in, in instructing the jury at least as a preliminary matter that there has to be a specific statute.

MR. BLACKORBY: Your Honor, that's not one of the elements of the proof. The Court has already ruled in its prior Orders that that's not a burden on the Government to show a specific --

THE COURT: I think you've already covered it, Mr. Stilley, and if that is your renewal on that basis, I'll overrule it once again and your record is preserved. Any other objections that you haven't made before and the Court has not reaffirmed today?

MR. STILLEY: Actually, Your Honor, do you mind if I present this? I have this laid out exactly the way I want it. Do you mind if I present this?

THE COURT: Oh, no. You can offer it as your tendered instruction whatever number you want to put on it.

MR. STILLEY: Your Honor mind if I approach?

THE COURT: Fine.

MS. PORTER: You want me to write tendered and refused?

THE COURT: We'll show your proposed Instruction No. 2 as being proffered and refused, and this is made a part of the record. Anything further before we go off the record?

MR. BLACKORBY: Not for the Government, Your Honor.

THE COURT: In the opening statements, I was told when I practiced law I could make a pretty good closing argument in opening statement, and I don't want you doing that, either side. An opening statement is not evidence. It's simply a road map where you sort of show what the evidence is going to be and what the witnesses are going to say. I don't need you arguing your case in the opening statement. I assure you there will be ample opportunity to argue your case in the closing arguments portion of it. I propose then at 1:00 o'clock to start downstairs with the preliminary instructions to the jury to be followed by the opening statements. Do you know how much time it's going to take, Mr. Blackorby, for the Government?

MR. BLACKORBY: Excuse me, Your Honor. Approximately 25 minutes.

THE COURT: Okay. Are you going to need any more time than that, Mr. Stilley, 25 minutes?

MR. STILLEY: Your Honor, I think that approximate 25 minutes is probably about right. I haven't timed it, but I think that's probably pretty close.

THE COURT: Well, that part of the hearing will be approximately 50 minutes opening statements then. Anything further?

MR. BLACKORBY: No, Your Honor.

THE COURT: And who is your first witness going to be?

MR. BLACKORBY: It will be IRS Service Center Representative, Your Honor, Mr. Bob Dean.

THE COURT: We're going to remain in recess until 1:00 clock, and when we reconvene, we'll assemble downstairs. I would like to express my appreciation to the courtroom gallery. It is very sensitive -- it does jeopardize Dr. Roberts' Constitutional rights if we had any murmuring or any display while the jury is being selected. I heard none and I commend you for it. We're going to be downstairs in that jury room. You're welcome to come. We would love to have you. And the only restrictions, and I told the attorneys this last week, is you need to be there when we start. If you walk in the courtroom downstairs, unfortunately the jury box is right by the door, so it looks like whoever designed that courtroom had never seen Judge Judy, but in any event, it causes problems with people coming and going. So if you do need to come, and we would love to have you, please be there when we start. Otherwise, you need to come at the breaks, because we'll not admit anyone while the jury is seated in the box, you know, while they're there. And I trust once you see how that courtroom is arranged down there, I think you'll understand why we're doing that. We're in recess until 1:00 o'clock. (Off the record at this time. Lunch recess. THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: I'm glad all you have found your way back. Everybody in the right seat and whatever? I did tell Mr. Harvell, Mr. Harvell if it turns out that you have trouble hearing, we may have you switch with Miss Chamberlin at some point. Why don't we try it for a while. If you need help hearing, we may move you down this way.

A All right.

THE COURT: Is that okay, sir?

A (Juror moves head up and down.)

THE COURT: This is the regular courtroom, and this is where hopefully we're going to finish this trial, going to start and finish it here. I'm glad you did get to see the historical courtroom. That's a special place up there. We -- do I have any smokers? I'm always afraid to ask. One? Okay. All right. When we go to take a break, we'll try to take it long enough where you can get outside. Unfortunately, Miss Mitchell, this is a non-smoking building. I think they're about to make the city non-smoking. You may have to go across into Oklahoma.

JUROR MITCHELL: That's all right. I won't die.

THE COURT: But we will try to take that into account and give you sufficient time. We'll probably try to take a break at mid-afternoon, but I'll sort of keep an eye on you. In the meantime any of you feel like you need to take a break or take some time, give me a signal, any sort of signal, and we'll take a break. At this point we're sort of working for you. I need to give you some preliminary instructions and then when I finish, the attorneys are going to make their opening statements in connection with this matter. I'm sorry. I have to read these to you, but the law says I do. I shall take a few minutes to give you some initial Instructions about this case.

(Instructions read to the jury at this time.)

I ask that you give attention to the Opening Statement of the Government. Mr. Blackorby?

MR. BLACKORBY: Thank you, Your Honor.

OPENING STATEMENT OF THE GOVERNMENT

MR. BLACKORBY: Afternoon, ladies and gentlemen. Let me thank you now for all parties for your diligence and your selection on this jury. I know it takes away from your time, your job, and your family, but we all appreciate it, and let me take the opportunity now to thank you. Ladies and gentlemen, over the next couple of days the United States is going to present a series of witnesses and a lot of documentary evidence on Dr. Roberts' two tax years, 93 and 94, and you're going to hear some accounting terms. You're going to hear some tax terms and a lot of bookkeeping information is going to come in, but I want you to keep one thing in mind. This is a very simple issue in this case, and the issue is essentially what the judge has instructed you on is whether Dr. Roberts was required to file individual income tax returns for 93 and 94 and he didn't do it when he should have, and he knew he didn't do it, and he didn't do it willfully. So the issue all along is going to be very simple. We will have a few, a very few record witnesses, but bear with us, because we have to introduce books and records so we will show you how the IRS recomputed what Dr. Roberts' true income was. Since he didn't file returns, it has to be reconstructed. So I think all along you will find the issue was simply was Dr. Roberts required to file a return; i.e., did he make enough money to trigger a filing requirement? Two, did he know he needed to file a return for each of those years. And, three, once he knew that, i.e., he made enough money and he filed returns in the past, he knew what it took, did he willfully not file a return for 1993 and 94? And that's the jury instruction that the judge had read to you earlier and that's what we have up here. And I'm going to reference to it, because as the Government information comes in, the burden is on you to plug the evidence into these three elements on each of the tax years. The first one is required to file federal income tax returns --

THE COURT: Mr. Stilley, if you need to move, sir, you can?

MR. BLACKORBY: -- for a specific year.

MR. STILLEY: I beg your pardon?

THE COURT: If you need to move to see that, you can.

MR. STILLEY: Okay. Thank you.

MR. BLACKORBY: Two, he knew he was required to file such a return and, three, willfully failed to file the required return, and the Court has defined willfully for you is to voluntarily, intentionally violate a known duty. So what we're going to do is right now let me explain to you what I think the Government's evidence is going to come from each of these elements. All right, No. 1, element No. 1, required to file a federal income tax return. You will hear from the witnesses from the Internal Revenue Service for the years 93 and 94 what the requirement was to file a return. What was the minimum amount of money I believe they will tell you that required any taxpayer to file a return? You're going to hear from a revenue agent by the name of Brian Miller, and I think what he's going to show you is for 1993, the minimum amount of money, not net profit, not net income, but the minimum amount of taxable income, taxable receipts coming to you for 93 is $6,050. For 94 it's $6,250. And he will explain to you why these figures change and why they adjust for inflation and so forth, but he will explain to you how for Dr. Roberts in 93 and 94, as a self-employed chiropractor, if you made money, receipts, essentially patient receipts, insurance receipts in this case over these two figures, he had a requirement to file tax returns. So that is the first element we're talking about here is was -- did Dr. Roberts have a requirement to file tax returns? Now, that's the target. The target and the burden on Government is to show that Dr. Roberts had income coming in to him in each of these two years over those two figures. Now, the way we're going to do that is in a method called bank deposits. Special Agent Tom Bryan, who is sitting right there, has actually investigated this case. He started his investigation in 1996. And he's going to take the stand, I believe, and he will testify that he put together a financial analysis of Dr. Roberts based on the bank records of Dr. Roberts, taking the deposit -- taking the bank statements for the two years, taking the deposit slips, taking the checks he wrote, and taking the checks that he deposited, many of them from insurance companies and patients that was part of his chiropractic business, and he did an analysis of those. And basically in the bank deposits method, what you do is you total up the deposits each year for an individual, and from that especially, when they're in a sole practice like this, it's not like us that we work for an employer and we have -- an employer gives us a check every two weeks or every month, but in Dr. Roberts' case his patients and insurance companies paid him, and the evidence will show you he put it into his bank account. Now, the special agent has totaled up those deposits for each of those years, and he starts out with that figure. From that he subtracts out. He's investigated, gone out and checked on the sources of deposit and interviewed these folks to find out why they paid these checks to Dr. Roberts, and you're going to find out that in most instances the deposits were made up of patients checks or, more importantly, most of the deposits we're made up of checks from insurance companies that were paying claims for patients. But he also found that certain checks that went into Dr. Roberts' bank account, I think he will tell you, came from non-taxable sources, and those he will subtract out of those deposits, such as gifts, such as loans. Those are not taxable proceeds. But the agent will explain to you how he came up with a figure of taxable gross receipts for each one of these years from the bank records of Dr. Roberts to determine if Dr. Roberts had a requirement to file. And I think what you'll here from his testimony, in 1993, Dr. Roberts' taxable gross receipts was over a $132,000. In 1994, it was over $207,000. So I think it will be clear in each of these years that this trigger was met. There was 20 or

30 fold in excess, as the agent will explain to you, gross receipts over the minimum amount that are required to file a return. The agent actually went farther than he was required to do, because he actually went to the insurance companies. He went to some patients and actually had them verify that, yes, these were for patient treatment. These were reimbursements we made to Dr. Roberts for treating our insureds or our patients. And you're going to hear from some of the those witnesses. We've brought in some of the insurance companies to introduce those books and records in referencing to explain to you that, yes, we did pay Dr. Roberts these amounts in these years for the services he performed on our insured as patients. Now, the agent will also talk about that basically we have met our requirement in this area. That's the burden of proof, if we show that the taxable receipts received by Dr. Roberts were in excess of these two figures. In 93 it's $132,000 that he actually received versus this figure. And in 94 he received over $207,000, I think the evidence will show you as compared to this figure. But the agent also ran in his computation and determined Dr. Roberts' gross profit and eventually his taxable income, because I think it will be important when I talk about the third element, willfulness, what that taxable income was. And the way the agent did that as part of the bank deposit analysis is just take the checks that Dr. Roberts wrote for his expenses, and the way he did -- decided what checks were expenses, he gave Dr. Roberts all the checks that he wrote as expenses and each of the years he wrote them, except for the ones that could be specifically tracked and traced to a non-expense payee, i.e., the grocery store or something to that effect. The agent will explain to you that to compute the net profit for Dr. Roberts, he gave him all the checks, even the checks written to cash or that ended up as pocket money or whatever, but he will outline for you how he utilized Dr. Roberts' checks to determine what his business expenses were for each year. And from that I think you will see, he will show you figures essentially like this. That in 1993 here's his gross receipts again coming in from the patient activity, the expenses from the checks giving him all the checks that, that could -- give him all his checks and expenses except the specific ones that were to a non-deductible source and then his net profit in 93 was over $60,000 and his net profit in 94 was over $123,000. And from this he will explain that the tax that's generated, the income tax and Social Security tax that Dr. Roberts should have paid in 93 was in excess of $18,000 and in 94 it was in excess of $40,000. So that's our first element, ladies and gentlemen, as we go back here. Clearly, I believe the evidence you see from those sources will demonstrate that Dr. Roberts had a requirement to file; that he passed many times those $6,000 figures that triggered his requirement to file. And I think also you'll see why when we get to that third element, willfulness. But let's talk about the second element that he knew he was required to file such a return in each of the years. Okay. You may make a whole lot of money, but we still have to show that he knew that once he made all this money, that he had a requirement to file. I think that will become evident from the witnesses we bring in and testify that for the decade prior to 1990, because the last return he filed you'll see is 1989, that the decade of the 1980's he filed consistently. He first filed as an individual as being a part of the United States Army with his wife through the eighties. He went into a -- went to school to become a chiropractor in Kansas City in the mid-eighties. You'll hear the testimony came out, passed his boards in 86. 87 he opened his own practice, the same practice he runs today, and in all through those years, through the 1981 tax year he filed his tax returns, reported the information and paid his tax. So he clearly knew what the filing requirements was, both prior to when he was chiropractor and once he became a chiropractor. And we will have his former wife come in and testify about how that whole historical period. How she worked with him in going through school; how she worked in the chiropractic business with him; how he set up his books; how he prepared his books and records; how he took them to the accountant and had his returns done. We will have the accountant come in, the accountant that prepared his 81 and 82 tax returns and also prepared his 87, 88, and 89 tax returns when he was a chiropractor, the same business he's in today. And he will explain to you how Dr. Roberts brought summaries in of income and expenses and other things that were utilized on the return as a self-employed individual here, a chiropractor, to make those returns. And from that I think it will be clear between their testimonies that the conduct of Dr. Roberts in those previous 1980's will establish he knew he was required to file a tax return. He knew it before and he knew it by the time 1993 and 1994 rolled around. Then we go to the third element, willfulness. He had a requirement to file, large gross receipts, large taxable income. He knew he had to file because he had done it for years. Nothing had changed in his life those latter years, but he just quit filing, and he quit filing knowingly and willfully. And I think you'll see, as I earlier mentioned, from the tax liabilities he quite filing as he told his accountant in 1989 because he didn't want to pay all those taxes. Now that the gross income had gone up and his net income had gone up, his tax liability went up. And so he chose not to pay it and the way he chose not to pay it was to quit filing. So I think it will be clear to that third element that his conduct of willfully not file or to not file was very willful; that he knowingly and intelligently just stopped filing. You'll see from the IRS records, from the bank, from the special agent analysis of the bank records as well as a couple witnesses that testify he had plenty of money to pay his tax. He had plenty of expendable money. He used it in other areas, and you'll see some of those other areas where he used it. But he intentionally chose not to file his return, not to pay his tax, to escape paying those taxes. So ladies and gentlemen, I will be here to talk to you at the end of the trial, but I think you'll see all along, even though we have books and records and accounting issues coming in, there's nothing difficult about this case. There's no close call. It was clear Dr. Roberts made many times the amount of money in these years he needed to file those returns. It was clear he knew how to file them and when to file and it will be clear that he chose not the file them. So I ask now as I will at the end of the trial when I get to visit with you again that you consider all the evidence and pay attention to it, but I think it will be clear at that point that Dr. Roberts is guilty of the charges we've brought against him. Thank you very much.

THE COURT: Fine. Thank you, Mr. Blackorby. Mr. Stilley?

OPENING STATEMENT OF THE DEFENSE

MR. STILLEY: Good afternoon, ladies and gentlemen. You've heard from the prosecution. You've heard their story. And I let him say what he had to say, because I felt like it would be appropriate. Let him tell you what he's going to prove. Let him explain his side of it. Then let me get up here and explain Dr. Roberts' side of it, because Dr. Roberts is not guilty of any crime. When the evidence is concluded in this trial, you will know that Dr. Roberts didn't commit any crime. Now, the last thing you heard was that, well, now Dr. Roberts did this because he didn't want to pay taxes. He wanted to get out of paying his taxes. Now, you didn't hear anything from the judge about a charge of not paying taxes. Section 7203, what they started out with, makes it a crime to fail to pay any tax required under that title, and that's -- that's 26 USC. That's what's called the Internal Revenue Code. We've got it right here in this box. And that's what we're going to be operating on today. We're going to be operating under the Internal Revenue Code. But they didn't bring any charges and say that he had failed to pay any tax that he was liable for. And what's furthermore and will be able to bring this out from the witnesses, they haven't assessed any tax against him. If you look at his record at something called an individual master file, if you look at his record, it will show an account balance of zero that he owes nothing. Yet the Government

has chose to proceed as they have and claim that he failed to file a return without claiming that he failed to pay a tax. Folks there is a reason for that. They know that there is no statute in the Internal Revenue Code that makes anyone liable to pay any income tax.

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Yeah.

MR. BLACKORBY: That's an incorrect statement.

THE COURT: I think we've covered that in an Order, but let's not -- why don't you limit your opening statement to show us what the proof is going to be what the evidence is going to be? Let's not argue the law.

MR. STILLEY: Well, that's -- that's what was I --

THE COURT: Why don't we approach the bench then. You know that's -- (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH AND OUTSIDE OF (THE HEARING OF THE JURY:)

THE COURT: I'm concerned here. You're going over the same stuff we've already been over before. We're going to stay away from that. The argument --

MR. STILLEY: Your Honor, that's not true, but contained within itself the very -- it would be self-defeating if I was to stand up there and lie to that jury. They're going to find that out. They're going to know that.

THE COURT: Okay, okay, Mr. Stilley. That's fine. I need for you in your opening statement to limit your remarks to what the proof is going to show. You know, don't argue the law. We've been through this and we're going -- you know, I don't want to reinvent the wheel again. Also, where is -- have we heard from Mr. Barringer?

MR. STILLEY: He's sick. And that brings up, I've got another young lady here, Laura Asbury. She doesn't hold the same religious beliefs or belong to the same ministry that Lindsey Springer does. I was wondering if it would be alright if I had her sit up at the counsel table and help me move papers?

THE COURT: Why don't we take it up after the opening statement and see where we are?

MR. STILLEY: Okay. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE (JURY:)

THE COURT: Continue.

MR. STILLEY: The Government has said that Dr. Roberts had gross receipts in the amounts -- I believe they have got it up here, $132,00 and $207,000. They have got a great big stack of papers there. You see there's three -- the three biggest binders on that little cart there contains papers to show that. Now, Dr. Roberts will save that this Court and this jury and the Government the trouble of having to prove that he had gross receipts in that amount, because we stipulate to that. We admit that that's true. Furthermore, this Honorable Court has already said that he's going to read the statutory definition of income to the jury, and as soon as that happens, if they want to bring in any of these documents to show that the money as represented by these documents are income as that term is defined in the Internal Revenue Code, that's fine, we don't have a problem. Bring it all on. Let you see it. Dr. Roberts is simply asking that he be entitled to be judged according to the law, not outside the law. Now, the attorney for the Government has said that if Dr. Roberts -- that if he made $6,050 in 1993, or 6250 in 1994, that he had a filing requirement. Now, I have asked -- I'll bet I've asked 20 times for somebody to show me the law, just show me the law. Where does it say that you have --

MR. BLACKORBY: Objection, Your Honor. He's arguing the law there.

THE COURT: Let's not argue the law. Show us, tell us what your proof is going to be and what your evidence is going to reveal. Don't argue the law.

MR. STILLEY: The proof is going to be that there's no where that they can go in the law and show you that it says that if you make more than 6,050 in 1993, that you're required to file a return. That's not there. Do you see what they say up here? Income filing requirement. Get down to brass tax. That's what we're talking about, income, and I just told you that the judge had already promised he will read the statute, the section of the code that defines income, and then we can analyze what we've got here and see if these gross receipts meet the test for income as defined by the code, and then we can get to this question and see if they can find anywhere in the code that it says that people that make over 6,050 have to file a tax return. And I will submit to you that they will not be able to produce that at any time. Now, there's some things that make -- well, it's already been raised. It's already been suggested that Dr. Roberts has engaged in the activity he's engaged in because he doesn't want to pay his taxes. That's not true. This is a military man with a military family and the proof's going to show that that's what he is, and he understands that the Government's have to have money. They have to have taxes in order to operate. And he, he does and he will. He will continue to behave in a manner paying all taxes that he is legally liable for, all taxes that he's required to pay. He has no objection to that. He's an honorable man with respect to all the duties that are placed upon him by the law. If everybody paid their taxes as honorably and as truthfully as Dr. Roberts and took as little services from the Government, the Treasury would be brimming with money. You heard from the Government that they're going to prove that he just quit just because he didn't want to pay money. He just wanted to save that money for himself. That's not the truth. The truth of the matter is that he began to examine the laws, specifically the Internal Revenue Code and the other laws that go along with that to see what the requirements are. You see now? What did the Government say that they were going -- -- well, the Government said they were going to use the fact that he has filed returns at some previous time to prove that he knew he had to this time. Well, I'll submit to you the proof is going to show that we've all had ideas and have changed our mind later. For example, most of us believed in Santa Clause at one point in time. Most of us don't now. Just because you believed in something previously doesn't mean it's true. In this case what happened is that Dr. Roberts began to research the law and to look at the law and see what the legal requirements are. He could find no legal requirement for anyone to file a tax return, try as he might, look as hard as he could. So he began to ask some questions. He asked here, there and everywhere. He asked accountants, attorneys, various kind of people can you show me where in the code it says that I'm required to file a return? Could not get an answer. And if you could -- this is the truth. What Dr. Roberts did was to put his believes down on paper the best that he could, send it to the IRS and say that I've concluded that I'm not required to file a return. Now -- and in the letter and it's even in the Government's Exhibit list, in these letters he said if I'm wrong, you send me a letter, do it within 30 days, send me a letter, and tell me where I'm wrong, and I'll govern my conduct accordingly. Dr. Roberts certainly is not a man who would knowingly violate a known legal duty. Let's see if we can find this here. Willfully to voluntarily and intentionally violate a known legal duty. The evidence is going to show that Dr. Roberts asked everywhere he could ask, starting many years ago and continuing up to the present has not been able to find one person that can tell him where that legal duty is at. And we believe that you are going to hear from a Federal Judge that he asked about this and tell me, tell me, are my beliefs the truth? And what he did, he said, the magistrate judge said I can't go there. That's where I get paid. So he didn't get anything there. This man has never tried to conceal anything. He has never tried to conceal his behavior from the Government he's. He's

asked the Government to tell him if he has made a mistake. You're going to -- the evidence is going to show that it's impossible that he voluntarily, intentionally violated a known legal duty. He's asked about the duty. He's checked about it, but he has not violated it. I mean you're going to hear something about Dr. Roberts. Dr. Roberts is not a child of privilege. His father was a military man. He worked hard. He worked on a farm, went to college for a little while. That didn't suit him for the time being, so that he went on -- actually went in the military, served in the military. Later he had a little girl, a real small child about I think one or two years old and she fell ill. She got injured. I think she fell, and for months she was very sick. And he took her to the doctors and he could get no relief, and one day on the way home from the doctor, he took his small child to the chiropractor and the chiropractor worked on that little child, and the next day she was well, and she was never sick again. She was fine. That impressed Dr. Roberts enough that he would go back to school to get some education to be a chiropractor. Now, you're going to hear some things about why Dr. Roberts believed that he was not required to file a tax return. As I said, he had never made any bones about it. He never tried in any way conceal it. And as a matter of fact, this investigation started in 1996 as Mr. Bryan started the investigation, and so they investigated and investigated and investigated, and I believe it was 1998. I'm not absolutely positive about that, but I believe it was 1998 that Dr. Roberts decided that he needed to know for sure. He had been investigated for a long time and they knew enough about him if they really wanted; if they really thought there was only the $6,050 requirement, they could filed charges right then. They already knew that. He filed a lawsuit right here.

MR. BLACKORBY: Objection, Your Honor. This is already been handled. It's improper argument.

MR. STILLEY: Your Honor, that's a part of the --

THE COURT: Well, don't -- Let's have a barside conference. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT (AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: Judge, they've got this in their Exhibits.

MR. BLACKORBY: He's already tried to argue this on selective prosecution.

MR. STILLEY: I'm sorry.

MR. BLACKORBY: He's already tried to argue this on selective prosecution. This is a legal argument.

THE COURT: Is this what you're arguing now, selective prosecution here?

MR. STILLEY: When you said that I could continue -- I mean selective prosecution isn't down just because we just lost on the first deal, but I mean that's -- this goes to many, many elements including selective prosecution, including his knowledge, including his intent, including willfulness. This is the heart of willfulness. How could a man who is trying to violate the law file a lawsuit and ask for a declaratory judgment on what the law is?

MR. BLACKORBY: Your Honor, he didn't even file this till 98. We're talking about 1993 and 94. He only filed it after the investigation started as the evidence was given to the Magistrate and it was only in response to stop the investigation, which is a legal issue, and the Magistrate has already ruled on it.

THE COURT: I think it's been ruled on, too. I'm not sure I know why we're covering it now and going over it again.

MR. STILLEY: Good faith. He's tried and tried and tried. Now, they're saying this 1998. But a lot of these letters were long, long before 1998.

THE COURT: The Magistrate's already taken care of this, Mr. Stilley.

MR. STILLEY: Oh, no. Oh, no.

THE COURT: Are you reading that order--

MR. STILLEY: No, that doesn't mean that --

THE COURT: Have you read the orders that have been entered in this case?

MR. STILLEY: Absolutely. I read every one of them.

THE COURT: What else have you got, you know?

MR. STILLEY: I'm about done.

THE COURT: I'm not going to strike that from the record, but, Mr. Stilley, I would get off of that just as soon as I can.

MR. STILLEY: I'll get off it as quick as I can.

MR. BLACKORBY: Your Honor, I'm going to object to saying anymore about it.

THE COURT: What else you going to say about it?

MR. STILLEY: Well, he's got it in his Exhibit list. How can he say -- how can he put it in witness list?

THE COURT: I don't know what your else you're going to say about it.

MR. STILLEY: Just a little, a very little bit, just let them know what the evidence and proof is going to be, and if they're so ashamed of it, they should have put it in their Exhibit list.

MR. BLACKORBY: Your Honor, our choice as to when we introduce in this courtroom. Those Exhibits have been used before the Magistrate in other locations. This is a stupid argument that it's in our Exhibit list.

MR. STILLEY: He's waived that objection, said it was --

THE COURT: I don't think he has. I want you to go on to something else. Let's get off of that. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE (JURY:)

MR. STILLEY: Anyway, he filed one lawsuit. It got bounced out on a technicality, filed another lawsuit.

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Yeah, I've already ruled on that, Mr. Stilley, and don't go back there. Let's talk about something else. That's improper argument. And I've told you at the bench side and I'm telling you now. Go on to something else. Tell us what the evidence is going to show and --

MR. STILLEY: It's right there in their witness list, their Exhibit list.

THE COURT: Don't argue with me, Mr. Stilley. Go ahead with your opening statement, sir.

MR. STILLEY: Your Honor, can I approach again? I've got some serious questions about this.

THE COURT: Yes, you may. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT (AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Mr. Stilley, I told you not to go there and then the first thing you do, the first two or three questions you go there. What do you think the Court should do?

MR. STILLEY: Judge, you told me to get off that quick as I could, and I was trying to get off quick as I could.

THE COURT: I said get off it completely. I want you off of it. I want you to tell me that you understand what I've just said? Do not go there. You can go some other place or whatever, but do not mention that again. Do you understand?

MR. STILLEY: How about the third lawsuit? Can I mention that?

THE COURT: No, you can't mention the first, second one or third one.

MR. STILLEY: It's on appeal to the Eighth Circuit right now.

THE COURT: That is not relevant to what the issue is here.

MR. STILLEY: That's not relative -- relevant to his mental state?

THE COURT: No, it is not. It was not. Let's go on to something else. Do you have any other arguments?

MR. STILLEY: Well, now, let me -- I want to make clear what the Court's ruling is. Is what's happened after 1994.

THE COURT: I'm saying you can't mention those three lawsuits. They have already been resolved. They have already been discussed.

MR. STILLEY: Well, there's one that's not been resolved. The last one is still on appeal.

THE COURT: Well, I understand that, but the Magistrate took care of that in her Order or whatever or his Order, but it's resolved. I want you to get off that in your opening statement. That's improper argument.

MR. STILLEY: Well, I want, I want to clarify this. Are the things that happened before and after the pertinent years simply irrelevant?

MR. BLACKORBY: Your Honor, I object to that. We have no idea what that is.

THE COURT: I have no idea what he's talking about either. I want you -- if you want to make any additional opening statement, you can, Mr. Stilley, but I want you to get off of those three suits that were filed. They're not relevant. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE (JURY:)

MR. STILLEY: The key issue here is subjective good faith. The key issue is -- well, actually let me put to you the way that the Court here has put it. No matter how irrational or unoriginal or incoherent one might find the pleas of Dr. Roberts, unless you find that in Dr. Roberts' mind --

MR. BLACKORBY: Objection. That is not what the Court has stated, Your Honor. That is --

THE COURT: Well, it's opening statement and I'm going to allow him to take some liberties with what the Court said. Go ahead and continue, but --

MR. STILLEY: Unless it is found in Dr. Roberts' mind that he was required to file a tax return by a specific section, then you must find that he is not guilty. And in order for them to show that, the first thing they're going to have to do is to show the law. They're going to have to show the specific law that required him -- that that created the requirement under specified conditions that he file a return. (Pause) Now, throughout this entire scenario, through this -- the entire amount of time that we are talking about here, Dr. Roberts has done absolutely nothing to hide anything, hide his views, to hide his beliefs, to hide his behavior from anybody, from the Government or anybody else. And one of things that you're going to see is a letter that Dr. Roberts wrote to the Government right after -- they sent him a letter and said do you want to come and talk to us about what we're planning to do to you? And he sent them a letter one last time and said, you show me the law that requires me to file this return or make this return, and I'll make all returns that are required by law. He got absolutely no response. Ladies and gentlemen, I'm sure when the evidence is through, you will see that Dr. Roberts has never intentionally violated and non-legal duty.

THE COURT: Call your first witness, please.

MR. BLACKORBY: Thank you, Your Honor. May I move the podium, Your Honor.

THE COURT: Yes. We've got some help here to help you with that, I hope. We're going to start with the testimony, but, again, we'll probably take a break about 3:00 o'clock. If anyone needs a break before that time, you just need to give me a signal. If you don't give me a signal, I assume that you don't need a break then.

(Witness sworn at this time.)

THE COURT: I would ask you to speak directly into the microphone. There's water and cups there, if you need it, sir.

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PLAINTIFF'S EVIDENCE

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ROBERT DEAN, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

A Thank you.

Q Good afternoon.

A Hello! Good afternoon.

Q Would you state your name and spell your last name, please?

A Bob Dean, D E A N.

Q And, Mr. Dean, how are you employed?

A I'm with the Internal Revenue Service in Austin, Texas.

Q And what is your job there?

A I'm the Custodian of Records for the Service Center.

Q All right. Do those records include records that would be filed from Arkansas?

A Yes, sir.

Q And how long have you been doing that job?

A About four and a half years.

Q All right. And as a Custodian of the IRS records there, do you have access to tax returns that have been filed by individuals?

A Yes, I do.

Q And being in your position as Custodian, can you make, I guess, certified copies or make true copies of those returns available on request?

A Yes, I can.

Q All right. Now, in that regard have you been asked to bring certified copies of tax returns concerning Philip E. Roberts?

A Yes, I have.

MR. BLACKORBY: Your Honor, may I approach the witness to hand him exhibits?

THE COURT: Yes, you may.

Q Let me hand you what's marked for the Government Exhibit 1-1, and ask you if you can identify that, and while we're there, let me hand you what's been marked as Exhibit 1-2, and hand you what's been marked as Government's Exhibit 1-4, and ask are you familiar with those Exhibits?

A Yes, sir, I am.

Q Without reading details from the document, what is Government's Exhibit 1-1?

A It's a tax return for the 1988 tax year.

Q Is that for the Defendant, Dr. Roberts?

A For Philip E. Roberts; yes.

Q All right. Is that a true copy of the records of the Internal Revenue Service?

A Yes, sir, it is.

Q Is that tax return Exhibit 1-1 under seal certified by the District Disclosure Officer?

A Yes, sir, it is.

Q And does contain the Universal Seal of the United States of America?

A That's correct.

MR. BLACKORBY: Your Honor, at this time I would move for Government's commission -- admission of Government's Exhibit 1-1?

THE COURT: Any objection?

MR. STILLEY: Yes, Your Honor. We would object, because if this was a required return, this could not be entered against the man that made it because the Fifth Amendment prohibits the compulsion of a person to be a witness against themselves in any criminal case; and if it's voluntary, it doesn't mean anything.

THE COURT: It will be admitted over the objection of the Defendant.

MR. BLACKORBY: Thank you, Your Honor.

MR. STILLEY: Your Honor, can I have a clarification of the ruling? Are we ruling that --

THE COURT: No. I'm ruling that that's admissible. I overruled your objection.

MR. STILLEY: Are you ruling that --

THE COURT: In this matter, you know, if you're making similar objection, I'm probably going to overrule those, too.

MR. STILLEY: Are you ruling it's admissible because it's filed voluntarily?

THE COURT: I'm ruling that it was admissible. Go ahead, sir.

MR. STILLEY: Your Honor, I'm asking for --

THE COURT: Mr. Stilley, you're going to sit down, sir, you know, I've ruled that that document was admissible and you've made your objection. You've made your record and it is admitted and be seated, sir.

MR. STILLEY: Your Honor, I certainly don't mean to object to --

THE COURT: Well, you are -- be seated. Go ahead, sir.

Q Sir, let me direct your attention to Government's Exhibit 1-3, and would you look on the face of that and would you tell us what that is?

A 1-3 or 2?

Q Whoops! Got out of order here. 1-2. Excuse me.

A That's an income tax return for tax year 1989.

Q And who's the return for?

A It's for Philip E. Roberts.

Q And that return has got a blue sheet on the front, is that right?

A Yes, sir.

Q And does that blue sheet certify that it's a true copy of the records of the Internal Revenue Service?

A Yes, it does.

Q And does that blue sheet certify that it's under seal of the United States Treasury and the United States of America?

A That's correct.

Q And, therefore, is this a true copy of the records of Internal Revenue Service concerning Philip E. Roberts' 1040 for 1989?

A That's correct.

MR. BLACKORBY: Your Honor, at this time move for admission as Government's Exhibit 1-2.

THE COURT: Same objection, Mr. Stilley? It will be admitted over your objection.

Q Also look at Exhibit 1-4. Do you have that in front of you, sir?

A Yes. These are transcripts for Mr. Roberts, transcripts of the account.

Q And starting from what timeframe, sir?

A From the 1988 tax year through tax year 1999.

Q What actually, without reading from them, that is a transcript of the Internal Revenue Service?

A That is a statement of any return filed with taxes that are owed and payments made.

Q And it's for the time period you just stated 88 through 98?

A 99.

Q From 99, excuse me. Is that also under certification as a true record of the Internal Revenue Service?

A Yes, sir. This is stamped with a certification stamp.

Q And these are true records of the Internal Revenue Service concerning the Defendant, Philip E. Roberts, is that correct?

A Yes, they are.

MR. BLACKORBY: Your Honor, at this time I'd move for admission of Government's Exhibit 1-4?

THE COURT: Any objection? Mr. Stilley, any objection?

MR. STILLEY: No.

THE COURT: Be admitted without objection as Government's Exhibit 1-4. BY MR. BLACKORBY:

Q Now, sir, let me direct your attention back to Exhibit 1-1 -- well, excuse me. Let's go to 1-4 first. That's the transcript I talked about?

A Yes.

Q Is that essentially a summary of a taxpayer's return for each of those years you mentioned in 88 through 99?

A That's correct. It shows some of the information that's on the returns in summary form. Also shows the -- what -- how much tax was charged and the payments that were made.

Q Okay. Now for 1988, and look at Exhibit 1-4. You want to bring up 1-4, please? Does that show in 1988 -- it will be a little difficult to read. Does that show that Dr. Roberts in 1988 filed a tax return?

A Yes, it does.

Q Does it show that he reflected income, taxable income on that return?

A Yes, sir.

Q And does it show he paid some taxes or had taxes due?

A Yes, it shows a tax-assessed amount.

Q Does it show payments were made?

A Yes, it does.

Q All right. Let me flip over the next page, which what year did that cover?

A This is for tax year 1989.

Q Does it reflect whether Dr. Roberts filed a return in 1989?

A Yes, it does.

Q And did he reflect income, taxable income on that return?

A Yes, it did.

Q Does it show a tax being assessed for 1989?

A That's correct.

Q Does it show payments on those taxes?

A Yes, it does.

Q Flip over to the next page. What year was that?

A This is for tax year 1990.

Q And does that show that a return was filed for 1990?

A No, it doesn't.

Q I asked an improper question. Was a return for 1990 after looking through this?

A No return is present.

Q Are there some figures for 1990?

A There was some estimated taxes paid.

Q There was no record of tax return being filed in 1990?

A That's correct.

Q Would you flip the page, the next page, please? What tax year is that?

A This is for tax year 1991.

Q And is there a record of Dr. Roberts filing a return in 1991?

A No, there's not.

Q Is there any payments or anything from Dr. Roberts in 1991?

A No, there aren't.

Q Flip on over to the next page. What tax year we talking about there?

A 1992.

Q Any record of Dr. Roberts filing a return in 92?

A There's no record of a return.

Q Maybe I can expedite this. In looking at that Exhibit 1 through 4, Exhibit 1-4 from 92 on or from 1990 on I think you -- did Dr. Roberts file any federal income tax returns?

A No. There have been no tax returns filed since 1989.

Q And that's through 1999?

A That's correct.

Q In looking at that Exhibit 1-4, has Dr. Roberts made any payments after the 1990 estimated tax payment?

A No, he hasn't.

Q Now, would you look at Government's Exhibit 1-1, please? Is that the 1988 tax return of Dr. Roberts?

A Yes, it is.

Q Do you have that, this Exhibit? Is that the same thing you're looking at that's up on the screen?

A Yes, sir, it is.

Q I believe you testified that is there -- that is the return he filed for 1988, is that correct?

A That's right.

Q All right. What was his wages and salaries on line seven on that return? Can you read that?

A $6,101.

Q And business income, line 12, how much was that?

A $18,414.

Q Flip over to the next page, please. What was his total tax due on that amount?

A Total tax was $3,825.

Q And this return from your records was filed, is that correct?

A That's correct.

Q Would you look at Exhibit 1-2, please? Is that the 1989 return?

A Yes, sir, it is.

Q Okay. And I'm looking at the first page? What's it show for 89? What's it show the address for Doctor or Philip E. Roberts in on this return?

A It shows a 302 North Greenwood in Ft. Smith, Arkansas.

Q And does it have business income? Can you read that figure for me, please?

A Yes, it shows business income of $77,653.

Q All right. And would you flip over -- well, let's flip over to the second page. Down at the bottom can you tell the jury what was the total tax liability for Dr. Roberts in that year?

A $22,638.

Q All right. And he had some withholding, is that right, or estimated tax payments?

A No, no. That was estimated tax payments.

Q So with the return, how much did he have to pay that year?

A With the return, he still -- when he filed he still owed $17,638.

Q All right. Would you flip over to the third page, please. Now, what profession does Dr. Roberts show as his profession?

A Chiropractor.

Q All right. Would you look up in the gross receipts line? I think it's No. 1?

A Right.

Q What was the figure that was put on that return?

A $153,791.

Q All right. And down below the expenses, what was the net profit figure?

A $7,653.

Q Now, would you flip over a couple pages to the page titled Social Security Employment Tax? Do you see where I'm talking about?

A Right.

Q And there is tax computation down there, is that correct?

A That's correct.

Q All right. And how much is that tax?

A $6,250.

Q And, again, your records reflect that this 1989 return had been filed by Dr. Roberts?

A That's correct.

Q And the taxes had been paid?

A Yes, sir.

Q It's also your testimony after 1989 he failed to file any additional tax returns, pay taxes through the present, is that correct?

A That's correct.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: Cross-examine.

MR. STILLEY: I didn't catch it. Was Exhibit 1-3 admitted into evidence?

MR. BLACKORBY: No. It wasn't offered.

MR. STILLEY: No?

CROSS EXAMINATION BY MR. STILLEY:

Q Can you tell us what law required Dr. Roberts to file a tax return?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Sustained.

MR. STILLEY: Your Honor, I'm not sure I understand what the basis for sustaining that objection is.

THE COURT: Well, we've been over that, Mr. Stilley, but let's approach the bench. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT (AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Have we not already been there?

MR. STILLEY: No.

THE COURT: Mr. Blackorby, do you think we've already been there?

MR. BLACKORBY: Your Honor, we have addressed this in my Motion in Limine. The Court has addressed it in its Order that there will be no challenge to the Constitutional or the validity or the requirement in the Internal Revenue Code to file tax returns, which is what Mr. Stilley is trying to do.

THE COURT: I think you are, too, Mr. Stilley, and I, you know, I have sustained the objection.

MR. STILLEY: Judge, I didn't say that the law was unconstitutional. I just asked where it was at.

MR. BLACKORBY: Your Honor, may I, may I ask to respond?

MR. STILLEY: I didn't even ask that. I asked if he knew --

THE COURT: It's not your time to speak. It's your time to speak.

MR. BLACKORBY: Your Honor, I addressed it in my Motion in Limine that the requirement to file tax returns as to the burden on the Government goes to the three elements of 7203, which we're here to demonstrate. Now, it's not to take all the pages of the Internal Revenue Code and in detail analyze which Internal Revenue Code. The cases I cited in my Motion in Limine clearly established that there is a requirement to file individual income tax returns, and if the Government demonstrates that the taxpayer made enough money to file, that he knew he had this requirement to file, and he willfully didn't file, we have met our burden. So there's no relevancy to him attempting to ask every witness where in the Internal Revenue Code does it say you have to file income tax?

THE COURT: It is not relevant. I'm sustaining his objection. I will give you, Mr. Stilley, a continuing objection on this, sir, so you have protected your record.

MR. STILLEY: Judge, all I'm asking is that he say. If he knows, he can say yes. If he doesn't, he can say no.

THE COURT: I'm not going to allow him to say no or whatever. I ruled on the objection and you have -- and I've given you an exception to the Court's ruling.

MR. STILLEY: You're saying he can't even say whether he knows or not?

THE COURT: I'm saying absolutely --

MR. STILLEY: So if he just out of oral tradition then, the jury can't know that?

THE COURT: Oral tradition, what is that?

MR. BLACKORBY: I don't know, Your Honor. The other thing is it's way outside of my direct examination. This is a custodian of records. All he did was introduce these records. We did not go into --

THE COURT: I'm going to sustain it. I don't think it's relevant. I think he is the custodian. It's outside the scope of examination, plus it's something the Court's already ruled on. We're not to go there, Mr. Stilley. I don't want -- but I want to give you a continuing objection to this Court's ruling, but if you've got other questions to ask him, ask them. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

Q Have you ever believed in Santa Claus?

MR. BLACKORBY: Objection, Your Honor; argumentative.

THE COURT: Well, if he knows or if he has, he can answer that.

A A long time ago, yes, and sometimes I still have to believe in Santa Claus.

Q Have you ever believed in the Easter Bunny?

MR. BLACKORBY: Your Honor, this is --

THE COURT: Well --

MR. BLACKORBY: There's no relevance to the Easter Bunny in this trial.

MR. STILLEY: Judge, I want -- let me help you out here by just letting you know where I'm trying to go. I'm just trying to establish that he has had ideas in the past and that he has given up those ideas for an idea that he now believes, and he now believes that the later idea is the truth.

THE COURT: Okay. Well, you can ask this question about the Easter Bunny, but we'll have no other questions along that line, Mr. Stilley. Do you believe in the Easter Bunny?

A Well, now that I have a grandson, I probably will believe again.

THE COURT: You have another area or another question?

MR. STILLEY: Oh, yes. We've got lots of questions for this witness.

THE COURT: Well, if you ask questions, Mr. Stilley, they need to be relevant questions and they need to be questions on cross examination that were brought up on direct examination. BY MR. STILLEY:

Q Sir, where did you, where did you look to try to determine whether or not Dr. Roberts had made returns for a given year?

A Our computer system shows the document locator number under his Social Security Number.

Q And where would a person that lives in the Arkansas District make a tax return?

A Generally that's done in the Memphis Service Center.

Q Okay. Did you do a record check in the Memphis Service Center?

A From what was postmarked on here, that's where these were received, but our computer system is accessible across the country, so --

Q So you checked to see if it was filed anywhere, is that correct?

A That's correct.

Q So if it was filed, even if it was filed in New York City by mistake, you would have found it, correct?

A If it was posted on the, on the master file, I guess it would be there.

Q Did you do it -- did you check any other part of the records? Did you check anything else on Dr. Roberts?

A Which other are you --

Q Did you check to see if he had anything to the IRS to explain his position?

A No.

Q Okay.

A Not as far as I know.

Q Let me draw your attention to Exhibit 1-3 and see if you know anything about that Exhibit. See if you recognize it first. It's in the --

A I wasn't given 1-3.

Q You were not given 1-3?

A Huh-uh.

Q I presume then you never heard about it or did you? You don't know anything about it?

A From what he understood, that that wasn't supposed -- wasn't going to be introduced, so I wasn't shown.

Q Wasn't supposed to be introduced at all or wasn't supposed to be introduced by you?

A As far as I know this is what I was supposed to introduce, Exhibit 1-1, 1-2, and 1-4.

Q Have you seen Exhibit -- the Exhibit marked Government's 1-3 before?

A I think I saw -- I reviewed it at one point in time.

Q So you do recognize it, is that not correct?

A Well, I would recognize it, but I have to say it I haven't introduced it.

Q Okay. Do you have any in front of you?

A No, sir, I don't.

MR. STILLEY: Okay. Your Honor, may I approach the witness?

THE COURT: What's the relevance of 1-3?

Q All right, Your Honor, that's Dr. Roberts' explanation that he sent to the Internal Revenue Service.

THE COURT: What do you think that's relevant to?

MR. STILLEY: Well, that would be relevant to show that he didn't just simply ignore the Government or the IRS; that he sent them a letter to explain his position on that, and I want to find out if he had -- what his knowledge is about this.

MR. BLACKORBY: Your Honor, I object. It's outside direct. It's also an area that the Court's already ruled on. There's no relevancy to these subsequent documents filed by Dr. Roberts with the IRS.

THE COURT: Ladies and gentlemen of the jury, I'm going to give you -- how long is it going to take my smoker, you think, to --

JUROR: I don't have to smoke.

THE COURT: Well, I know, but we -- why don't I give you about 15 minutes? We're going To remain in session. Remain seated, sir, until the jury is out of the room. Remember admonition of the Court to not discuss this with each other or allow anybody to discuss it with you. If you do go outside the building, you need to wear your juror button. It will help you gain admission back. (THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Okay. Let the record reflect it's 1:20. The jury is out of the room and we're here discussing Exhibit 1-3. Mr. Blackorby, do you propose to introduce this at any point or --

MR. BLACKORBY: No, Your Honor. This record is just the protest documents of Dr. Roberts file where he takes the various positions the Court has already ruled on; that he's a non-resident alien; that he's not a resident of the United States; that he's a non-taxpayer. It's just a host of his arguments that have already been rejected by the Court as well as all the other courts.

THE COURT: Have we not already considered this, Mr. Stilley?

MR. STILLEY: Your Honor, I don't think so. I think this is a perfectly legitimate line of questioning.

THE COURT: Well, I know you think it's perfectly legitimate, but the question I've tried to ask, I thought I asked, was had we not already considered this? Has the Court not already ruled on this?

MR. STILLEY: No, no. As a matter of fact, the section 7203 says that a person can be required to make a return statement or list. And this is, I think quite clearly, a statement, and I need to ask him some questions about this statement. And it was --

THE COURT: Well, I'm going to let you. I'm going to let you ask briefly about it, but as I understand it, he is merely the custodian. I'm not sure he's in any position to interpret the code or whatever. You may stand down too, sir, we'll be in recess till about, oh, let's make it at least 25 till. Do you have other questions you want to have answered of this witness?

MR. STILLEY: Yes, I do.

THE COURT: Why don't you give us a heads-up on where we're going?

MR. STILLEY: Okay.

THE COURT: Well, what I'd like to do, Mr. Stilley, is he is the custodian of the records, and if you intend to get much beyond, you know, what he's the caretaker and the custodian of, I'm not going to permit it. He's not going to be the only witness, you know, I assume. We also, this morning, we made arrangements or I had told you could make an offer of proof in connection with Mrs. Blackorby and also Judge Jones. My suggestion was that's going to be out of the presence of the jury that we do that after we turned the jury loose today. Is that agreeable with you, Mr. Stilley? Is that when you want to do it?

MR. STILLEY: That would be fine.

THE COURT: Mr. Blackorby, can we have the people here and do that?

MR. BLACKORBY: I've asked that they be contacted, Judge, and I assume that will be.

THE COURT: Well, you may stand down. Let's take a break and we'll start back at 25 till. (Off the record at this time for a recess. THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Have a good break?

JURORS: Yes, yeah.

THE COURT: You get a chance to go outside, my smoker? Continue to cross-examine him, please.

MR. STILLEY: Your Honor, one housekeeping matter, I'd like for the record to have an introduction of a new individual at the Government's counsel table. I just don't know who that is.

THE COURT: Who is the individual at the counsel table?

MR. BLACKORBY: This is Jimmy Gibbs. He's the technician that operates our visual effects up here.

THE COURT: Yeah. He's the one that -- usually we have Miss Porter, whose expertise is limited to jiggling it, as I recall, but it works sometimes, but we're glad to have you with us, Mr. Gibbs. BY MR. STILLEY:

Q Sir, are you the custodian of physical records or just the computer records?

A Any records from the Internal Revenue Service.

Q Okay. And where are you stationed out of?

A Austin, Texas.

Q Fine. For a taxpayer in Arkansas, do you know where that they would file their tax returns?

A Generally they file them in Memphis Service Center.

Q Are you sure that they wouldn't file them in Oklahoma City?

A That's, that's the district office in Oklahoma City. The service centers are -- service centers generally handle returns being filed.

Q And is Arkansas part of the Oklahoma District or Arkansas/ Oklahoma District?

A Yes, it is.

Q When you do a search for records, as in this case, do you see all the records that that person has sent to the IRS?

A No. I searched the -- whenever we try to find, locate records, I search on the computer looking for specific records that had been filed, and if you're looking for a tax return, that's the document that I'm looking for. And that's one of the reasons that we have the transcripts to show any returns that were filed.

Q All right. When you looked on the -- and tell us what is the document or the record, the file that you look at when you're looking at someone's records? Is that an individual master file?

A Right. If you're looking for somebody under a Social Security Number, yes, we're looking at the individual master file.

Q Did you look at the individual master file in this case?

A Yes.

Q And does that show -- would that show all correspondence with the IRS by that particular individual?

A No, it wouldn't, not necessarily.

Q What correspondence wouldn't be shown on the individual master file?

A If it's strictly correspondence, generally, they're generally attached to a return or to another document. They don't show up strictly as correspondence.

Q How would you find out about correspondence that had been mailed to the IRS?

A Sometimes we find other transaction codes that would indicate that something had been received and we filed it under that, under the year that's pertaining -- that the correspondence pertained to.

Q Can you look at the records that you've got there and see if the document that is marked Government's Exhibit 1-3, does that show up on the individual master file?

A I don't have 1-3 in front of me.

Q Okay. Just a second. May I approach the witness?

THE COURT: Yes, you may. Mr. Stilley, I think he's testifying about records that he's the custodian of. If he's not the custodian of 1-3, I'm not sure he can testify about it, but you can sure ask him about it. You can ask him if he's the custodian of it. BY MR. STILLEY:

Q Sir, are you custodian of the record that you see that's marked Government Exhibit 1-3?

A As a custodian of the records for the Internal Revenue Service, yes, I am.

Q Okay. Do you recognize that document?

A I have seen it before.

Q And can you tell us what that document is?

A It's a document that was sent in and it has attached to it correspondence from the Internal Revenue Service that was sent back to us by Mr. Roberts.

MR. STILLEY: Move to admit Government's Exhibit 1-3?

MR. BLACKORBY: I object, Your Honor. He still hasn't laid any foundation for its admission showing its relevance to his failure to file for these years in question.

THE COURT: I'm going to admit it over your objection as 1-3. He is merely the custodian of it. I'm not sure that he's prepared to answer any questions about it or whatever, but I'm going to admit it. He has testified it is a record. It will come in as 1-3. BY MR. STILLEY:

Q Mr. Dean, I'd like to show you a page from this Exhibit that was just admitted.

THE COURT: Mr. Stilley, I'm going to admit 1-3. I said I'm not real sure he's going to be allowed to testify from it unless it has something to do with his being custodian. He's in no position to interpret anything in 1-3. Did you not understand what the Court has done?

MR. STILLEY: Yes, I understand what the Court has done. And I know there's a difference between being custodian and knowing about the particulars of that document. I want to ask him -- I'll just tell you what I'm want to ask him about it. I want to ask if a particular document would generate a response from the Internal Revenue Service.

THE COURT: I'm not sure I even understand the question, but if you do, you may attempt to answer that, sir.

A Well, one of the pages is a letter that we sent to Mr. Roberts that says request for telephone contact, and that was returned to us from Mr. Roberts, and that's pretty much what I --

THE COURT: You don't actually analyze the letters or try to interpret them or whatever. You just keep -- you're just the custodian.

A This is actually coming out of Collection.

THE COURT: I think we need to go on to something else, Mr. Stilley.

MR. STILLEY: Everybody see that?

THE COURT: Mr. Stilley, I think --

MR. BLACKORBY: Your Honor, I object to the publication of that page. Since this witness can't testify or attribute to that page, I object to the publication on the Doar.

THE COURT: That'll be sustained. Take it off the Doar, sir.

Q Okay. There was a letter that was sent by Dr. Roberts to the Internal Revenue Service in which he had an explanation of why he was not required to file. In your job as custodian of records, do you know if that document should generate some kind of response from the Internal Revenue Service?

A I don't work in this area. I've never worked in Collections, so I wouldn't know.

THE COURT: Anymore questions? BY MR. STILLEY:

Q So are you saying then that you don't know whether the IRS would make a response to this particular document?

A I don't know what their procedures are and I won't -- I will not speak for somebody that works in an area where I'm not trained.

MR. STILLEY: Pass the witness.

THE COURT: Any redirect?

MR. BLACKORBY: No, Your Honor.

THE COURT: May this witness be excused and stand down?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Fine. Thank you very much, sir. Call your next witness, please.

MR. BLACKORBY: United States calls Clisdol Ruffin, Your Honor.

MR. BLACKORBY: Your Honor, I have a blue ribbon copy of Exhibit 1-3, which I will substitute in lieu of Mr. Stilley's binder, if that's --

THE COURT: Okay. Fine. Do you have any objection to that?

MR. STILLEY: No problem.

THE COURT: Certified copy?

MR. BLACKORBY: Yes, Your Honor, it is certified.

THE COURT: If you have no problem, just say no. You have no objection?

MR. STILLEY: No objection.

THE COURT: Fine.

CLISDOL RUFFIN, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Good afternoon!

A Yes.

Q Would you state your name and spell your last name, please?

A Clisdol Ruffin, R U F F I N.

Q And, sir, what city or town do you reside in?

A Van Buren, Arkansas.

Q And how long have you been in this area?

A Going on 21 years.

Q And what's your profession?

A I've been a tax consultant for 35 years.

Q As a tax consultant, do you also prepare tax returns for other people?

A Yes, I do.

Q That's part of your profession, right?

A Yes.

Q Okay. What kind of training have you had as a tax preparer, tax consultant, sir?

A I've had all kinds of training down through the years.

Q Do you have any college degrees or --

A I have no college degree, but I've taken courses. I was a licensed tax consultant from the State of Oregon and they have a licensing law and I had to pass tests to become a consultant there.

Q Okay. And you still do that professionally as a tax consultant and preparer?

A Part time; yes.

Q Okay. When did you cease doing it full time, sir?

A About three years ago.

Q Okay. Now, do you know the Defendant, Dr. Philip Roberts?

A Yes.

Q And how long have you known Dr. Roberts?

A 86, 87, I guess 88, 89.

Q Okay. How did you come to know him?

A He came to my office to have a tax return prepared.

Q All right. Did you know him before he came in and had that return done?

A I knew of him, but I don't know when I knew him personally.

Q And how did you know of him?

A Through a family.

Q And do you know what was the first year you actually prepared a return for him?

A I can look it up. I think it's like 80. It was in the eighties.

Q Okay.

A Early eighties.

Q Early eighties? Well, maybe we can accelerate this. Your Honor, may I approach the witness with Exhibits?

THE COURT: Yes, you may.

Q Sir, let me hand you what's been identified as Government's Exhibits 6-1, 6-2, 6-3, and 6-4. And would you take a look at those for me, sir? Are those copies of your records?

A Yes, they are.

Q And those are true copies of your records, right?

A Yes.

Q And these are tax returns or work papers pertaining to Dr. Roberts, the Defendant, is that true?

A Yes.

Q And I believe 6-1, does that pertain to the 1987 tax year?

A Yes, sir.

Q And is that copy in front of you a true copy of the records that you maintained concerning your work on Dr. Robert's return?

A Yes, it is.

MR. BLACKORBY: Your Honor, at this time I move for admission of Government's Exhibit 6-1?

THE COURT: Any objection?

MR. STILLEY: Yes. We would object on the grounds that if it was, this was compelled by Dr. Roberts, then it couldn't be used against him in a criminal case, and if it was voluntarily, it really doesn't help the Government in any way. It's immaterial.

THE COURT: Fine. Your objection is overruled. It will be admitted as 6-1. BY MR. BLACKORBY:

Q Sir, would you look at Exhibit 6-2? Is that a copy of the 88 return for Dr. Roberts?

A Yes, it is.

Q Is that a return you prepared for Dr. Roberts?

A Yes.

Q Is that a true copy of the records that you maintained concerning Dr. Roberts' 88 return?

A Yes, it is.

Q And in the normal course of your business do you keep copies such as this?

A Yes.

MR. BLACKORBY: Your Honor, at this time I would move for admission of Government's Exhibit 6-2.

THE COURT: Same objection?

MR. STILLEY: That's correct.

THE COURT: Be admitted over the objection of the Defendant as 6-2.

Q Exhibit 6-3, sir, would you look at that?

A Yes.

Q Is that Dr. Roberts' 89 tax return?

A Yes.

Q Is that a return he had you prepare for him for the 89-tax year?

A Yes.

Q Is this return a true copy of the records you maintained and the return you prepared for Dr. Roberts?

A Yes.

Q Is it part of your normal course of business to keep such records as this 89 return?

A Yes.

MR. BLACKORBY: Your Honor, I move for admission of Government's Exhibit 6-3.

THE COURT: Same objection?

MR. STILLEY: Correct.

THE COURT: Be admitted as 6-3 over the objection of the Defendant. BY MR. BLACKORBY:

Q Sir, would you look at Exhibit 6-4? Is this what I would call some worksheets?

A Yes.

Q All right. And who prepared these worksheets, part of them, sir?

A They came from Dr. Roberts' office.

Q Who provided this worksheet to you on Government's Exhibit 6-4?

A Yes.

Q And did you utilize it to prepare one of his returns?

A Yes.

Q What year did you utilize it, sir?

A 1989.

Q And is this Government's Exhibit 6-4 records you maintain?

A Yes.

Q Was part of your normal business to maintain records such as Government's Exhibit 6-4?

A Yes.

MR. BLACKORBY: Your Honor, at this time I move for the admission of Government's Exhibit 6-4?

THE COURT: Same objection?

MR. STILLEY: Correct.

THE COURT: Be admitted over the Defendant's objection as 6-4.

Q All right, sir. Let's look at 6-1, if you would, please. Before we bring up six -- could I bring up 6-1, sir? There's a 1987 return I believe you just testified that you prepared for Dr. Roberts?

A Yes.

Q You prepared any returns prior to that return?

A I don't remember.

Q Okay. But you did do this 87 return, is that right?

A Yes.

Q Is that it up there on the screen that we're looking at?

A Yes.

Q Okay. Now, in preparing this return, whose handwriting is actually on that return where we see the handwritten stuff?

A It's mine.

Q All right. And the information that's on there as far as dollars and cents and expenses and so forth, where did you get that information?

A It was provided by the taxpayer.

Q Would that be Dr. Roberts?

A Yes.

Q Dr. Roberts himself brought you that information, is that right?

A To my knowledge, yes.

Q How did he bring that to you? Did he bring it in books or what?

A I don't remember.

Q Okay. At any time -- now we've already looked at one summary which I think is Exhibit 6-4, is that right?

A Uh-huh.

Q Would he bring you -- were there occasions that he brought you summaries with information summarized like that?

A I don't remember.

Q Okay. But you're sure that the information that is on the return he provided it, is that right?

A Yes.

Q All right. Now, I believe on that page -- we'll just flip to the second page, the back page here, sir.

A Of which year?

Q The one we're talking about, 1987. We're still in 1987?

A Uh-huh.

Q And what did you compute to be Dr. Roberts' taxable income for that year?

A In 1987 it was a minus $1304.

Q Okay. So in essence did he owe any tax in 87?

A No.

Q All right. Do you remember if you had done his 86 return?

A No, I don't remember.

Q Okay. Now, let's flip over to the page entitled "Profit and Loss from Business or Profession." You see where I'm looking? Is that the page we have up here on the screen?

A Uh-huh.

Q Okay. And you prepared the information on that return, is that right, or on that page, is that correct?

A Yes.

Q Is that from information Dr. Roberts gave you?

A Yes.

Q Now, what business was Dr. Roberts in per that page?

A It says chiropractor.

Q Okay. And on line one does it show gross receipts or sales? What's that figure, sir?

A 50,555.

Q All right. And then that part two there, right in here, this, are these the business deductions down below?

A Yes.

Q All right. And how much are the business deductions? What do they total?

A 51,869.

Q And that's where the loss came from that you just testified earlier?

A Yes.

Q All right. Looking at that 87 return, what was the main source of Dr. Roberts' income for that year?

A To my knowledge it was from chiropractic.

Q You don't -- other than a small -- about $200 in interest on the second page, did you list any other source of income other than chiropractor?

A There was a W-2 Form for that year.

Q And who was that on, sir?

A His wife.

Q Okay. Now, turning over to the page titled "S and E Computation of Social Security and Self-employment Tax," do you see where I'm talking about?

A Yes.

Q You made a computation there. What actual tax are you computing here, sir?

A If there was a positive income, there would have been a Social Security tax, but it's a negative income.

Q Okay. Why did Dr. Roberts have to consider whether he paid Social Security? Did you do that with every taxpayer that comes in; do you do a Social Security computation?

A In that year, yes, I did.

Q Okay. Even it it's a W-2 wage earner?

A Right. No, not a W-2. If it was a Schedule C.

Q All right.

A Business Income.

Q But since Dr. Roberts operated at a loss, he didn't have any tax, is that right?

A No.

Q Now, sir, flipping over to the next-to-last page, I believe, of that Exhibit, looks like that's an Arkansas Income Tax Return, is that right?

A Yes.

Q Did you also do the Arkansas return for Dr. Roberts?

A Yes.

Q Was that from the same information he provided you?

A Yes.

Q And, again, it appears that his state return was at a loss also, is that correct?

A There was tax on the state return.

Q You filed that somewhat differently, didn't you, sir?

A Yes.

Q And why did you do that?

A Minimize the tax.

Q Okay. Now, once you prepared these returns for Dr. Roberts in 87, what did you do with the returns?

A They were -- he was to come and pick it up from my office and pay and file it.

Q Is that what he did?

A To my knowledge.

Q Did you file the returns for him?

A No.

Q So if they got filed, he would have had to file them?

A Yes.

Q Okay. Let's look at Exhibit 6-2, which is the 88 return, sir. Now, I believe it's your testimony you also prepared this return for Dr. Roberts, is that right?

A Yes, sir.

Q And who provided the information for you to prepare this return?

A It came from him.

Q All right. Do you remember how you got it? Did it come in summaries or books or do you know?

A No, I don't.

Q All right. On that first page, does it also list that he's filing married, is that correct, sir?

A Yes.

Q All right. And he's got some children that he's claiming as exemptions, is that right?

A That's correct.

Q All right. What was the -- which I guess we have to go to the second page. What was his taxable income for 1988, sir?

A Line 37 was $10,151.

Q And, again, looking at the return, if we jump over to the Profit and Loss, Schedule C, what business was Dr. Roberts in?

A It shows chiropractor.

Q And that's that statement up at the top, is that correct?

A Yes.

Q All right. What was Dr. Roberts' gross receipts in 1988 from his business?

A 77,766.

Q All right. And what was his expenses? This part down here, what did they total?

A 59,352.

Q So what was his net profit from his chiropractic?

A 18,414.

Q Okay. And you prepared this from what Dr. Roberts gave you?

A Yes, sir.

Q Again, would you flip over to the Social Security Tax page? Did you do a computation here?

A Yes, I did.

Q Okay. Did he owe tax this time for 1988?

A Yes.

Q And why is that?

A Because it was a positive income.

Q Okay. Did you explain to Dr. Roberts exactly what the Social Security tax was?

A I don't remember.

Q All right. What was the tax? Why? Why is there -- why did you prepare that, that form for that tax?

A Tax that was due was $2397.

Q Okay. And that goes towards what when you pay that tax?

A Towards Social Security.

Q Now, also on the 88 return, if you flip over, I believe there's a depreciation schedule, depreciation amortization schedule. You see where I'm talking about?

A Uh-huh.

Q Okay. Where did you get the information about the assets to depreciate?

A It was information that was provided to me.

Q By Dr. Roberts?

A Yes.

Q It also lose like he did his state income tax return, is that correct?

A That's correct.

Q All right. Again, was that from information that Dr. Roberts provided you?

A Yes.

Q So for 1988, once you completed the returns for Dr. Roberts, what did you do?

A Our custom is in our office is to prepare it for the person to come and pick it up, sign it, and mail it in.

Q And to your knowledge is that what you did for that year?

A Yes.

Q You did not file those returns for him, did you?

A No.

Q So if they got filed, to your knowledge he would have filed them?

A That's correct.

Q Let's look at Exhibit 6-3. Is that the 89 return? Let me ask you something about 88. That's fine. Did you do anything else in 88 besides income tax returns? Did you do any payroll taxes?

A Some time in 88 or 89 I was doing some quarterly reports.

Q That's payroll taxes?

A Yes, sir.

Q Does that concern taxes if someone has employees?

A Yes.

Q So from what you saw, did Dr. Roberts have employees during that timeframe?

A Yes.

Q How would you get the information? Would he bring it to you or would you go to his office?

A I would -- I think at that time I went to his office and picked it up.

Q Okay. Would that be in the form of books or records or summaries or how did you get it?

A Some kind of payroll summaries. I don't remember.

Q All right. But Dr. Roberts had asked you to do his payroll taxes?

A Yes.

Q All right. Back to 1989, Government's Exhibit 6-3, did you prepare that return, sir?

A Yes, I did.

Q Did you prepare it for Dr. Roberts?

A Yes.

Q And where did you get the information that was put on the return?

A From the book that he kept and brought into me that I made the copies, 6-4, from.

Q All right. So it was Dr. Roberts that brought Exhibit 6-4 to you, correct?

A Right.

Q And that to me looks like -- can we pull up 6-4? Is that what we're looking at, sir?

A Yes.

Q Okay. And that's what Dr. Roberts brought you?

A Yes.

Q It appears to be a listing of sales receipts plus checks written for various expenses. Is that what we're looking at?

A Uh-huh.

Q Was it from this that you prepared his 89 return?

A Yes, sir.

Q And so but you -- Government's Exhibit 6-4, this thing right here, you did not prepare that, right?

A No.

Q You got that from Dr. Roberts?

A Someone prepared it, and I got it from him.

Q He brought it in to you. You don't know whether that's his handwriting or not?

A No, sir.

Q But you know he brought it to you?

A Yes.

Q Okay. Thank you. All right. Back to the return, sir. What was Dr. Roberts' taxable income in 89?

A Line 37 was $69,177.

Q Okay. Jumping over to the "Profit and Loss for Business Schedule C," what was the gross sales from his chiropractic business in 89?

A $153,791.

Q All right. And then I think we have -- below that we have the list of expenses, is that correct?

A Yes.

Q And you took that -- is that from that summary sheet, Government's Exhibit 6-4?

A Yes.

Q What was Dr. Roberts' net profit then down at the bottom there?

A Line 30 is $77,653.

Q Given that kind of profit income, what did his tax liability for 1989 turn out to be?

A $22,638.

Q And had he made any estimated payments or?

A $5,000 was sent in with a -- with an extension form

Q Okay. Would you tell the jury what's an extension form?

A Filing for additional time to prepare the return.

Q Okay. Now, did you go over this return with Dr. Roberts?

A To my knowledge, yes, I did.

Q And did he have any concerns about the return?

A If I remember, yes, he was concerned about the amount, you know, how much that he owed.

Q Would that have been a substantial increase from the previous year?

A Yes, sir.

Q Take a look at 88. How much, how much was the jump? Do you recall approximately? In 88 is there a tax of $3,825?

A 3,825 in 88 to 22,638 in 89.

Q Okay. And was he -- what was his -- what did he express to you? When you said he was concerned, how did he express that?

A According to my memory, that he was concerned because of the amount being, you know, as great an amount as it was.

Q Okay. Did you go over the return with him to show how that amount came about?

A If I remember right, I went through the worksheets the second time to make sure that this was correct.

Q You're talking about his worksheets?

A His worksheets, right.

Q What he had given you?

A Right.

Q Which is Government's Exhibit 6-4, is that right?

A Yes; uh-huh.

Q And did that seem to placate him?

A Well, that, that -- I said, you know, from the records, that's all I could come up with, you know.

Q Did you explain to him given the amount of income he made, that was the best you could do?

A I don't remember, but I'm sure I did.

Q Okay. Did Dr. Roberts take the returns you had prepared for 89?

A Yes.

Q Okay. You also did -- I didn't reference it. Did you do a state return for 89 that year also?

A Yes.

Q Okay. After he took the returns, do you know whether he filed them or not?

A No, I don't.

Q You didn't file them for him, did you?

A No.

Q So if they got filed, he would have done it?

A Yes.

Q All right. After the 89 return, did you ever do any more returns for Dr. Roberts?

A No, sir.

Q Did you ever talk to him again or did he ever come back to you for tax purposes?

A No. My understanding was he was going to go somewhere else.

Q Okay. Did he tell you why he was going to go somewhere else?

A No.

Q Did he ever come back and get any records from you?

A That's a long time back in 89, but I believe he came and picked up some payroll records that I had been doing.

Q So after the 1989 year you didn't do any taxes for him, is that right?

A No, sir.

Q You ever see him or visit with him again?

A No.

Q So after the preparation of the 89-year, that was your last contact with Dr. Roberts?

A Yes, sir.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. STILLEY:

Q Do you by any chance know what amount law it is that requires Dr. Roberts to file a tax return?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: It will be sustained. BY MR. STILLEY:

Q Now, when you were talking about these returns, do you know who brought this information to you, the information that from which you prepared the returns?

A I didn't understand you.

Q Okay. When you got information pertinent to Dr. Roberts' finances, do you know who brought those records to you?

A Not offhand. I was thinking that he did.

Q All right. But you're not sure about that one or another, is that correct?

A No, sir.

Q How many taxpayers do you know in your practice -- do you have quite a few taxpayers that don't like the amount of tax that they have to pay?

A I'm sure there is some.

Q Is that a fairly common scene?

A I don't know how many numbers.

Q All right. A common sentiment or is it an uncommon sentiment?

A Probably an uncommon one in our practice.

Q Do you -- what's -- what's the economic profile of your customers? You do mostly wage earners' tax returns or what type of people do you generally work for?

A I do mainly wage earners. I do some small businesses and a limited number of corporations.

Q Dr. Roberts never brought you any information, had you prepare tax returns and then failed to file it, did he?

A Not to my knowledge.

MR. STILLEY: Pass the witness.

THE COURT: Redirect.

MR. BLACKORBY: One more question, Your Honor.

REDIRECT EXAMINATION BY MR. BLACKORBY:

Q Sir, did Dr. Roberts on that Exhibit 6-4, the summary sheet, did you explain to him how to fill that out when you gave him a book or something?

A I may have headed -- the book does not have headings like this has, you know --

Q Uh-huh.

A -- the one through 14 columns. I may have headed out the book.

Q And that's a discussion you had with Dr. Roberts start with right?

MR. BLACKORBY: Pass the witness.

THE COURT: Any recross?

RECROSS EXAMINATION BY MR. STILLEY:

Q You made these returns, but you didn't file these returns, correct?

A Correct.

Q And if I told you that "make" and "file" meant the same thing, would you agree with that statement?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Yeah. That will be sustained. Do you have another question? BY MR. STILLEY:

Q Why do people have to come to you to do returns?

A Because they don't want to do it themselves.

Q Is it because most people don't know how to do that?

MR. BLACKORBY: Objection; calls for speculation, Your Honor.

THE COURT: Well, he can answer that, if he can.

A Oh, probably some of them do. I don't know.

Q Do you think the majority of the people that come to you bring their materials to you to make the return because they don't know how to do it?

A Some of them don't and some of them just don't want to do it themselves.

Q The people that come to you for you to do their tax returns, do you know what percentage of them know the law concerning the making of tax returns?

MR. BLACKORBY: Objection, Your Honor; calls for speculation of the knowledge of the law.

THE COURT: I'm going to sustain that. Do you have any more questions?

MR. STILLEY: Pass the witness.

THE COURT: You may stand down. Thank you.

MR. BLACKORBY: May this witness be excused, Your Honor?

THE COURT: Any objection, Mr. Stilley?

MR. STILLEY: No.

THE COURT: You may be excused. Thank you very much. Call your next witness, please.

MR. BLACKORBY: United States call Laura Sampson. (Witness sworn.)

THE COURT: Come around, ma'am, and have a seat right there, and speak directly into the microphone. There's water over there, if you need it.

LAURA SAMPSON, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Good afternoon, ma'am. Would you state your name and spell your last name, please?

A Laura Sampson, S A M P S O N.

Q And what town do you reside in or nearby?

A It's between Gore and Webber Falls, Gore and Vian, Oklahoma.

Q Okay. You essentially reside in the Lake Tenkiller area, is that right?

A Yes.

Q Do you own or operate a business there?

A Yes.

Q What is the name of that business.

A Pine Cove Marina.

Q Okay. And how long have you been in business there?

A About 13 years.

Q All right. You're familiar with Dr. Roberts or his name?

A Yes.

Q And how do you know Dr. Roberts?

A He's had boats with us.

Q Okay. And having boats, does he have them in your slips or does he use your boats or how does he do that?

MR. STILLEY: Objection on the grounds this is immaterial and irrelevant to the issue of this case.

THE COURT: It will be overruled. You may answer.

Q What I've -- how does he do boating business with you? Does he rent a slip?

A Yes.

Q Okay. During the years 1993 and 1994 did he rent slips?

A Yes.

Q All right. And normally how did he pay you for this rental?

A With a check usually.

Q All right. How often was the rental due? Was it yearly, monthly?

A Once a month we send out statements.

Q Okay. Does he still -- has he consistently rented slips from you since that timeframe?

A Yes.

Q Do you remember the first year he rented this slip from you?

A Yes.

Q And what year was that?

A Just a minute and I can tell you.

A 1992.

Q Okay. And does he still rent a boat slip from you?

A It's not in his name anymore. It's in --

Q What name is it?

A It's in NXS Maritime.

Q Okay. Does he still write you the check, still signed by him?

A Yes.

Q Okay. Now, did you research your records to determine for the years you guess 92 through 94 approximately what he had paid you for slip rental?

A Yes.

Q Okay. Let me hand you what's been marked as Government's Exhibit 28-1. Your Honor, may I approach?

THE COURT: Yes, you may.

Q And is that the letter and a sheet you utilized to verify those checks, ma'am?

A Yes, it is.

Q And so from your best determination for your records, those are the payments Dr. Roberts made in those years he rented a boat slip from you, is that right?

A Yes.

Q How big is that slip? Do you recall?

A Yes. It was a -- let's see. A 31-foot slip.

Q And how big a slip does he rent now?

A A 50-foot.

Q Okay. And he's got a boat in that slip now?

A Yes.

Q Okay. Going back to the years in front of you with the letter Exhibit 28-1, so that's a true to the best of your ability, that's a true reporting of the fees Dr. Roberts paid you in those years for slip rental?

A Yes, it was.

MR. BLACKORBY: Your Honor, I move for admission of Government's Exhibit 28-1.

THE COURT: Any objection?

MR. STILLEY: Yes, Your Honor. I would object on the grounds that this is not material. If the Government can explain any possible basis that this is relevant to this case or material to them, I could understand that, but I can't see how this possibly could be material.

THE COURT: I'm overruling your objection. It will be admitted as 28-1 over the objection of the Defendant.

MR. BLACKORBY: Your Honor, I pass the witness.

THE COURT: Cross-examination.

CROSS EXAMINATION BY MR. STILLEY:

Q How often do you see Dr. Roberts?

A Oh, sometimes weekly or monthly, whenever he comes up.

Q You don't know anything about where that he gets the money to pay his bills, do you?

A No.

Q And you wouldn't know whether that money was income or not, would you?

A No.

MR. STILLEY: Pass the witness.

THE COURT: Any redirect?

MR. BLACKORBY: No, Your Honor.

THE COURT: May she be excused?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: You may stand down. Thank you very much. Have a safe trip back to Pine Cove.

A Thank you.

THE COURT: Call your next witness, please.

MR. YURKANIN: Your Honor, the Government calls Dan Hasty, witness 38.

DAN HASTY, DIRECT EXAMINATION, SWORN BY MR. YURKANIN:

Q Sir, could you please tell your last name for the court reporter?

A Hasty, H A S T Y.

Q Where do you work?

A Randall Ford Incorporated.

Q And how long have you worked there?

A Sixteen years.

Q What's your current position with Randall Ford?

A I am the Business Manager.

Q And were you -- are you here today as a result of a subpoena?

A Yes, sir.

Q And when you were served a subpoena, did that cause you to search your records for documents pertaining to Philip Roberts?

A I'm sorry, sir?

Q Let me simplify that. As a result of that subpoena, did you search for records relating to a Philip Roberts?

A Yes, sir.

MR. YURKANIN: Your Honor, may I approach?

THE COURT: Yes, you may.

Q I'm handing you what's been marked for identification as Government Exhibit 38-2. Without reading from it, would you tell us generally what it is?

A That is a Purchase Order to purchase an automobile.

Q And was this record, this document, this Purchase Order made at or near the time of the purchase of this vehicle?

A Yes, sir.

Q Was this record made by someone with personal knowledge of the events recorded?

A Yes.

Q Is it in the regular course of Randall Ford's business to make these records?

A Yes, it is.

Q And does Randall Ford regularly keep these records?

A Yes, sir.

MR. YURKANIN: Your Honor, move for the admission of Government's 38-2?

THE COURT: Any objection?

MR. STILLEY: Objection, Your Honor. I'm totally at a loss to figure out --

THE COURT: Well, just make your objection. Are you objecting for the same reason you did to the boat loan?

MR. STILLEY: Yes.

THE COURT: Be fine.

MR. STILLEY: I can't imagine that anyone would suggest that this proves that Dr. Roberts had income unless -- and I want to make another objection that it's a waste of time and unduly prejudicial to just bring in and try to show that Dr. Roberts had certain things when it is just immaterial to this case. It's a waste of time.

THE COURT: It will be admitted as Government's Exhibit 38-2 over the objection of the Defendant.

MR. YURKANIN: Your Honor, may it be published to the jury?

THE COURT: It may be.

Q Mr. Hasty, reviewing this document, can you tell us back in 1994 did Dr. Roberts have any business with Randall Ford?

A Yes.

Q And exactly what was that? What happened in 94?

A It looks like a purchase of a 1994 Ford Explorer.

Q And can you tell how much Dr. Roberts paid for that Ford Explorer?

A Yes, sir. $26,870.

Q And can you tell whether or not Dr. Roberts financed that Ford Explorer?

A No, sir. That looks like a cash transaction. It was not financed through Randall Ford or Ford Motor Credit or any of our finance sources.

Q Finally, can you, based on the information you have, do you have any idea about what level of Ford Explorer this was or what packages it contained?

A From the VIN number it looks like it possibly was an Eddie Bauer or a Limited Edition.

MR. YURKANIN: Your Honor, may I have one moment?

THE COURT: Yes.

MR. YURKANIN: Nothing further.

THE COURT: Cross-examine.

THE COURT: Mr. Stilley, any cross-examination? Is that a yes?

MR. STILLEY: Yes.

CROSS EXAMINATION BY MR. STILLEY:

Q Mr. Hasty, do you have any idea where the money came from to pay for this vehicle?

A No, sir.

Q Do you have any idea whose name it was titled in?

A Yes, sir. It's -- it was titled in Dr. Philip Roberts. I've got a copy of the title. We have to keep all of our records as far as Bills of Sale, MSO's, title. Once we assigned them, we keep them as a permanent record.

Q Pass the witness.

MR. YURKANIN: Nothing further, Your Honor. May the witness be excused?

THE COURT: Mr. Stilley?

MR. STILLEY: Yes.

THE COURT: You may stand down, sir. You are excused. Call your next witness, please.

MR. YURKANIN: Your Honor, the Government calls Pamela Wallace. If I may, I'll just tender this original Exhibit.

THE COURT: Yes. (Witness sworn.) Fine. Come around and have a seat right here, please, ma'am. Speak directly into the microphone. There's water to the right, if you need it.

PAM WALLACE, DIRECT EXAMINATION, SWORN BY MR. YURKANIN:

Q Ma'am, would you please tell us your name?

A Pam Wallace.

Q And would you spell your last name for the court reporter, please?

A W A L L A C E.

Q Where do you work?

A City National Bank.

Q What do you do at City National Bank?

A I'm supervisor of proof and transit and research.

Q I'm sorry. Could you --

A I'm sorry. It's proof and transit and research area.

Q Are you here today as a result of a subpoena?

A Yes.

Q Due to that subpoena, did you search City Bank records for any records of Philips Chiropractic or Philip Roberts?

A Yes.

Q And did you find any accounts?

A Yes.

MR. YURKANIN: Your Honor, may I approach?

THE COURT: Yes, you may.

Q I'm going to hand you what's been marked as Government's Exhibit 8-1 and 8-2. For the time being, if you would just focus on 8-1. Do you recognize that document?

A Yes.

Q And can you, without reading it, can you tell us generally what it is?

A It's a bank signature card.

Q And looking at 8-2, do you recognize that document?

A Yes.

Q And can you tell us generally what that is?

A It's a Corporate Resolution we have businesses sign.

Q Okay. I believe 8-1 is a two-page document, is that correct?

A Yes.

Q All right. Let's switch over, and the Corporate Resolution, is that on the second page of the 8-1?

A Yes.

Q If we look over now to 8-2, can you generally describe that document for us?

A It's a signature card on a savings account.

Q Were these cards made at or near the time of the events recorded?

A Yes.

Q Were these cards made by an employee of City National Bank with personal knowledge of the events recorded?

A Yes.

Q Is it in the regular course of the bank's business to make these records?

A Yes.

Q And is it in regular course of the bank's business to keep these records?

A Yes.

MR. YURKANIN: Your Honor, I move for the admission of 8-1 and 8-2?

THE COURT: Any objection?

MR. STILLEY: Yes, Your Honor, I am generally puzzled as to what relevance at all that these documents have. I would object under it's a waste of time, irrelevant, immaterial.

THE COURT: Admitted over your objection as 8-1 and 8-2, sir.

MR. YURKANIN: And may we publish 8-1 to the jury?

THE COURT: Yes, you may.

Q What is this document, again, please?

A It's a signature card on a checking account.

Q And in whose name is this checking account?

A Roberts Chiropractic Center.

Q And in the search of your records, is this the -- did you ever -- did you find any other checking accounts either in Dr. Roberts' name individually or Roberts' Chiropractic Center?

A No.

Q Turning now to the second page of 8-1, what is that document?

A It's a corporate resolution.

Q And could you explain briefly what's the purpose of that document?

A It tells the bank who is authorized to sign withdrawals, make deposits, withdraw funds, also who is authorized to make any loans.

Q And in with respect to this account, who was the authorized signer?

A Mr. Roberts.

Q And were there any other people authorized to sign on this account?

A No, sir.

Q If he could now go to document 8-2, which has already been admitted into evidence. Do you have that one?

A Yes.

Q And this is another signature card?

A Yes.

Q What kind of account is this?

A A savings account.

Q As opposed to a checking account?

A Yes.

Q In reviewing your records, did you find any other savings account at City National Bank?

A No.

Q When was this account opened?

A It was opened June 15th of 1987.

Q In fact, were both accounts opened around the same time?

A The checking account was opened in September of 87.

Q And have both accounts been used since that time?

A Yes.

Q Did the savings account ever become dormant at some time?

A Yes. It became dormant in July of 91.

Q What about the checking account? Did the checking account ever become dormant?

A No, sir.

Q And, again, your search revealed only these two accounts?

A Yes, sir. (Pause)

MR. YURKANIN: Your Honor, if I may, I would like to approach the witness with a bulk of Exhibits, 8-15 to 8-26?

THE COURT: 8-15 through 8-26?

MR. YURKANIN: 8-26, yes, Your Honor.

THE COURT: Yes, you may.

MR. YURKANIN: And we won't need to go through each of these individually, Your Honor.

THE COURT: Has Mr. Stilley seen these?

MR. YURKANIN: Oh, yes, Your Honor.

Q Miss Wallace, I've handed you what's been marked, that stack of Exhibits, 8-15 through 8-26, which I believe you and I reviewed yesterday, is that correct?

A Yes.

Q And do you know what is that stack of exhibits is?

A It's bank statements.

Q Bank statements for?

A And closed items.

Q For whose account?

A Roberts Chiropractic Center.

Q And for what year?

A This one I'm looking at is 1993.

Q And within those exhibits can you tell me exactly what's contained?

A They will contain bank statements for each month. The checks written on the account plus deposits that were made and the items that were deposited.

Q Again, were these records maintained by City National Bank --

A Yes, they were.

Q -- in the regular course of business?

A Yes.

Q Were these records made at or near the time of the events recorded back in 93 --

A Yes.

Q -- by someone with personal knowledge?

A Yes.

MR. YURKANIN: Your Honor, the Government would move to admit 8-15 through 8-26?

THE COURT: Same objection, Mr. Stilley?

MR. STILLEY: Yes, Your Honor.

THE COURT: Fine. They will be admitted over the objection of the Defendant as 8-15 through 8-26.

Q Let me approach the witness and direct her to this one document.

THE COURT: Yes, you may.

MR. YURKANIN: Before I have you confused, let me tender 8-1 and 8-2 to the Clerk, Your Honor. If I may question the witness briefly from this position or would --

THE COURT: Yeah, you can. You need to speak up, though, if you can.

MR. YURKANIN: I will, Your Honor.

THE COURT: Some of us don't hear as well as we once did. So --

Q Looking at document 8-15A, if we can have that put up on the DOAR system, please, would you just explain to the jury exactly what this single document is?

A It's a bank statement on a checking account.

Q And if you look in the upper right hand corner, what is the date of that statement?

A January 29th, 1993.

Q So is that the statement for the entire month of January 93?

A Yes, it is.

Q Let me hand you a stack that's marked as 8-15B. Would you just explain to the jury, and we may not have this on the overhead projector. What are 8-15B?

A It is a deposit made by Roberts Chiropractic and it shows all the checks that were deposited to that account.

Q So in fact this is the entire number of checks that were deposited to the account that month?

A On one deposit.

Q On one deposit. And who are those checks made out to?

A They're made out to Roberts Chiropractic.

Q I'm going to hand you lastly 8-15D. Would you identify 8-15D for us?

A It's deposits and checks written on the account.

Q And what is the name on the checks?

A The checks are on Roberts Chiropractic Center.

Q So all of these checks were written from the account and entitled Roberts Chiropractic Center?

A Yes.

THE COURT: Officer Johnson?

Q Exhibits -- or if I may --

THE COURT: Yes, please.

Q Exhibits 8-15 through 8-26, each number represents a different month for that year, is that correct?

A Yes.

Q For example, 8-16 is February?

A Yes.

Q And so on and so forth?

A Yes, for the whole year.

MR. YURKANIN: Your Honor, at this point, I am finished with this bunch of Exhibits for the 93 year and would just like to tender them to the Court.

THE COURT: Yes, you may. They have been admitted and you may tender them and publish them to the jury or give them to the Clerk.

MR. YURKANIN: I'll give them to the Clerk and they'll be available to the jury to review in detail. Your Honor, may Mr. Blackorby approach with Exhibits 8-27 through 8-38?

THE COURT: Yes, he may.

Q And if Mr. Blackorby would pull out 8-27A, and please show it to Miss Wallace.

MR. STILLEY: Your Honor, if I could save just a little bit of time, if Court would like to go ahead and admit these subject to the same objection, I have no objection to waiving the basic foundation statements.

THE COURT: Do you want to move 8-27 to 8-38?

MR. YURKANIN: We do, Your Honor, move them into evidence.

THE COURT: They'll admitted over the objection of the Defendant.

MR. YURKANIN: And if I may just ask one question of the witness:

Q Are these the records for the 94-year?

A Yes, they are.

Q Are they arranged or organized in a fashion similar to those records just admitted for the 93 year?

A Yes, they are.

MR. YURKANIN: Your Honor, with respect to these records, I would like to go ahead and tender these to the Clerk.

THE COURT: They will be tendered. I'm either going to have to get a bigger desk for the Clerk or a bigger clerk. I'm not sure which.

MR. YURKANIN: I don't have too many more, Your Honor.

Q 8-40, Mr. Blackorby, can you please hand to Miss Wallace? Do you recognize that document?

A Yes.

Q And what is it?

A It's a loan application.

Q And when was that loan taken out?

A September 2nd, 1994.

Q And what was the purpose of that loan?

A For a 1994 Ford Explorer.

Q And what was the amount of that loan?

A $24,000.

Q And what were the terms?

A To be paid back in 12 payments of $2098.99 beginning October 1st of 1994.

Q Let me step back a moment, if I may. Is this -- was this record made at or near the time of the events recorded?

A Yes.

Q Was this record made by someone with personal knowledge of the events recorded?

A Yes.

Q Is it in the regular course of the bank's business to keep these records?

A Yes.

Q Is it in the regular course of the bank's business to make these records?

A Yes.

MR. YURKANIN: Your Honor, move for the admission of 8-40.

THE COURT: Same objection.

MR. STILLEY: That's correct, Your Honor.

THE COURT: It will be admitted over the objection of the Defendant as 8-40.

Q I believe you said this was a loan --

A Yes.

Q -- or a document?

A Document for a loan, yes.

Q Of how much money?

A 24,000.

Q To be paid back in how many payments?

A Twelve payments.

Q And what was the direct -- what was the time between each payment?

A one-month. They were to be -- to be paid monthly.

Q And what was the amount of each monthly payment?

A $2098.99.

Q Do you have any information there or any knowledge indicating how this loan was actually paid back to the bank?

A Yes. It was paid back within three months.

Q Do the records before you indicate how much was paid each month?

A Yes.

Q Tell us how much was paid the first month?

A $8,098.09.

Q And when did that payment occur?

A October 31st.

Q And can you tell us or actually if you would double-check --

A I'm sorry. That was -- it was September the 24th or 29th was the first payment. And it was $8,098.09.

Q And the second payment?

A Second payment was October the 31st for the same amount.

Q How much?

A $8,098.09.

Q And the last payment?

A It was a payoff and it was paid on November the 15th of $8,120.25.

Q Going back to the front page of the Loan Application Agreement Note, who took the loan out?

A Philip E. Roberts.

Q And who made the payments to the best of your knowledge?

A Mr. Roberts.

MR. YURKANIN: Your Honor, if I may now tender this Exhibit to the deputy?

THE COURT: Yes, you may. Yes, you may.

MR. YURKANIN: Your Honor, the two last Exhibits for this witness, if I may approach --

THE COURT: Yes, you may.

Q I'm handing you now what's been marked as Government's Exhibit 8-43 and 8-44. Miss Wallace, do you recognize those?

A Yes.

Q And were these records made by someone with personal knowledge of the events recorded?

A Yes.

Q Were these records made at or near the time of the events recorded?

A Yes.

Q Is it in the regular course of the bank's business to make these records?

A Yes.

Q And is it in the regular course of the bank's business to keep these records?

A Yes.

MR. YURKANIN: Your Honor, I move for the admission of Government's Exhibit 8-43 and 8-44?

THE COURT: Same objection?

MR. STILLEY: Correct.

THE COURT: Will be admitted over the objection of the Defendant as Exhibits 8-43 and 8-44. Q (By Mr. Yurkanin)

MR. YURKANIN: If we may publish 8-43 to the jury, Your Honor...

THE COURT: Yes, you may.

Q Miss Wallace, would you please tell us what this document is?

A It's a 1099 Form for the year of 1993 that shows interest paid on a savings account.

Q On whose account was this interest paid?

A Roberts Chiropractic.

Q And the bank prepared this form?

A Yes.

Q And what did the bank do after preparing this form?

A We mailed these to our customers and also provide a form to the IRS.

Q So a copy of this, it's your bank's policy to mail a copy of these to the account holder?

A Yes.

Q And if we could go ahead, and what calendar year was that for?

A 1993.

Q And then if we could publish 8-44, Your Honor?

THE COURT: Yes, you may.

Q And can you tell the jury what 8-44 is?

A It's a 1099 form for the interest paid and for the year of 1994.

Q And on whose account?

A Roberts Chiropractic.

Q And would your bank again have sent a copy of this to Roberts Chiropractic --

A Yes.

Q -- as well as the Internal Revenue Service?

A Yes.

MR. YURKANIN: Your Honor, if I may have one moment.

Q Why is it that you provide 1099's to your account holders?

A For income tax purposes.

MR. YURKANIN: Your Honor, at this time the Government passes the witness. If I may tender those last two Exhibits...

THE COURT: You may cross-examine, please.

CROSS EXAMINATION BY MR. STILLEY

Q Have you ever read the definition of income in the Internal Revenue Code?

MR. YURKANIN: Objection, Your Honor; beyond the scope, and irrelevant. (Mr. Yurkanin and Mr. Blackorby talking at the same time.)

THE COURT: Well, I'm hearing an echo, I think, but it will be sustained.

MR. STILLEY: Your Honor, you've already told --

THE COURT: I mean --

MR. STILLEY: -- me not to tag team. Now, my man's sick, but --

THE COURT: Well, I don't know who made him sick, but I, you know, but I have sustained the objection. I heard two, and you're absolutely correct. I need to only hear from one attorney at a time.
BY MR. STILLEY:

Q You don't know whether or not any of these payments or any of these -- any of this interest constitutes income as that term is defined?

MR. YURKANIN: Objection, Your Honor.

THE COURT: Yeah. Let's not get into the definition of income.

MR. STILLEY: Well, Your Honor, I'm just trying to establish --

THE COURT: I know what you're trying to do and the objection is sustained. Ask another question.

MR. STILLEY: Your Honor, I need to make this record clear on what I'm -- if I can just establish --

THE COURT: You can make a record, but you're asking a question that's improper. There was an objection and I have sustained the objection. Your record's noted, but move on to something else. Do you have another question?

MR. STILLEY: Yes, I do.

Q You're not an expert in tax law, are you?

A No.

Q So anything -- any of Dr. Roberts' dealings between him and IRS have to simply be between him and the IRS, is that correct?

A Yes.

Q You're not accusing Dr. Roberts of any crime, based on your personal knowledge, are you?

A No.

MR. STILLEY: Pass the witness.

MR. YURKANIN: No redirect, Your Honor. May the witness be excused?

THE COURT: Yes. Thank you very much. You may be excused.

THE COURT: Anybody need a break? Call your next witness, please.

MR. BLACKORBY: United States calls Bill McRae.
(Witness sworn.)

THE COURT: Mr. McRae, speak directly into mike, if you would, please, sir. WILLIAM CHARLES (BILL) MCRAE,
DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q How do you do, sir?

A Hello!

Q Would you state your name? Spell your last name, please?

A My name at this William Charles McRae, M C R A E. I go by Bill.

Q Okay. And what town do you reside in?

A Ft. Smith.

Q Are you employed?

A Employed by State Farm Insurance Company.

Q And what position do you have with State Farm?

A My title is Claims Specialist.

Q And how long have you been in that business, sir?

A 15 years.

Q And in that position, do you have access to the records of State Farm?

A Yes, sir.

Q And do you also have access to the records concerning checks paid by State Farm?

A I do.

Q In that regard, were you asked to search the files of State Farm concerning payments to either Dr. Roberts or Roberts Chiropractic Center?

A I was.

Q And did you find that such records existed?

A Yes, sir.

Q And did you -- why was State Farm making the payments to Dr. Roberts? Did you determine that?

A They were for reimbursement for medical services provided to our insured or to a third party claimant.

Q In other words, you insured a patient that he went to -- who went to him, is that right?

A Yes, sir.

MR. BLACKORBY: May I hand -- Your Honor, may I approach?

THE COURT: Yes.

Q I hand you 24-4, 24-5, and 24-6. Are those records of State Farm, sir?

A Yes, sir.

Q They're actually checks drawn on the account of State Farm, is that right?

A Yes, sir.

Q And they're payable to Dr. Roberts or Roberts Chiropractic, is that correct?

A That's correct.

Q And if you'll just look on each bundle. Are these for the years 93 and 94?

A Appears so.

Q Are these true copies of the records of State Farm?

A Yes, sir.

Q Is the normal course of business for State Farm to keep copies of there checks like that?

A Yes, sir.

Q And were these checks made in the normal course of business of State Farm's activity?

A Yes, sir.

MR. BLACKORBY: Your Honor, at this time I move for the admission of Government's Exhibits 24-4, 24-5, and 24-6. Any objection?

THE COURT: Any objection? Same objection?

MR. STILLEY: Same objection.

THE COURT: They will be admitted over the objection of Defendant as 24-4, 24-5, and 24-6.

Q Can you bring 24-4, the first one, up, please? Let me ask you, sir, you testified that State Farm made payments to Dr. Roberts for medical services that he performed. Is that what these checks represent, State Farm's payments for those services?

A Yes, sir.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: Any cross-examination?

CROSS EXAMINATION BY MR. STILLEY:

Q You're not an expert in tax law, are you?

A No, sir.

Q And you're not accusing Dr. Roberts of any crime, isn't that correct?

A That's correct.

Q Actually, these payments were made basically in regard to personal injuries that had been suffered by certain individuals, correct?

A That's correct.

MR. STILLEY: Pass the witness.

THE COURT: Any redirect?

MR. BLACKORBY: One question, Your Honor.

REDIRECT EXAMINATION BY MR. BLACKORBY:

Q The payments to Dr. Roberts were for his service as a chiropractor on others, is that right?

A That's correct.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: May this witness be excused?

MR. STILLEY: Yes.

THE COURT: You may stand down. Thank you very much, Mr. McRae. Call your next witness, please.

MR. YURKANIN: Your Honor the Government calls Amy Yates.

AMY YATES, DIRECT EXAMINATION, SWORN BY MR. YURKANIN:

Q Ma'am, would you please tell us and spell your last name for the court reporter, please.

A My name is Amy Yates, Y A T E S.

Q And where do you work?

A Superior Federal Bank.

Q And what do you do there?

A I'm a fraud investigator.

Q Are you here today pursuant to a subpoena?

A Yes, sir.

Q And as a result of that subpoena, did you search your bank for records?

A Yes.

Q Can you tell the Court what kind of records you search for?

A I searched for a cashiers check.

Q Relating to whom?

A Relating to Philip E. Roberts.

MR. YURKANIN: Your Honor, may I approach?

THE COURT: Yes, you may.

Q I'm handing you what's been marked for identification as Government's Exhibit 9-2. Do you recognize that document?

A Yes, I do.

Q And generally what is it?

A It's a cashiers check.

Q That's -- if you don't mind --

A Okay.

Q Was this check made at or near the time of the events recorded?

A Yes.

Q Was this check made by someone with personal knowledge of the information recorded?

A Yes.

Q Is it in the regular course of the bank's business to make these types of records or checks?

A Yes.

Q Is it in the regular course of the bank's business to keep copies of these records?

A Yes.

MR. YURKANIN: Your Honor, I move for the admission of Government 9-2?

THE COURT: Same objection?

MR. STILLEY: Correct.

THE COURT: It will be admitted over the objection of the Defendant.

MR. YURKANIN: May it be published to the jury?

THE COURT: And it may be published.

Q Now, could you please explain to the jury exactly what is this document?

A Okay. It's a cashiers check issued by Superior Federal Bank.

Q To whom?

A To Philip E. Roberts.

Q And for how much?

A For 11,000.

Q Dollars?

A Dollars.

Q And when was this check drawn or on what day?

A It was purchased on December 22nd, 1993.

Q And who was this check purchased by?

A By the remitter, Mary Ann Roberts.

Q And do you know the relationship of Mary Ann Roberts to Philip, the Defendant, Philip Roberts?

A Yes.

Q And what is that relationship?

A His mother.

Q I'm sorry?

A His mother.

Q Now, I believe Exhibit 9-2 is -- does your copy contain two pages?

A Yes, it does.

Q And if you would look to the second page, and can you tell us, and if we could publish the second page, was this check ever -- what's the term -- negotiated or deposited or whatever?

A Yes. On the back of the check it will show that it was negotiated at City National Bank. It has their endorsement stamp and it was deposited into Roberts Chiropractic Center --

Q Account?

A -- account number --

Q That's enough.

A Okay.

MR. YURKANIN: Your Honor, pass the witness.

THE COURT: Any cross-examination?

CROSS EXAMINATION BY MR. STILLEY:

Q You're not an expert on Federal tax law, are you?

A No, sir.

Q And you said you were a fraud investigator, but there's nothing about this check that would indicate fraud to you, is there?

A No, sir. We do all the subpoenas for the bank.

Q And you're not doctor -- you're not accusing Dr. Roberts of any crime, are you?

A No.

MR. STILLEY: Pass the witness.

THE COURT: May she be excused?

MR. YURKANIN: Yes, Your Honor.

THE COURT: Fine. Thank you very much. You may stand down.

MR. YURKANIN: If I may tender the Exhibit to the Clerk...

THE COURT: Yes, you may. Call your next witness, please.

MR. BLACKORBY: United States calls Martha Campbell. (Witness sworn.)

THE COURT: Fine. If you'll have a seat right there, Miss Campbell. Speak directly into the microphone.

MARTHA CAMPBELL, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Good afternoon, ma'am. Would you state your name and spell your last name, please?

A Martha Campbell. C A M P B E L L.

Q And what city or town do you reside in?

A I reside in Bryant, Arkansas.

Q Okay.

A And how are you employed?

A I'm employed with USAble Administers.

Q And what's your position with them?

A Customer Service Coordinator.

Q Okay. What is USAble? What is their function?

A USAble is a third party administrator. What we do is for large employer groups that are self-insured, they pay a fee to us and we actually pay medical claims according to their medical benefit plans.

Q Okay. So for one of the company's you insured, if their employee's hurt and there's a medical -- a need to pay the medical services, that would go through you?

A Yes.

Q Okay. Now, have you been asked to search the files of USAble concerning payments to Dr. Roberts or Roberts Chiropractic?

A Yes, I have.

Q Did you find that such payments had been made by your company during the years 93 and 94?

A Yes, I did.

MR. BLACKORBY: All right. Your Honor, may a approach?

THE COURT: Yes, you may.

Q Let me hand you what's been marked for identification as Government Exhibit 26-3, 26-4, 26-5, 26-6, 26-7, 26-8, 26-9, 26-10, and 26-11, and I would ask if you would take a look at those. Are those records of USAble?

A Yes, they are.

Q And are those the records you previously provided to the United States for the subpoena?

A Yes, they are.

Q Okay. And do they reflect payments to Dr. Roberts or Roberts Chiropractic?

A Yes.

Q Do they cover the years 1993 and 1994?

A Yes.

MR. BLACKORBY: Your Honor, at this time I'd move for the admission of Government's Exhibits 26-3 through 26-11.

THE COURT: Same objection?

MR. STILLEY: That's correct.

THE COURT: They'll be admitted over the objection of the Defendant as 26-3 through 26-11. You may publish them or give them to the Clerk.

Q Now, can we bring up 26-3, please? Now, ma'am, you testified you paid medical claims. Were these payments to Dr. Roberts or Roberts Chiropractic for such medical claims?

A Yes.

Q So one of your companies had someone referred that Dr. Roberts treated and you paid him, is that right?

A Yes.

Q And that's what all of those checks are for 93 and 94?

A Right.

Q Would you look on the back of the 26-3, that first check, would you look to see how it's endorsed? Can you read the endorsement?

A Yes, "for deposit only, Roberts Chiropractic Center."

Q Okay. And then gives the account number, I believe?

A Yes.

MR. BLACKORBY: Okay. Thank you. Pass the witness.

THE COURT: Cross-examination.

CROSS EXAMINATION BY MR. STILLEY:

Q You're not an expert on Federal tax law, are you?

A No.

Q And you're not accusing Dr. Roberts of any crime, are you?

A No.

MR. STILLEY: Pass the witness.

THE COURT: May this witness be excused?

MR. BLACKORBY: Yes, Your Honor.

MR. STILLEY: Yes.

THE COURT: You may stand down. Thank you very much. Have a safe trip back and drive careful.

A Thank you.

THE COURT: Is the interstate still torn up?

A Yes.

THE COURT: Well, be careful.

A Thank you.

THE COURT: Anybody need about a 15 minute break? I now have four going up and down. We're going to -- let me ask you this: Do we have -- I've sort of checked and is it Hoffer or Hoeffer?

JUROR: Hoeffer.

THE COURT: Mr. Hoeffer, I think you won the traveling award today from Hartford. Any reason anyone can't stay till about 5:30 or 6:00 today? Anyone have any problems that you need to -- and you'll find, too, if you don't say anything or whatever, then assumed that you don't. But we may go to 5:30 or so. I'm going to visit with the attorneys here and kind of see how many witnesses they have got available. But we're going to remain in session until you're out of the room. Why don't we do about a 15-minute break? That may give my smoker time to get out and get back, but remember the brief admonition of the Court not to discuss this with anyone or allow anyone to discuss it with you. Thank you very much. (Off the record at this time. THE FOLLOWING PROCEEDINGS WERE HELD OUTSIDE OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: We're going to be in recess until about 4:15. When we do come back, how many other witnesses -- can we go to about 5:30? Is that going to work an inconvenience? You got witnesses to go that far?

MR. BLACKORBY: It's not an inconvenience. I need to check to see how many witnesses we have. I'm pretty sure we have enough witnesses so far.

THE COURT: Also, for the record, at some time after 5:00 o'clock we still have an offer of proof and the testimony Mr. Stilley desires to offer in connection with Judge Jones and Mrs. Blackorby. Are they available did we determine?

MR. BLACKORBY: Yes, Your Honor. I've talked to both of them.

THE COURT: Okay. And I don't know how long it will take, but we'll need to do that, but we can do that after the jury has been excused. Anything else anyone wants to bring up out of the presence of jury before we take a break?

MR. BLACKORBY: No, Your Honor.

THE COURT: Fine. We'll be in recess until about 4:15. Thank you very much. (Off the record at this time.) (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND (HEARING OF THE JURY:)

DOMINICK FURFARI, DIRECT EXAMINATION, SWORN BY MR. YURKANIN:

Q Sir, would you please tell us your name?

A May name is Dominick Furfari.

Q Would you spell your last name for us?

A F U R F A R I.

Q And where do you work?

A I work for the United Healthcare Company Insurance Company.

Q And what is your job?

A Manager of Provider Information Management.

Q Can you explain in laymen's terms what that means?

A What my staff is responsible for is loading provider contracts into the electronic systems so that claims can be processed against those providers, and we also maintain all the company records.

Q And when we use the term "provider," are you -- what do you mean by that provider?

A Provider service would be a doctor of some sort.

MR. YURKANIN: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

Q I'm handing you what's been marked as Government's Exhibit 25-3 and 25-4. Without reading from those documents, do you recognize them?

A Yes. Yes, I do.

Q And generally can you tell me what are they?

A These reports detail client information.

Q Let me stop you. Are they reports from your company?

A Yes, they are.

Q And were these records made by someone with personal knowledge of the information contained therein?

A Yes, they were.

Q Were these reports made at or near the time of the events recorded?

A They would be made shortly after the year-end.

Q Is it in the regular course of United Healthcare's business to make these records?

A Yes, it is.

Q And is it in the regular course of the United Health's business to keep copies of these records?

A Yes, it is.

MR. YURKANIN: Your Honor, I move for the admission of Government's 25-3 and 25-4.

THE COURT: Same objection?

MR. STILLEY: That's correct.

THE COURT: They'll be admitted over the objection of the Defendant as 25-3 and 25-4. You may publish them and also place them with the Clerk at your convenience.

MR. YURKANIN: Thank you, Your Honor.

Q If you would put 25-3, please. Mr. Fufari, if you would please explain this report to us...

A This report represents payments that were made to providers for services rendered to one of our insureds for the company.

Q In particular, who is the provider that received these payments?

A The payments would have been to P. Roberts Chiropractic Center.

Q And these payments were for what type of services?

A They would have been for medical services rendered.

Q And when were these payments made?

A On the one report, they were made in 1993.

Q And that's report 25-3?

A Yes, it is.

Q And on report 25-4?

A Payments would have been made in the year 1994.

Q During the calendar year?

A Yes, sir.

Q Also to Dr. Roberts or Roberts Chiropractic?

A Yes. They were made to P. Roberts Chiropractic.

Q For medical services rendered?

A Yes, sir.

Q One question: Does United Healthcare withhold any taxes when it makes payments to healthcare providers?

A No, they did not.

Q And why don't they?

A This is payment that's due as we report as income to the provider for rendering service.

Q So is the provider or provider, or in this case Dr. Roberts, is he an employee of United Healthcare?

A No, he's not.

Q What is -- how would you classify him?

A Classify him as basically as a vendor.

Q A vendor?

A He provides a service and he is paid for that service provided.

MR. YURKANIN: Pass the witness, Your Honor.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. STILLEY:

Q You file Federal income tax returns?

MR. YURKANIN: Objection, Your Honor. Whether or not he files Federal income tax returns is irrelevant.

THE COURT: Does he personally or does he do it as a business, a profession or --

MR. STILLEY: As an individual.

THE COURT: What is that relevant to?

MR. STILLEY: Well, if he's a lawbreaker, I need to impeach his testimony, and if he doesn't, I need to know that he doesn't.

THE COURT: The objection will be sustained.

MR. STILLEY: Your Honor, it's a --

THE COURT: Don't argue with me, Mr. Stilley. I've sustained the objection. Your record is clear. That's an improper question. It was objected to and I sustained it. If you have another question, ask it. If not, I'm going to excuse this witness. (pause)

MR. STILLEY: Your Honor, may I approach?

THE COURT: Yes. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Do you have information that this guy has not filed his tax return?

MR. STILLEY: I don't have any information one way or another, but I think --

THE COURT: I don't think you do either. That's why I sustained the question. That is a most improper question. That may be the worst question that I have ever heard asked since I've been a judge. It's only been two and a half years.

MR. STILLEY: Judge, if he is a lawbreaker, can I not --

THE COURT: No, you can't.

MR. STILLEY: I cannot impeach his testimony by --

THE COURT: No, you can't. That ain't the way you do it.

MR. STILLEY: If he had felony conviction, could I do that?

THE COURT: No.

MR. YURKANIN: Good faith basis, Your Honor, and he has offered no good faith basis at all, and I must ask the Court to advise the jury that that was an improper question because his --

THE COURT: Yeah, I'm going to. Do you have any other questions?

MR. STILLEY: I've got another question.

THE COURT: You what?

MR. STILLEY: I've got another question.

THE COURT: Okay. I thought you said you had a lot of questions.

MR. STILLEY: No.

THE COURT: If you've got questions that are relevant to what he asked on direct, you can ask them. Otherwise, you're not to ask them, Mr. Stilley. This is called cross-examination. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE (JURY:)

THE COURT: I'd ask the jury to disregard the last question that was attempted to be posed by Defendant's counsel to this witness. We'll strike it. Do you have another question, sir?

MR. STILLEY: Yes, sir.

Q You're not accusing Dr. Roberts of committing any crime, are you?

A No, I'm not.

MR. STILLEY: Bass the witness.

THE COURT: May this witness be excused?

MR. YURKANIN: Yes, Your Honor.

THE COURT: You may stand down. Thank you very much. Call your next witness.

MR. BLACKORBY: Your Honor, the United States calls Dannette King. (Witness sworn.)

THE COURT: Please have a seat right up here, please, ma'am, and speak directly into the microphone.

DANNETTE KING, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Good afternoon, ma'am. Would you state your name and spell your last name, please?

A Dannette King, last name K I N G.

Q What town do you reside in?

A Centerton.

Q That's here in Arkansas?

A In Arkansas.

Q And how are you employed?

A With Wal-Mart, the Associates Health and Welfare Plan.

Q I'm sorry?

A The Associates Health and Welfare Plan.

Q Okay. And what actually is that Plan within Wal-Mart? What do you do? What does the plan do. Excuse me.

A We take care of the associates for Wal-Mart. We handle their medical, dental, life insurance.

Q Okay. And that may be classified as -- in other words, you cover your employees for their medical insurance, is that right?

A Yes. Yes.

Q In that regard, do you pay bills to doctors and physicians and so forth for treatment that your employees receive?

A Yes.

Q Have you searched the records of Wal-Mart and the plan to see if any payments were made to Dr. Roberts?

A Yes.

MR. BLACKORBY: Your Honor, may I approach?

THE COURT: Yes, you may.

Q I'm going to hand you what has been marked for identification as Government's Exhibit 27-3, 27-4, 27-5, 27-6, and 27-7, and for the records of 27-3 through 27-6, are those records reflecting payments to Dr. Roberts?

A Yes, they are.

Q Okay. And does that cover the periods 1993 and 1994?

A (Pause) Yes.

Q All right. And those records of 27-3 through 27-6, were those records that Wal-Mart keeps in its regular course of business?

A Yes.

Q Were the records made about the time that the payments were made to Dr. Roberts?

A Yes.

Q And are those true copies of Wal-Mart's records that have been provided there?

A Yes, they are.

MR. BLACKORBY: Your Honor, at this time I would move for Government's admission -- or Government's Exhibits 27-3 through 27-6?

THE COURT: What happened to 7? You're going to address it separately?

MR. BLACKORBY: I am going to address that separately, Your Honor.

THE COURT: Same objection, Mr. Stilley?

MR. STILLEY: Correct.

THE COURT: Be admitted as 27-3 through 27-6 over the objections of the Defendant's attorney.

Q Now, ma'am, through those Exhibits and we'll look at 27-3, if we could, that's actually -- the first page of 27-3 is actually some kind of claim, is that correct?

A Yes; that's correct.

Q And that's actually multiple employees that were covered in 1993 with payment to Dr. Roberts, is that right?

A Yes.

Q What does Wal-Mart's -- what's the purpose of checks to Dr. Roberts? What is the purpose of making those checks payable to him?

A He provided services for our insureds, services that we covered.

Q Okay. Now, is that the same for the checks that we're looking at in 1994?

A Yes.

Q And the checks in 1994, how is it actually payable? What's the payee on the check?

A Roberts Chiropractic Center.

Q And does it have an address?

A 302 North Greenwood, Ft. Smith, Arkansas, 72901.

Q Okay. Thank you. Let me direct your attention to Exhibit 27-7. Is that also a record of Wal-Mart?

A Yes, it is.

Q Does that pertain to Dr. Roberts or Roberts Chiropractic?

A Yes.

Q And without reading from the Exhibit, what is that document?

A This particular document is sent out to the providers if we receive notice from the IRS that their tax identification number does not match the name of their facility.

Q So is that a way for you to ask the taxpayer what his true number is?

A Exactly.

Q And did you do this with Dr. Roberts?

A Yes.

Q And that's what the information -- is that his response that he sent back to you there?

A Yes, it is.

MR. BLACKORBY: Your Honor, at this time I'd move for admission -- is that a true copy of Wal-Mart's records?

A Yes, it is.

MR. BLACKORBY: I'd move for admission of Exhibit 27-7.

THE COURT: Same objection?

MR. STILLEY: No. Let me, let me take a look at it.

THE COURT: Was that previously provided, Mr. Stilley?

MR. STILLEY: Just a minute, Judge, if you don't mind.

THE COURT: Was that previously provided to Mr. Stilley?

MR. BLACKORBY: Yes, sir.

MR. STILLEY: Yes, there is an objection. This is -- if I'm not mistaken, this is 1998. This is way on past the years that we're talking about.

MR. BLACKORBY: Your Honor, may I voir dire the witness some more?

THE COURT: Yes, you may.

MR. BLACKORBY: Okay.

THE COURT: Yes, you may.

Q Okay. Let's look at this Exhibit, ma'am. It has dated 2/3/98, is that right?

A That's right.

Q But on the second page of the Exhibit actually we have a date of 11/25/97, is that correct?

A Correct.

Q And we actually -- on here it references the effective date and taxpayer's name and number as March of 1996, is that right?

A Correct.

MR. BLACKORBY: Your Honor, there's evidence already in that the investigation into Dr. Roberts' 93 and 94 years started in 1996. I believe it's relative to show changes Dr. Roberts made to the records at Wal-Mart concerning that investigation.

THE COURT: Mr. Stilley, anything further? Further comment?

MR. STILLEY: Yes. This just absolutely doesn't relate to a 1993 and 1994. It's totally irrelevant. It would be highly prejudicial. It's a waste of time. There is no need to put this in, and we object because --

THE COURT: One of these days I'm going to start sustaining objections on the basis of wasting your time. I'm not sure that's a legal objection. It's one that's beginning to appeal to me more. I'm going to admit it over your objection as 27 dash what, 7?

MR. BLACKORBY: 7, yes, Your Honor.

Q Ma'am, in this Exhibit 27-7, does it appear to have the signature of Dr. Roberts' down at the bottom?

A Yes, it does.

Q And what taxpayer name is given at the top?

A Orthoneuro Medical Associates.

Q And what's the address for that?

A Care of 302 North Greenwood, Ft. Smith, Arkansas, 72901.

Q And down on line E, does it have handwritten words in there?

A Yes.

Q What's that say?

A Pure Trust Organization.

Q And when was that effective?

A March of 96.

Q And on the second page of that Exhibit does it still reference the term Orthoneuro Medical Association?

A Yes.

Q And what's the address for the medical association there?

A Post Office Box 71, Grand Turks Islands.

Q And does it have another address for the organization?

A In care of 302 North Greenwood, Ft. Smith, Arkansas.

Q Now, ma'am, your testimony to those checks and payments made to Dr. Roberts was for medical services he performed on your employees, is that right?

A That's correct.

MR. BLACKORBY: Pass the it, Your Honor.

THE COURT: Cross-examine.

MR. STILLEY: Your Honor, may I have a moment with my client?

THE COURT: Yes. (pause)

CROSS EXAMINATION BY MR. STILLEY:

Q You're not an expert on Federal income tax law, are you?

A No, I'm not.

Q And you're not accusing Dr. Roberts of committing any crime, are you?

A No, I'm not.

Q Does Dr. Roberts still do work for Wal-Mart?

A I would not know that without looking at further records.

MR. STILLEY: Pass the witness.

THE COURT: May this witness be excused?

MR. BLACKORBY: Yes, sir.

THE COURT: Fine. Thank you very much, Miss King. Call your next witness, please.

MR. YURKANIN: Your Honor, the Government calls Nora Rijos, sir. (Witness sworn.)

THE COURT: Fine. Have a seat right there, if you would, please, ma'am, and speak directly into the microphone.

NORA RIJOS, DIRECT EXAMINATION, SWORN BY MR. YURKANIN:

Q Miss, would you please tell us your name and also spell your last name?

A Nora Rijos, R I J O S.

Q And where do you work?

A Aetna US Healthcare. I'm a Special Investigator in the Special Investigations Unit.

Q And are you here today as a result of a subpoena?

A Yes, I am.

Q And did that subpoena cause you to search your records regarding any payments to either a Philip Roberts or Roberts Chiropractic Clinic?

A Yes.

MR. YURKANIN: Your Honor, may I approach?

THE COURT: Yes, you may.

Q I'm going to hand you now what's been marked for identification as Government's Exhibit 10-3, and 10-4. Without reading from those Exhibits, will you tell us generally what they are?

A Yes. It's a check along with an explanation of provider benefits.

Q Were these records made at or near the time of the events reported?

A Yes.

Q Were these records made by someone with personal knowledge of the events reported?

A Yes.

Q Is it in the regular course of Aetna Healthcare's business to make these records?

A Yes.

Q And is it in the regular course of Aetna Healthcare's business to keep copies of these records?

A Yes.

MR. YURKANIN: Your Honor, the Government moves for admission of 10-3 and 10-4.

THE COURT: Same objection?

MR. STILLEY: That's correct.

THE COURT: They'll be admitted as Exhibits 10-3 and 10-4 over the objection of the Defendants.

Q Direct your attention now to that bundle of Exhibits 10- 3. Could you more specifically explain what's contained in that packet?

A This is an explanation of provider payments which lists all the members or patients who have seeked treatment, chiropractic treatments, and they have submitted a claim to us, and the claim was processed and a check was issued to Roberts Chiro Center in bulk payment.

Q And so this stack of 10 -- this stack of exhibits, checks in 10-3, does that constitute all the payments for 1993 --

A Yes.

Q -- from Aetna Healthcare to Roberts Chiropractic?

A Correct.

Q If you'll turn your attention now to the stack of Exhibits 10-4, are these the same?

A It's the same.

Q What year does that check apply for?

A 1994.

Q 1994?

A Yes.

Q And were all of these payments you testified were to Roberts Chiropractic?

A Correct.

Q And what were the payments for?

A For medical services rendered to our members.

Q To your who?

A Our members.

Q Your insureds?

A Patients, yes.

MR. YURKANIN: Pass the witness, Your Honor.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. STILLEY:

Q You're not an expert on Federal income tax law, are you?

A No.

Q And you're not accusing Dr. Roberts of committing any crime, are you?

A No.

Q Is that a no?

A Yes, I mean. I'm sorry.

Q I want to make sure we've got it clear for the record that you're not accusing doctor --

A Oh, no, not accusing him. No. I'm sorry.

Q Thank you.

THE COURT: May this witness be excused?

MR. YURKANIN: Yes, Your Honor.

THE COURT: You may stand down. Thank you very much. Call your next witness, please.

MR. YURKANIN: Your Honor, the Government calls Jay Davidson. (Witness sworn.)

THE COURT: Fine. Mr. Davidson, have a seat right around here, sir, and speak directly into the microphone.

JAY DAVIDSON, DIRECT EXAMINATION, SWORN BY MR. YUKANIN:

Q Sir, would you tells us your name and spell the last name?

A Jay Davidson, D A V I D S O N.

Q And where do you work, sir?

A Arkansas Best Corporation.

Q And what's your job at Arkansas Best?

A We administer medical benefit plans for a number of our operating companies.

Q Are you here today as a result of a subpoena?

A Yes.

Q And due to that subpoena did you or someone at your direction search your records for payments related to Roberts Chiropractic or Philip Roberts?

A Yes, we did.

MR. YURKANIN: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

Q I'm handing you now what's been marked for identification as Government's Exhibit 11-3 and 11-4. Without reading from those documents, could you please tell us if you recognize them?

A Yes, I do.

Q And generally what are they?

A Listings of the 1099's issued for 1994 and I believe this other one is 1992 tax years.

Q Were these records made at or near the time of the events recorded?

A Yes, they were.

Q Were these records made by someone with personal knowledge of the events recorded?

A Yes.

Q Is it in the regular course of Arkansas Best's business to make these records?

A Yes, it is.

Q And is it in the regular course of Arkansas Best's business to keep these records?

A Yes.

MR. YURKANIN: Your Honor, at this time I move for the admission of Exhibits 11-3 and 11-4?

THE COURT: Same objection, Mr. Stilley?

MR. STILLEY: Correct.

THE COURT: They will be admitted over the objection of the defense as 11-3 and 11-4.

Q Okay. Turning your attention, first of all now to 11-3, could you again specify or more specifically state what this is?

A It's a listing with the detail of the information that was contained on individual -- or I'm sorry -- It's the detail of the 1099 that was issued to Roberts Chiropractic.

Q And does this indicate payments to Roberts Chiropractic for services rendered?

A Yes, it does.

Q For which -- is there any time period that this 11-3 specifically refers to?

A 1993.

Q So this would be all the payments from Arkansas Best to Roberts Chiropractic during 1993?

A Yes.

Q And what were these payments for?

A Chiropractic services rendered to our employees and/or their dependents.

Q And now if we could go ahead and turn to Government's Exhibit 11-4, it's a two-page Exhibit, is that correct?

A Yes.

Q And, again, are these statements for Roberts Chiropractic?

A Yes, they are.

Q In what calendar year were these payments made?

A The calendar year 1994.

Q And so were all of these payments made, were all of these payments made during 1994 from Arkansas Best to Roberts Chiropractic?

A Yes, they were.

Q Briefly, there's some handwritten notes. For example, if you look at the top of 11-4, page one it says voucher number. It's written in check number?

A Yes.

Q Can you just briefly explain that? Is that of any significance?

A No. We internally change the way we process payments. The Accounting Department went from a voucher system to checks. It was a cost and a cash management issue.

Q So despite the wording here, these records still reflect payments in U.S. currency to Dr. Roberts, is that correct?

A That's correct.

Q Did you by chance withhold any taxes from these payments?

A No, we did not.

Q Is there any reason why you would or would not withhold taxes from these payments?

A They're a service provider similar to an independent contractor and not an employee.

Q So Dr. Roberts, technically, he's not an employee of Arkansas Best, is he?

A No, sir.

MR. YURKANIN: Pass the witness, Your Honor.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. STILLEY:

Q You're not an expert on Federal income tax law, are you?

A No.

Q And you're not accusing Dr. Philip E. Roberts of committing any crime, are you?

A No.

MR. STILLEY: Pass the witness.

THE COURT: May this witness be excused?

MR. STILLEY: Yes.

MR. BLACKORBY: Yes, Your Honor.

THE COURT: He may stand down. Thank you. Good seeing you. Call your next witness, please.

MR. BLACKORBY: United States calls Bob Bookout.

ROBERT (BOB) BOOKHOUT, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Sir, will you state your name and spell your last name, please?

A Robert R. Bookhout, B O O K H O U T.

Q And what town do you reside in?

A North Little Rock, Arkansas.

Q And how are you employed?

A I work for Arkansas Blue Cross/Blue Shield.

Q Right. And how long have you been there?

A Since August of 82.

Q And what's your position with them?

A I'm Coordinator of Group Services Administration.

Q Okay. And from your position with Blue Cross and Blue Shield, do you have access to the records of payments that Blue Cross/Blue Shield makes?

A Yes, sir.

Q And have you been caused or asked to search the records of Blue Cross concerning payments to Dr. Philip Roberts?

A Yes, sir.

Q Have you provided those records to the United States?

A Yes, sir.

MR. BLACKORBY: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

Q Let me hand you what's been marked for identification as Government's Exhibit 2-3 or correction, 12-3 and 12-4. You recognize those as records of Blue Cross and Blue Shield, sir?

A Yes, sir.

Q And without reading from them, are those 1099's?

A Yes, sir.

Q Do they pertain to Dr. Roberts --

A Yes, sir.

Q -- from Roberts Chiropractic? Do they pertain to the years 93 and 94?

A Yes, sir.

Q Are they true copies of records of Blue Cross and Blue Shield?

A Yes.

Q Do you keep such records in the normal course of business?

A Yes.

Q Is it the policy of Blue Cross and Blue Shield to make such records at the time as such information became available?

A Yes.

MR. BLACKORBY: Your Honor, I move for admission of Government's Exhibit 12-3 and 12-4?

THE COURT: Same objection.

MR. STILLEY: That's correct.

THE COURT: Be admitted over the objection of the Defendant as Exhibits 12-3 and 12-4, and you may publish it and circulate it.

MR. BLACKORBY: Thank you, Your Honor.

Q Looking at that 1099, sir, the amount that was paid to Dr. Roberts in that year was -- what was the amount? I don't have that? Do you have the amount?

A Off this?

Q Yes, sir.

A In which year?

Q 93. $11,464?

A That's the one. $11,464.62.

Q And was there any taxes withheld from those payments to Dr. Roberts?

A No, sir.

Q Neither state or Federal, is that right?

A No, sir.

Q Now, look at the one for 94 which is the next Exhibit, please.

A Now --

Q How much was paid to Dr. Roberts in 94?

A $13,316.90.

Q And, again, were any taxes withheld, state or Federal?

A No, sir.

MR. BLACKORBY: All right. Your Honor, may a approach again?

THE COURT: Yes, you may.

Q Let me hand you for identification Government's Exhibit 12-9, 12-10, 12-11, 12-12, 12-13, 12-14, 12-15, and 12-16. Would you look at those, please?

A Sure.

Q Are those records of Blue Cross/Blue Shield.

A Yes, sir.

Q And are those the records you previously or your agency previously provided to the United States Government?

A Yes, sir.

Q Are those true copies of the records for Blue Cross/Blue Shield?

A Yes, they are.

Q And are those records -- those are checks, is that right?

A Checks and remittance advises to the physician.

Q All right. And in this case that would be Dr. Roberts?

A Yes.

Q Is that the payee on the checks?

A Yes.

Q All right. And it's the normal course of business for Blue Cross/Blue Shield to keep such records?

A Yes, sir.

Q And the checks and remittance documents were made about the time that the money was paid to Dr. Roberts?

A At the same time.

Q And they're true copies, is that correct?

A Yes, sir.

MR. BLACKORBY: Your Honor, at this time I would move for admission of Government's Exhibits -- forgot where I started?

THE COURT: 12-9 through 12-16.

MR. BLACKORBY: Yes.

THE COURT: Any objection, Mr. Stilley?

MR. STILLEY: Correct.

THE COURT: They will be admitted over the objection of the Defendant as 12-9 through 12-16.

Q Now, sir. Those checks that were made to Dr. Roberts and also reflected in these is a 1099. Was Dr. Roberts being paid by Blue Cross/Blue Shield?

A He provided services to covered members of Arkansas Blue Cross/Blue Shield.

Q And from that information can you tell if he provided those services as a chiropractor?

A Yes, sir, he did.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. STILLEY

Q Are you an expert on Federal income tax law?

A No, sir.

Q And you're not accusing Dr. Philip Roberts of any crime, are you?

A I haven't yet.

Q Thank you. Pass the witness.

THE COURT: May this witness be excused?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: You may stand down. Thank you very much. Mr. Bookout, have a safe trip home and drive carefully, sir.

A Thank you.

THE COURT: Call your next witness, please.

MR. YURKANIN: Government calls James Johnson. Ask permission of the Court to place these on the Exhibit stand.

JAMES JOHNSON, DIRECT EXAMINATION, SWORN BY MR. YURKANIN:

Q Sir, would you please tell us your name?

A James Johnson.

Q And where do you work?

A Connecticut General Life Insurance Company.

Q And what's your job with -- or is there a more generic name?

A Cigna.

Q Cigna? And what is your job with Cigna?

A I'm a Claims Service Manager.

Q Could you explain briefly what that entails?

A What that does is I manage people with the medical review, the legal part, claim investigation, and for claims processing.

Q And are you here today as a result of a subpoena issued by the Government?

A Yes, sir.

Q And as a result of that subpoena, did you or someone else at Cigna search your-all's records for any payments to either Philip Roberts or Roberts Chiropractic?

A Yes.

Q In front of you you'll see what's marked as Government's Exhibit 14-3 and 14-4. Without reading from them, can you generally tell me what they are?

A They're 1099 reports.

Q Okay.

MR. STILLEY: Your Honor, we stipulate the basic foundation questions on this to hurry this up a little bit.

MR. YURKANIN: Your Honor, we move for the admission of 14-3 and 14-4.

THE COURT: They'll be admitted over the objection of the Defendant as 14-3 and 14-4.

Q Mr. Johnson, looking at 14-3, could you please tell the jury, and if we could put it up on the screen, exactly what that document is?

A It's a 1099 that shows payment for services performed through Roberts Chiropractic Center --

Q So these --

A -- for 93.

Q These are payments to whom?

A To Roberts Chiropractic Center.

Q And for service performed by whom? By Roberts Chiropractic?

A Yes.

Q Who did Roberts Chiropractic or -- did Roberts Chiropractic perform any services on people insured by Cigna?

A Yes.

Q Now, after the first page, the initial summary, can you briefly tell us what's contained underneath in the remaining pages, pages 2 through 23?

A Page two?

Q Yes.

A Page three on it looks like copies of cancelled checks to Roberts Chiropractic Center.

Q And these are checks from Cigna?

A Yes, sir.

Q Now, turning your attention to 14-4, is that another 1099 summary report?

A Yes, sir.

Q And if we could put that up, 14-4... And is this again for payments during a calendar year?

A Yes, sir, 1994.

Q And these payments were from which company to who?

A From Connecticut General Life Insurance or Cigna to Roberts Chiropractic Center.

Q And what were these payments for?

A For services performed.

Q When we say services, what kind of services?

A Whether it be chiropractic, whether it be office visit, modalities, just general --

MR. YURKANIN: Your Honor nothing further.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. STILLEY:

Q You're not an expert on Federal income tax law, are you?

A No, sir.

Q And you're not accusing Dr. Roberts of having committed any crime, are you?

A No, sir.

MR. STILLEY: Thank you. Pass the witness.

THE COURT: May this witness be excused?

MR. YURKANIN: Yes, Your Honor.

MR. STILLEY: Yes.

THE COURT: Thank you, sir. You may stand down. Be excused. Call your next witness, please.

MR. BLACKORBY: United States calls Leah Birch.

LEAH BIRCH WALKER, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Madam, would you state your name and spell your last name, please?

A Leah Birch Walker, W A L K E R.

Q And were you formerly Leah Birch?

A Yes.

Q And how are you, employed ma'am?

A Harbor Town Apartments in Ft. Smith here.

A Yes.

Q Okay. And how long have you been with Harbor Town Apartments?

A Fourteen years.

Q What is your position there?

A Manager.

Q All right. And in regards to that are you familiar with Philip Roberts?

A Yes.

Q How do you know Mr. Roberts?

A He rented from us.

Q Okay. Do you remember the timeframes from when to when he rented from you?

A Can I get my papers?

Q Sure. I tell you what, maybe I can expedite that.

MR. BLACKORBY: Your Honor, may I approach?

THE COURT: Yes, you may. BY MR. BLACKORBY:

Q Let me hand you what's marked as Government's Exhibit 36-2. Is that familiar?

A Yes.

Q Is that some of the records of Harbor Town Apartments?

A Yes.

Q Are those the records that you produced and provided?

A Yes.

Q And are those -- do those pertain to Dr. Roberts or Philip Roberts?

A Yes.

Q Does that pertain to a lease of an apartment with you-all?

A Yes.

Q And are those true copies of records that you maintained at Harbor Town?

A Yes.

Q Is it the normal practice of Harbor Town to maintain such records of those?

A Yes.

Q And the information put on the records, was it put on the there about the time that these payments were made and so forth?

A Yes.

MR. BLACKORBY: Your Honor, at this time I move for admission of Government's Exhibit 36-2.

THE COURT: Same objection?

MR. STILLEY: That's correct.

THE COURT: It will be admitted over objection of the Defendant as Government's Exhibit 36-2.

Q Can we bring up 36-2 now? Ma'am, looking at that first page is that the application filled out by Dr. Roberts --

A Yes.

Q -- for the apartment? What year was that filled out in?

A 89.

Q And the attached documents basically reflect his monthly payments, is that correct?

A Yes.

Q And that goes through the years 1993 and 1994?

A Yes, it does.

Q All right. Looking back to that first page, which is I believe up on the screen, what business does Dr. Roberts show himself in there?

A Chiropractor.

Q Okay. And what does he show his salary to be? Straight to the right.

A 3500 a month.

Q Okay. And on the second page, does that appear to be Dr. Roberts' signature?

A Yes.

Q And that's your signature, right?

A Yes.

Q You know, Dr. Roberts, is that correct?

A Yes.

Q You've seen him at the apartment when he was there?

A Yes.

Q When did Dr. Roberts quit renting from you folks?

A We don't have the year.

Q Pardon?

A I don't have the exact date.

Q It was after the time of those records, some time after the time of those records? Let me ask a better question. Does he rent from you now?

A They -- no.

Q Okay. Now, in looking at the 93/94 payments, what was normal monthly rent during those timeframes?

A 94?

Q Yes, ma'am?

A $410.

Q $410 a month?

A Uh-huh.

Q What about 93, can you tell?

A 370.

Q All right. How did Dr. Roberts normally pay his rent? Did he use a check or cash or do you recall?

A Personal check and then company check.

MR. BLACKORBY: Okay. Your Honor, may I look at that Exhibit a second?

Q I take it the rent went up in 94?

A Yes.

Q $425. Thank you. Pass the witness, Your Honor.

THE COURT: Cross-examine.

MR. STILLEY: No questions.

THE COURT: You may stand down. Thank you very much.

A Uh-huh.

THE COURT: Call your next witness, please.

MR. YURKANIN: Your Honor, the Government calls Danny Greenfield. (Witness sworn.)

THE COURT: Mr. Greenfield, have a seat right there and speak directly into the microphone, please.

MR. YURKANIN: Your Honor, may I approach just to place the Exhibits?

THE COURT: Yes, you may.

DANNY GREENFIELD, DIRECT EXAMINATION, SWORN BY MR. YURKANIN:

Q Sir, would you please tell us and also spell your last name?

A G R E N F I E L D.

Q Your first name is?

A Danny.

Q And where do you work, sir?

A Carco International.

Q What do you do at Carco.

A I'm the president of the company.

Q I've placed in front of you a document marked Government Exhibit 37-2. Without reading from it, can you tell me generally what it is?

A It's a Purchase Order.

Q Was this record made at or near the time of the events recorded inside that record?

A Yes.

Q Was this record made by someone with personal knowledge of the transaction reported?

A Yes.

Q Is it in the regular course of Carco's business to make these records?

A Yes.

Q Is it in the regular course of Carco's business to keep these records?

A Yes.

MR. YURKANIN: Your Honor, I move for the admission of 37-2.

THE COURT: Same objection, Mr. Stilley?

MR. STILLEY: Correct.

THE COURT: Be admitted as 37-2 over the objection of the Defendant.

MR. YURKANIN: And may I have it published?

THE COURT: Yes, you may.

Q Sir, turn your attention back to 1993. Did Carco International have any dealings with a man by the name of Philip Roberts?

A Yes.

Q And what was the nature of those dealings? What was that transaction?

A Well, we sold a new John Deere lawn and garden tractor LX178 model.

Q For how much?

A $3,700, and plus tax, a total was $3866.50.

Q And do the records indicate about when -- either when the sale took place or when it was delivered, the tractor?

A Yes. It was -- the sale took place on June the 15th of 93 and it was delivered June the 16th of 93.

Q And do you know how Doctor -- do your records indicate the method of payment?

A It was by check.

Q Check?

A Yes.

MR. YURKANIN: Nothing further from the Government.

THE COURT: Cross-examine.

CROSS EXAMINATION BY MR. STILLEY:

Q Do you know where this lawn tractor was delivered?

A Do I know when it was what?

Q Do you know where this lawn tractor was delivered?

A At the address that's shown, here I assume, 508 North 10th in Van Buren.

Q Okay. Do you know whose address that is?

A Well, it says here it's Philip Roberts'.

Q Does it have a middle initial?

A No.

Q Okay.

MR. STILLEY: Pass the witness.

MR. YURKANIN: Nothing further, Your Honor.

THE COURT: May this witness be excused? Mr. Greenfield, Mr. Corley at work today?

A He was when I left.

THE COURT: How old is Mr. Corley now?

A He's 93.

THE COURT: Okay. Thank you, sir.

A Yes, sir.

MR. BLACKORBY: Your Honor, our next witness is probably 20 to 25 minutes and we're ready to go. It's up to the Court, whatever the Court wants to do.

MR. STILLEY: What's that?

MR. BLACKORBY: Our next witness will be a longer witness, probably 20 to 25 minutes. I just want to give the Court --

THE COURT: May be some cross-examination on top of that. You-all want to pack it in for the night and start again in the morning? I'm now -- I'm getting more voting every time. Are we going to have any problems say starting at 9:00 in the morning? Is that going to inconvenience anybody? If you'll come on in whenever you want to, but there will be doughnuts and coffee in the break room. Just assemble in the break room, again we've got some stuff I need to talk with the attorneys about. We're going to remain in session, but, again, remember the admonition of the Court. Do not discuss it with anyone nor allow anyone to discuss it with you. Your significant other is going to say, you know, come on, you can tell me, but you simply must tell them that you absolutely cannot, because it's important that you not discuss this with anyone till you've heard all of the evidence and the arguments and it's been submitted to you. We're going to remain in session. You can leave your juror buttons here. Be sure and leave your notes here and you can leave them in the jury room or leave them on the rail or whatever you would like to do. You're going to have the same seats in the morning. And have a good night. I think everybody made their calls and I'm letting you go a little early, but we'll make it up tomorrow. Thank you very much. (Jury leaves the courtroom at this time. THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: You-all want to take a short break before we hear from Judge Jones and Miss Blackorby?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Anything else we need to address to the Court other than hear from those two potential witnesses and let Mr. Stilley make his proffer for the record?

MR. BLACKORBY: Not from the Government, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: Your Honor, I am going to ask some questions from some other witnesses including David Blackorby and the reason for that is that he sent a letter to this Court --

THE COURT: Now, I missed part of that. I'm sorry.

MR. STILLEY: I want to, I want to ask some questions of David Blackorby because he sent a letter to this Court on June 26th, 2000, saying that quote my wife was not involved in the investigation of Mr. Roberts. And I know for a fact that that's not true, and I want to put him on the stand and see if he wants to stick with that story.

THE COURT: Well, you're not going to put him on the stand. That's improper. You have recited a letter and I assume he wrote that letter and I think it's, therefore, you know, before the Court. Who do you -- which one do you want to take first, Mrs. Blackorby or Judge Stites or does it matter? Are they both here?

MR. BLACKORBY: Yes, Your Honor.

MR. STILLEY: Let's do Stites.

THE COURT: Okay. Do you want a break first, too?

MR. STILLEY: Yes.

THE COURT: You want a short break?

MR. STILLEY: Yes.

THE COURT: How long? It is important once, you know, and I'm -- I'm not fussing, but ever, ever clock in this Federal building has got a different time. Why don't we try to see if we can get synchronized on this one. It is important if we say we're going to be back at 5:15 if we're all back at 5:15. It's a little irritating to be ready and not everybody here, so let's take a nine-minute break and let's assemble back on the record at 5:15. Thank you all very much. (Off the record at this time.)

Let the record reflect it's 5:17. The jury is out of the room and we had agreed this morning to take up as soon as we could the Defendant's request as to the issue of subpoenas and have two witnesses testify. Those witnesses were Mrs. Blackorby, who is with the Internal Revenue Service, as well as Judge Jones. Subpoenas apparently were issued either late last week or sometime yesterday, and I assume, therefore, they were probably served yesterday or some time. The Government filed a Motion to Quash, Mr. Blackorby, is it both subpoenas or is it just one plus one on your representative? I'm not, I'm not sure that there --

MR. BLACKORBY: Well, it addressed Mrs. Blackorby, Your Honor, and it addressed the wording of Tom Bryan's subpoena. We weren't aware that Judge Jones had been subpoenaed at the time we filed our Motion, so we have added that orally before the Court.

THE COURT: Again, Mr. Stilley, I don't want to hear all of your arguments over again, unless you just feel doubly compelled to make them again, but why is it necessary to have Judge Jones and Mrs. Blackorby? You can take them one at a time.

MR. STILLEY: Judge Jones I was just hoping to ask her a few questions, and I could demonstrate that in just a jiffy, if you'll let me.

THE COURT: You what?

MR. STILLEY: I could demonstrate the relevance in just a jiffy, if you'll let me, if I could ask her a few questions.

THE COURT: Mr. Blackorby? I don't think it make -- you know, he can make an offer of proof on this. I'm not at all convinced I'm going let her testify.

MR. BLACKORBY: Your Honor, the only relevance the Government sees from Judge Jones is she was a patient of Dr. Roberts' during part of the time that's under the Indictment and she made payments. The Government sees no other relevance. The Government did not intend to call her because her payments weren't even sufficient to rise to the sample level that the IRS undertook to reconstruct the income.

MR. STILLEY: Your Honor, if I could respond to that. If it was his intention never to call her but he subpoenaed her and caused her to recuse, Your Honor, I would, I would suggest that is very bad conduct.

MR. BLACKORBY: Your Honor, we never subpoenaed her. We never asked her to recuse.

MR. STILLEY: Somebody did.

MR. BLACKORBY: Your Honor, I think she's got a good basis to recuse, because she was a patient of Dr. Roberts'.

MR. STILLEY: Judge, I want to ask her about that, because my recollection --

THE COURT: Okay. Let's bring her in. But if you can, Mr. Stilley, once we get her on the stand, I mean it's late for her, and I think we're imposing on her and let's cut to the chase. Bring her in, please. (Pause) Judge Jones, we're pleased to have you with us.

A Thank you very much.

THE COURT: Go ahead and take the stand.

A Certainly.

THE COURT: Is there any requirement that Judge Jones be sworn?

MR. BLACKORBY: No, Your Honor.

THE COURT: Mr. Stilley, you want her sworn?

MR. STILLEY: Yes, if you don't mind, and also we got another issue and that is Mr. Bryan. I would like to -- since we're going to be taking some testimony from him, I'd like to have him excluded from the room.

THE COURT: No. He is, he is the representative of the Government and he's not going to be excluded. Judge Stites, it's most unusual. You're a Federal officer. I don't think I've ever heard of a

Federal officer of having to even asked to be sworn, but it has been requested by Mr. Stilley, so would you please raise your right hand?

A That will be fine.

THE COURT: Face the Clerk, and I apologize.

A That's fine.

DEFENDANT'S EVIDENCE (MOTION) BEVERLY STITES-JONES, DIRECT EXAMINATION, SWORN BY MR. STILLEY:

Q Please state your name.

A Beverly Stites-Jones.

Q And what is your position?

A Magistrate Judge with the Federal Court of the Western District of Arkansas.

Q Do you know Philip Roberts?

A I do.

Q How long have you known him?

A I began seeing him some time after I became Magistrate in 1987 for back problems, so we are talking that it has been probably over ten years.

Q Have you had, during these times that you were at his office or at other times, have you had occasion to talk with him about Constitutional issues?

A Once or twice.

Q Fine. Do you remember Dr. Roberts ever telling you that it's his understanding that a person couldn't be required or wasn't required to file a Federal income tax return?

A No. I can, I can -- we had a conversation, but I do not remember him telling me that.

Q Okay. Can you tell us what you recall about it?

A I'll tell you what I remember about a conversation. He told me that he had a tape from some people who had not paid taxes, and that according to the tape and what they were saying, that paying taxes was -- we did not have to pay taxes. It was unconstitutional.

Q Did he ask you any questions about your opinion on that?

A I don't remember that. I have some recollection of perhaps saying, you know, I don't think that's true, but I really, I really do not remember at the time. Frankly, when I went to Dr. Roberts, I needed help with my back and I didn't focus that much on something that was on the side, but, you know, that's all I really remember about that.

Q Okay. Do you ever recall raising your hand and saying I can't go there; that's where I get paid, in talking about taxes?

A I don't remember that, but I could have, because frankly I was offended by him bringing up that subject with me.

Q You were offended by it?

A Yes, I was. And I told my secretary that when I came back that day.

Q And when did that happen?

A The day that he talked about the tape. You know, my tax dollars were paying him. My salary comes from taxes, and I was paying him, and, you know, but, frankly, I just tried to be easy going and get my treatment and go along, but, yes, it, it did not sit well with me.

Q Do you know what the year was when that happened?

A I really don't.

Q Can you come close?

A Well, let me see.

THE COURT: When did you --

A Maybe in 90. I really don't remember.

THE COURT: When is the last time you sought any treatment from Dr. Roberts?

A I was a patient of Dr. Roberts until I was advised by the agent from the Government that there was an investigation, and at that point that -- in fact there would be -- that he had not paid his taxes, and based on that I felt that, that I did not want to go back.

Q Do you remember when that was?

A Approximately a year ago or a year or a year and a half, maybe two years.

Q Do you remember who this agent was?

A The agent who's sitting at the table.

Q So that was Tom Bryan?

A Yes, Tom Bryan.

Q Did he suggest to you in any way that you should stop doing business with Dr. Roberts?

A No. Absolutely not. I -- that was my call. I mean if he -- I can't remember him doing that, but after knowing what had happened, I would have made that decision anyway. He did not prompt me to make that decision. That was my own decision.

Q Okay. Let's go back to 1990 when we had an incident where you said I can't go there?

A I didn't say I said that, but he referred to that.

Q Okay. But you do remember the incident from which that that --

A I remember him talking about the tape, yes.

Q Okay. At that point in time did you tell him that there was a legal requirement to file tax returns? (Pause)

A I do not. I do not remember whether I did or not. I did not put -- I don't think that I wanted to engage with him. What I was trying to do, frankly, was be polite and get out of the office. I only wanted treatment from him. And I -- so I do not think that I did anything to engage in where he was going. I did not want to participate or be a part of it in any respect, and so I doubt that I would have said anything. I assumed that everyone knew that and that I did not have to tell him that.

Q Did the possibility occur to you that he was sincere in his belief?

A I did not come to that conclusion.

Q But did that possibility occur to you?

A I thought at that time he was just toying with the idea. I didn't -- if I had thought that he was sincere, I would not have gone back again. I just thought it was something, perhaps something he was toying with and that he -- it was going to be just a passing fancy.

Q Based on your conversation did you see any evidence that he was insincere in his belief?

MR. BLACKORBY: Objection, Your Honor. We're getting too speculative.

THE COURT: Well, he asked that once. She answered it.

A I did not come to a conclusion on that. BY MR. STILLEY:

Q Did you come to a conclusion one way or another?

A No, I did not.

Q During the years that you've known Dr. Roberts --

A But let me tell you this, as I said, if I had come to the conclusion that he was sincere, I would not have gone back. I could not have in good conscience have gone back, so I did not leave with any conclusion that this -- that he was sincere.

Q If you had come to the conclusion that he was sincere, would you have tried to dissuade him from those beliefs?

A No. I would have just ceased my association with him.

Q Have you ever known Dr. Roberts to lie?

MR. BLACKORBY: Objection, Your Honor, speculation. How can she judge when Dr. Roberts is lying?

A Well, I don't know what that has to do with anything.

MR. STILLEY: Your Honor, I'm trying to find out whether or not she thinks that Dr. Roberts is an honest person or a person of good character.

THE COURT: What's that got to do with anything, Mr. Stilley?

MR. STILLEY: Well, it has everything to do with this, because good faith is a defense, and I'm trying to find out here if she thinks that he's -- that he obeys the law to the best of his ability and --

THE COURT: Well, and I'm going to sustain that objection. Do you have any more questions of her?

MR. STILLEY: Yes, I do.

THE COURT: Well, I want to know what they are. Let's ask them. Okay?

MR. STILLEY: Okay. The next question is going to be: Does she know -- do you know anything about Dr. Roberts? Do you know of him having ever violated any other law knowingly and intentionally? Let's just leave out income tax. As to any other laws, do you know of him having ever intentionally violated the law?

MR. BLACKORBY: Objection, Your Honor. Again, it calls for speculation.

THE COURT: I think it's just outside of what she possibly could know. She saw him as a patient I guess on -- How often did you see him?

A Once every two weeks.

THE COURT: For how long? 30 minutes or an hour or --

A Thirty minutes to an hour. I actually -- I didn't see him that long. I would go in and be on the machines, and my time with him would be ten minutes perhaps.

Q Do you know any -- have you known Dr. Roberts long enough to have formed an opinion about his character?

THE COURT: How is this -- I'm not sure character is an issue that has to do with his filing of a tax return. I don't know what you're trying to get from her. If you can answer that, you can. If you can't, you don't have to. I think it's an objectionable question, but I'm going to let you answer if you can.

A I don't know what you mean exactly by character. Character can be made up of many things. I mean we can be honest. We can be giving. We can be greedy. You know, I don't know what part of the character you're talking about. I -- go ahead. I felt -- frankly, my -- what I knew him as was a doctor, and I thought he was a good doctor. That's, that's -- and I don't. He -- I don't know that -- I did not have that personal relationship with him.

Q Well, what -- have you formed an opinion about his character as far as --

THE COURT: I've sustained that objection. Let's get off the character issue. I don't want to hear anymore of that. Do you have any other questions you're going to ask her?

MR. STILLEY: Yes. Have you talked to Dr. Roberts about Constitutional issues since 1990?

A Other than that one conversation, he asked or somehow I gave him a copy of a case that had the dissent of one of the justices that he liked and, frankly, I told him this is something that I ordinarily would not do, but he mentioned the case and I provided it to him, and, frankly, I just did that, you know -- I -- we had a library there. It's open to the public. Sometimes we do, as a courtesy, give a copy to somebody. He mentioned the case. I gave him a copy of the case.

Q Would that be the Lopez case?

A Yes, that's right. It was the Lopez case.

Q You didn't do anything wrong by giving him a copy of that case, did you?

A No, absolutely not, not in my opinion.

Q Did you indicate to him that you didn't want it to be known that you had given him the case?

A Well, I can't go around just making copies of cases for everybody that may want something. I felt like on that that it was just sort of a special favor. He had mentioned he wanted it. You know, frankly that is just something I don't go around doing. So it was -- so I wouldn't want everyone to say Judge Jones will give copies of cases to anyone. It was a special favor and I tried to just do it, you know, as a special, as a special favor.

Q Do you remember when that happened?

A I really don't. It -- you know, it was three or four three years ago. I don't know when the Lopez decision came out.

Q Well, was it right when the decision came out?

A It was after some time I think. Frankly -- go ahead.

Q Go ahead, if you've got more --

A No, I really don't have that much --

Q Do you know why Dr. Roberts wanted a copy of that decision?

A No. Something about he liked the dissent of Justice Thomas. And, frankly, he said some things, but I will tell you the truth. It sounded like gobbledy-gook. I never did understand what he was saying, but it's something that he liked. And I couldn't -- it sounded like someone talking that new just enough law to get it all confused, but, frankly, I didn't care. If he wanted it, I was going to be nice and give it to him.

THE COURT: Anymore questions, Mr. Stilley?

MR. STILLEY: Your Honor, can I take just a minute?

THE COURT: Yes. Let's make it a quick minute. It's getting late. (Pause)

MR. STILLEY: Pass the witness.

THE COURT: Do you have any questions, Mr. Blackorby?

MR. BLACKORBY: Briefly, Your Honor.

CROSS EXAMINATION BY MR. BLACKORBY:

Q Your Honor, on that case, you remember about when it was? Would it have been after 1995 that you provided the copy of the case?

A Could have been. It could have been. I was --

Q Probably would be after the date of the case?

A After the case, right.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: You may stand down. Thank you, Judge Jones.

A Thank you.

THE COURT: I appreciate your coming down and you're excused with the great appreciation of this Court.

A Thank you.

MR. BLACKORBY: Your Honor, again we continue our Motion to Quash the subpoena to Judge Jones. There's been no basis demonstrated or any relevance for her testimony. As she articulated, she remembers one conversation. She didn't think he was sincere in that. I can't imagine Mr. Stilley wanting that testimony to go before the jury, but the Government would object to her being subpoenaed and put forth.

THE COURT: You think this testimony helps you, Mr. Stilley?

MR. STILLEY: I think it certainly could. It shows that he was not -- he knew that she was the Magistrate Judge, but he told her anyway. And if it's bad for us, why should he care?

THE COURT: The issue isn't whether she's a Magistrate Judge. I'm going to sustain the objection to it. You've made your offer of proof and that will be a part of the record and be available to the Eighth Circuit when you appeal this matter. Is Miss Blackorby here?

MR. YURKANIN: She is, Your Honor, but prior to her being called, I'm a little unclear precisely as to the reason why Mr. Stilley wants to call Agent Blackorby. Is he continuing to argue his selective prosecution argument, or does he believe that she has relevant testimony pertaining to Defendant's guilt or innocence?

THE COURT: What -- how far did this get in front Judge Shepherd?

MR. YURKANIN: Judge Shepherd, Your Honor, he had Agent Bryan was on the stand. Agent Bryan was being questioned and Special Agent Blackorby's name was mentioned, and I can pull the transcript. And after conferring with co-counsel, Mr. Stilley changed to a completely different subject. It's in the transcript of that hearing at page 35, if the Court wants to review it. Mr. Stilley had the opportunity to explore it at that time. The Judge previously ruled, and so if we're going to have the selective prosecution again --

THE COURT: Is that what it's about, selective prosecution?

MR. STILLEY: Your Honor, it's both of them, and by all means --

THE COURT: What do you mean both of them?

MR. STILLEY: We're not going to waive the selective prosecution just because --

THE COURT: I don't think you have waived it, Mr. Stilley. You've made a record and it's a record that I think anybody can see. I mean I don't think it's appropriate. I think there's been a ruling on it, but, you know, I don't think anybody is suggesting you waived it.

MR. STILLEY: Well, I want to a bring her in not only for the selective prosecution --

THE COURT: It sounds like you want to bring her in and harass her because her husband is co-counsel for the Government.

MR. STILLEY: No, I wouldn't harass anybody. No. No. I need the evidence. Now, we got to get something -- -- in this letter she says she was not involved and I know better because I've got a transcript of where that she was in a meeting with Mr. Bryan and interviewing a witness actively. I want to ask her about that.

THE COURT: Well, tell me how that possibly could be relevant to any claim that you have or any defense other than the fact that she is married to the lead attorney in this case?

MR. STILLEY: Your Honor, she was asked --

THE COURT: Selective prosecution is gone, Mr. Stilley. It is a non-issue with this Court. It has been decided. Your record is preserved and it's there for you on appeal. What else would you possibly call her about?

MR. STILLEY: Are you saying that if, if --

THE COURT: That's exactly what I'm saying. Selective position and it is gone. Now, why else would you call her? You said there are two reasons. Give me No. 2.

MR. STILLEY: Your Honor, I want to make it clear on No. 1. Let me ask you this: If I was to obtain evidence from witnesses at this trial that clearly demonstrates selective prosecution, is this Court saying that I would be incapable of renewing that Motion and moving for dismissal of this case for selective prosecution?

THE COURT: That issue is gone. It has been decided.

MR. STILLEY: You're saying that even if she --

THE COURT: That's exactly what I'm saying, Mr. Stilley. I've said it about three times.

MR. STILLEY: Even if a witness gets up there and says, yes, this was --

THE COURT: I'm not going to let you put her up there to ask her that. What else are you going to put her up there and ask her?

MR. STILLEY: Well, she's got relevant evidence about the good faith of Dr. Roberts seeings how she interviewed witnesses, so she knows and we don't know how many since we've not been able to get her on the stand and find out what else she did since they say that she was not involved at all and we know that she is, she might well have done a whole lot of other things. I would like to know what the truth of this is and we do have a Sixth Amendment right to call witnesses. We don't even have a jury here. And I would like to put her on the stand so I can ask her some questions.

THE COURT: Mr. Stilley, I tell you -- I'm going to let you call her, but if I have the slightest hint that you've called her just to harass Mr. Blackorby, I promise you, sir, we'll visit this issue again and again, after this case is over. Do you understand me?

MR. STILLEY: I understand that and I did not do that.

THE COURT: Well, you've not done that, but I'm telling you if you do, do you understand me?

MR. STILLEY: I understand what you're saying.

THE COURT: Fine.

MR. STILLEY: Yes, I do.

MR. YURKANIN: Your Honor, then if I may, to clarify for my understanding, Agent Blackorby is being called to determine whether or not she has any relevant knowledge pertaining to this case or an interview of a witness in this case? Is that it, Mr. Stilley?

THE COURT: What do you say, Mr. Stilley. That's not a bad question.

MR. STILLEY: Repeat the question.

MR. YURKANIN: You just -- as I understood your argument to the Court, you just alleged that Agent Blackorby has personal knowledge regarding this case regarding an interview, you said since she had made some type of interview of someone in this case. Is that the only question that you're going to solicit from her while she's present?

MR. STILLEY: No, I might find something else out while I was talking to her while I was asking her questions about that where I --

THE COURT: No, you're not going to do that, Mr. Stilley. This is not a fishing expedition, sir. If you'll tell me --

MR. STILLEY: I understand this is not a fishing expedition, but I want to know what the witness is going to say.

THE COURT: Well, you need to tell me what you think she's going to say before she says anything or what you hope she will say.

MR. YURKANIN: And also, Your Honor, Mr. Stilley was provided with every memoranda or the memorandums of interview which would have indicated her involvement. He had full access to the discovery. You know, at this late hour to be coming up with this, it's -- we have it appears to be harassment.

THE COURT: I'm going to let you call her and I'm going to let her testify, but, Mr. Stilley, I want you to pick and choose your questions carefully, because the examination may not take very long. You understand me?

MR. STILLEY: Yes, Your Honor.

THE COURT: And I'm going to want it to be on the investigation that she's done in this particular case and I don't want to get on this selective prosecution. Bring her around, please.

LAURA BLACKORBY, DIRECT EXAMINATION, SWORN

THE COURT: If you would please state your name for the record.

A My name is Laura Blackorby.

THE COURT: Miss Blackorby, are you employed by the IRS here in Ft. Smith?

A Yes, sir, I am.

THE COURT: Fine. Thank you. Mr. Stilley, ask your question.

MR. STILLEY: Your Honor, can we have her under oath, too?

MS. PORTER: I did.

THE COURT: You going to put her under oath again?

MR. STILLEY: No, no, I don't. BY MR. STILLEY:

Q Can you tell us when you first became involved in the investigation of Dr. Philip Roberts?

A I'm not sure what you mean by involved with this investigation.

Q Okay. Let's start with when you found out that there was an investigation of Dr. Roberts?

A I'm not sure when it was. I've been a special agent and a manager here in Ft. Smith for eight years, and it was prior to my becoming a manager, but I don't remember what year it was.

Q Wait a minute. Are you saying that you became aware of an investigation more than eight years ago?

A No. I said some time during that eight years, but I'm sorry. I don't know what year it was.

Q Okay. Can you get close?

A I really don't remember. I know it's prior to July of 1998, when I became the manager. It may have been a couple years, three years before that. I really don't remember.

Q Okay. Do you remember being involved in this case on September 14, 1996?

A The only involvement I've had is I did sit in on an interview with Mr. Bryan on I think it was a Brenda Gray.

THE COURT: With whom? With whom? Brenda who?

A I believe her name was Brenda Gray. It was the girl friend of Mr. Roberts.

Q And what was your role during that interview?

A I was a special agent. I was simply there as a witness.

Q So you didn't ask any material questions?

A No, sir.

Q You're absolutely positive about that?

A I'm not -- I don't -- I don't have an independent recollection of it.

THE COURT: Were you there in a back-up role, Mrs. Blackorby?

A That's correct.

THE COURT: Who was the primary IRS person there?

A It was Special Agent Tom Bryan.

THE COURT: Do you have any other knowledge of this case other than that?

A No, sir.

THE COURT: Mr. Stilley, do you have another question?

MR. STILLEY: Yes.

Q Did you ask any of the questions?

THE COURT: I think she answered that. She said she didn't think so, but then she just -- she couldn't absolutely state she didn't.

Q Have you ever seen a copy of the transcript?

A Probably at the time of the interview Mr. Bryan would have written a memorandum of interview which I would have seen, but I have not seen it since then. (Pause)

Q Did you -- is there anything that you can remember from that interview that you -- that you learned about the case?

A Nothing at all.

Q Do you know why that you would have went out to witness on that interview and then not do anything else on the case?

A The way we conduct our investigations is the case agent, who was Mr. Bryan, usually asks for a witness, and as I recall, Miss Gray brought somebody with her to act as her witness, and then the case agent proceeds with the investigation. I carry my own caseload, so I have nothing else to do with the investigation after that, unless he asks me to go again.

Q Are you the individual who recommended that this case be for prosecution?

A I would be what is considered the first level of approval, but it's a first of many levels.

Q Okay. Did you refuse -- what did you review before you made the decision to recommend this for prosecution?

THE COURT: I'm sure that that's proper --

MR. YURKANIN: Objection. This gets to the prosecution issue.

THE COURT: I'm going to sustain that. That gets into interworking and bowels of the IRS. I thought you were going to ask her about the investigation and information she developed. You've gotten away from that, Mr. Stilley. Do you have another question about her investigation that you said that she knew something about?

MR. STILLEY: Can I take just a minute?

THE COURT: Yes. (Pause)

MR. YURKANIN: Your Honor, if I may, I believe the defense is reviewing a transcript of a tape recording made during this interview. They made the tape recording. They have had this transcript for some time. It's -- I don't know what they're looking for, but if they already have it --

THE COURT: I don't either, but I'm going to give them some time to look for it.

MR. YURKANIN: Yes, Your Honor.

Q Have you discussed this case with your husband?

THE COURT: If there's an objection --

MR. YURKANIN: Objection, Your Honor.

THE COURT: I'm going to sustain that. It looks like we're getting back to the very area I told you to avoid.

MR. STILLEY: Pass the witness.

MR. YURKANIN: Your Honor, one question.

CROSS EXAMINATION BY MR. YURKANIN:

Q Agent Blackorby, when the IRS is interviewing a female witness, is it common to have a female agent present?

A Yes, it is.

MR. YURKANIN: Nothing further, Your Honor.

THE COURT: You may stand down, Mrs. Blackorby. Thank you very much. I'm granting the Motion to Quash that subpoena. And your offer of proof is here. You have made a proffer and it will be available to you in the event this matter is appealed. We had, as I

counted, and I may be -- maybe I missed somebody. Did we have 16 witnesses, and how many do we have left?

MR. BLACKORBY: Four, Your Honor.

MR. STILLEY: Who are they?

THE COURT: I think they're the ones that --

MR. BLACKORBY: I'm not going to give you the order.

THE COURT: You don't have to give the order, but there is four of them?

MR. BLACKORBY: Yes, sir.

THE COURT: Mr. Bryan's one of them.

MR. BLACKORBY: Yes, sir.

THE COURT: How long do you think he will be?

MR. BLACKORBY: Probably on direct a half hour, Your Honor.

THE COURT: How long do you think it will take you to put on your remaining four witnesses?

MR. BLACKORBY: Two hours, Your Honor.

THE COURT: Do you all -- do you think it's possible we can get this matter concluded tomorrow?

MR. BLACKORBY: I think so, Your Honor. I don't know where the defense is going, but clearly I see here, even with anticipated cross examination, that the Government clearly will rest before lunch.

THE COURT: Mr. Stilley, what do you think?

MR. STILLEY: I don't know if we'll get done tomorrow or not, but if you don't mind, on this Miss Blackorby, can I call one more witness?

THE COURT: No.

MR. STILLEY: Can I call Brenda Gray? She was there. She's a witness.

THE COURT: Witnesses are over. How long is it going to take you tomorrow?

MR. STILLEY: I don't know. I don't know.

THE COURT: How many witnesses are you going to have?

MR. STILLEY: Five, six, seven.

THE COURT: What's Mr. Barringer's condition?

MR. STILLEY: He's sick.

THE COURT: Well, you told me that this morning.

MR. STILLEY: He's --

THE COURT: Has his condition changed any?

MR. STILLEY: No. He was -- he went and ate lunch with us today, but he was feeling very ill by the time he was through with lunch and went back to the hotel room there.

THE COURT: Is he in town?

MR. STILLEY: Yes, he is.

THE COURT: And he went to the hospital?

MR. STILLEY: No, he didn't go to the hospital. He went back to his hotel room. He was throwing up this morning real bad. And --

THE COURT: But you saw him this morning in Ft. Smith and he's in town is what you're saying?

MR. STILLEY: Yes; uh-huh.

THE COURT: I trust -- I hope he gets better. Anything else we need to be concerned about on the record? It's 5:50. We've had a long day. You-all have done a full day's work.

MR. BLACKORBY: Nothing from the Government, Your Honor.

THE COURT: Mr. Stilley? The jury is going to be back at 9:00. Any reason we need to assemble before then? The Court's going to work on the Instructions. I will try to have a rough draft of the proposed Instructions by the time the Government finishes its case. What I'd like for you to do then at some time tomorrow is sort of look through the Instructions. Tell me if there's anything that's glaringly wrong, something I left out or something I included in I shouldn't include. Then we will look at them again. Then we will discuss them. And then I'll finally let you put your objections on the record, if you have objections. I would like to get the Instructions worked out, at least have a draft to you by the time the Government finishes with its case, which hopefully will be by noon.

MR. STILLEY: Judge, can I show you the Instructions that I'd like to have?

THE COURT: Yeah. Would you just give them to Erin --

MR. STILLEY: Okay.

THE COURT: -- the law clerk. Okay. Anything further?

MR. BLACKORBY: No, Your Honor.

THE COURT: Is everybody tired?

MR. BLACKORBY: Yes, sir.

THE COURT: See you-all at 9:00 o'clock in the morning. Thank you very much. (Off the record at this time.)

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PROCEEDINGS OF JUNE 28, 2000, 9:00 A.M.

---o0o--- (THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: We're convening in open court, it's 9:00 o'clock, outside the presence of the jury. Mr. Stilley came back to me and said he had something he wanted to address to the Court. My understanding, Mr. Stilley, is any time we need to talk, Mr. Stilley, we need to do it in open court on the record. So go ahead, sir.

MR. STILLEY: Yes, Your Honor. What I'd like to do. I talked to the Marshal and they indicated to me that my personnel wouldn't be able to go out of the courtroom to run tasks and errands for me, and I would like to make sure that it's understood --

THE COURT: Well, who is your personnel? I mean the last time you told me you had a personnel committee or something. Who you talking about?

MR. STILLEY: No, I didn't say I had a personnel committee. I said a personnel manager. This is Laura Asbury right back here. She's worked for me all this summer. She is the daughter of Dr. Dale Asbury her in town and she's been working for me and I need her to run some errands for me, and by the way, I'm told from the folks back in the gallery that the other side has been sending their people in and out all the time.

THE COURT: Is there going to be anyone else other than that? I don't have any problem with her doing that. That's fine.

MR. STILLEY: If you don't have any problem with her doing that, that's great. I would like --

THE COURT: Well, I appreciate you saying it's great. You don't need to comment on it. I'll authorize her to do it. I would ask all sides to hold the going and coming to a minimum because, as we've discussed, the door is within about two feet of where the jury is seated. So if we can hold that to a minimum, we need to Mr. Stilley.

MR. STILLEY: Okay. What I would like to do is to have this rule changed. I don't know that it's ever been a ruling in any other case. I would like to have the rule changed so that people can come and go if they come and go quietly. Because you can come in that door. The jury won't see you. If they don't slam the door, they will know never know you came in and they will never know you left.

THE COURT: Mr. Stilley, when you're a Federal judge, you can run it any way you want to, but that's the ruling of the Court. You come and go during breaks, not when the jury is not seated. They can come now. It's two minutes after 9:00. I just don't want anybody coming and going when we have jurors in the box. Jurors can be intimidated, and I'm not going to have them intimidated in this case or any other case, Mr. Stilley. Is there anything further?

MR. STILLEY: No.

THE COURT: You're here, sir?

MR. BARRINGER: Yes, Jerry Barringer.

THE COURT: Yes, sir, Mr. Barringer. I'm glad to have you, sir. I understand you've been ill?

MR. BARRINGER: Food poisoning, I think, Judge.

THE COURT: I'm sorry. I hope you didn't get that in Ft. Smith.

MR. BARRINGER: I'm afraid I must have.

THE COURT: Okay. We can probably find you a lawyer. I don't know what sort of role you're going to have in it. That's up to I guess to Mr. Stilley and to Dr. Roberts. I am a little concerned that we had a full day of trial. Apparently we had 17 of what I understood to be 20 witnesses yesterday, so the trial is pretty far along. So I also hope, Mr. Barringer, for everyone's sake that you have acquainted yourself with the previous Orders and rulings of this Court. We went through some of them yesterday again for about the umpteenth time and I'd like to avoid that today, if we possibly can. I'd like to get the case tried today and submitted, if at all possible. Anything further we need to put on the record before we get the jury in?

MR. BLACKORBY: Not from the Government, Your Honor.

THE COURT: Anything else, Mr. Stilley?

MR. STILLEY: No, Your Honor.

THE COURT: Glad to have you with us.

MR. BARRINGER: Thank you, Judge. (Off the record at this time. THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Morning.

JURORS: Morning.

THE COURT: Did you all have a -- I trust you had a good evening? Did we have any doughnuts back this morning?

JURORS: Uh-huh.

THE COURT: We had some difficulty getting those. We have now whined enough, you know, that they're usually there, so if they're not there some morning, you need to tell us. We'll have the same rules as yesterday. I'll probably give you a break probably 10:30 or so, but if anyone needs one before then, I think you found yesterday I do try and keep eye contact with you, so if you need to take a break, just give me a sign and we'll sure do it. We also, Mr. Stilley, I think your co-counsel is here. Would you like to introduce him to the jury?

MR. STILLEY: Yes. This is Mr. Jerry Barringer from Illinois.

THE COURT: Fine. Mr. Barringer, we're happy to have you with us. You may be seated. Mr. Barringer apparently ate some of Ft. Smith's finest food a night or so ago, and I understand that he's been recovering from a bout of food poisoning of some sort. We're glad to have you with us, sir. Next witness.

MR. YURKANIN: Your Honor, the Government calls Kelly Stinson.

THE COURT: She's here?

MR. YURKANIN: Yes, sir.

(Witness sworn at this time.)

THE COURT: Have a seat. If you would speak directly into that microphone. KELLY STINSON, DIRECT EXAMINATION, DULY SWORN BY MR. YURKANIN:

Q Would you tell us your name and then spell your last name, please?

A Kelly Stinson, spelled S T I N S O N.

Q Where do you work, Miss Stinson?

A Sallie Mae Servicing Corporation.

Q What is your job at Sallie Mae?

A I handle corporate complaints, anything sent to the CEO, complaints and subpoena.

Q Are you here today pursuant to a subpoena?

A Yes.

Q And as a result of that subpoena, did you search or someone at your direction search Sally Mae's records for information relating to the Defendant Philip Roberts?

A Yes.

Q I'm going to direct your attention now to what's marked as Government's Exhibit 30-2. Without reading from that document, can you tell us generally what it is?

A It's a Student Loan Promissory Note.

Q And was that record made at or near the time of the events recorded?

A Yes.

Q Was that document made by someone with personal knowledge of the events recorded?

A Yes.

Q Was it made in the regular course of Sally Mae's business to make these records?

A Yes.

Q And it is in the regular course of your business to keep these records?

A It is.

MR. YURKANIN: Your Honor, I move for admission Government's 30-2?

THE COURT: 30-2? Same objection, Mr. Stilley?

MR. STILLEY: That's correct.

THE COURT: Be admitted, Government's 30-2, over the objection of the defense in this matter.

Q If we could put the first page of that on the screen, now, Miss Stinson, if you would explain what this -- explain this document, please, to the jury?

A Okay. This particular document is a Promissory Note for a Stafford Loan and it appears to have been disbursed around February of 1983 for $2,500.

Q Okay. And who was the borrower?

A Philip Roberts.

Q Turning to page two of Government's 30-2, please tell us what that is?

A That's another Promissory Note for a loan in the amount of $5,000 taken out in September of 1983.

Q And what kind of loan was that?

A Again, it's a Stafford loan.

Q Going to No. 3, page three, could you please tell us what that reflects?

A It's also a Stafford loan for $5,000 taken out in May of 1984.

Q By whom?

A Philip Roberts.

Q And page four, if you would, please?

A Page four is another Promissory Note for a Stafford loan for $5,000 taken out in January of 85, again by Philip Roberts.

Q Now, direct your attention to page five?

A Five is another Promissory Note. This is for a Health Education Assistance Loan.

Q Is there a difference between that and a Stafford loan?

A This is -- a Stafford is usually an undergraduate or graduate, and Health Education Assistance is for medical school.

Q And how much was this loan for?

A 4,750.

Q And looking to page six of that Exhibit, what does that reflect?

A That's another Health Education Assistance Loan taken out in 1985 for $2083.

Q And all of these loans were -- who was the borrower on all of these loans?

A Philip Roberts.

Q Turn your attention now to Government's 30-3 without. Reading from the document, please tell -- identify it for me.

A This is a payment history. It lists all available payments made by Philip Roberts for his student loans.

Q Who prepared this document?

A I did.

Q And was it at the request of the Government's trial subpoena --

A Yes, it was.

Q -- or subpoena? When you prepared this document, did you have personal knowledge of all the information therein?

A Yes.

Q Is it in the regular course of Sallie Mae's business to prepare these types of documents?

A Yes, at request.

Q And is it in the regular course of Sallie Mae's business to keep these documents?

A Yes.

MR. YURKANIN: Your Honor, I move for the admission of Government's 30-3.

THE COURT: Same objection.

MR. STILLEY: That's correct.

THE COURT: Be admitted as Government's Exhibit 30-3 over the objection of the Defendant in this matter.

Q Okay. This is also a six-page document, is that correct?

A Yes.

Q Could we, if we look, if we could put it up on the Doar, page five, and would you please explain in more detail what this reflects?

A This is a payment history for Mr. Roberts' Stafford loans and it, it lists all payments from 86 until 93. And I'll give you the date, and the amount of payment and the breakdown.

Q Now, on this history did you notice anything peculiar regarding this payment history?

A The only thing --

Q And let me direct your attention to page six and bring up page six, please.

A In 1993 he paid it off entirely.

Q How much did the Defendant pay off in 1993?

A Down at the bottom he paid off $11,152.55.

Q And that's reflected on the last column of the document on the screen, page six of Government's 30-3?

A Yes.

Q Now, turning to the first, let's focus now back to the first four pages of this Exhibit, that's another payment history, is that correct?

A This is the payment history to Mr. Roberts' Health Education Assistance Loans.

Q So as opposed to the Stafford loans, this was the Health Education loans?

A Correct.

Q You prepared a payment history from beginning when?

A All records we had from 84 until 94.

Q After you prepared and reviewed this payment history, did anything about this payment history strike you as peculiar?

A He was paying regularly and then it appeared in February of 94 that he started to make larger payments to pay that one off as well.

Q When you say he was paying regularly, what were roughly the payments?

A It was like they went from a 300 to 800.

Q Okay. Now, direct your attention to page four and if we could put page four on the screen, when was there a time when these payments increased significantly?

A They started to increase in February of 94.

Q And can we enlarge from and can you tell us for during 1994, the payments that Dr. Roberts made on his loans?

A In February of 94 he made a payment of 448.82, $2,125.80, $1,725.38, and $4,304.71.

Q That was in February of 94?

A February of 94.

Q And what about in March of 94?

A March of 94 he made two payments, one for $500 and for $4,000.

Q And in April of 94?

A April he made another two payments, one of 800 and one of $5,198.47.

Q Okay. And in May of 94?

A May of 94 he made a payment of $800, a payment of $5,000, another payment of $800, another payment of $7,788.27.

Q And what about for the rest of the year?

A The rest of the year he made a payment of $800, one of $6,000, one of $6,257.46, one of $800, and one of $11,524.96.

Q Okay. And what was the date of that last payment?

A Was August 22nd of 1994.

Q So in the beginning of the year, what was the outstanding balance that Dr. Roberts owed to Sallie Mae approximately?

A Approximately 57,000.

Q And by the end of 1994 that entire 57,000 had been paid off?

A Yes.

Q One last question, are the loans through Sallie Mae made available because in part of Federal funding?

A Stafford Loans are federally funded.

MR. YURKANIN: Nothing further. I pass the witness.

THE COURT: Cross examine.

CROSS EXAMINATION BY MR. STILLEY:

Q Do you know what the interest rate on that loan was?

A I don't believe I have it in here with me. It should say on the Promissory Note. Nine percent it looks like on the first one, nine on the second, nine on the third.

Q Would those interest rates be more or less fair market value interest rates?

A They usually are based on the T-bill.

Q So that really didn't cost the Federal Government anything for Dr. Roberts to borrow that money, did it?

MR. YURKANIN: Objection; argumentative.

THE COURT: Well, he can answer. He can answer. I'm going to overrule that objection.

A They're federally backed which means it would have cost the Government money if he had not paid.

Q But then as a matter of fact he did pay, is that correct?

A Correct.

Q And you're not accusing Dr. Roberts of having committed any crime, are you?

A No.

MR. STILLEY: Pass the witness.

MR. YURKANIN: Nothing further, Your Honor.

THE COURT: May this witness be excused?

MR. YURKANIN: Yes, Your Honor.

THE COURT: You may stand down. Thank you very much. Call your next witness, please.

MR. BLACKORBY: Government calls Jefferee Bolen.

(Witness sworn at this time.)

THE COURT: Fine. Have a seat right here and speak directly into the microphone, please, ma'am. If you need water, it's there on the right. I think I told the jury this last week. The first trial we ever tried down here it lasted several days with several witnesses. It was about the end of the last day we realized that everyone had been drinking from the same cup. So that may have been how we got food poisoning. I'm not sure, but go ahead, sir. SUE NORA JEFFEREE BOLEN, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Good morning, ma'am. Would you state your name and spell your last name, please?

A Sue Nora Jefferee Bolen, B O L E N.

Q Do you normally go by Jefferee?

A Yes, sir.

Q And what city do you reside in?

A Fayetteville, Arkansas.

Q All right. And are you employed?

A Yes, I am.

Q And what is your employment?

A I'm a registered nurse for Healthsouth Rehabilitation Hospital.

Q Okay. Is that in the Fayetteville area?

A Yes.

Q All right. To get to that point, what's your educational background, ma'am?

A I started college when I was 39. Prior to that was just high school and a few courses through -- a couple of computer courses through West Ark computer courses. (Off the record at this time.)

Q Do you have a degree?

A Yes. I have a diploma as a registered nurse.

Q Okay. Now, you were married to the Defendant, Philip Roberts at one time, right?

A Yes, sir.

Q Could you give the jury the years from when to when approximately?

A June 2, 1974. The divorce was final in June of 1990.

Q Okay. And briefly how did you and Dr. Roberts meet?

A We went to high school together.

Q In what town?

A Van Buren, Arkansas.

Q Now, ma'am, I'm going to ask you to tell the jury after you got married in 74, did either you or Dr. Roberts work?

A Dr. Roberts did the whole time we were married and I didn't work until about 1979.

Q Okay. At some point did Dr. Roberts go into the army?

A Yes. He was in the army when we got married.

Q Oh, he was?

A Yes, sir.

Q Okay. How long was he in the army?

A The Summer of 1977.

Q Is that when he got out?

A When he got out; yes, sir.

Q And after he got out, what kind of job did Dr. Roberts take on at that point?

A He worked at Whirlpool Manufacturing Company.

Q Okay. During this timeframe, both the army and so forth, to your knowledge were you filing tax returns?

A Yes, sir, we were.

Q Who was preparing those returns? Do you recall?

A I was.

Q Did you go over those returns with Dr. Roberts before you sent them in?

A Yes, sir. We both signed them.

Q Okay. After Whirlpool, did he change jobs or what happened next?

A He worked for the railroad, the Missouri Pacific Railroad till he had a back injury.

Q What did he do for the railroad?

A He was a brakeman.

Q Okay. And do you remember what year the injury occurred?

A Would have been 79. I believe early in 79. I can't -- I'm not sure of the date.

Q Bad question on my part.

A Sorry.

Q Did he become a student at some point?

A Yes, sir. In 1980 he started at West Ark.

Q Okay. And what was his purpose for starting West Ark?

A He was getting his pre-chiropractic education.

Q So his goal was at that point was to become a chiropractor?

A Yes, sir.

Q Okay. While he was a student at West Ark, did you work?

A I sold Mary Kay cosmetics.

Q Okay. And how long was he at West Ark?

A About two and a half years, almost three.

Q So he would have finished some time in 1983?

A We moved to Kansas City in January of 1983.

Q Is that after he graduated from West Ark?

A Yes, sir.

Q So he got an associate degree at West Ark?

A Yes, sir.

Q Okay. Now, during this timeframe before you went to Kansas City, were you continuing to file Federal tax returns?

A Yes, sir, we were.

Q And who was preparing those?

A We had an accountant when I started with the Mary Kay because it was a home-based business.

Q Okay. And who took the information to the accountant to get the return done?

A We both did.

Q All right. Now, after you went to Kansas City, I think you said in January of -- 83?

A 83; yes, sir.

Q And what was Dr. Roberts doing in Kansas City?

A He was a full time student through 1985, and a lab tech, I'm not sure exactly when he started, maybe late 84.

Q Full time student at the what? What was the name of the school? Do you remember?

A Cleveland Chiropractic College.

Q Okay. Now, during this time while you-all were in Kansas City, did you file tax returns?

A Yes, sir.

Q What was the sources of income for those returns?

A I worked at a health spa.

Q Okay.

A And then in 84 and part of 85 I did babysitting and worked in the chiropractic office.

Q And on these Federal returns who prepared these returns?

A I believe I did.

Q Okay. Did you get information from Dr. Roberts to put on them?

A He had an income as the lab tech from the school.

Q Okay. Did you both sign your returns?

A Yes, sir.

Q Now, when did Dr. Roberts graduate with his chiropractic degree?

A December 85.

Q What did you guys do then?

A I was at the time living in Van Buren. We moved back and I went to work for Rheem Manufacturing.

Q When Dr. Roberts -- when he moved back, what area did he move back to?

A Van Buren.

Q Okay. When did that occur?

A January of 1986.

Q What was his employment then? He started as a chiropractor or what happened?

A I believe he took his boards in March or April. Prior to that he wasn't working.

Q March and April of 1986.

A Yes, sir.

Q Okay. Did he pass his boards?

A Yes, sir.

Q You guys were still married, is that correct?

A Yes, sir.

Q After he passed his boards, did he go to work as a chiropractor?

A Yes, sir.

Q Did he open his own business or what did he do?

A He was working for Maples Chiropractic I believe for eight months or a year, I don't recall, full time.

Q At some point did he open his own business?

A Yes, he did.

Q And do you recall about when that was?

A I believe it would have been in, I believe it was May of 1987. I'm not certain to the month.

Q But sometime in 1987?

A Yes, sir.

Q All right. Where was the location of this business?

A On Greenwood here in Ft. Smith.

Q To your knowledge is that where the business is today?

A To my knowledge; yes, sir.

Q Now, did you work at the business at all?

A I helped him to get the office set up originally and I was working full time at Rheem still and I would go in on weekends and kind of catch up on the books and to make sure the insurance was filed directly and that type of thing.

Q When you say insurance filed, is that -- what, what kind of claims are we talking about?

A Patient services to the different -- there were several different insurance companies that were filed.

Q So you were filing claims for patients that Dr. Roberts was treating?

A Yes, sir.

Q Now, you said set up work on the books. Who set the books up for the practice?

A Dr. Roberts did.

Q And did he keep track of what was put into the books?

A Yes. He had the checkbook and I just made entries.

Q Okay. Now, let me show you -- let's strike that. Your Honor, I'm going to turn this large television off. It's acting up. And --

THE COURT: I appreciate you're doing that. I've written the Docket Clerk 14 notes about it. We're thinking about shooting it.

Q Well, don't shoot the Clerk, Your Honor.

THE COURT: Also, the one up here is even crazier than that one. It kind of terrorizes the witnesses, too.

MS. PORTER: That flag and book is in the way of the that satellite. It might help when we turn it back on.

THE COURT: Okay. We've -- if and when we decide to turn it back on, I will need to -- I need to talk to the attorneys. This is a satellite system that's in here and we have may have something blocking the view of the satellite and I'm sure that's unintentional, but when we need to turn it back on, you know, we'll need to give a heads-up to the Court and get it straightened out.

MR. BLACKORBY: Yes, sir.

THE COURT: Continue on, please. BY MR. BLACKORBY:

Q Now in 90, or correction, 1988, did you also either full time or part time work with Dr. Roberts in his practice?

A It was more part time.

Q And what works -- what kind of work did you do with Dr. Roberts in 1988?

A There was some time periods that he was between secretaries and so I was kind of helping to fill in and interview some, and again doing the transferring of the books, you know, jotting in bills that were paid and insurances that were filed and making sure it was on the patient records and that type of thing.

Q Was Dr. Roberts, did he continue to keep an eye on the books and review the books?

A Yes, sir.

Q Did he continue to have the checkbook?

A Yes, sir.

Q Who would have made the deposits from the income?

A He would.

Q Now, what about in 1989; did you continue to work with Dr. Roberts' practice?

A Very little in 1989.

Q At some point in 1989 did you separate?

A Yes, sir, in May.

Q All right. Up until that point, if you worked at the practice, would it have been the same duties you just talked about?

A Yes, sir.

Q Now, once he started the practice in 87 forward while you were still there, to your knowledge were Federal and state income tax returns filed?

A Yes, sir, they were.

Q Who prepared those returns?

A Clisdol Ruffin.

Q All right. And who took the information to Mr. Ruffin to get the returns prepared?

A For the most part Dr. Roberts did. Occasionally I would take information over, but it was just a carrier type thing.

Q As far as what was taken to Mr. Ruffin, who made that decision?

A He did.

Q He being Dr. Roberts?

A Yes.

Q Let me hand you what's already been admitted as Government's Exhibit 6-1 and 1-1 and 1-2. And we'll start with 6-1, a 1987 1040 that's already in, excuse me, in evidence. Can we bring that up, please? Does that appear to be the 1987 return that you filed with Dr. Roberts?

A Yes, sir.

Q Now, can we go on to page two or the Schedule C, please? Ma'am, will you flip over the page that says Profit and Loss, Schedule C, Chiropractic?

A Yes, sir.

Q See where I'm talking about?

A Yes, sir.

Q Now, as far as any of that information that went to Mr. Ruffin, is that the information you testified that your husband would have taken to him --

A Yes, sir.

Q -- as far as income and expenses?

A Uh-huh.

Q Now, looks like in that year that the practice operated at a loss. Do you remember that?

A Yes, sir.

Q Okay. Now, would you look at Government's Exhibit, I believe it's 1-1 up there that's under the blue. You see that one?

A Yes, sir.

Q Is that the 1988 return?

A Yes, it is.

Q Would you look at the second page, please? Is that the signature page?

A Yes, sir.

Q Does that appear to be your signature on there?

A Yes, it is.

Q And does that appear to be Dr. Roberts' signature?

A Yes, it is.

Q And as far as the information that was taken to Mr. Ruffin to have this return prepared, was that taken by Dr. Roberts?

A Yes, sir.

Q To your knowledge would Dr. Roberts have gotten the information to take to Mr. Ruffin -- where would he have gotten the information?

A From his office books.

Q Okay. Now, would you look at the next blue sheet, 1-2? Is that a 1989 return?

A Yes, it is.

Q Now, you're not on that return are you, ma'am?

A No, sir.

Q Can we go back to the first page, please, and I think when it says filing status, see where that block is checked on that first page?

A Yes, sir.

Q Could you read for the jury what's the filing status that's checked there?

A Head of household.

Q Okay. Did you file a separate return in 1989?

A Yes, I did.

Q And Jeremy Roberts I think is listed as an exemption. Is that one of your children?

A Yes, my son.

Q Was he with Dr. Roberts at that point?

A Yes, he was.

Q So was the 1988 return the last return you filed together with Mr. Roberts?

A Yes, sir.

Q And since then is whatever you've done with your taxes, you've done separate from Mr. Roberts, is that correct?

A That's correct.

Q Now, I believe you testified you were divorced in 1990?

A Yes, sir. That's when it was final.

Q Let me hand you what's been marked for Government's Exhibits 4-3 and 4-4. 4-3 is under seal and certified by the Chancery Court of Sebastian County, Arkansas, Ft. Smith District, and 4-4 is under seal from the Chancery Court, Sebastian County, Arkansas, Ft. Smith District, both under seal and certified as true and accurate copies of county records. Do those pertain to your divorce, ma'am?

A Yes, sir, they do.

MR. BLACKORBY: Your Honor, at this time I'd move to admit Government's Exhibit 4-3 and 4-4?

THE COURT: Same objection, Mr. Stilley?

MR. STILLEY: Your Honor, I don't see 4-3 and 4-4. Just a second. Let me take a look at that.

THE COURT: You want to show them to Mr. Stilley?

MR. STILLEY: Same objection.

THE COURT: It will be admitted with the same objection by the defense. Admitted as 4-3, 4-4.

Q Now, ma'am, in these documents, does it set forth that you were to receive both alimony and child support from Dr. Roberts?

A Yes, sir.

Q Do you recall in 93, or how much was the monthly alimony; do you recall what that was or how that that's arranged?

A It was $250.

Q Okay. Do you recall was that being paid by Dr. Roberts in 93 and 94?

A Yes, it was.

Q Okay. That's 250 a month?

A Yes.

Q And how would he normally pay that to you?

A Through the Circuit Clerk system.

Q Okay. And what about child support; was he required to pay child support?

A Yes.

Q And how much was that?

A 600.

Q Per month?

A Yes, sir.

Q And was that paid during 93 and 94?

A Yes, it was.

Q And, again, was that paid through the county office there?

A Yes, it was.

Q Well, ma'am, let me ask you on that 89 return, which is 1-2 up there, the blue one, and I think it listed just your one child as an exemption?

A Yes, sir.

Q Did you have a discussion with Dr. Roberts about exemptions for that year 1989?

A He requested that he be able to claim one of the girls and that he would pay me the deduction of a thousand dollars for it, and after discussing it with John Terrell, my accountant, and my attorney, Jan Nielson, I refused.

Q Okay. And you ended up claiming your daughter, is that right?

A Yes, I did.

Q And you were entitled to claim your daughter, is that right?

A Yes, I was.

Q She was living with you?

A Both of them were.

Q Now, ma'am, to your knowledge, you've been in some contact with Dr. Roberts through the years on child support and child custody and so forth, is that correct?

A Yes, sir.

Q To your knowledge has Dr. Roberts always resided in the Ft. Smith area from 1990 through the present?

A Yes, sir, to my knowledge.

Q To your knowledge has his practice, once it was opened on North Greenwood through the present been at that location?

A Yes, sir.

Q And when you were filing insurance claims with Dr. Roberts at the practice, you were filing the claims from that location, is that right?

A Yes, sir.

Q And any mail concerning checks and so forth, payments from insurance companies or patients, would they come into the location on Greenwood?

A Yes, sir, that's correct.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: Cross examine.

CROSS EXAMINATION BY MR. STILLEY:

Q I want to ask you a few questions. If there's any question that I ask you that you think might incriminate you, please just say so. I'm not trying to infringe on any of your rights, but I do need to ask you some questions. When you said that you first -- at first you made out tax returns, is that correct?

A During the first part of our marriage, yes, sir.

Q And but then you stopped that, is that correct?

A When I had my own business with Mary Kay, yes, I did.

Q And why did you stop?

A Because there were a lot of -- there was a lot of tax knowledge that I was not aware of, and I wanted a professional to do it.

Q Okay. So you lacked sufficient knowledge to prepare your own return, after your financial affairs became fairly complicated, right?

A Yes, sir.

Q Why did you file tax returns?

A Excuse me?

Q That's -- that's the question. Why did you file tax returns?

A For one thing, it's the law.

Q Any other reasons?

A Because I want to, and I abide by the law.

Q Okay. Did I hear you say that you wanted to?

A I obey the law, sir.

Q Okay. Are you saying then it wasn't because you want to, because you want to obey the law?

THE COURT: Yeah, what's the purpose of that?

A You're just making --

THE COURT: Mr. Stilley, if you have another question... you asked the question. She answered it. Move on to something else, sir.

Q Have you ever seen the law that requires you to file a tax return?

THE COURT: That's an improper question. You don't need to answer that.

A I am not a law student --

THE COURT: Ask another question. We're not going to have any questions, you know, about laws and tax returns and whatever. Ask her on cross examination anything that was brought out on direct examination.

MR. STILLEY: Your Honor, I didn't hear an objection from the other side on that.

THE COURT: Well, that's consistent with the rulings we've had in this for some time, Mr. Stilley. They may understand that and I would hope you would. Ask another question, if you have a question. BY MR. STILLEY:

Q Is it fair to say that you file your tax returns because you didn't want to be in the position Dr. Roberts is in facing charges?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: And I'm sustaining that. The Jury will disregard that and strike that entirely.

Q When you filed these returns, was that under the penalties of perjury?

A I do not understand that question.

Q Okay. You don't -- then you don't have knowledge of whether or not the returns were made under the penalties of perjury?

A That doesn't make sense to me. There's nothing -- perjury. I mean if you sign what you've gotten here, then you sign to your knowledge that that's correct, and the ones that I signed, that's to my knowledge is correct.

Q Do you understand what the term under penalty of perjury means?

A Well, yeah, if you lied to the law, then you're in trouble.

Q Okay. Did you know that you signed those returns under penalty of perjury?

MR. BLACKORBY: Objection, Your Honor. It's been asked and answered.

THE COURT: I think she answered it twice. I may have to invoke the Roy Gean, Jr, rule, Mr. Stilley, which means you can only ask the same question twice. You've asked it twice, so let's move on to something else, sir.

Q To your knowledge has anyone ever told Dr. Roberts that he was not required to file a tax return?

A That was never discussed in our marriage. I do not have any knowledge of that.

Q Who set up the books for the business at the chiropractic business?

A He did.

Q Are you sure it was Dr. Roberts that did that?

A He's the one that owned the business, sir. He set the books up. I wrote down in the columns that were prepared by him applicable transfers of insurance, income, expenses that were spent for the business.

Q Are you sure that it wasn't Mr. Ruffin that had those books for the entries to be made?

A No, it was not. It was in his writing.

Q When you made these tax returns, did you claim all the cash that you had received from sewing and babysitting?

A Yes, I did.

Q Was that on any of the returns that you personally made?

A Yes, it was.

Q Has Dr. Roberts ever missed a payment of child support or alimony to you?

A It was paid through the court system. He couldn't.

MR. STILLEY: May I have just a moment?

THE COURT: Yes. (Off the record at this time.)

MR. STILLEY: Pass the witness.

THE COURT: Any redirect?

MR. BLACKORBY: No, Your Honor.

THE COURT: Fine. May this witness be excused?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: You're excused. Thank you very much.

A Thank you.

THE COURT: Call your next witness, please.

MR. BLACKORBY: United States calls Resident Agent Brian Miller.

THE COURT: Are we going to need this, the Doar? Are you going the need this evidence presenter in anything he's going to be doing? (Pause) Well, if you need to use it here, I need to talk to everybody at barside.

MR. BLACKORBY: I can get by without it this witness. The next witness I will need to use it.

BRIAN MILLER, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Sir, state your name and spell your last name, please.

A My name is Brian Miller, M I L L E R.

Q And how are you employed?

A I'm a revenue agent with the Internal Revenue Service.

Q And how long have you been a revenue agent?

A Thirteen years.

Q And would you tell the jury what's a revenue agent do?

A We audit income tax returns. It varies from individual, business, corporate, partnership returns.

Q And to be a revenue agent, first of all, sir, what's your education?

A I have an accounting degree from Harding University.

Q And have you had training by the IRS?

A Yes, frequent.

Q What areas do they normally give you training in?

A Many, many different areas, but primarily just regular income taxes and partnership tax and corporate tax law.

Q How many audits would you say you've done?

A Probably a thousand.

Q Have you dealt with returns, individual taxpayer returns?

A Many.

Q Have you dealt with taxpayer returns where it's a sole practitioner or self-employed individual?

A Yes.

Q Now, you've been given an overview of this case, is that true?

A Yes.

Q So you're aware Dr. Roberts was a chiropractor?

A Right.

Q Filed a Schedule C?

A (Witness moves head up and down.)

Q Have you audited returns and been involved in returns such as Dr. Roberts filed?

A Yes.

Q In that regard, sir, are you familiar with the dollar amounts or what is required to file a tax return?

A I am.

Q Does everyone have to file a tax return?

A Only if their income exceeds a certain amount.

MR. STILLEY: Your Honor, I'm going to object to this testimony, because this man has not been certified as an expert and there's no foundation. This is a foundation objection.

THE COURT: You can have a continuing objection. I'm going to overrule that objection. I'll give you a continuing objection to it, so may save you some time. Go ahead, sir. You may answer.

Q Does the code, the Internal Revenue Code, the various regulations, set forth what those bottom dollar amounts are?

A Yes, it does.

Q And in regards to the 1993 and 1994 tax year, have you looked in it to see what those figures are?

A Yes.

Q What sections of the code do you actually look to determine what the dollars are?

A 6012.

Q And what, and that's what defines what the minimum amount that you've got to make to file?

A Basically it just says that if a person has gross income exceeding a certain amount, that they are required to file a return.

Q As far as the dollar amount, is that same information put on documents that are available to taxpayers?

A Yes.

MR. BLACKORBY: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

Q Let me hand you what's been marked for identification as Government's Exhibit 3-1 and 3-2. Those are blank forms, aren't they, sir?

A Yes.

Q Are those 1993 and 1994 blank 1040 forms?

A Correct.

Q Have you had a chance to look at those forms before now?

A Yes.

Q And those are true forms that are to be filed for those tax returns, is that correct?

A Yes.

Q Is this a form that the Internal Revenue Service makes available to taxpayers in this case to file returns in the 93 and 1994 year?

A Yes.

Q And those forms are true copies or true forms of what was available in 1993 and 1994?

A Yes. Those are the actual forms.

MR. BLACKORBY: Your Honor, at this time I would move for the admission of Government's Exhibit 3-1 and 3-2.

THE COURT: Any objection?

MR. STILLEY: No objection.

THE COURT: They will be admitted without objection as 3-1 and 3-2.

Q Now, sir, would you show us if we could bring it up, I believe it's on the back of 3-1, the 93 return. Go to the second page, please. Would you show us where it lists what you utilized to determine the number of dollars that were required to file in 1993?

A Okay. It's a combination of two numbers. From line 34 for a single individual you would add the $3,700. And then you would also add the $2,350 from line 36 for a total of $6,050.

Q Okay. And if a person had over $6,050 in 1993, would they have to file a return?

A Yes, over $6,050 in gross income.

Q Gross income. Now, they could still not have a taxable income, is that right?

A Correct.

Q They could still -- they may not even owe tax?

A Right.

Q But if their gross income is over what was the total, $6,050 --

A Right.

Q -- they were required to file a return?

A Yes.

Q Now, if you would look at Government's Exhibit 3-2, which is the 94 form, and I think we go to the second page, is the same information on that page, sir?

A The numbers are slightly different. Same format, yes, the amount.

Q So you added which two numbers in 34?

A From the 34 for the same individual, $3,800; from line 36, the 2450.

Q And what's that add up to be?

A 6,250.

Q So in 1994, if Dr. Roberts had over $6,250 in receipts, would he be required to file a return?

A Over 6,250 in gross income, yes, he would be required to file.

Q Now, why did that figure change, go up a couple hundred dollars?

A Congress allowed each year for inflation.

Q Okay. Now, there are names for those figures, aren't there, in that first figure?

A Yes. That's called the standard deduction.

Q And why are -- why is a taxpayer entitled to a standard deduction?

A Congress decides that every taxpayer was entitled to a minimal amount. Those that can itemize are entitled to a standard deduction. That was a title given to it when allowed by Congress.

Q Okay. Now line 36, that $2450 figure, is there a term to that?

A That's the exemption amount.

Q And what is an exemption?

A An amount that Congress decided each person would be entitled to each person given an exemption for themselves and there may be a spouse or children.

Q So going back to the front page, please... so on the front, as we saw in the other returns, if there -- is this where you determine your exemptions --

A Yes, sir.

Q -- for yourself, if you have a spouse --

A Right.

Q -- your children? So in 94 for each one of those you would have taken, if there would have been four people, you would have taken four, if you would have had income and so forth, right --

A That's correct.

Q -- four times it? Now, sir, also you talk about gross income. Did you determine as far as Dr. Roberts being a chiropractor and receiving receipts, and the jury's heard most of those that come from the insurance companies or patients, would such income or receipts come into Dr. Roberts from those sources be taxable income --

A Absolutely.

Q -- to include say gross receipts, taxable gross receipts?

A Right.

Q What section of the code defines that?

A Section 61.

Q Now, sir, would you look at Government Exhibit 1-1? Is that up there? Whoops!

MR. BLACKORBY: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

Q On 1-1, is that a 1988 tax return?

A Yes.

Q And that's for Dr. Roberts and his wife at that time?

A Correct.

Q Is that right? Okay. Would you actually jump over to the Schedule C, please? Now, it shows employment, chiropractor. It shows gross receipts. I don't have the return in front of me, but is that the receipts that you're talking about, gross receipts or sales, that $77,000 figure?

A That is gross receipts.

Q All right.

A That's not the same as gross income, but --

Q All right. But is that where we start? Those are taxable? The net of those are taxable, is that right?

A Those are taxable. The gross income that's referred to in section 61 would be line five on Schedule C.

Q Which here is entitled standard gross income, is that right?

A It's the same; yes.

Q So to determine whether Dr. Roberts made over $6,050 in 93, for that year, that figure would have to be over $6,050, is that correct?

A Correct.

Q For 94 that figure would have to be over the $6,250 figure you mentioned, is that correct?

A Correct.

Q So the requirement to file a tax return to compare to those $6,000 figures you've cited goes, in Dr. Roberts case as a chiropractor, goes to that line five?

A Right.

Q Now, we've introduced, you've introduced those blank 1040's for 93 and 94 that had the information on it. Does the taxpayer have other sources where he or she can figure out for whatever tax year they're in, what information they needed to and whether they need to file?

A Yes. We put out all kinds of information.

Q Can you give this jury some samples or ideas where that information is?

A Okay. Lots of people will receive an individual form 1040 booklet each year. If they don't receive one, they can go to their accountant, library, bookstore, the Internet, toll free phone numbers. Ft. Smith even has a walk-in office you can go to visit if you'd like.

Q Now, let me show you what's been marked for identification as Government's Exhibit 3-3 and 3-4. Can you identify those, sir?

A These are the instruction booklets for the Form 1040 for 1993 and 94.

Q Okay. Is that a booklet that would have been available to any taxpayer?

A Yes.

Q And those locations you just mentioned, would that -- would a taxpayer have got that information or those booklets at those locations?

A Possibly not at the bookstore, but anywhere else they could have.

Q And those are true booklets for the 93/94 tax year?

A Yes, they are.

Q And you've reviewed them and they have the same information that was current in 93 and 94?

A Yes.

MR. BLACKORBY: Your Honor, I'd move for admission of Government's Exhibit 3-3 and 3-4.

THE COURT: Any objection?

MR. STILLEY: Your Honor, we would object on the grounds of the best evidence. This is obviously offered for the purpose of trying to prove what the law was, and the best evidence of the law would be the law itself, which is the Internal Revenue Code and if the --

THE COURT: Your objection is noted and overruled, and it will be admitted over your objection as 3-3 and 3-4. BY MR. BLACKORBY:

Q Now, sir, you said you've been a revenue agent for 14 years. That takes you back about 1986/87?

A Yes.

Q And you've been familiar with the code and changes in filing requirements since you've been a revenue agent, is that right?

A Right.

Q Okay. And you saw that Dr. Roberts' last return, the 1989 return, Government's Exhibit 1-2, was filed as a chiropractor?

A Yes.

Q Has anything changed in that industry, chiropractors, in the filing requirements since then that you see in your work?

A No.

Q And in your study or review or your training has anything changed that would not require chiropractors to file tax returns?

A Absolutely not.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: Cross examine. (Off the record at this time.)

CROSS EXAMINATION BY MR. STILLEY:

Q Sir, do you hold yourself out to be an expert in tax law?

A I would consider myself more versed than the average person.

Q Fine. It would be fair to say that you are an expert on tax law?

A I would say that nobody's an expert on all the tax law, but I'm pretty familiar with certain parts of it.

Q What parts are you familiar with?

A Primarily parts that deal with computation of income.

Q Are you familiar with the parts dealing with any requirements, filing requirements?

A I am.

Q If I was to show you a statute, would you be able to -- that was recently pertinent to the issues of this case, filing requirements, et cetera, would you be able to discuss those with me and explain to the jury what that statute meant?

A I would hope so.

Q Are you aware of the Paperwork Reduction Act of 1980?

A Yes.

Q Are you aware of the requirements of that law?

A Not specifically; no.

Q Okay. There is a paperwork act --

MR. BLACKORBY: Your Honor, I would object to this line of questioning. That has already been raised before this Court.

THE COURT: I think it has. I'm going allow him a little leeway here, and if you can answer that or if you know something, you can, but the Court has made some previous rulings Mr. Stilley's aware of and we're not going to go there again, but, go ahead, sir.

Q On the front, if you could put that up, could you put the 1993 tax return up on the screen? (Pause) Up at the top right hand corner it says for paperwork for Privacy Act and Paperwork Reduction Act Notice see page four. Do you see that?

A Yes.

Q Do you know what that relates to?

A No, I do not.

Q Okay. Have you seen the instruction in either Exhibit is it 3-3 and 3-4? I believe that's correct.

A Yes.

Q Have you seen those instructions?

A Yes.

Q All right. And are they in your Exhibits?

A Yes. These?

Q Yes.

A I guess they were admitted a minute ago.

Q Now, this is on the return. Is the return referring not to the return itself, but to the instruction booklet?

A I do not know.

Q Is it safe to say then that the --

A It appears that it is related to the instruction booklet, yes.

Q Okay.

A But title as to the same page.

Q Now, the Paperwork Reduction Act relates to collections of information by the Government, is that correct?

A Partially.

Q Is an income tax return collection of information by the Government?

A Yes.

Q Okay. So are the tax returns subject to the Paperwork Reduction Act of 1980?

A I would assume so, but that would be speculation on my part.

Q Okay. Now, you -- I notice that you didn't -- we didn't show the jury any law during your direct examination, did we?

A We discussed the law. I don't think we showed it on the screen.

Q You told us about two sections of the Internal Revenue Code, is that correct?

A Yes.

Q And that would be 6012 and Section 61, is that correct?

A Yes.

Q Do those two sections of the code tell us everything we need to know to determine whether or not an individual is required to file a tax return?

A No. Those are, those are summations and you're required to go over to a few extra places to get specific dollar amounts and details.

Q Okay. Where else do we need to go?

A Well, code section 6012 says a single person has to file an income tax return if their gross income exceeds the basic exemption and the standard deduction. To get the exemption and standard deduction, you have to go to Section 63 and 151.

Q Okay. So you've got to go to 63 also, correct?

A Yes.

Q And 151?

A Right.

Q Is that 151?

A Yes.

Q Anything else?

A No.

Q If I lay a Section 6012 on this Doar here, can you tell us where it says that a person's required to file a tax return?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Yeah, we've covered this. I'm going to sustain that, and this has been covered previously in the Court's rulings, Mr. Stilley. Ask some other question.

MR. STILLEY: Your Honor, may I approach the witness? I'd like to have -- let him have --

THE COURT: No, you may not approach the witness. You can approach the bench. I want to see you up here right now. You can come with him. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Mr. Stilley, haven't we already covered this --

MR. STILLEY: No, sir, we absolutely have not.

THE COURT: -- in the Order. Have you just not read the Order?

MR. STILLEY: I have read the Order. I have read every Order that you sent out.

THE COURT: Well, do you think it just doesn't pertain to you?

MR. STILLEY: No, it pertains to me. It pertains to me.

THE COURT: Mr. Stilley, I don't want you to go there. That question -- there was an objection and it has been sustained. You know, I think you've made your record as clear as you can, and you're not to go there on this. I will allow you some latitude. You have gotten in some about the statutes that required, but I'm not going to have you go over what we've already decided.

MR. STILLEY: Are you not going to let him read from the statute?

THE COURT: No, no. I'm not going to let him read the statute.

MR. BARRINGER: The statute doesn't say --

THE COURT: Listen, you know, when you come up you can speak one a time. But are you going to speak or is he going to speak?

MR. STILLEY: I wanted both of us to speak.

THE COURT: Well, I'm going to -- fine. I'll ask you if you want both of you to speak. You're not both going to speak, Mr. Stilley.

MR. STILLEY: Well, I'll let him tell me, then I'll tell you.

MR. BARRINGER: 6012 does not say what he said, Your Honor.

MR. STILLEY: Your Honor, 6012 doesn't say what he said. Are you going to let him lie to the jury?

THE COURT: Mr. Stilley, you need to be very, very careful. You are getting close. Your are getting very, very close, and maybe that's what you're trying to do --

MR. STILLEY: No, I'm not. I'm not.

THE COURT: Well, get off of that subject. You know, you've made your record and whatever. Now, do you have other questions you want to ask?

MR. STILLEY: I've got lots of questions.

THE COURT: Well, do you have other questions where we have not already ruled on them, Mr. Stilley? I don't want to come back up here again and go through this again. I want you to stay away from rulings this Court's already made.

MR. STILLEY: Have you already directed a verdict on behalf of the Government?

THE COURT: Okay. You ask your question. If you ask an improper question, I'm going clear this courtroom. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:) BY MR. STILLEY:

Q How many experts like you do you know of that there are in the United States?

A I have no idea. What do you mean by expert?

Q Someone with your knowledge and skill that would be able to tell the jury what the requirements of the law are.

A You mean just within the IRS or including tax accountants and attorneys?

Q Everybody. Everybody.

A I'm sure there are many thousands around the country.

Q Okay. Let's do a comparison here. As between a layman and a CPA, who has more knowledge about the tax laws?

A CPA.

Q As between a CPA, ordinary CPA, and a person like you, who has more knowledge about the law?

A I would say the law as through general term, an accountant would be more knowledgeable in certain areas and an IRS agent would be more knowledgeable in other areas.

Q Is it fair to say that -- scratch that. You didn't say anything about any regulations. Is it fair to say that you are only talking about the statutes when you reference laws requiring the making of a tax return?

A The code is what I was referring to when I --

Q So you're saying we don't have to go outside the code, right?

A I'm saying the code -- right. The code is the most law to verify the filing requirement, yes.

Q Did you read these statutes, 6012, 61, 63, and 151, before you came into this courtroom?

A Yes.

Q Did you read them completely?

A I didn't read all the footnotes.

Q Okay. Did you read the complete statutes?

A No. I read all of 6012 and I read all of 61. I don't think I read all of 51. It's several pages long.

Q So you didn't read all of 151?

A Correct.

Q Do you know Dr. Roberts?

A No.

Q Do you know anything about what knowledge he's got?

A I have a very limited amount of knowledge about his knowledge.

Q So you really couldn't testify about the knowledge in his mind as to what he knew his requirements to be, is that correct, or what he knew his duties to be?

A Just based on the fact that he'd gone to an accountant before and had previous tax returns filed, and his records that would have been required from him to take to his accountant would imply to me that he had some knowledge about his requirements.

Q So you're just looking for -- to find out about his knowledge, you're just looking at implications, is that correct?

A Yes. I have no, no other thing to base my knowledge on.

Q Okay. In essence what your testimony is about is about his duty, correct?

A My testimony is about the duty of a -- of any taxpayer and the requirements that exists for them to file a return.

Q You're talking -- are you talking about a legal duty?

A Yes, I am.

Q Does that have a legal component as well as a factual component?

A Sir?

Q What is the legal component of that?

A I don't guess I understand the question, but the law says you have to file a return if your gross income exceeds that. I assume that's a legal duty.

Q If this jury wanted to see that law, how would they see that law?

THE COURT: Mr. Stilley, let's not go there, sir. You have another question? We discussed that before. (Pause)

Q How is the Internal Revenue Code broken up?

A Into sections or chapters and subchapters and sections.

Q Okay. This is, this is the Internal Revenue Code of 1986. How and if somebody -- if you wanted to describe this to somebody, what do you call it?

A I would call it the Internal Revenue Code.

Q Is this also Title 26?

A Title 26 of the U.S. Code; yes.

Q Okay. Is there subtitles?

A Of the Internal Revenue Code?

Q Right.

A Yes.

Q Do you know what those are?

A No, not all of them.

Q Okay. Do you know any of them?

A I think there's a definition of taxable income to be one of the subtitles. I'm not familiar with them specifically.

Q The definition of income would be one of the subtitles?

A Either subtitle or a chapter. I don't remember the distinction.

Q If I brought you a coy of the Internal Revenue Code, could you tell me which subtitle that was?

MR. BLACKORBY: Objection, Your Honor. I don't see the relevance on the direct.

THE COURT: It's not relevant and that objection is sustained.

Q Do you know any other subtitle of the Internal Revenue Code?

A Not specifically. We deal with specific sections. We don't deal with titles or subtitles.

Q Do you know how many subtitles there are?

A I do not.

Q Do you know the name of any of the subtitles?

A No, I do not. (Pause)

MR. STILLEY: Your Honor, can I read, read this witness just a little snippet from the 6012 and ask him about it?

THE COURT: No, sir, you may not.

MR. STILLEY: What?

THE COURT: You may not.

MR. STILLEY: I can't not even read a little snippet?

THE COURT: No, sir. You cannot. You cannot. You can't read a snippet, can't read a word. Go on to something else. We've been on to that several times. Do you have other questions of this witness?

MR. STILLEY: I got lots of questions, Judge. I'm not near out of them. I've just asked hardly any of them. I've asked I don't know how many times --

THE COURT: Do you have questions that you are going to ask the Court hasn't already ruled on, Mr. Stilley?

MR. STILLEY: Your Honor, I've asked from day one --

THE COURT: I know what you've asked, and I know what you've asked from day one. I know what the Court's ruled from day one. Do you have other questions to ask that the Court's not already ruled on?

MR. STILLEY: I do not, Judge. I've asked --

THE COURT: We're going to take -- I'm going to give you about a, oh, a 15-minute break. We're to remain in session for awhile, but, again, don't discuss this with anyone or allow anyone to discuss it with you. (Jury leaves the courtroom at this time. THE FOLLOWING PROCEEDINGS WERE HELD OUTSIDE OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Mr. Stilley, I don't know -- let the record reflect that the jury is out of the room. I don't know if you're trying to get a mistrial or what. I mean I'm, I'm becoming increasingly concerned about your antics and your procedures and your entire line of questioning and cross examination. The Court's ruled on most of what you're now trying to ask several times before. If you have an objection to it and if you think the Court's wrong, when the trial is over, it can be appealed, but you simply must not continue asking the same question, the same line of questions.

MR. STILLEY: Judge, let me explain my position, if you don't mind, since the jury is out of the room.

THE COURT: I think I understand. I mean I really think I do.

MR. STILLEY: I don't think you do.

THE COURT: I don't think it's nearly as complicated as somehow you want to make it.

MR. STILLEY: Judge, from day one I have been asking --

THE COURT: I understand you've been asking.

MR. STILLEY: -- someone to show me the law, and you said at the arraignment --

THE COURT: And I've seen the T-shirts and the signs out front. I understand what you're asking, Mr. Stilley, but I'm telling you we're passed that.

MR. STILLEY: Are you absolutely positively not going to permit anybody to show the jury the law?

THE COURT: Mr. Stilley, we have been down this road before. If you -- do you have other questions of this witness?

MR. STILLEY: Well, I'm not near through making my record on this witness. Before this witness was allowed to testify about the matter of expertise, he should be qualified, and I should have had a chance to take him on voir dire and ask him about his qualifications. I didn't get that. We just skipped right past it. Now, he testifies not from the law, but from forms that have been put out of what the law is.

THE COURT: Did you hear his testimony; he's been with the IRS for years; he's examined thousands of tax returns?

MR. STILLEY: I did.

THE COURT: Did you hear that?

MR. STILLEY: I did. If this was any other trial --

THE COURT: You asked him if he was more competent than a CPA, and he said in some areas he may be. Do you remember all of that testimony? You even put some of that in, Mr. Stilley, and now you're saying he's not qualified?

MR. STILLEY: Judge, I'm -- it's not that. It's that if this was any other trial, I'm satisfied that you would have forced the Government to tender the witness to the defense and let the defense voir dire the witness to establish his qualifications. I'm not saying he's not an expert. I'm saying --

THE COURT: Okay. You can voir dire him right now and on his knowledge of the Internal Receive Service Code.

MR. BLACKORBY: Your Honor, may I add something to the record?

THE COURT: Yes, sir.

MR. BLACKORBY: Mr. Stilley doesn't understand the Federal Rules, and under the Federal Rules there is not a give and take to establish the expertise of a witness. The Government lays its foundation and goes on. If Mr. Stilley has a problem with that, he attacks that in cross examination. There's no formal declaration of an expert witness under the Federal Rules.

THE COURT: I agree with that. Hopefully Mr. Stilley knows that. Mr. Stillley, you may ask him now on the record with the jury out of the room what his qualifications are.

MR. STILLEY: I don't want to ask any questions with the jury out of the room about his qualifications.

THE COURT: You may not be permitted to ask any then except on cross examine -- You may not be permitted to ask any more questions ever, if you're not careful in this case, Mr. Stilley. What questions are you going to ask him? What other lines do you intend to pursue with this witness?

MR. STILLEY: Well, I want ask him about the matters that he's testified about the requirements. He's testified --

THE COURT: You want to ask him about the specific sections and have him read the code? He's not going to do that.

MR. STILLEY: Well, let's bring the jury back in. I'll do my best. I hardly --

THE COURT: What I want to know is what questions you're going to ask, Mr. Stilley. I don't want to bring the jury back in and have you ask that same question you've asked time and time again. What are you going to ask when the jury comes back in? I want to know what questions you're going to ask, because if that's the only question you're going to ask, you're not going to ask any more questions, Mr. Stilley. Do you have other questions that you need to raise, you need to put in for Dr. Roberts' defense?

MR. STILLEY: I do. Are you going to compel me to tell what my questions are?

THE COURT: I want to know the general topic area that you're going to on cross examination, because we have had a poor track record through to this point of communicating, and I think if you'll tell me on the record where you're going --

MR. STILLEY: Yes. I want to ask him how he gets to that. I want to ask him --

THE COURT: Ask him what? I can't understand you.

MR. STILLEY: I want to ask him how he calculated the 650, and I want to test his math skills a little bit. Make sure he added it up right.

THE COURT: Fine. You may ask that.

MR. STILLEY: Okay. Very good. I'm ready to bring the jury back in then if you are.

THE COURT: Is that the only question you're going to ask?

MR. STILLEY: I might have a few more. He might -- his answer might jog my mind that I might ask some more.

THE COURT: Are there any other topics that you think of other than adding up the -- I think his math skills or something in determining what the reporting requirement is? Anything else you're going to ask?

MR. STILLEY: Yeah, just a second. Let me take, let me take a little break here. (Off the record at this time.)

MR. STILLEY: Your Honor, I also wanted to specify exactly where that he got the numbers that he got and clarify that issue.

THE COURT: Okay. But you're primarily concerned with the numbers? That's going to be your further examination?

MR. STILLEY: That's going to be my primary part of my further examination.

THE COURT: Okay. Well, if you ask any questions other than that, Mr. Stilley, I need you to approach the bench first. Can we have that understanding? Nothing complicated about my request. Let me --

MR. STILLEY: Yes, I'll approach the bench. I will approach the bench.

THE COURT: We also -- I'm going to take a break and we're going to come back in, and then I don't think your cross examination is going to last much longer. You're going to ask some questions concerning your computations. I permitted Dr. Roberts yesterday to bring in the folded American flag and the American Bible. The Government objected and I think he's got an absolute right to have it, if he needs it, and that doesn't bother me. What he's done though, he's placed it in front of one of our receivers here, and you need to move it over, Dr. Roberts, because that's the reason the TV sets are not working.

THE DEFENDANT: Sorry.

THE COURT: So you know, if it doesn't inconvenience you, you need to sort of be convenient, if you can, for the technology we've got in the courtroom. Anything else? We all need a little break and let's come back in at -- let's come back in at 20 till, and when we come back in, you can be back on the witness stand. (Off the record at this time. THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Mr. Stilley, continue, sir. BY MR. STILLEY:

Q 3-3, back up on the screen, please. Try 3-4. The second page. Okay. Can you blow that up so we can see the numbers at the top of the screen? Sir, you're contending that this tax form is law, are you?

A No.

Q But there's some numbers up at the -- on line 34, is that correct?

A Yes. There are some numbers on line 34.

Q Where do those numbers come from?

A They're taken from the Code.

Q Was it a specific section of the Code?

A Line 34 comes from lines or Section 63. Those numbers specifically are not in Code Section 63.

Q Okay. Where are they? But you said that they came from 63? Did I misunderstand you?

A Yes, they come from 63.

Q Is it just 63?

A The standard deduction amounts are discussed in Section 63.

Q Does Section 63 say, does it say what the standard deduction is?

A The definition or the dollar amount?

Q The dollar amount.

A It gives a dollar amount for one particular year. And then it gives a formula for computing the amount in the subsequent years.

Q Okay. For what year, does it give the particular amount?

A I believe the Internal Revenue Code of 1986 gives a dollar amount for 1988, I believe.

Q Is that the complete -- now, do we need to go anywhere except 63 to find these numbers on line 34?

A Nowhere else in the Code.

Q Okay.

A But if you're asking will you ever find the number three, comma, seven, zero, zero in the Code, it's not there.

Q Okay. So that number just doesn't come from the Code at all?

A There's a formula in the Code for computing that number, but that actual number is not there.

Q Does that formula -- what is that formula?

A The dollar amount for 1988, it's either 88 or 89, I forget specifically, but I think it's 1988, the dollar amount is $3,000 for a single individual. For each year subsequent to that, I believe the formula is you take the consumer price index at the end of year, subtract from that the consumer price index at the beginning of the year, take that difference, multiply it by one times the -- or that difference multiplied by the previous year's standard deduction over the increase will be the amount you use in the next year rounded to the nearest $50.

Q Where do you find out that -- you said you need the consumer price index to calculate that, is that correct?

MR. BLACKORBY: Your Honor, I object. I don't see the relevance of this. The evidence has been put in what the figures were for 1993 and 1994. That's what the taxpayer or what Dr. Roberts is charged with. The witness has already testified to what those figures for those years as determined were. I don't see the need to go outside of that testimony. That was the testimony on direct.

THE COURT: Where are we going, Mr. Stilley? Why is it necessary to go outside the --

MR. STILLEY: Well, there's -- two major -- Your Honor, if I could take just a moment? (Pause) Your Honor, the witness testified that these numbers are true and correct. I'm trying to figure out where he got them from.

THE COURT: I think he said he got them from the forms that are provided, and if I understood him now, I think what you've asked him though is how someone computed that to place on the form. That may be outside his expertise. I don't know. Is that the basis, Mr. Blackorby, of your objection?

MR. BLACKORBY: Your Honor, may I voir dire the witness briefly?

THE COURT: Yes.

VOIR DIRE EXAMINATION BY MR. BLACKORBY:

Q Sir, did you make the computation of that $6,050 figure and $6,250 figure, or was that already provided to you from the forms?

A Well, I used the two numbers on the form.

Q But you didn't make computation to determine what it should have been for 1988 to 93, did you?

A No.

Q That was already provided to you by the forms and the documents, is that correct?

A Correct.

Q So you don't know who made that computation, do you?

A Someone at the IRS, I assume, or the Treasury Department. I don't know.

MR. BLACKORBY: Your Honor, I renew my objection.

MR. STILLEY: Your Honor?

MR. BLACKORBY: This witness has testified that where he got the information and what the information is. Any questioning about how the computations were made, this witness doesn't have that knowledge, as he just stated.

MR. STILLEY: Your Honor, I move to strike all his testimony about the legal requirement, because he just testified that he did not get this information from the law. He got it from a booklet, which is not law. Therefore, he cannot possibly be an expert that can tell the jury what the law was since he didn't. He's already admitted --

THE COURT: Mr. Stilley, I'm sustaining the objection.

MR. STILLEY: Are you going to rule on the Motion to Strike?

THE COURT: I'm denying the Motion to Strike. You have another question?

MR. STILLEY: Are you sustaining the objection to the --

THE COURT: Yes, sir. I sustained the objection.

MR. STILLEY: So I cannot ask him where he -- how he calculated this figure?

THE COURT: No, Mr. Stilley. I don't know if -- it's not difficult. I think what he said, he said he got the figure from a booklet. Someone in the IRS did it, and they did it based on some formula back in 1988 or something. Yes, I sustained the objection. I denied your Motion to Strike. If you have another question concerning another topic, please proceed.

CONTINUED CROSS EXAMINATION BY MR. STILLEY:

Q How many statutes would Dr. Roberts need to know in order to calculate, in order to understand his -- any legal requirement to file a tax return?

MR. BLACKORBY: Objection, Your Honor; calls for speculation as to what Dr. Roberts would need to know. He doesn't know Dr. Roberts' background.

MR. STILLEY: Can I rephrase that question?

THE COURT: Well, you can. Yes, sir. BY MR. STILLEY:

Q How many statutes would the ordinary American citizen need to know and understand and know for sure what their filing requirement would be with respect to Federal income tax returns?

A How much they would need to know to compute the exact amount of the tax or just whether or not they had a filing requirement?

Q Whether or not they had a filing requirement?

A Three or four.

Q Three or four statutes?

A Three or four Code sections.

Q Code sections. Okay. And what are those Code sections?

A Code Section 6012, 63, 151, maybe 61.

MR. STILLEY: Your Honor, may I approach? You told me I needed to approach to ask before I ask questions that might be questionable.

THE COURT: I did. And I also need to advise you don't need to make comments like that in front of the jury. You may approach. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: I want to ask the witness if this number shows up in any of those code sections, 6012, 61, 63 or 151.

MR. BLACKORBY: Your Honor, he's already testified that it didn't; that it's a computation of this formula. This has been asked and answered.

THE COURT: Mr. Stilley, are you -- I think he's already testified to that. That's been covered. Do you have another question --

MR. STILLEY: I do.

THE COURT: -- or another topic? Well, what is it, because I don't want to do this again?

MR. STILLEY: I want to ask him if the exemption amount changes every year.

THE COURT: If the exemption amount changes every year?

MR. STILLEY: Right. Can I ask him that?

THE COURT: Yeah, I think, I think he's already answered that, but I'll let you ask him. Are you going to ask anything else other than that?

MR. STILLEY: Yeah. I'm going to ask some more, but I'll have to see how he answers that.

THE COURT: Well, what other areas are you intending to cover? Do you have some idea where you're going with this witness?

MR. STILLEY: Uh-huh.

THE COURT: Well, you need to share that with me at this point.

MR. STILLEY: I want to know how long it takes to get his knowledge.

THE COURT: Okay. Those two questions. Any more?

MR. STILLEY: I have to see what -- how these come out.

THE COURT: Okay. We're going to talk about knowledge. You're going to ask if the figure changes every year. Anything further, come back to the bench. Okay, sir?

MR. STILLEY: Okay. (THE FOLLOWING PROCEEDING WERE HAD WITHIN THE HEARING OF THE JURY:)

Q Does the exemption amount change every year?

A Generally it has in the past, assuming there is a rate of inflation, that you could assume that the exemption amount would also increase.

Q Is it fair to say that it wouldn't necessarily?

A That's fair to say; yes.

Q How long does it take for a person to take to get the knowledge that you've got concerning Federal income taxes?

A I would say it's a few years probably, couple years, depending upon how dedicated you are to it.

Q This return that we've got up here, is that a complete return?

A That is the first page of it and it could be a complete return. When schedules are required, then obviously it wouldn't be.

Q Is it possible that this is a complete return?

A It's possible, yes.

Q Under what circumstances would that be a complete return?

A Well, let me back up. If everything that was required to be presented was on here, and the law didn't require for any supporting

schedules or W-2's to be attached or anything like that, then it would be complete.

Q Have you -- Your Honor, may I approach?

THE COURT: Yes. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: I want to ask him if he had examined anything about Dr. Roberts' situation to know what he would have been required to make, what statutes and forms that he would have been required to fill out.

MR. BLACKORBY: Your Honor, Dr. Roberts didn't even file.

MR. STILLEY: He would have been --

MR. BLACKORBY: What's he going to examine?

THE COURT: Are you going to say if he filed, if he had filed?

MR. STILLEY: Right.

THE COURT: Do you think you need to ask that --

MR. STILLEY: Yeah, I think so.

THE COURT: -- a question like that? I'm not sure that --

MR. STILLEY: Is that improper?

THE COURT: Well, I'm just concerned it may hurt your client. (Off the record briefly.) I don't think that question would be in the best interests of your client, but you can ask anything you want to, Mr. Stilley, if you want to ask that.

MR. STILLEY: I want to ask what law would he would need to know to know what supporting schedules that he would be required to make, too.

MR. BLACKORBY: Object, Your Honor.

THE COURT: Yeah, I would sustain that. What else? Do you have any other questions?

MR. STILLEY: Uh-huh. Oh, yeah.

THE COURT: Well, I need to know what they are and what areas you're going into, Mr. Stilley. (Off the record at this time.)

MR. STILLEY: I need to ask him if all of his responses for 93 apply to 94.

THE COURT: Okay. Is that the only question you're going to ask?

MR. STILLEY: No.

THE COURT: Well, you need to tell me what the other ones are, Mr. Stilley. I'm not trying to trick you. I'm not trying to be tricked either.

MR. STILLEY: Well, I want to ask him if he understands enough about Dr. Roberts' situation to know what schedules that he thought would be required.

THE COURT: He said he would object and I would sustained that.

MR. STILLEY: Are you not going to let me --

THE COURT: No, sir. No, sir.

MR. STILLEY: I'm going to ask him about signature.

THE COURT: Going to ask him what, sir?

MR. STILLEY: About the signature. I'm going to ask him to read the penalty of perjury line and ask him who's making that statement.

MR. BLACKORBY: I would object, Your Honor. This is failure to file. Dr. Roberts did not file a return. He's not charged with evasion or 7206.1 where the perjury or the attestation even comes in as an issue. It's not an element of the proof.

THE COURT: There's not going to be any proof of perjury, I don't think.

MR. STILLEY: There's knowledge that he would have to say that he had knowledge, personal knowledge of all that other stuff. Let me explain for the record. If you have to show that he had knowledge, personal knowledge that he was required to file that return, it would seem that you would need to know what the complete return is, not just part of it. You would need to --

THE COURT: Are you arguing now something other than perjury? I thought you were talking about perjury.

MR. STILLEY: No, I'm not -- I wanted to -- I wanted to have him read that statement and ask who's making that statement. Is it -- would it be Dr. Roberts? Is it the signer? Is it the preparer? Who is it?

MR. BLACKORBY: Your Honor, I object. That's a question for the jury. If he was charged with evasion or had been charged with filing false returns. He didn't even file a return. That is not --

THE COURT: I'm not sure how he can be charged with perjury if he didn't sign a return. I don't understand, Mr. Stilley.

MR. STILLEY: Well, part -- one of instructions says that if he -- is the subjective good faith. If he did -- if his mind did not have the knowledge of the requirement to file, then, he can't be guilty. So we would need to know did he have knowledge, not to file a partial return, but to file the whole return and the ability to sign that knowing that he had made all of the accompanying statements and complied with all requirements.

MR. BLACKORBY: Your Honor, this witness would be pure speculation. If they want to elicit that, put Dr. Roberts on the stand and ask him. He's the only one that's going to have that information.

THE COURT: I'm not going to permit you to go there, Mr. Stilley. What else do you have? Do you have any other questions that I --

MR. STILLEY: Your Honor, I've got one I want to ask him about 93 and 94.

THE COURT: If they're the same?

MR. STILLEY: Right.

THE COURT: I understand that. I'm going to permit you to ask that. You going to ask any other questions other than that?

MR. STILLEY: I'll have to see if we have any.

THE COURT: Well, any other area you want to get into?

MR. STILLEY: Okay.

THE COURT: Ask one question and if he says yes --

MR. STILLEY: Well, if I think of something else, I'll let you know. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:) BY MR. STILLEY:

Q You've testified about the numbers that apparently came from some Treasury official. Would that testimony be true for the 1994 the same as it would be for 1993?

A Yes.

Q Can you do a short calculation for me?

THE COURT: Do a short what?

MR. STILLEY: Calculation. Do I need to approach again?

THE COURT: Calculation for what?

MR. STILLEY: I just wanted him to add up some numbers.

MR. BLACKORBY: Well, I object, Your Honor. I don't see the relevance.

THE COURT: I'm going to sustain that objection. Do you have another question?

MR. STILLEY: Your Honor, may I take just a moment?

THE COURT: Yes. (Pause)

MR. BLACKORBY: Your Honor, I object. I don't see where in the Federal Rules where you're allowed in the Federal Rules to go outside the bar and consult the public to complete your examination.

THE COURT: I'm attempting to allow him some latitude and the Court's going to do that. Do you have another question?

MR. STILLEY: Yes, sir. I've got two more questions. Do I need to approach?

THE COURT: Okay. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: Your Honor, I want to --

THE COURT: Wait a minute --

MR. STILLEY: I just wanted to clarify with this witness that the number 6,050 and 6,250 don't appear anywhere in the Internal Revenue Code.

THE COURT: I think he answered that.

MR. BLACKORBY: He's answered that.

MR. STILLEY: No, I asked about him the numbers on line 34. I didn't ask him about 6,050 and 6,250. I just want to make sure that these numbers don't appear anywhere in the law.

MR. BLACKORBY: Your Honor, that's been asked and answered.

THE COURT: That's asked and answer.

MR. STILLEY: Well, I just want to clarify it. I know you let the jury --

THE COURT: I know you just want to make a point, but, you know, what's the other -- what's your other question?

MR. STILLEY: I want to read the penalties of perjury clause and tell us what it means.

THE COURT: I've already ruled on that. I've already said he cannot do that, Mr. Stilley.

MR. STILLEY: But I just want him to say what it means.

THE COURT: Mr. Stilley, you're not going to do it. You know, I -- do you have any redirect?

MR. BLACKORBY: (Mr. Stilley moves head from side to side.)

MR. STILLEY: Are you going to let me --

THE COURT: No, I'm not. No. Your cross examination is over, sir. You may be seated. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Redirect, please.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: You may stand down. Thank you very much, sir. Call your next witness, please.

MR. BLACKORBY: United States calls Special Agent Tom Bryan. (Witness sworn.)

THE COURT: You've heard this for I think a couple days. Speak directly in the microphone, if you would, please. There's water on the right and fresh cups, too. We can't trick you into using an old cup.

TOM BRYAN, DIRECT EXAMINATION, SWORN BY MR. BLACKORBY:

Q Sir, will you state your name and spell your last name?

A My name is Tom Bryan. It's B R Y A N.

Q How are you employed?

A As a Special Agent with the Criminal Investigation Division of the Internal Revenue Service.

Q And what does a Special Agent do?

A Special Agents can conduct criminal investigations relating to the Internal Revenue Service and related laws.

Q And you got that -- where do you reside?

A Ft. Smith, Arkansas.

Q And how long have you been a Special Agent?

A Almost 23 years.

Q Has most of that been in the Arkansas area?

A All of it.

Q How long have you been in the Ft. Smith area?

A Since May of 87. Prior to that I was in Little Rock where I was born and raised.

Q Okay. You're the investigative agent on this case, is that right.

A Yes, sir.

Q And when did you start the investigation of Dr. Roberts?

A I initiated the investigation in February of 1996.

Q And at that time you were investigating what years?

A 1992, 1993, and 1994.

Q And had you found based on the information you gathered at that point that he had not filed for those years?

A Yes, sir.

Q Did you also look into whether he had filed state returns?

A Yes, sir.

Q Let me hand you what's been marked for identification as Government's Exhibit 43-1. It's certified -- it's a certified letter from a state official for the State of Arkansas Department of Finance. What's the date on that letter, sir?

A Date of the letter is June 8, 2000.

Q Does that letter concern Dr. Roberts' filing situation with the State of Arkansas?

A Yes, sir, it does.

Q And it's a certified signature?

A Yes, sir.

Q Under the State seal?

A Yes, sir.

MR. BLACKORBY: Your Honor, at this time I'd move for admission of Government's Exhibit 43-1.

THE COURT: Any objection?

MR. STILLEY: Yes; hearsay.

THE COURT: It will be admitted, 43-1.

Q Sir, would you take a look at that state letter, and have you seen the letter?

A Yes, sir.

Q What, does it say the filing status for Dr. Roberts in the State of Arkansas, what does it say his filing status was?

A Says that Dr. Roberts has not filed a return with the State of Arkansas from 1988 to the present.

Q And the present is the date of June 8, 2000?

A Yes, sir.

Q Now, would you explain for the jury in 96 how you started your investigation? What is your normal procedure?

A I received -- my investigation really started when I received a telephone call from an acquaintance that told me that basically that Dr. Roberts had not filed income tax returns. So based on that, then I started doing a little bit of investigations, pulling up some of our internal records to see if he had a duty to file. I found that he had not filed since his 1989 return, so, therefore, I -- and then I checked on him, looked him up in the phone book, found he still had an ongoing business, and then decided that was sufficient for me to go ahead and hold an investigation. Normally our first outside contact on an investigation such as this is to attempt to contact the taxpayer.

Q Did you attempt to contact Dr. Roberts?

A Yes.

Q Did you make contact with Dr. Roberts?

A Not personally. I -- Revenue Agent Juanita Power and I went to Dr. Roberts' office in February of 1996 and I presented myself to the receptionist there and told her that I wished to speak to Dr. Roberts. She went back in and then came back and told me that because he was with a patient and he couldn't meet with me then, so then I set an appointment with him with the receptionist to meet with him later on, about six days later, I think it was.

Q Did Dr. Roberts respond to that?

A Yes. He sent me a letter and stated that basically that the letter just said that he realized that I had been in to see him, and that he would not honor the appointment; and if I had any questions, would I pose them to him in writing.

Q Let me hand you what's been marked as Government's Exhibit 2-2. Is that the letter?

A This is the letter; yes, sir.

Q And that's the letter from Dr. Roberts?

A Yes.

Q Is that the original you received?

A Yes, it is.

Q And as far as you know that came directly from Dr. Roberts?

A Yes.

MR. BLACKORBY: Your Honor, at this time I move for the admission of Government's Exhibit 2-2.

THE COURT: Any objection, Mr. Stilley?

MR. STILLEY: Just a second.

MR. STILLEY: No objection.

THE COURT: Be admitted without objection as 2-2.

Q Sir, looking on the screen and I believe you have one there?

A Yes, sir.

Q Is this the letter you're talking about?

A Yes, sir, it is.

Q Okay. Now, after you received your letter, what did you do next?

A I then responded to him with a letter that I think was dated like March the 8th, and basically told him that, that I desired to meet with him and some other things.

Q Let me hand you what's been marked for identification as Government Exhibit 2-3.

A Yes, sir. That's the letter that I sent to him.

Q That's your signature?

A Yes, sir, it is.

Q And you drafted that letter?

A Yes, I did.

MR. BLACKORBY: Your Honor, at this time I move for admission of Government's Exhibit 2-3?

THE COURT: Any objection?

MR. STILLEY: None.

THE COURT: Be admitted without objection.

Q Now, sir, in part of this letter you advised Dr. Roberts he was under investigation?

A Yes, sir. I advised him that I had been assigned the investigation of his income tax matters for the years 1992, 93, and 1994.

Q Now, as far as your field investigation, the contact with the taxpayer, Dr. Roberts in this case, at what point do you do that, early, late, middle?

A Yes, sir. Normally we try to interview the subject of investigation the very first thing.

Q And why is that?

A Well, because if there is a reasonable explanation as to why they can disprove the allegation that we have, then we want to know that right up front. Plus, it's our policy we notify them that we're conducting an investigation.

Q Now, did you hear back from Dr. Roberts?

A Yes, I did.

Q And what kind of response as that?

A I received another letter from him dated, oh, within a week or so after this letter.

Q Let me hand you what's been marked as Government's 2-4. Is that the letter you received?

A Yes, sir, it is, dated March 16, 96.

Q Have you maintained possession of that letter --

A Yes, sir.

Q -- since you received it? And that's the letter that you received from Dr. Roberts?

A Yes, sir.

Q Does it appear to have his signature?

A Yes, sir, it does.

MR. BLACKORBY: Your Honor, I would move at this time for admission of 2-4.

THE COURT: Any objection?

MR. STILLEY: No objection.

THE COURT: Be admitted without objection.

Q In this letter did he answer any of your questions or pose any information concerning the filing requirement?

A Yes, sir. He sent me some information that basically he had already previously sent to the Internal Revenue Service stating that he was not required to file a Form 1040.

Q After you received that correspondence, did you have any more correspondence back and forth with Dr. Roberts?

A The only other correspondence that, that I sent to him was about two years later after I had received bank records and had put the bank records into a database, I prepared what we call a check spread. It's just a listing of all the checks that he had written during those years. And asked him if he would classify those checks as to whether or not they were for a personal purpose or whether or not they had any business purpose. These were checks that he had written out of his checking account.

Q And let me hand you what's been marked as Government's Exhibit 2-5. Do you recognize that?

A Yes, sir. That's a letter that I sent him dated April the 9th of 98.

Q Does it also contain the check spread attached?

A Yes, sir.

Q Is that the true letter?

A Yes, sir, it is.

Q That's your signature?

A Yes, it is.

Q Is that your check spread that's attached?

A Yes, sir. I prepared that.

Q Concerning Dr. Roberts?

A Yes, sir.

MR. BLACKORBY: Your Honor, at this time I would move for admission of 2-5?

THE COURT: Any objection?

MR. STILLEY: Same objection I had previously to the majority of yesterday's Exhibits.

THE COURT: Okay. It will be admitted as Government Exhibit 2-5 subject to the objection stated yesterday by the defense.

Q Can we bring up the 2-5, the second page? Is that the check spread, sir?

A Yes, sir, it is.

Q Now, now, as far as that, this typed information, check number, check date, amount, did you prepare that?

A Either I prepared it or it was prepared at my direction; yes, sir.

Q Was the information taken -- that's one of the pages, is that right?

A Yes, sir.

Q All right. Was the information taken from what?

A It was taken from his checks and from the bank statements.

Q Okay. Where did you get the checks and bank statements?

A From City National Bank.

Q All right. Did Dr. Roberts provide any of those checks or bank statements?

A No, sir.

Q Now, those checks and bank statements, have those been introduced already here in evidence?

A Yes, sir.

Q That is essentially all of the exhibits 8-1 through whatever?

A Yes, sir. The City National Bank employee introduced them.

Q Are those the records that you utilized in making this check spread?

A Yes, it is. They are.

Q Once you sent this check spread to Dr. Roberts, did you hear from him?

A Yes, sir, I did.

Q And what was that?

A He sent another letter acknowledging receipt of my letter with the check spread and said some other things.

Q Sir, let me hand you what's been marked for identification as Government's 2-6. Is that the letter he responded to you on the check spread?

A Yes, sir, it is.

Q And that letter, is it directed to you?

A Yes, sir. It's directed to -- it's addressed to the Internal Revenue Service, but it has my name at the top and so they would have given it to me once they --

Q Appears to be signed by Philip E. Roberts?

A Yes, sir, on this third page.

Q And that's the envelope, the last part of the Exhibit, right?

A Yes, sir, it is.

Q Does that show to be what you know to be Dr. Roberts' address on the envelope?

A Yes, sir. That's his business address.

MR. BLACKORBY: Your Honor, I would move for admission of Government's Exhibit 2-6?

THE COURT: Any objection?

MR. STILLEY: None at all.

THE COURT: I think that's a no and it will be admitted without objection.

Q Sir, in essence what is Dr. Roberts telling you in this letter?

A Basically he's saying that he's already informed me that of his status as a non-taxpayer.

Q Is he also challenging your authority to investigate?

A Yes, sir.

Q Now, did you ever hear from Doctor -- did Dr. Roberts ever actually do the check spreads and get it back to you?

A No, sir, he did not.

Q Now, you testified you had the bank records from Dr. Roberts. How did you actually determine his income and expenses?

A Used a method we called the bank deposits method to determine his income and his expenses.

Q Would you briefly explain to the jury what that is?

MR. BARRINGER: Your Honor, I'm going to object to that. The bank deposits method is not appropriate for this type of case, deals with tax evasion-type cases.

THE COURT: I'm going to overrule that objection, but I will give you a continuing objection, and I'll allow you to cross examine on it. Are you going to cross examine this witness then?

MR. BARRINGER: I probably or Mr. Stilley will.

MR. STILLEY: I'm sorry about that. I'll take that.

THE COURT: Okay. You may want to discuss with him sort of the go ahead, sir.

MR. BLACKORBY: Did you overrule it, Your Honor?

THE COURT: Yes. BY MR. BLACKORBY:

Q Would you explain to the jury what the bank deposits method is?

A The premise behind the bank deposits method that you if you are in an income-producing activity and you make periodic or regular deposits to your bank account, then those deposits, after they have been adjusted for certain non-taxable items and other items are considered to be your income.

Q What are the normal adjustments you would look at, adjustment to deposits?

A Normally what we do first, we would start with all deposits and then we would look and make sure that the income was reported in the proper year. And then if it was not, we would move it to the proper year. Then we look for non-income deposits such as loans or gifts, and then come down to an amount that would represent the gross taxable deposits made to that account.

Q Then, did you also utilize the bank records in the deposit, bank deposits method to determine expense --

A Yes.

Q -- of Dr. Roberts?

A Yes.

Q How did you determine that?

A Okay. As I already said, I got all the checks for 1992, 1993, 1994, from the City National Bank. I had those checks scheduled, as you've seen on the check spread. Our policy is that we can't classify something as a business expense unless we actually prove it. Based on looking at his checks it appears to be easier to go ahead and classify the personal expenses and then just allow everything else as business expense. So I went and contacted witnesses, many of whom you've heard from the trial, and identified personal expenditures made with checks from his checking account. And then I allowed everything else that was written out of his checking account as a business expense, except those particular personal expenses that I documented.

Q From that did you go ahead and determine the taxable income?

A Yes, sir, I did.

Q And from that did you compute his tax liability?

A Yes, I did.

Q This is for the year 1993 and 1994?

A Yes, sir.

Q Okay. Did you make some schedules or summaries? Is that the deposit spread that you just testified?

A Yes, sir, I did.

Q Let me hand you what's been marked for identification as Government Exhibit 2-19, 2-20, and 2-18B. Are you familiar with those schedules?

A Yes, I am.

Q Did you prepare those schedules?

A Either I prepared them or had them prepared at my direction.

Q Have you reviewed those schedules to verify their accuracy?

A Yes, sir, I have.

Q 2-19, that addresses what year?

A 1993.

Q And deposits for whom?

A These are deposits that were made into Dr. Robert's bank account during 1993. The schedule reflects not only the amount of the deposit, but the bank provided me with the actual items that made up the deposit, otherwise the checks that he actually put into his bank account. So for each deposit I have listed all of the checks that represent that deposit.

Q Now, just describing as Exhibit 2-20, is that the same thing for the 1994 year?

A Yes, sir, it is.

Q Is that a spread of his deposits you just testified on?

A Yes, sir.

MR. BLACKORBY: Your Honor, at this time I would move for admission of 2-19 and 2-20.

THE COURT: Any objection?

MR. STILLEY: Yes, same objection.

THE COURT: They will be admitted over the objection of the defense, 2-19 and 2-20. BY MR. BLACKORBY:

Q Now, could you get the last page of 2-19, please?

Q Is that the last page, Mr. Bryan?

A Yes, it is.

Q So for 1993, what did you determine the total of deposits to be?

A His total gross deposits for 1993 amounted to $154,049.53.

Q This would be before he made some adjustments for non-taxable deposits?

A Yes, sir.

Q Now, let's look at 2-20, please. Can we go to the last page? Can you tell the jury --

THE COURT: Mr. Blackorby, I think you can get that focused a little better, too.

Q Your Honor, if he can look on the screen, my copy has a crimp in it. What is the total deposits for 1994?

A The total deposits made to his checking account at City National during 1994 was $234,795.14.

Q You have 2-20 up there in front of you?

A Yes. I thought that's what you're asking me. You gave me your copy.

Q Now, you testified that you verified some of these deposits?

A Yes, sir.

Q And how did you determine who you were going to verify them with?

A By looking at the checks that they actually deposited into his account, I noticed that they were recurring checks from like insurance companies; that the same insurance company would send him checks, so I picked out any insurance company or individual that had sent him as many as 25 checks during the years of my investigation, 92, 93, 94, and I contacted each of those, actually ended up being just one individual, and then a multitude of insurance companies had sent him 25 or more checks during that period of time.

Q Now, did you prepare a schedule of those insurance companies you actually went to and verified?

A Yes, sir, I did.

Q I think you have in front of you as Government's Exhibit 2-18B--

A Yes, sir.

Q -- is that the schedule you prepared?

A Yes, sir, it is.

Q That lists the verification and the amounts that you verified at each insurance company to what was paid to Dr. Roberts?

A Yes, sir.

MR. BLACKORBY: Your Honor, I would move for admission of Government's Exhibit 2-18B.

THE COURT: Mr. Stilley, same objection?

MR. STILLEY: I don't have a copy of that, Judge. Okay. I think I do.

THE COURT: Any objection?

MR. STILLEY: Just a minute. I need to look at it. Same objection.

THE COURT: It will be admitted over the objection of the Defendant.

MR. BLACKORBY: We have 2-18B, please?

Q Does that appear to be the schedule?

A Yes, sir.

Q Can you see it on the television up there?

A Yes, sir, I can.

Q And can you read it? It may be a little blurry from your standpoint. Can you read your 93? How much total dollars did you verify in 1993?

A From the insurance companies and the one individual I contacted listed here, $74,046.28.

Q So those two deposits in 93 you testified to before you actually talked to people that had paid him up to $74,000 worth, is that correct?

A Yes, sir.

Q In 94, what was the total?

A $100,851.81.

Q And here again these are people you talked to, to verify that they had paid Dr. Roberts these amounts?

A Yes, sir.

Q Did you verify that all of these were for patient treatment?

A Yes, sir. They were for medical services rendered.

Q Now, did you prepare other summaries in addition to your deposit spread? You testified to the check spread, is that correct?

A Yes, sir.

Q What about a computation of personal expenditures?

A Yes, sir. I did.

Q Let me hand you what's been marked for identification as Government's Exhibit 2-24 and 2-25, and ask you if those are schedules you prepared?

A Yes, sir, they are.

Q Without reading from the schedules to 2-24, that schedule concerns what information?

A It's my computation of his personal expenditures during the years 92 through 94.

Q And why did you need to know -- well, strike that. This is a schedule you prepared, correct?

A Yes, sir, it is.

Q And where did you get the information to prepare it?

A From his -- first from his checks that I got from City National Bank, and then from the individuals that are listed on this schedule that I interviewed.

Q All right. So is the checks you're talking about the checks that have been admitted into evidence?

A Yes, sir.

Q And you prepared or at your authority had this schedule prepared, is that right?

A Yes, sir. I prepared this schedule.

MR. BLACKORBY: Your Honor, at this time I would move for admission of Government's Exhibit 2-24.

THE COURT: Any objection?

MR. STILLEY: Same objection.

THE COURT: It will be admitted over the objection of the Defendant.

Q Now, could we have the first page of 2-24? Is that the same schedule, sir?

A Yes, sir, I believe it is.

Q That whole page references to Pine Cove Marina, is that correct?

A Yes, sir.

Q Is that the lady that testified yesterday about payments for the boat slip?

A Yes, sir, it is.

Q Is that where you got the information in addition to the checks?

A Yes, from the checks and from her testimony.

Q All right. Could we go to page two, please? We also have Sallie Mae. We got a witness from Sallie Mae here this morning, is that correct?

A Yes, sir, we did.

Q Is that where you got the information concerning that loan repayment?

A Yes, they are.

Q So the sources of information on 2-24 is from the checks and then the interviews you conducted, is that right?

A Yes, sir, during my investigation.

Q Now, why do you need to know? Why was it important in your computation of personal expenditures?

A In order, as I explained previously, in order to arrive at a taxable income amount, I need to know what expenses he had related to his business. Rather than prove out the actual expenses which would have necessitated contacting many, many people from looking at the check spread, it appeared that it was a lot easier just to exact the ones that I thought were personal and then subtract them and allow him everything else that was written out of the checking account as a business expense. This actually turned out to be very advantageous to him because there were many checks that even though they may have had personal notations down in the memo section of the check or the section of the check, I allowed the expense basically because I didn't prove the testimony that it was personal.

Q Sir, would you look at 2-25?

A Yes, sir.

Q Without reading from it, that's a schedule you prepared --

A Yes, sir, it is.

Q -- concerning your investigation of Dr. Robert?

A Yes, sir.

Q And what area are you addressing with this schedule?

A As I mentioned, that's one of the -- one of the adjustments that I needed to make to the deposits that were made into his checking account, dealt with deposits that did not reflect current year income. So I had to switch some, some of the deposits or some of the checks from one year to another and that's what this schedule relates to.

Q And you took the information on looks like your reference checks here. Did you take that from the evidence that's already been admitted in this trial?

A Yes, sir.

MR. BLACKORBY: Your Honor, at this time I would move for admission of Government's Exhibit 2-25.

THE COURT: Any objection?

MR. STILLEY: Same objection.

THE COURT: It will be admitted over the objection of the Defendant.

Q Sir, let me hand you Government's Exhibit 2-22. Now, is that a check spread analysis?

A Yes, sir. This is the check spread analysis that I prepared for the year 1993.

Q And 2-23?

A Yes. It is the check spread analysis that I prepared for the year 1994.

Q Prepared it from records, the bank records you testified to earlier?

A Yes, sir.

Q And does that concern Dr. Roberts?

A Yes, sir. These are checks written out of his account at City National Bank.

MR. BLACKORBY: Your Honor, I would move for admission 2-22 and 2-23?

THE COURT: Mr. Stilley, same objection?

MR. STILLEY: Correct.

THE COURT: Fine. Will be admitted over the objection of the Defendant.

Q Sir, let me hand you document Exhibit 2-26. Did you prepare that schedule?

A Yes, sir, I did.

Q And that schedule addresses what issue?

A The returned items that were deposited into Dr. Roberts account during the year 1993.

Q All right. Did you prepare a schedule for 94?

A Yes, sir, I did.

Q Is that 2-27?

A Yes, sir, it is.

Q You prepared those schedules?

A Yes, sir, I did.

Q From bank records that you testified to here earlier?

A Yes, sir.

MR. BLACKORBY: Your Honor, I move for admission of Exhibit 2-26 and 2-27?

A Six and seven.

MR. BLACKORBY: I'm sorry, Your Honor.

THE COURT: Is that the same objection, Mr. Stilley?

MR. STILLEY: That's correct.

THE COURT: They will be admitted as 2-26 and 2-27 over the objection of the Defendant.

Q Now, sir, why are you interested in returned checks?

A If Dr. Roberts had received a payment from a patient and deposited that payment into his account and then for some reason that check was not paid by the patient's bank, otherwise they had insufficient funds or for whatever reason, maybe they forgot to sign the check, whatever the reason, then the normal procedure for that is that the check would then be redeposited at a later time when the person had sufficient funds to, to cover the check. If you didn't make adjustments, then you would have actually the checks deposited into his account twice instead of just once. So you have to remove them in order to have a correct accounting. The bank records did not identify exactly which checks were returned for insufficient funds. It was simply listed on the statement that these, that these amounts were returned for insufficient funds. So I can't tell you for positive that they were actually redeposited, but I can tell you that I took them out just in case they were redeposited.

Q Now, sir, let me hand you what's been marked for identification as Government Exhibit 2-29, correction, 2-28 and 2-29. Did you make those schedules?

A Yes, sir, I did.

Q And schedule 2-28 addresses what topic?

A 2-28 addresses 1993 non-taxable deposits deposited into Dr. Roberts' bank account at City National Bank.

Q Did you take that from the bank records that's already been introduced into this case?

A Yes, sir.

MR. BLACKORBY: Your Honor, at this time I would move for admission Government's Exhibit -- I forgot what it was.

A 2-28.

MR. BLACKORBY: 2-28.

THE COURT: Same objection?

MR. STILLEY: That's correct.

THE COURT: Be admitted over the objection of the Defendant as 2-28.

Q What's the topic for 2-29?

A It's the same topic. It's the non-taxable deposits that were deposited into Dr. Robert's account during the year 1994.

Q And you took that from the bank records that have been admitted into evidence here?

A Yes, sir.

MR. BLACKORBY: Your Honor, I move for the admission of 2-29.

THE COURT: It'll be admitted over the objection of Defendant as 2-29.

Q Can you look at 2-28, please?

A Yes, sir.

Q What did you find is a non-taxable deposit in that year 1993?

A During the year 1993 I found only one non-taxable deposit made to Dr. Roberts checking account at City National Bank. That was the $11,000 cashiers check that was drawn on his mother's account at Superior Federal that was testified to yesterday. It was treated as non-taxable because I had nothing showing me that it was for a business purpose. It was much larger than a normal chiropractic charge. So to be conservative, it's in his benefit to take it out as a non-taxable deposit, so I withdrew it as a non-taxable deposit.

Q Now, 2-29, what did you find as a non-taxable deposit?

A The only non-taxable deposit I found in year 1994 was a $24,000 deposit made representing a loan from City National Bank in September of 1994. This was testified to yesterday relating to the purchase of the 1994 Ford Explorer.

Q Now, sir, have you prepared a computation or a schedule where you have summarized essentially what you're testifying to here, your deposits, your expenses, how you computed the net profit, taxable income, and so forth?

A Yes, sir, I have.

Q Let me hand you what's been marked for identification as 2-18A. Are you familiar with that schedule?

A Yes, sir. I prepared this.

Q Is that the schedule that summarizes your testimony as to income and expenses you've just talked about?

A Yes, sir, it does.

Q And is that schedule made up of your testimony you've just made?

A Yes, sir.

Q Is that also made up of the or the previous Exhibits we have admitted, what I'll call the sub schedule?

A Yes, sir.

Q Does that also come from the information you took from bank records and other Exhibits that have been admitted in this trial?

A Yes, sir.

MR. BLACKORBY: Your Honor, at this time I would move for admission of Government's Exhibit 2-18A?

THE COURT: Objection, Mr. Stilley?

MR. STILLEY: Same objection.

THE COURT: Fine. It will be admitted over the objection of the Defendant. 2-18A.

MR. BLACKORBY: Your Honor, I have this Exhibit actually blown up on cardboard I'd like to put on the --

THE COURT: Fine.

Q Is that the schedule that's up on the screen, sir --

A Yes, sir.

Q -- that you're looking at in front of you?

THE COURT: Mr. Blackorby, are you going to use the Doar anymore?

MR. BLACKORBY: No, sir.

THE COURT: We may turn it off then. I think it's --

MR. BLACKORBY: It is acting -- yes, sir.

THE COURT: It's acting a little goofy. Thank you, sir.

Q Sir, this is a two-page schedule, is that right?

A Yes, sir, it is.

Q We looking at the first page?

A Yes. We are.

Q And can you see what I'm referring to from where you're sitting?

A Yes, sir, I can.

Q Okay. Now, your first line was entitled gross bank deposits, is that correct?

A That's correct.

Q And the figure you have for 93 is $154,049 and change?

A Yes, sir.

Q And 94 is $234,795?

A Yes, sir.

Q All right. You took that from the deposit analysis you've testified to earlier?

A Yes, sir, directly.

Q All right. The next line titled current receipts deposit in the following year, where did you get that information?

A From the schedules that I mentioned where I moved deposits from one year to the next in order to reflect current year income. The way that works is if an insurance company had sent him a check and their check was dated let's say December the 28th of 93. It's reasonable to expect that he probably didn't deposit that until 1994, because he probably didn't received it till then or even if had received it, probably would have made a deposit, so, therefore, what I did, because I had no records that reflected when he actually received the check, I used the dates on the checks from the insurance companies and individuals to determine what year those checks would apply to. And so if there were 93 checks deposited in 94, I moved them back to 93. Likewise, if he had 92 checks deposited in 93, I moved them back, and if they were 91 checks in 92, I moved them back.

Q So in essence is that what you did with the next line where it says subject prior year receipts deposited in the current year?

A Yes, sir. That, that -- the first, the first line which is add current year receipts deposited in the following year, I would have moved those from the 1994 year back to the 93 year, and so they show up as subtraction in 1994 and an addition to 1993. And then, then subtract prior year receipts deposited current year. That 12,413 represents 1992 checks, so I would have moved them from 1993 back to 1992.

Q Is that why this figure $2,770.80, are these the same figures?

A Yes, they're the same.

Q You're putting in the 1993?

A Yes, sir, and moving from it 94.

Q All right. The next line you've got checks returned and deposited. Is that from your sub schedule you testified earlier?

A Yes, sir. Those were the checks that he deposited that the bank statements showed had been returned for some reason or another.

Q And those are actually being subtracted out of the deposit?

A Yes, sir. They're subtracted out of the total gross bank deposits.

Q Now, another subtraction is non-taxable deposits that you just testified to that information?

A Yes, sir. Those are the two, the two non-taxable deposits. I discovered one in each year. And they're subtracted out from the gross deposit amount.

Q Now, your next line titled gross taxable deposits, is that a summation or a totaling of these figures down to it?

A Yes, sir. Simply a computation of taking the gross bank deposits and either adding or subtracting as is listed there and then you come down to the gross taxable deposits.

Q Now, as far as that $6,050, that $6,250 requirement we heard Revenue Agent Miller testify to, is this where you would compare to see if Dr. Robert had to file a return?

A Yes.

Q Is it on down?

A Yes, sir.

Q Oh, we'll get there. All right. Your next line is add interest income.

A Yes. Dr. Roberts had a savings account at the City National Bank. It's listed on the same bank statements as his checking account records. Actually they have both. Both accounts are listed on one statement. And during the years 93 and 94, he had no deposits or transactions into that savings account other than just the simple monthly adding of interest. So that represents the amount of interest that was deposited into his savings accounts during the year 1993 and 1994.

Q Maybe I've got us there. Now, your next line, gross income?

A Yes, sir. That's just simply adding the interest income to the gross taxable deposits.

Q Is that the figure you would look to, to determine the filing requirement?

A Yes, sir.

Q So in Dr. Roberts' case I believe the testimony was the requirement was $6,050, and you would look to see if this $132,000 exceeded that?

A Yes, sir.

Q And on the 94 year, I think it was $6,250 was the testimony, and you looked to see if this $207,000 exceeded that?

A Yes, sir, I would.

Q Okay. Now, you've subtracted out checks. Would you explain to the jury what's going on here?

A As I told you, I did a check analysis or a check spread as we call it, which listed every check that he wrote out of his bank account during the years of my investigation. The first line gives the total amount of checks that he wrote each year out of the bank account. In 1993, he wrote $147,022.84 worth of checks. In 1994 he wrote $216,797.81 worth of checks out of his account.

Q So in essence the net -- you did the compilation here, is that correct?

A Yes. I then, then I, as has previously admitted, I contacted, using the checks, I contacted the individuals to try to determine if they were personal business expenses. The next figure below the add checks written for personal expenditures, I actually -- that represents all the checks that I documented were for personal expenditures during that year. During the year 1993, it was documented that he spent $75,125 on personal items during the year 1994. It was documented that he spent $132,929.34 on personal items. I then netted those two, those two amounts, all the checks written less the checks that were for personal expenditures to come up with all the other checks that were written out of his checking account, and it was all the other checks that I allowed as business expenses.

Q So -- and this would be your line, your math right here, right?

A Yes, business expenses allowed are shown there on the form.

Q So for 93, it's $71,897 plus?

A Yes, sir.

Q And in 94 it's 83,868?

A Yes, sir. Those represent the checks that I did not document as personal.

Q All right. Then the next line, the net profit line, is that a computation or is that more information?

A That is a computation. It is taking the gross taxable deposits, which would have been the receipts for his chiropractic business, which are found up above, and then simply subtracting business expenses. Had he filed a tax return, such as he did in 88 and 89 and had a Schedule C, this is what you would have seen. You would have seen gross taxable deposits as his gross income and then you would have seen the business expenses allowed. You would have seen those totals. And then his net profit or the bottom of that Schedule C would have been $60,198.81, $123,795.87.

Q Can you pull up 1-2? Hang on a second, please. Is that the Schedule C type you were talking about?

A That is the Schedule C for the 1989 return that he filed.

Q Okay. So that net profit figure you're talking about is the one down here?

A Yes, sir.

Q So where it was in 89, it was 77,000 plus, you have determined for 93 that it was 60,198.

A Yes, sir.

Q And for 94, it was $123,795?

A Yes, sir.

Q Now, you've got another -- the next line down states total income unreported receipts, there is a slight difference in amounts. Why are the amounts different?

A Okay. Basically what that does is that takes the net profit from his business and adds the interest income and then totals the two.

Q Now, the figures are different that -- you got the word self employment tax here. Is that the reason?

A Yes, sir. I needed to make a computation of his net profit from his business in order to compute his self- employment tax. That's the only reason I need a net profit computation. You don't pay self-employment tax on interest income.

Q Let me hand you what's been marked as Government's Exhibit 2-37. Is that the -- without reading that, tell the jury what that is, please.

A This is a self-employment tax form for the year 1993.

Q And let me hand you 2-38, the same form for 1994?

A Yes, sir, it is.

Q And those are your computations --

A Yes, sir.

Q -- utilizing the information provided on those forms?

A Yes, sir.

Q And that concerns the computations you're making here that reference then Exhibit 2-18A?

A Yes, sir. I show on the form the figure from the 2-18A as his gross receipts, as his net profit, excuse me.

MR. BLACKORBY: Your Honor, at this time I would move for admission of Government's Exhibit 2-37 and 2-38.

THE COURT: Same objection.

MR. STILLEY: That's correct.

THE COURT: They will be admitted over the objection of the Defendant as 2-37 and 2-38.

Q Recall a 2-37 second page, please? Is that your computation for the 93 year, sir?

A Yes, sir, it is.

Q And the self-employment tax, the payment of this tax addresses what issue?

A Social Security.

Q This is where you pay your Social Security contribution?

A Yes, for a self-employed individual.

Q Now, sir, can you do some subtracting here? Can you explain to the jury what's going on here?

A Okay. On the line where it has less one half self-employment tax, an individual that's self-employed that has to pay self-employment tax is entitled to a deduction of one half of that amount. So basically what I did, I took the amount from the self-employment tax forms which are 2-37 and 2-38, and divide it in half and then gave him that as a deduction. That's listed on the front of your 1040 under the adjustments to your income for each year.

Q And you also have a line looks like you subtracted out alimony paid?

A Yes, once again, in a divorce situation where one spouse pays alimony, it's deductible by the spouse that's paying the alimony, and that's once again listed on the front face of the 1040 form.

Q Now, sir, you go forward and you pick up a subtraction of standard deductions of personal exemptions. Are these the same figures that Revenue Agent Brian testified to earlier?

A For the most part, yes. For 1993, they are exactly $3,700 for the standard deduction and 2350 for the personal exemption, which ads up to the $6,050 that we discussed earlier. For 1994, they're slightly different, a computation is made. When your income reaches a certain level, you start losing the amount of personal exemption that you get to deduct. And so the standard deduction remains $3800, just like it was discussed. However, because his income reached such a high level in 1994, he lost part of the personal exemption that he was able to deduct. It amounted to $98. So the personal exemption that is deducted there is $2352 instead of 2450 as shown on the form.

Q Now, I guess I need to change charts. Sir, will you go to your second page? The first line you've got on the second page, sir, is corrected taxable income and how did you get to that figure?

A Simply computation. It's from subtracting out his standard deductions and his exemptions from his adjusted gross income as shown on the previous page of the chart.

Q So in essence we took, from this first page we took -- we're starting with these figures here and take the subtractions that you just testified to?

A Yes. You'll get down like the third or fourth line there up. You see adjusted gross income?

Q Read the figure for me, sir.

A It's -- in 93 it was $52,997.67.

Q So here we go?

A And in 1994 it was $115,432.71.

Q And this is the figure. Your actual math is carried forward to your second page, is that correct?

A Yes, it is.

Q So now you show taxable income in 93 of $46,947?

A Yes, sir.

Q And in 94 taxable income of $109,208?

A 280.

Q 280. I'm sorry.

A Yes, sir.

Q On reportable taxable income, you put zero. Why is that?

A Because he didn't file a return for either 1993 or 1994, therefore, he did not report any taxable income to the Internal Revenue Service.

Q Now, from that point, sir, did you make a tax computation as to what the tax would have been if Dr. Roberts filed any returns?

A Yes, sir.

Q And is this what you determined the tax to be?

A Yes, sir. For the year 1993 his income tax that he owed was $10,266. For 1994 his income tax was $29,266.52.

Q And then are these the self-employment tax figures that you've already testified to?

A Yes, sir. Those came straight from the self-employment tax forms that we've already mentioned.

Q And so his total tax liability in 93 was determined to be what?

A If he would have filed a tax return for the year 1993, based on my computation, he would have owed $18,771.82.

Q And what? I'm sorry.

A The same figure for the 1994 tax year, the tax he would have owed for had he filed a return would have been $40,096.36.

Q Sir, you testify you utilize tax statements. Let me hand you what's been marked as Government's Exhibit 2-34 and 2-35.

A Yes, sir.

Q Are you familiar with those exhibits?

A Yes, sir. 2-34 is the tax table for the year 1993 for 1993 returns. 2-35 is the tax rate schedule for 1994 returns.

Q Is that what you used to determine the actual tax you just testified to?

A Yes, sir, I did.

Q Now, sir, from your investigation in going through your bank deposit analysis here, did you determine that Dr. Roberts had made in excess of the filing requirement amounts, the six- thousand-dollar-plus amounts?

A Yes, sir. Based on my investigation in 1993, Dr. Roberts' gross income was $132,148.22. In 1994, Dr. Roberts' gross income was $207,716.10.

Q And as far as money that would have been available to him at a minimum to pay those taxes, is that information reflected on this chart?

A The information that's reflected is the checks written for personal expenditures line, which means that those were non-business checks written for personal expenditures that I documented. In 1993, he wrote checks for personal expenditures in the amount of $75,125.20. In 1994, he wrote checks for personal expenditures --

MR. STILLEY: Objection, Your Honor, I object to this whole line of questioning, because there is no accusation that Dr. Roberts has failed to pay any tax. There's only an accusation that he's failed to make a tax return.

THE COURT: Your objection is overruled. You may you may answer.

A For 1994, the checks written for personal expenditures out of his checking account amounted to -- let me find it $132,929.34.

MR. BLACKORBY: Thank you. Pass the witness, Your Honor.

THE COURT: Let me -- did you move to admit 2-34 and 2-35?

MS. PORTER: No.

MR. BLACKORBY: I should have, Your Honor. At this time I move to admit Government's 2-34 and 2-35.

THE COURT: Do you have the same objection, Mr. Stilley?

MR. STILLEY: No. I've got a question. Does this come straight out of the Internal Revenue Code? If it comes straight out of the Internal Revenue Code, I don't have any objection.

A This --

THE COURT: I'm going to -- I'm going to admit them and you can ask on cross examination where it came from.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: Let me see the -- can I see the attorneys at the bar shortly? (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Now, we're going to talk about something important, lunch. What's the -- how are you feeling?

MR. BARRINGER: Starting to go down hill a little bit actually right now.

MR. STILLEY: I want to eat. I'm hungry.

THE COURT: Tell me about your cross examination.

MR. STILLEY: I'll do it right and honest and by the rules.

THE COURT: That's why I'd almost like to do it right now, Oscar, but, oh -- yes, sir?

MR. BLACKORBY: Your Honor, I can put them -- I have some self-authenticating documents that I was going to conclude with. We're going to rest after this witness. So you want me to put them in?

MR. STILLEY: Well, I might want to object.

THE COURT: No. I think before you rest we need to put them in.

MR. BLACKORBY: Yes, sir, I do. I don't know if you want me to do it before we go to lunch.

THE COURT: No, we can do it -- he needs to cross examine and then we'll do it, and then I'll let you rest. Anything further you-all want to take up before we turn the jury loose?

MR. STILLEY: No.

THE COURT: Thank you all very much. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Why don't we assemble then, if we can, at 1:00 o'clock? Again, get back to the point where you can recite it back to me, remember the admonition of what you're supposed to do and that is not to talk to anyone or let anyone talk to you about it. You're excused. We're going to remain in session until you're out of the room. Have a good lunch. (Jury leaves at this time.)

THE COURT: We're in recess until 1:00 o'clock. Thank you very much. (Off the record at this time for lunch recess. THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: You may stand down just for a moment, sir, and then we'll, we'll -- Let the record reflect it is straight up 1:00 or let the record reflect with the jury out of the room we had a development just as we left the courtroom and I want to put it on the record. And if anyone has any suggestion on how we ought to proceed, I will -- we had some discussion this morning about security in the courtroom and why the Court felt it was unwise to have people coming and going during the course of our trial, especially a jury trial, and that's an issue in this courtroom, because the only entrance into this courtroom is not three feet from where the jury box begins where there is a semi-partition of a sort between them. It still gives

the Court concern. As the jury was leaving the courtroom for the break or the lunch break, one juror gave to the CSO some notes that had been inserted into her notebook. The Court is concerned about it. I don't know how they got into the notebook. This is the second day of trial. She said she had left her notebook in the courtroom itself sort of under her chair and her chair unfortunately is located in extremely close proximity to the door. Has anyone seen anybody in and around the jury box or after we adjourned say yesterday or anytime that they need to bring to the attention of the Court?

MR. BLACKORBY: Not from the Government that I am aware of, Your Honor.

MR. STILLEY: No, not from the Defendant.

THE COURT: I intend to turn those notes over to the Marshal and then to the FBI or for whatever investigation handling they deem appropriate, but I consider that to be a substantial development. Having said that, there may be a very logical explanation for it. None of us needs to overreact, but it may be that it was an old notebook. These notebooks are recycled and may have been notes from a previous hearing of some sort. But it was obviously some notes or notations written in connection with a criminal trial, and the thing that concerns me, we've not had that many criminal trials in this courtroom. In any event, I wanted to bring that to your attention. It's something the Court is going to look into in some detail. I asked the attorneys to look at the remaining Exhibits. Do you have any problems with what they're calling their self-authenticating documents, Mr. Stilley?

MR. STILLEY: No. I'm going to have the usual objections, but that's it.

THE COURT: Okay. All right. Can I have the usual rulings?

MR. STILLEY: I expect --

THE COURT: A little humor, Mr. Stilley. What is it? Very little. We have a cross examination and then we need to go through those Exhibits. Do we need to get the jury out in order to do those Exhibits or we can do them in front of the jury? I don't know.

MR. BLACKORBY: Your Honor, I think they need to come in front of the jury.

THE COURT: Oh, I'm -- yeah, but I'm saying do we need to approach the bench or, you know, need to make our arguments concerning those outside the presence of the jury? But I agree they must come in with the jury here. Any suggestions?

MR. BLACKORBY: Your Honor, we can tender them before we start cross at the conclusion of this witness. I'm ready at anytime.

MR. BLACKORBY: I've shown them to Mr. Stilley. They're public documents that are under seal; two from Sebastian County, one from the State of Oklahoma.

THE COURT: Okay. Well, we'll just -- once we finish with this witness, then we'll -- you know, I'll let you do that if Mr. Stilley has no objection. If we need to go out, we'll get the jury out. We'll do it and make whatever record we need to make. Why don't we bring the jury in? Everyone remain seated until the jury is brought back in, please. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND (HEARING OF THE JURY:)

THE COURT: Mr. Stilley, cross examination, please. I remind you, sir, you're still under oath.

A Thank you.

CROSS EXAMINATION BY MR. STILLEY:

Q Sir, you told the jury the whole truth on the things that you've been talking about here today, is that not correct?

A Yes, sir, to the best of my knowledge.

Q You haven't even tried to distort the truth at all, have you?

A Not to my knowledge; no, sir.

Q You are a very honest man, is that correct?

A As far as I know; yes, sir.

Q You go to the First Baptist Church here in town, correct? What church do you attend?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: I'm not sure that's relevant to anything. I'm going to sustain the objection to what church he attends.

Q You've been here at all the hearings in this case, is that correct?

A I've been here for the testimony that's been given here during this trial. Is that what you mean?

Q Yes.

A Yes.

Q You've been here at the hearings previously in this case, correct?

A I haven't attended all of them because I was conducting some interviews during some pre-trial interviews during those hearings, so I missed some of those hearings; yes, sir.

Q But you were here for most of them, is that correct?

A That's right.

Q In investigating this alleged crime, what was the first thing that you had to do?

A Very first thing I had to do is to try to verify whether the information that was given to me had any basis or background before I decided whether or not it was -- it merited conducting the investigation.

Q Did you first try to ascertain what the elements of that alleged crime were?

A Basically I knew what the elements of the crime was from my training in my past.

Q So you already knew that?

A Yes, sir.

MR. STILLEY: Your Honor, if I may, I'd like to bring a document previously used by the Government and show that to the witness.

THE COURT: Sure. Assuming it's relevant, you may use it. Mr. Blackorby, if you need to move, sir, too, you can.

MR. BLACKORBY: Thank you, Your Honor.

MR. STILLEY: Can everyone see this?

Q What did you know the elements of this crime to be?

A As they're stated here, that he be required to file a Federal income tax return for a specific year.

Q So would that be his duty? Would that be a duty?

A Yes.

MR. BLACKORBY: Your Honor, I object to this line of questioning. We're arguing the law here, trying to get this agent to testify to the law. That's up to the Court to instruct.

THE COURT: I think it is, too, and I thought we had --

MR. STILLEY: Your Honor, I just want to try to lay a little foundation. If I'm not framing that question right, maybe I could rephrase it.

THE COURT: Well, I don't think it's how the question is phrased so much that's objectionable as to the subject matter of it. You can answer it, if you can, sir.

A What was the question again, please?

Q Would it be fair to say that this element No. 1 would be the duty?

THE COURT: You can answer that anyway you want to. It may be a requirement, but you can phrase it any -- you can answer it anyway you want to, sir.

A The element No. 1 would be whether or not he was required to file a Federal income tax return for a specific year. I wouldn't restate it in any other words.

Q Okay. But it would be fair to say that in order to prove the crime, you would have to prove that Dr. Roberts had a duty to file a tax return, correct?

MR. BLACKORBY: Objection, Your Honor. He has asked and answered the question.

THE COURT: Yeah, I think he did, too. Move on to another question, Mr. Stilley.

Q All right. Let's look at No. 2. Is it fair to say that that on that element you have to show on the part of Dr. Roberts a knowledge of a legal duty?

A Had to show that he knew he was required to file such tax return; yes.

Q So that would you had to show knowledge in his mind, correct?

A I had to show that he knew he was required to file a tax return.

Q And you knew that that had to be subjective good faith on the part of the Dr. Roberts, correct?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: I'm sustaining --

MR. BLACKORBY: It's a legal argument.

THE COURT: I'm sustaining that.

Q Did you know whether or not -- now they're -- do you know the difference between subjective good faith and objective good faith?

MR. BLACKORBY: Objection, Your Honor; again, a legal distinction, legal argument.

THE COURT: Well, you can answer that if you can, sir.

A I don't have any idea what you're talking about.

Q Okay. Do you know what objective good faith is then?

A I just said I don't have any idea what you're talking about, sir?

Q Do you know what subjective good faith is?

MR. BLACKORBY: Objection, Your Honor.

MR. STILLEY: There's a different question.

MR. BLACKORBY: He's already asked the question.

THE COURT: I think you asked the first question subjective and objective and I think he said he didn't know what either one of them was. Now you've asked them separately. I'm sustaining the objection. It's been asked and answered.

Q Based on your understanding of the law at the time that you started on this investigation, was it your understanding that you had to prove that Dr. Roberts didn't have a reasonable belief that he was not required to file?

MR. BLACKORBY: Objection, again, Your Honor. Again, we're calling for legal conclusions.

THE COURT: Yeah. I'm going to sustain that. We've been over this, Mr. Stilley. Ask another question, sir.

Q Okay. Was it your understanding then that if -- that you only had to show that Dr. Roberts should have known that he had a legal requirement?

MR. BLACKORBY: Objection, Your Honor. It's still arguing legal conclusions.

THE COURT: You are arguing with the witness, I think. I'm sustaining that objection, too.

Q Okay. When you started your investigation, you must have been looking for certain facts, is that not correct?

A Yes.

Q And those facts would have to be pertinent to some element of the case, is that correct?

A Yes.

Q Did you -- when you went to try to develop evidence on a certain fact, did you think about which element that he might have -- it might go to?

A Not specifically; no.

Q You didn't? You just went to get some evidence?

A Based on my experience, I knew the evidence that I needed to collect to prove whether or not the allegation was true or false. So I started moving toward that direction to gather evidence. I didn't really, as I told you earlier, I didn't get out the elements and look at them and say I'm going to do this to prove this element and this to prove that element.

Q So is it fair to say then that you didn't even read the elements or read a written statement of the elements of the crime?

A It's fair to say that I already knew the elements of the crime, sir.

Q Well, that's not the question. The question is whether that you actually read a statement of the elements of the crime?

A At this particular time, no, not that I can remember.

Q How many investigations have you done for willful failure to file a tax return or willful failure to make a tax return as you've put it?

A In my career, probably 10 to 15. I don't know the exact number.

Q So this isn't your first investigation?

A No, sir.

THE COURT: I think he said 10 to 15.

MR. STILLEY: That's exactly what he said.

THE COURT: Well, are you arguing with him over that?

MR. STILLEY: No, I'm not arguing with him. That was --

THE COURT: Well, if you have a question, ask a question. You don't need to recap what he said. We heard that.

MR. STILLEY: Well, Judge, may I approach?

THE COURT: Yes. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUTSIDE OF THE HEARING OF THE JURY:)

THE COURT: This is when I sort of wish we had concluded cross before lunch. I thought you had agreed to kind of follow the Orders of the Court. Why are you approaching?

MR. STILLEY: Judge, I have might have been mistaken, but it was my understanding on selective prosecution examination that he testified that this is the only case he had worked on. He didn't know of anybody else. And I might be wrong about that. I'd have to look.

THE COURT: Well, I think -- are we not past the selective prosecution issue?

MR. STILLEY: Well, we're not past the truthfulness of a witness. That's for sure.

THE COURT: Well, you know, let's go on to something else. You know, I don't know what it's got to do -- I don't know that he did testify some other way. I don't know what difference it makes.

MR. STILLEY: Does it not make a difference if his previous testimony was contrary to what --

THE COURT: Whether he's investigated one or ten or 15 -- yes, sir.

MR. BLACKORBY: Plus he's laid no foundation to challenge this witness.

THE COURT: What other questions --

MR. STILLEY: Well, if it's a foundational issue, then I'll try again.

THE COURT: No. Mr. Stilley, do you have any questions that you intend to ask this witness that were brought out on direct examination?

MR. STILLEY: Oh, a ton of them, a ton of them.

THE COURT: Tell me what they are, because --

MR. STILLEY: Oh, I couldn't begin to. Those would be pages and pages. Let me go back and try again. Let's see what --

THE COURT: Well, okay, Mr. Stilley, and please remember the prior Orders and previous rulings of the Court and let's try to, you know, get this concluded.

MR. STILLEY: I'm doing my best.

THE COURT: And let's do it in a lawyer-like way, if we can, sir. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:) BY MR. STILLEY:

Q How long have you worked on this investigation?

A I began this investigation in February of 1996.

Q So it's taken over four years, is that correct?

A Yes, sir.

Q And do you know how much money was spent on this investigation?

A No, sir.

Q Do you have any way of estimating?

A No, sir.

Q How long did it take you to determine what you thought would be the correct filing status for Dr. Roberts?

A I have no idea. It was the result of several interviews that I conducted, so I don't remember exactly on what day or month that, that I made that determination.

Q That wouldn't take very long, would it?

A It depends upon when I, when I approached that in my investigation.

Q How long did it take you to find -- now, am I not correct in saying that your testimony to the -- to this jury would be that the only thing that is required is that the Government show $6,050 for 1993 of gross receipts in order to trigger a requirement of the filing of a tax return?

A I don't believe that's what I said.

Q Okay. Would it be $6,050 in gross income?

A The minimum filing requirement for 1993 is $6,050 gross income; yes, sir.

Q Okay. Does -- would he have to have a tax liability in order to file under your understanding of the tax laws?

A No, sir.

Q Okay. So you did try to do a calculation of how much money that you thought Dr. Roberts would owe, is that correct?

A Yeah, I did a calculation of his tax due and owing for 93 and 94.

Q What element would that information go to?

A Probably several.

Q Which ones?

A It would definitely go to whether or not he was required to file a return. It would definitely go to the last one on, on whether or not he willfully failed to file a return.

Q Do we have more elements than I've got shown up here?

A Yes, sir, there's three.

Q Okay. What's the third one?

A Whether or not he willfully filed a return; whether he knew that he was required to file; and that he purposely did not file a return.

Q So you're saying that -- are you saying that the fact that your calculations showed that he would owe some income tax shows willfulness?

A That's part of my determination; yes, sir.

Q Isn't it true that if you just have to have $6,050, you could prove that $6,050, and stop right -- and plus a little bit for, for additional to spare, to simply bring a charge of willful failure to file?

A It's not true to my information; no, sir.

Q It isn't?

A No, sir.

Q We had some evidence about the purchase of a tractor. You've heard that about the purchase of a lawn and garden tractor by an apartment dweller. What element of this case would that evidence go to?

A I don't remember any testimony about a purchase by an apartment dweller, sir.

Q Okay. There was some -- Do you not recall the evidence that Dr. Roberts paid some money for an apartment?

A For an apartment?

Q Yes, Harbor Town Apartments.

A He paid rent. He lived in the Harbor Town Apartments during the years 92, 93, 94.

Q What element of this offense does that evidence go to?

A Well, the fact is that it was part of my computation and the fact is that it was a personal expenditure by him. I used that in trying to determine whether or not he had business expenses paid out of his checking account.

Q Would that go to his legal duty to file?

MR. BLACKORBY: Your Honor, I object to this whole line of questioning, trying to force this agent to put the evidence into the three elements. That's the role of the jury.

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

Q Do you know that Dr. Roberts pays Federal taxes, is that not correct? Gasoline is taxed, is it not, by the Federal Government?

A Gasoline is taxed. Have I ever seen Dr. Roberts purchase gasoline? The answer would be no.

Q There are many items that are taxed by the Federal Government, is that not correct?

A As far as I know; yes, sir.

Q Do you know, is it not fair to say that the Government -- that Congress could not tax something without defining what it's trying to tax?

THE COURT: I hope he understood that question, Mr. Stilley, because I didn't.

A I don't, I don't understand the question.

Q You don't understand that question? Would it be necessary to first define a thing before that Congress tried to, to tax that thing?

MR. BLACKORBY: Objection, Your Honor.

MR. STILLEY: Let me rephrase that, Judge. I'm sorry.

Q What we're talking about here today is an income tax, is that correct?

A It's a failure to file Federal income tax returns for the years 93 and 94; yes, sir.

Q What taxes are reported on that return?

A Income taxes and Social Security taxes.

Q Wouldn't it be fair to say then that Congress would have to define income in order to tax income?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Sustained.

MR. BLACKORBY: Legal argument.

Q You computed the liability what you thought to be the liability of Dr. Roberts, is that correct?

A In 1993 and 1994, yes, sir.

Q When did you do that? When did you compute that, the liability?

A Probably finished the calculations some time during the Summer of 1999.

Q So it took you four years to calculate how much tax that Dr. Roberts owed?

A As I've explained to you previously, Mr. Stilley, the way we work investigations is that we have a case load assigned to us as criminal investigators of many cases, and we work on some cases at some time and then other cases take priority and pull us off of those cases. Plus, on at least two occasions during this time I was detailed out of the state one time for six weeks straight and another time for three months straight. So to say that it took me four years to do that, is I don't think a fair statement, so I would have to say no. As far as the number of hours I put in before I, before I arrived at that conclusion, I don't know how many hours that was.

Q Did you testify before the grand jury?

A Yes, sir, I did.

Q And was all of the testimony that you gave to the grand jury true?

A As far as I know, yes, sir.

Q And was it all made on personal knowledge?

A Yes, sir.

Q To the grand jury you said that you actually worked on and drafted the Draft Indictment that's before the grand jury, is that correct?

A I assisted; yes, sir.

Q Okay. So you had some control over the input of that into the way that that Indictment was drafted, correct?

A Well, you have to understand. My assistant with the U.S. Attorney -- my assistance with the U.S. Attorney's Office is minimal. They are the more, much more knowledgeable in drafting Indictments. I basically just assisted them by providing them with the information from my investigation such as the amount of gross income.

Q In that Indictment you accused Dr. Roberts of not making a tax return, didn't you?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Sustained.

MR. STILLEY: Your Honor, may I approach?

THE COURT: Yes, you may. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: Your Honor, we've got direct testimony from the Government's witness that Dr. Roberts has never made a return. It was always his CPA, so I need to --

THE COURT: Now, what now? Listen! I didn't -- I must have missed part of that.

MR. STILLEY: We have direct testimony from Mr. Ruffin, the CPA, that Dr. Roberts never made a return.

MR. BLACKORBY: That's not correct, Your Honor. That's not what he testified.

MR. STILLEY: She made the returns and Dr. Roberts filed them.

THE COURT: Well, we've had this discussion I think before, and the difference between making and filing I think is a matter of semantics that I'm not going to let you go into with this witness. I'm going to sustain your objection. Let's go. What else have you got?

MR. STILLEY: Is that sustained because that we'll not be allowed to -- well, I'm trying to show knowledge whether or not he has any information to show that Dr. Roberts had knowledge of how to make a return.

MR. BLACKORBY: Your Honor, he testified that the computations he made to determine the tax liability were gross taxable income, gross receipts, and it's not -- he didn't testify to any legal arguments in the testimony --

THE COURT: I don't think he did either.

MR. BLACKORBY: -- listened to his elements.

THE COURT: I don't think he gave legal arguments. I don't think you need to go into that either. I'm going to sustain the objection. What else are you going to ask?

MR. STILLEY: I've not even come close.

THE COURT: Well, what doesn't concern legal arguments is what I need to know, Mr. Stilley? I am getting really concerned about that.

MR. STILLEY: Well, just let me ask a few questions.

THE COURT: Well, I want you to ask a few questions. Ask him any questions you need to, but they need to be relevant to the direction examination, you're on cross examination, and not something that's a legal issue or something or something that we've already ruled on. Okay, sir? (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

Q How did you start your investigation?

A I received information that -- from an individual that Dr. Roberts had not filed income tax returns, and, therefore, I tried to determine if that was correct and then tried to determine based on Internal Revenue Service records whether or not it necessitated or merited me conducting an investigation.

Q When did this happen? When did you get this information?

A I don't remember. It would have been prior to February the 23rd of 1996.

Q How much prior to that time?

A I had no idea.

Q Did you not write that down?

A No, sir.

Q Well, would it be a year?

A I just said I don't remember, sir.

Q Two years?

MR. BLACKORBY: Objection, Your Honor. He's asked and answered it. Badgering the witness.

THE COURT: I think he said he couldn't recall.

Q Who is this individual that gave you this information?

MR. BLACKORBY: Objection, Your Honor; relevancy.

THE COURT: What is that relevance, too, Mr. Stilley?

MR. STILLEY: Your Honor, in his grand jury testimony he said that it was --

THE COURT: Well, I'm going to sustain the objection in that regard, the grand jury testimony. Move on to something else, sir.

Q In your grand jury testimony you said that it dealt with the fact that Mr. Roberts, through a girlfriend, was bragging that he had not filed?

THE COURT: Mr. Stilley, I have -- I sustained that objection.

MR. STILLEY: Well, Your Honor, I didn't ask for the identity.

THE COURT: Well, I want you to go on. I'm sustaining the objection concerning the question you asked, identity notwithstanding. Move on to something else. (Pause)

Q From the Indictment you said that --

MR. BLACKORBY: Objection, Your Honor, the agent says nothing in the Indictment. It's returned by the grand jury.

MR. STILLEY: Let me rephrase the question.

THE COURT: Good idea.

Q The Indictment which you drafted --

MR. BLACKORBY: Objection. The agent has already testified he didn't draft the Indictment.

MR. STILLEY: Okay. Let me rephrase that again.

Q The Indictment in this case accuses Dr. Roberts of failing to make a return required by law, is that not correct?

A As far as I know.

Q Okay. And do you know what law that is that requires the making of that return?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: That's sustained once again, Mr. Stilley.

Q Have you ever seen the law?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Now I need -- now I need to see the attorneys. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Do you know enough about this case to conduct a cross examination?

MR. STILLEY: Yes, I do.

THE COURT: I'm not talking to you at all, Mr. Stilley.

MR. BARRINGER: Yes, I believe so.

THE COURT: Mr. Stilley, we have ruled on it about a dozen times. The 11th time or 12th time was just before you asked the 13th question. Are you not keeping up with the Court's rulings or do you not remember what questions you ask?

MR. STILLEY: Your Honor, that is a different question from what I had asked previously. I just asked him if he had ever seen it.

THE COURT: Seen what?

MR. STILLEY: The law requiring filing of his returns. Let me try it again.

THE COURT: Well, I want you to get away from that. I don't want to come up here again. I don't want to hear the word "law" mentioned again from this witness. Do you understand me?

MR. STILLEY: I understand. I heard what you said.

THE COURT: Good. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

Q Have you ever made a contribution to any charity?

A Yes.

Q Were you required to do that?

MR. BLACKORBY: Objection. I don't see the relevancy of this agent making contributions.

THE COURT: I don't either. If you can recall, or answer, I guess, if you can.

A No, sir. I said no, sir.

Q Okay. I heard you testify on direct examination that the Form 1040 is used for the purpose of paying Social Security contributions, is that correct?

A I don't think that's what I testified to. I said that a self-employed person computes their self-employment tax which goes towards Social Security, and it's shown on the tax return, yes, sir.

Q Did you not hear Mr. Blackorby state that these were Social Security contributions?

MR. BLACKORBY: Your Honor, I'm not a witness. I didn't testify and I didn't testify to that.

MR. STILLEY: Your Honor, can I explain to that?

THE COURT: No. He can answer if -- it may be quicker to have him answer than to have you-all explain what you've asked and what someone answered.

A I don't remember the question that he asked, no, sir.

Q You don't remember him asking you about Social Security?

A I remember he asked me about the self-employment tax computation.

Q Isn't it true that Social Security taxes are repeatedly referred to in the various IRS publications as contributions?

A I wouldn't know that, sir.

Q You don't know that?

A No, sir.

Q Do you read the IRS publications about income tax?

A Only the ones necessary to prepare my tax returns.

Q Okay. Now, there's two sides on this Form 1040 and part of it's for Social Security contributions and part of it is for the income tax, is that not correct?

A Not to my knowledge, no, sir.

Q It's not? Did you not show us a schedule? What schedule is self-employment employment tax computed on?

A It's form SE.

Q And that's what we are talking about when we say Social Security contributions, is that correct?

A I haven't talked about contributions, sir.

Q Would you disagree that the Social Security taxes are frequently referred to as Social Security contributions?

MR. BLACKORBY: Objection, Your Honor. He's asked and answered.

THE COURT: I will sustain the objection.

Q Is the -- well, do you know what -- does the same section of the code that imposes the income tax imposes self- employment tax?

A I don't know.

Q You don't know about that?

A No, sir.

Q Are -- is there a difference between -- to your knowledge, is there a difference between the income tax proper and the self-employment tax as far as the requirement to pay?

MR. BLACKORBY: Objection, Your Honor, calling for a legal conclusion again.

THE COURT: I think we're talking about, you know, the very issue I thought we were going to avoid. I'm going to sustain it.

Q Has Dr. Roberts ever asked you any questions about his legal duty?

A No, sir.

Q He's never asked you any questions about his legal duty?

A I've never spoken directly to Dr. Roberts that I can remember, sir.

Q Has he ever sent you anything in writing and asked you about what his legal duties might be?

A He sent me some letters, yes, sir.

Q And what kind of questions did he ask about his legal duties?

A Without having letters in front of me, I don't know, sir.

Q Okay. Just a minute. I believe the Government has already admitted Exhibit 2-6. Can I draw your attention to Government Exhibit 2-6? Do you have that in front of you?

A No, sir.

Q All right. I'll provide you a copy then. Where is it? Okay. (Pause. Off the record briefly.) Do you see Government's Exhibit 2-6?

A Yes, sir, I do.

Q Can you read? He's got this numbered in paragraphs, correct?

A Yes, sir.

Q Can you read paragraph seven?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Yeah, I'm going to sustain that objection. The Court has covered that and we're not going to visit that again, Mr. Stilley.

Q If someone came to you today and asked you, they said now I'm going to make sure I obey the laws and I want to know what my duties are; I want to know what the requirements are; can you show me what my requirements, what duties that I have? How would you respond to that?

MR. BLACKORBY: Objection, Your Honor; relevance; outside the scope of direct.

THE COURT: I think it is outside. I'm going to let him answer, if he can answer it, though, but we're not going to stay on it very long, Mr. Stilley.

A Would you repeat the question, please?

Q If someone came to you today and said I really want to obey the law and I want to know what my duties are with respect -- under the law with respect to the filing of Federal income tax returns, can you show me what my duties are? How would you respond to that individual?

A I would probably tell them that if they had a duty, if they made enough money, enough gross income to require them to file, that they needed to file Federal income tax returns.

Q If they sent you something in writing and asked the same question, would you respond back in writing?

A I don't know. I don't really like to respond to a lot of things in writing. I prefer face-to-face interviews with someone. I know that was the case with Dr. Roberts. I asked him several times to meet with me face-to-face so that I can ask him questions, because I didn't want to get into a letter writing campaign such as this. So I prefer face-to-face discussions with someone.

Q And isn't that because that you've got orders from your superiors not to respond in writing to questions about the duties of the public with respect to the making of Federal income tax returns?

A I've never received any word like that from my superiors.

Q There's none that you know of?

A I have never received any word like that from superiors; no, sir.

Q What do you mean when you say you have never received any such things from your supervisor.

MR. BLACKORBY: He answered the question, Your Honor. I object.

THE COURT: I think it's pretty self-explanatory, but apparently you can explain it.

A My supervisor never told me not to respond to something in writing, I guess if that's the question.

Q Have you ever seen anything in writing that tells you not to respond to a request of that type when it's in written form and ask for a written response?

A Not to my remembrance; no, sir.

Q Is it then possible that you've seen it and just forgot about it?

A I don't remember seeing it.

Q Do you know how many letters that Dr. Roberts has written to either to you or to some other IRS official asking questions concerning his duty to make a tax return?

A No, sir.

Q Can you give us an estimate?

A I don't know how many was written. I'd know if I would have seen all of them.

Q How many -- well, you would have had access to these letters for your investigation, correct?

A Maybe. I don't know that I would have seen everything that he's written.

Q How many can you remember that you've seen that were written by Dr. Roberts?

A Including the ones that he wrote to me?

Q Yes.

A Probably, I don't know, somewhere between 5 and 15. I don't know.

Q So then it's fair to say that he's wrote a bunch of letters to you?

A Yes, sir, not exactly to me.

Q Or to somebody?

A I guess.

Q And what was he trying to find out with those letters?

THE COURT: I think those letters can speak for themselves on what they concern, but I think we're getting a little off the subject again, Mr. Stilley.

Q Did Dr. Roberts ever ask you how he could comply with this duty requirement without waiving any of his Fifth Amendment Constitutional rights?

MR. BLACKORBY: Objection, Your Honor. It's an improper argument.

THE COURT: It will be sustained.

MR. STILLEY: Your Honor, I wanted to ask some questions, but I certainly don't want to get in trouble. Can I approach the bench a little bit?

THE COURT: Yes. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Yes, sir?

MR. STILLEY: I wanted to ask him if he could, you know, if he was asked by a citizen how that they could come comply with their duties.

THE COURT: I've already ruled on that. You did ask that and it was objected and I sustained the objection.

MR. STILLEY: Well --

THE COURT: I think he answered a big part of that.

MR. STILLEY: Well, let me go back and try it again. I'm going to try --

THE COURT: No. I don't want to do that again.

MR. STILLEY: Well, I'm not going -- I'm not going -- the reason I'm coming up here is so that --

THE COURT: Well, when you come up and you tell me you're not going to do something, you go back and you ask the identical question you said you're not going to ask. I don't want that anymore. Tell me the questions you're going to ask? What subject are you going to cover?

MR. STILLEY: Oh, I've just -- I've got a whole bunch of stuff.

THE COURT: Well, you need to tell me what they are because this cross examination may be over a little sooner than you think it's going to be. I'm not going to let you just hammer this witness on the stuff that's not admissible and stuff I've already ruled on, Oscar. I can't do it. I'm not going to do it. It's not fair to anybody. It's not fair to your client.

MR. STILLEY: Well, I want to ask him about his delegation of authority, too.

THE COURT: That's not relevant either.

MR. STILLEY: I subpoenaed that here.

THE COURT: Pardon?

MR. STILLEY: I subpoenaed his delegation of authority here.

THE COURT: Yeah, and it was quashed.

MR. STILLEY: I thought there was two of them that was quashed, but not this one.

THE COURT: Well, I'm quashing it now. I'm not going to hear that. Do you have --

MR. STILLEY: Yeah, I've got more questions and I'm trying, Judge, I'm trying to do what's right, but it's -- you know, I just get shot down every time.

THE COURT: I know you do, because I don't want you to discuss the law or, you know --

MR. STILLEY: But how do you get the knowledge, how do you discuss the knowledge without asking about the law?

THE COURT: Well, I don't think that's the witness to do it with.

MR. STILLEY: I'll try -- I'm trying hard, Judge.

THE COURT: You got any idea of how we can move this along and maybe ask questions that are more relevant on cross examition than I've heard so far? I have not heard I'll bet over three questions that were really not objectionable. And I'm trying Oscar, Mr. Stilley, to give you as much latitude as I can, but I'm fearful we keep falling back into it.

MR. BARRINGER: Can I have a minute with Oscar at the bench before he goes back?

THE COURT: Yeah. Would you do that? That may be of substantial help. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

Q Have you ever told Dr. Roberts it's a requirement to file a return?

A No, sir.

Q Has Dr. Roberts ever disputed that he had the level of gross receipts that you say he had?

A No, sir.

Q Isn't it true that in his legers, as you testified on direct examination, that he was perfectly honest or maybe more than honest in his division of receipts between personal and business?

A I testified that Dr. Roberts did not cooperate and did not, did not give any assistance in providing whether or not the checks written were business or personal.

THE COURT: You made that determination, did you not?

A Yes, sir, I -- yes, I made this determination based on the investigative contacts that I made. Dr. Roberts did not respond to my request about providing the, the which checks were business and which were personal.

Q Can you tell us what you did as part of your investigation to determine the level of knowledge that Dr. Roberts had about his requirements under the law with respect to filing a Federal income tax return?

A I made investigative contacts of various people. Among them were Clisdol Ruffin, the former return preparer, his ex-wife. I contacted his current receptionist. So I contacted several people in trying to determine his knowledge of tax matters; yes, sir.

Q Is that a fair and complete statement of the efforts that you made to determine his personal knowledge?

A That's, that's three people that I contacted; yes, sir.

Q But in -- during your investigation did you do anything else to try to determine his personal knowledge of any requirements as with respect to filing Federal income tax returns?

A That's all that I can recall at the moment; yes, sir.

Q You don't know anything at all about -- you're not an expert on the law with respect to Arkansas income tax returns, are you?

A No, sir.

Q If Dr. Roberts had gotten someone to make a tax return, but he hadn't signed it and he sent it in, would that be considered making a return?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: Yeah, that's sustained.

Q Do you know of any duty of an individual person in the United States to hire a CPA to prepare a tax return, if they don't know the law?

A What person are you talking about?

Q Just any Joe on the street.

A Do I know of a duty?

Q Right, to hire a CPA?

MR. BLACKORBY: Your Honor, I think it's speculative as to, one, what duty means, and I think it's irrelevant to the line of questioning on direct.

THE COURT: Yeah, it's sustained.

Q Did you keep track of the hours you spent on this case?

A No.

Q Can you estimate how many hours you spent in attempting to prepare the returns that you or the information for the returns that you made for Dr. Roberts?

A No, sir. As I explained before, the work on this case was intermittent, interspersed with other investigations. Sometimes those investigations took priority over this investigation, so I -- I don't have any knowledge as to the total number of hours that I spent just working on this one specific investigation.

Q Can you give us an estimate?

A I just said I don't have any idea, sir.

Q Do you think that Dr. Roberts has the knowledge that you have, that you've demonstrated in your preparation of his filing information?

MR. BLACKORBY: Objection, Your Honor; relevancy and speculation.

THE COURT: Sustained.

Q If a person came to you and asked about whether they should sign a tax return and they said that they didn't know if all the material statements on that tax return were true and correct, would you still advise them to sign that return?

MR. BLACKORBY: Objection, Your Honor; calls for speculation.

THE COURT: I'm going to sustain that. I think we're getting pretty far a field.

Q If a person did not, did not understand his legal duty or didn't know his legal duty or have doubts about his legal duty, would it be acceptable to ask an IRS agent or a Federal Judge about what the -- what their legal duties were?

MR. BLACKORBY: Objection, Your Honor. I'm not sure this witness is qualified to talk about the judiciary.

THE COURT: I'm going to sustain that also. I think the Court's also already ruled on that previously.

MR. STILLEY: Your Honor, I certainly don't want --

THE COURT: Sustain it again, so --

MR. STILLEY: What's that?

THE COURT: I sustained it again. Let me talk to the attorneys briefly, please. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Are we not covering the same ground we've already covered and already ruled on it? I've heard these questions, some of them. I know; you've been back in the back and gotten some more questions, but I think your questions you're asking now have already been asked. Do you not recall that you've asked those?

MR. STILLEY: I don't recall that. I thought that he was. Well, if he's objecting to the form that it is compound or something like that, then I'll break it down. If I can't do it then, Judge, I don't want to ask questions that will get me in trouble, get me thrown out. I don't want to do that. I'm just trying, I'm trying to protect my client, and it just seems like I can't open my mouth without --

THE COURT: Well --

MR. STILLEY: -- getting an objection.

THE COURT: Well, but the questions you're asking are most improper. Did you have a discussion with him at the break? I saw you back talking to a paralegal or somebody.

MR. BARRINGER: Yes, Your Honor.

MR. BLACKORBY: For the record, he's been talking to Mr. Springer.

THE COURT: Mr. Stilley, how many more questions do you propose to ask, sir? It is now almost 2:00 o'clock and we've gone over the same few questions over and over again and, and I am trying to give you substantial latitude on the cross and we don't seem to be making a lot of progress.

MR. STILLEY: I've already asked why he didn't assess a tax.

THE COURT: I beg your pardon?

MR. STILLEY: Have I already asked him why he didn't assess a tax against Dr. Roberts?

THE COURT: Well, I think he said the testimony was that if in fact he did compute the tax on the basis of his of his procedure, he had an amount of tax that was due. Is that what you're asking? I think that's --

MR. STILLEY: No. There's no assessment for him and I want to know why there's no assessment.

THE COURT: Do you have any idea?

MR. BLACKORBY: You mean why he actually wasn't sent a bill?

MR. STILLEY: Yeah.

MR. BLACKORBY: He was under investigation. He was given notice that there would be a freeze on his account till the investigation was over.

THE COURT: I'm not going to permit you to ask that. I think that's improper.

MR. STILLEY: I can't ask him why he didn't even assess the taxes for what he calculated?

THE COURT: No, cannot. What else are you going to ask? (Pause) Let me ask you, Mr. Barringer, can you think of any other relevant questions that you would ask if you were sitting where Mr. Stilley is sitting?

MR. BARRINGER: I can think of about three or four. I can tell them to him. I believe they're relevant and deal with Exhibits 2-4 and 2-6, which have already been admitted as evidence. That's very quickly the type of questions.

MR. BLACKORBY: Which Exhibits?

MR. BARRINGER: 2-4, and 2-6.

THE COURT: Well, I read 2-6. That's the letter that --

MR. BARRINGER: Well, nobody's read it. I just have more specifically the question would be is it fair to say that Dr. Roberts asked questions, not what they are, and the second one is --

THE COURT: And I don't have any problem with that question.

MR. BARRINGER: And the second one would be is it fair to say that you didn't respond to it, and the same would be with respect to 2-4, which was a statement Dr. Roberts said why I'm not required to file. Is it fair to say he sent that and the second question is it fair to say you didn't respond to it.

MR. BLACKORBY: He didn't ask any questions on that Exhibit, Your Honor.

MR. BARRINGER: 2-4 includes -- here's the trick that I watched. The Government's trying to include an entire set of documents as 2-4, and then only want to ask questions about one page. They admitted all. They got to talk about it all. In fact, 2-4 says that specific on the first page it refers to the letter attached and the letter attached is the one I'm referring to. Their own Exhibit ends up tricking them with respect to what the language in the next page says. There's nothing I can do about it. That's what they submitted.

MR. BLACKORBY: It's the same letter. He already testified he didn't respond to it. He's already answered that question.

THE COURT: I thought he did, too, about 2-6.

MR. BLACKORBY: It's the same letter.

MR. BARRINGER: No, there's -- if I might --

THE COURT: Yes, sir.

MR. BARRINGER: 2-4 is why I'm not required to file. And it's not a letter. It's more of a statement. 2-6 --

THE COURT: From Dr. Roberts.

MR. BARRINGER: From Dr. Roberts to the IRS. 2-6 is a letter directed specifically to Mr. Bryan which says and hopefully all the questions all of which you don't want to go into I understand, but

I just want to say it's safe to say that he asked the questions and, secondly, that you didn't respond to them.

THE COURT: What do you think?

MR. BLACKORBY: I think he already answered the questions, but if he wants to ask them again, I don't have any problem with that.

THE COURT: Those are two questions. Do you understand them?

MR. STILLEY: I understand them.

THE COURT: Okay. Do you think you can ask those two questions just like he's phrased it here?

MR. STILLEY: Let me see if I can, Judge. What I will ask Mr. Bryan is this: Is it safe to say that Dr. Roberts asked questions concerning his duty?

THE COURT: I don't think that duty -- see, there you going to get into duty and what all and whatever. Ask, sir, the questions.

MR. STILLEY: Well --

THE COURT: How would you phrase it? Tell him how you would phrase it.

MR. BARRINGER: Very specifically the question is phrased this way. Exhibit 2-4 includes more than one page, is that correct? Yes. Includes a second page that says why -- that's entitled on the top why I'm not required to file, is that correct? Yes. Is it safe to say that no one from the IRS responded to that question?

THE COURT: Okay.

MR. BARRINGER: Very simple.

MR. BLACKORBY: I think he already answered, but...

THE COURT: I think he has, too, but if you can ask those questions in that order... Do you want him to ask it? Do have any other questions other than --

MR. STILLEY: Well, then I want to ask then did Roberts explain why he didn't think he was required to file?

THE COURT: No.

MR. BLACKORBY: Your Honor, he can testify --

MR. STILLEY: That Exhibit, that Exhibit -- it's the caption on why I'm not require to file.

THE COURT: I'm not going to let you do that.

MR. STILLEY: So I can only ask did Roberts asked questions.

THE COURT: You can ask the three questions he just suggested.

MR. STILLEY: And can't go past the questions?

THE COURT: No, no.

MR. STILLEY: And got no response, and I can't go beyond that?

THE COURT: Okay.

MR. STILLEY: Okay. Well, he's done a lot of math on this. I want to test his math skills. And it won't take but five seconds.

THE COURT: You're not going to ask what kind of math skills he has.

MR. STILLEY: I just want to see if he can add, you know --

MR. BLACKORBY: He's twisting that, Your Honor.

MR. STILLEY: No.

MR. BLACKORBY: He's trying to refer to the different blocks, the different returns to back into the code. This isn't a math test.

MR. STILLEY: It's not a math test. I just want to check. It won't take 40 seconds.

THE COURT: I'm not going to permit that, but I will allow you to ask those three questions and then this cross examination is over.

MR. BARRINGER: Remember the three questions would also apply theoretically to 2-6 as well, 2-4 and 2-6. There actually should be six questions.

THE COURT: Well, can you not ask them one with reference to 2-4 and 2-6?

MR. BARRINGER: Well, yeah, I guess you could phrase it out specifically that way, but I think you have to separate them out so that you can at least show the -- have him read the top line of the one that said why I'm not required to file.

THE COURT: Okay. You understand that?

MR. STILLEY: Read the type line on the one that said --

THE COURT: No.

MR. STILLEY: No, I didn't understand that.

THE COURT: Okay. You want to explain it to him?

MR. BARRINGER: What you want to get at is that 2-4 includes more than one page; that it includes a second page. And I guess we can put that second page on the screen and just let him -- is that the second page of a letter that you received I think would be appropriate. And say is it safe to say that Dr. Roberts at least sent this? Is it safe to say that no one from the IRS responded to it? I think those are all within --

THE COURT: Can you ask those questions?

MR. STILLEY: I think I can.

THE COURT: I don't think you need it on the screen. Just ask him.

MR. STILLEY: I only want to ask him to add. This is not hard. I just want to demonstrate his ability to add things up that he's not made mistakes.

THE COURT: That's denied. That's denied. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

MR. STILLEY: Your Honor, may I have permission to put the second page of the Government's Exhibit 2-4 on --

THE COURT: Why don't you just ask the questions we discussed? It may not be necessary to put any of them up.

MR. STILLEY: Okay.

Q Mr. Bryan, I want to call your attention to Government's Exhibit 2-4. How many pages are there to that?

A Four pages followed by an envelope.

Q All right. And what is -- what is the title of the second page?

THE COURT: I think the way it was "did Dr. Roberts ask" I believe was the way the questions were to be phrased.

MR. STILLEY: All right. BY MR. STILLEY:

Q Did Dr. Roberts -- did Dr. Roberts send you an explanation on this second page?

A The second page has at the top explanation.

Q And what's the next line?

A Why I am not required to file.

Q Did you respond to that?

A No, sir. This letter was sent to me in response to the letter that I had sent to him asking him for the second time to meet with him for an interview because I had some questions I wanted to ask him related to his income tax matters for the years 1992 through 1994. And, so, no, I did not respond. I explained earlier that I did not want to get into a letter writing campaign with him.

MR. STILLEY: Your Honor, may I have just a moment with counsel?

THE COURT: Yes. (Pause)

Q I'd like to turn your attention to Government's 2-6.

A Yes, sir.

Q Was that document sent to you?

A Yes, sir.

Q And is it fair to say that in this document Dr. Roberts asked a number of questions?

A Yes, sir.

Q And is it fair to say that you didn't answer those questions?

A Yes, sir.

Q And is it fair to say that nobody else within the IRS answered those questions?

A To my knowledge no, not as a result of this letter.

MR. STILLEY: Pass the witness.

THE COURT: Any redirect?

MR. BLACKORBY: No, Your Honor.

THE COURT: You may stand down. Thank you, Mr. Bryan. Call your next witness, please.

MR. BLACKORBY: Your Honor, all I have at this time is to move in some self-authenticating documents that it'd like to introduce, seek admission, and then publish to the jury if they're so admitted.

THE COURT: Announce what they are.

MR. BLACKORBY: First one, Your Honor, is Government's Exhibit 35-1. It's a Sebastian County Circuit Clerk's Office Child Support letter, and it's referencing to Philip Eugene Roberts. It's under the certification and seal of Sebastian County and it pertains to payments that includes the time period charged in the Indictment, 93 and 94.

THE COURT: Any objection? Mr. Stilley?

MR. STILLEY: Have I seen those?

MR. BLACKORBY: Yes, sir. I handed them to you earlier.

MR. STILLEY: Okay. Same objections.

THE COURT: It will be admitted over the Defendant's objections, 35-1?

MR. BLACKORBY: Yes, Your Honor.

MR. BLACKORBY: 35 -- correction 39-1 is under the letterhead of the Office of the Tax Collector for Sebastian County. It is a Ledger of Personal Property Taxes paid and it's under a self-certification letter signed by Mary K. Erwin, Chief Deputy Collector of Sebastian County, pertains to Dr. Roberts's personal property taxes and the amounts paid in the years alleged in the Indictment. It's Government's Exhibit 39-1.

THE COURT: Any objection to 39-1?

MR. STILLEY: Just a second. Same objection.

THE COURT: It will be admitted over Defendant's objection, 39-1.

MR. BLACKORBY: And the last one, Your Honor, is Government's Exhibit 34-1 is on the stationery of the Oklahoma Tax Commission, signed by David Freno, Deputy Director Oklahoma Tax Commission verifying checks that had been provided to him from the bank records of Dr. Roberts as believed to be boat registration fees paid during the years 1993 and 1994. I would move for the admission of Government's Exhibit 34-1.

THE COURT: Same objection?

MR. STILLEY: Yes.

THE COURT: It will be admitted over the Defendant's objection as 34-1. Any other Exhibits?

MR. BLACKORBY: No, Your Honor. At this time the United States rests.

THE COURT: Ladies and gentlemen of the jury, the Government has rested its case in this matter. There's some things I'm going to need to take up with the attorneys. We're going to give you a break here hopefully no more than 20 minutes or so, but again remember the admonition of the Court not to discuss this with anyone or allow anyone to discuss it with you. Thank you very much and have a nice break. (THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Let the record reflect it's 2:10. the jury is out of the room. Any motions on behalf of the Defendant, Mr. Stilley?

MR. STILLEY: Yes. Could I have about five minutes with co-counsel?

THE COURT: Yes, you can, but I tell you what. Let's leave the jury out. Let's try to come back in at 2:15 and get your motions on the record. Are you prepared once we get that done to start your part of the case?

MR. STILLEY: I think so. We've called, tried to get hold of a witness, and I'm not sure this witness is going to get down here on time, but we've tried to get the witness in.

THE COURT: Well, did you subpoena the witness?

MR. STILLEY: Yes, we did.

THE COURT: Subpoena served?

MR. STILLEY: Yes, it was.

THE COURT: Where was it -- who is the witness?

MR. STILLEY: Charles Leflar.

MR. BLACKORBY: He's here, Your Honor.

MR. STILLEY: Oh, he is? Excellent!

MR. BLACKORBY: He's been in the building all day.

MR. STILLEY: Excellent! We're in good shape.

THE COURT: Do you have any witnesses -- Mr. Leflar?

MR. STILLEY: Yes.

THE COURT: Are they present? You don't have to tell me who they are. Are they present --

MR. STILLEY: Yes.

THE COURT: -- in the building? At some point I think we need to talk about Instructions. Do you know how long it's going to take to present your part of the case?

MR. STILLEY: Several hours. Three hours maybe, not long.

THE COURT: Okay. Why don't we -- why don't you visit with your co-counsel and we'll -- and when you're ready to put whatever motions, if any, you want to make on the record, you know, send word. Otherwise, I would like to start your testimony about 2:25. I'd like to continue this testimony, like to finish this case today, but I for sure would like to finish the testimony today. (Off the record at this time.)

THE COURT: Motions?

MR. STILLEY: Yes. You mind if I speak from here?

THE COURT: Oh, please. Anywhere you'd like to.

MR. STILLEY: On behalf of Dr. Roberts we move for a directed verdict and we would like to preserve and restate all the previous motions that have been made on behalf of Dr. Robert for the dismissal. I do not want to take a lot of the Court's time. I do

want to make it very clear about certain things that have arisen in this trial that require a directed verdict or a verdict as a matter of law. No. 1, there is no proof that Dr. Roberts did not make any of the tax returns that he's charged with not making. Mr. Ruffin testified that he had, in years past he had made the returns and Dr. Roberts filed them for the years in question. We have absolutely no prove that Dr. Roberts failed to make those returns. We've had allegedly an expert in here who testified and based only his testimony, there is no requirement in the law that a person who makes $6,050 in 1993 or $6,250 in 1994 is required to make a return. They clearly testified that they got their information not from the law, but from a pamphlet or from a tax form. And the Indictment does not state that Dr. Roberts violated a pamphlet or a tax form. States he violated a law. It says that we -- by reason of such income he was required by law and that would have to be a statute of the United States. Based on the testimony of Brian Miller, it's impossible for us to come to the conclusion that that is the legal requirement, and it's impossible for us, for the jury to come to the conclusion, therefore, that Dr. Roberts had a duty to file a return or that he failed -- or to make a return or file a return, or that he failed in that duty. This Court has in the past -- I mean you know that I have harped on this again and again and said we would like to see the law. Show us the law. And this Court has said, you will see that later. The Government will have the burden, the Government will have the burden of proving that legal duty in the Court. The Government has clearly, unequivocally failed to prove that legal duty. As a matter of fact, their testimony demonstrates that they affirmatively don't know any legal duty for a person to make or file a tax return based on a certain amount of income or a certain amount of gross receipts. We have -- do have testimony that the figure upon which the filing requirement is allegedly triggered is determined based on inflation. We have absolutely no evidence of what the inflation rate is, of what the base figure is, or of what the method of applying inflation to the base rate. So we have absolutely no way to conclude that $6,050 is the right number or $6,250 is the right number, even if those numbers were to trigger some sort of a filing requirement. So we simply don't have any proof of a legal duty on the part of Dr. Roberts. Next is knowledge. They had to prove that he knew that he was required to file a return. What did he do to show knowledge on the part of Dr. Roberts to file a return? He testified right here from the stand that all he did was, well, I interviewed a few people and I checked with the accountant, basically going on the theory that because Dr. Roberts had made or filed a return in a previous year, that he would, therefore, think and know that he had a duty to do the same thing in a subsequent year. That simply isn't enough upon which the case can be sent to the jury.

THE COURT: Are you making an argument, Mr. Stilley, in connection with both counts of both Indictments --

MR. STILLEY: Yes.

THE COURT: -- Counts I --

MR. STILLEY: This applies to both counts of the Indictment. There's no proof of willfulness here. There is proof that Dr. Roberts asked questions of the Government concerning his responsibilities and his duties. There is proof, uncontradicted proof that there was no response to that from which Dr. Roberts my devine what his duties might be. It cannot be controverted that nobody showed him any law requiring him to make a return or file a return on to do anything else. So it would be impossible that doctor -- a reasonable jury could find that Dr. Roberts acted willfully when there's no proof that he had acted to fail to comply with a known legal duty. Their own Instructions, the Government has already put in its Instructions and they put these figures in, $6,050 and $6,250. And they put these Instructions in, yet their own expert has testified that he has -- he cannot point to the law anywhere that says a person who has made $6,250 is required to file a return. And on the basis of this, these facts, and this evidence that has come in and the law, Dr. Roberts is entitled to a judgment as a matter of law, and in addition to that, for all the reasons that have been set forth in the voluminous filings previously made in this case, he is entitled to a judgment as a matter of law.

THE COURT: Fine. Thank you, Mr. Stilley. Mr. Blackorby?

MR. BLACKORBY: Thank you, Your Honor. The Court has heard the testimony, so I'm not going to go into point out the discrepancies and the odd interpretations of the testimony by Mr. Stilley. I think it's clear from the evidence that Dr. Roberts made taxable gross income in 93 of at least $132,000 plus he made 207,000 plus dollars in 94. And clearly the requirement if it exceeded $6,050 in 93 and $6,250 in 94, he had a requirement to file. So I think it's clear we've established he had a requirement to file. Also, he knew he had a requirement to file by the testimony of the accountant who had prepared returns for at least three years prior to Dr. Roberts ceasing to file who had worked with him and who Dr. Roberts brought in the income and expenses and the information to him as well as brought in summary sheets which came into evidence before this Court where Dr. Roberts itemized his own income and expenses, worked with the accountant, had those returns prepared and filed them. Prior to that, the former wife testified that they had filed for years with information that he had provided. She also testified that he set up his own books and records and ran his own accounting system in his business, so he clearly knew how to establish his income and expenses and he knew what he had. As to willfulness, well, all of that goes to willfulness, Your Honor. He had a large income which the figures of the special agent demonstrate. He knew he had a requirement to file. He had more than sufficient funds to pay his tax liability and he chose not to file. All of these letters and so forth that they have tried to site during this case are after the act of not filing the tax returns, Your Honor, and are not even relevant, but I think the Government has clearly met its burden in all three areas to prove that Dr. Roberts is guilty of Counts I and II. Thank you.

MR. STILLEY: I don't want to waste this Court's time and, Judge, there's just one thing I want to go to and that is a transcript of the hearing June 9, 2000, page 24, in which this Court said, "I'm not sure what you mean by this, but I assume that the Internal Revenue Code also probably -- in fact I know it defines income, and I'm sure at some point if the jury needs that Instruction, we will give an instruction, we will define what income is, but I'm not going to instruct on what income is before we pick a jury or while we're picking a jury." Your Honor, there has been no evidence of a definition of income from which any reasonable jury could determine what is income and what is not income. And even if he cannot get this on this particular issue on the Motion for Directed Verdict, I would very much request that the statutory definition of income, not gross income or any other kind of income, but the bear term income, be given to the jury if this case does go to the jury, so that they will have that information.

THE COURT: Okay. Fine. I'm going to overrule both Motions for Directed Verdict. I think a jury question has been made in connection with both counts. I will consider your Motions, your objections to the Court's rulings on evidence as well as other matters to be renewed, and the ruling will be the same, and your objections are again noted and your exceptions are noted and you have a continuing objection. With reference to, to Instructions, I would propose that we generally look at a set probably at the next break. And I don't know when that will be. The Court has roughed some out. What I want you to do initially is to look through them, and if there are any glaring omissions or that you see or anything that's obviously been left out, tell me. And I want to hear I think your objections at that time, but kind of look through them and see if there's something that should be included that's not and/or something included that should not be. I think we can worry about the wordage

and we can argue about the wordage. We need to, first of all, see if we can agree on the Instructions that are going to govern in this case. We -- what do we have? About this time? (Off the record briefly.) Did you all have a chance to take a break? You-all need -- anybody need some time?

MR. BLACKORBY: We are ready to go.

MR. STILLEY: No. But we do need some water. (Off the record at this time. THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Good afternoon again. Did you have a good break?

JURORS: Yes.

THE COURT: The Government has rested its case and the defense will now begin. Mr. Stilley, call your next witness, please.

MR. BARRINGER: Your Honor, I'm going to do the first witness, Charles Leflar.

THE COURT: Fine. And we hope you're feeling better.

MR. BARRINGER: Well, I wished. I hoped I would be too, Your Honor.

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DEFENDANT'S EVIDENCE

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CHARLES LEFLAR, DIRECT EXAMINATION, SWORN BY MR. BARRINGER:

Q Mr. Leflar, would you state your name for the record, please?

A My name is Charles Joseph Engler Leflar.

Q And where do you reside?

A 1717 West Center Street, Fayetteville, Arkansas.

Q Low long have you lived there?

A Off and on my whole life. Most recently about eight years.

Q Okay. And what do you do there?

A I teach accounting at the University of Arkansas.

Q Are you a CPA?

A Yes, sir, but my license is inactive.

Q Do you have any law degrees?

A No, sir, I do not.

Q Okay. Have you taught anywhere else?

A Yes, sir, I have.

Q And where have you taught?

A While I was a graduate student, I taught at the University of Missouri at Columbia from about 1987 through Spring 1992, and Summer 1992 to December 1993 I taught for Arkansas State University at West Ark.

Q Okay. And West Ark is where?

A Here in Ft. Smith.

Q Okay.

Q And what class did you teach at West Ark?

A I taught a number of different classes including Managerial Accounting, Financial Accounting I, Financial Accounting II, Auditing, and Governmental Accounting.

Q Okay. At any occasion did you have a student in your class by the name of Brenda Gray?

A Yes, sir, I did.

MR. BLACKORBY: Your Honor, I object. I don't see the relevance of this whole line of questioning.

THE COURT: Why don't you -- let's approach the bench. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: Tell me how this is relevant.

MR. BARRINGER: It goes to the question of knowledge and good faith with respect to Brenda Gray who is Dr. Roberts girlfriend and who has been also working at his office at least for a period of time. The issue of whether or not this professor had ever seen material the same as or similar to what we've already entered as evidence establishing that Dr. Roberts has in fact been maintaining the same position far beyond 1992, 93 or 94, and dealing with that subject matter.

THE COURT: Well, does this witness, what is his name?

MR. BARRINGER: Charles Leflar.

THE COURT: L E F?

MR. BARRINGER: L E F L A R.

MR. BLACKORBY: Your Honor, they're trying to put on --

THE COURT: Does he know Dr. Roberts? Has he visited with Dr. Roberts and have knowledge --

MR. BARRINGER: I don't know if he knows Dr. Roberts or not.

THE COURT: Well, you're trying to get in what supposedly what Dr. Roberts knows through Brenda Gray, secretary or something.

MR. BARRINGER: We will bring that in through Brenda Gray as well, if necessary. We're attempting to do it through Doctor -- or Charles Leflar.

MR. BLACKORBY: Your Honor, it's hearsay from either.

THE COURT: I think it is hearsay. Why is it not? Is Brenda Gray here? Is she going testify?

MR. BARRINGER: She's here, and if necessary we will call her.

THE COURT: I'm not trying to tell you how to try your case. I believe the objection is sustained unless you can tell me how you think -- do you want to try and make -- you want to try and make an offer of proof here, see what this witness would say about what he knew about what Brenda Gray would say?

MR. BARRINGER: Well, my offer of proof would be that Brenda Gray submitted to him a similar document entitled explanation of why I'm not required to file; that he and her had discussions, and that based upon that, he gave her if not an opinion, talked about that subject matter with her. In fact, that it was my understanding that there was a quote wager for purposes of the class that if someone could establish that you did not, there were no requirements to file, that that information --

THE COURT: I think, I think if Brenda Gray had been the one charged, you very well could have a good argument, but I'm going to sustain the objection. I'm not going to permit that. Is that all he goes to do?

MR. BARRINGER: I have one other area of questioning to cover and that deals with whether or not --

THE COURT: Is something that's inadmissible?

MR. BARRINGER: Well, we'll find -- here's what it's about. I don't have any problem telling you. It deals with whether or not he was the one that made the phone call that started the investigation.

MR. BLACKORBY: It's irrelevant, Your Honor. He was, but that's irrelevant. What's the relevancy? I mean he's been charged and indicted.

THE COURT: I don't think it's relevant either, but I would let you make an offer of proof that if he were permitted to testify -- are you saying he would be the one who would testify that he made the call?

MR. BARRINGER: Yes.

THE COURT: With that offer of proof, is there anything else you want to put on for the record, because I'm going to excuse him?

MR. BARRINGER: That's fine. Oh, and the only other question I would have is when did he make that phone call?

THE COURT: Okay. And when was that? For the record, cover yourself.

MR. BARRINGER: I honestly don't know, and nobody here has been able to tell us so far.

MR. BLACKORBY: I think it was probably in 95, Your Honor. But it was long after the returns were required to be filed.

THE COURT: Well, I don't know any way to ask him. I mean can you all agree on a date?

MR. BARRINGER: Well --

THE COURT: Well, let's just assume, all right, then, that it was 95. Anything further?

MR. BARRINGER: Not of this witness.

THE COURT: Who's your next witness going to be?

MR. BARRINGER: It will be Brenda Gray. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Mr. Leflar, you're excused. Thank you very much. Call your next witness, please.

BRENDA GRAY, DIRECT EXAMINATION, SWORN BY MR. STILLEY:

Q Please state your name?

A Brenda Gray.

Q Where do you live?

A Ft. Smith, Arkansas.

Q Where you work?

A I work at Dr. Roberts' office.

Q Okay. And what's your relationship with Dr. Roberts?

A We have a lifetime commitment to each other.

Q Okay. And how long have you had this lifetime commitment to each other?

A Approximately nine or ten years.

Q Okay. What is your job where you work?

A I'm the office manager. I do several duties there.

Q Okay. What is your educational background?

A I attended high school at Greenwood and then I proceeded on to a college in Oklahoma on a basketball scholarship, and then I also played at West Ark for a year and continued on there at the University Center where I obtained my Business Administration Degree.

Q So what did you study at West Ark?

A Business Administration.

Q During your course in at West Ark did you have the occasion to have class with Dr. Robert Leflar or Charles Leflar?

A Yes, sir, I did.

Q And what kind of class was that?

A I believe it was called Managerial Accounting, but it was some sort of accounting class towards an area of my degree.

Q Okay. I need to lay a little foundation about some previous facts before I go any further about Mr. Leflar. During the course of time that you have been with Dr. Roberts, has he discussed with you his beliefs about any requirements with respect to the making of a tax return?

A Yes. We discussed that many times.

Q Okay. And what is his belief?

MR. BLACKORBY: Objection, Your Honor. I think the Court has already addressed about bringing in tax beliefs through a third party witness is improper.

THE COURT: Let me see the attorneys again, please, at barside. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. BLACKORBY: Your Honor, my Motion in Limine has set forth a whole cite of cases why even the Defendant in most instances cannot challenge the tax code constitutionally, the applicability. It was clear in some of those cases that a third party witness can't advocate what the Defendant's position is, therefore.

THE COURT: Have we not ruled on that, Mr. Stilley? What is she going to say that's not covered or that we've already ruled --

MR. STILLEY: It's subjective good faith for one thing. I'm just trying to lay a foundation, trying to lay a foundation.

THE COURT: I don't doubt you're trying to lay a foundation. I just wonder if we hadn't already removed that foundation. Tell me why that's still an issue?

MR. STILLEY: Well, because that, see, while she was -- what the evidence will show is that while she was at West Ark, she and Charles Leflar, the professor, had a discussion and she said that she didn't think that the Revenue Code required anybody to file a tax return. And he made a challenge and said if anybody can show me that a person is not required to make or file a tax return, then they won't have to take the final exam. So she brought in documents and showed where a person had sent a document identical to the ones that's already admitted by the Government, sent that document to the IRS, and the IRS sent them a letter back and said based on your information, you are not required to file.

MR. BLACKORBY: Your Honor, that whole comment, Your Honor, this whole conversation between the two of them is hearsay. Dr. Roberts is not a part of this conversation.

MR. STILLEY: It's not for the truth of the matter asserted. We already know that we can't go down that road. I've already been down that road and had my hand spanked lots of times.

THE COURT: Well, I'm not in the businesses of spanking hands or anything else. It just looks like we've already crossed that bridge, though, and it concerns me, Mr. Stilley.

MR. BARRINGER: If I might jump in on a different issue, Mr. Blackorby commented about the Motion in Limine dealing with challenging the Constitutionality of the tax code or he asked. That's not actually what anybody's talking about here. And it is --

THE COURT: Well, that occurred to me, too. Your question was, you asked her had she had discussions with Dr. Roberts about his beliefs or something concerning the filing of a tax return.

MR. STILLEY: Oh, yes, many times.

THE COURT: No, no. Was that your question?

MR. STILLEY: Yes. Well, I asked her first if she had discussions. Was that when you objected?

MR. BLACKORBY: Yes. You asked the question had she had discussions with Dr. Roberts about his position, something about the tax code.

MR. STILLEY: His beliefs about whether or not a person is required to file a return.

MR. BLACKORBY: If you want to put that on, it's my position Dr. Roberts' got to take the stand.

MR. STILLEY: All right. Cool. We can handle that.

MR. BLACKORBY: Well, I'm not sure he can go down that road.

THE COURT: Is he not the one that offered that testimony though, Mr. Stilley, as opposed to --

MR. STILLEY: Well, let me tell you where this is going to go. Where this is going to go is that Brenda took one of these documents which is already a Government Exhibit and another document which is not a Government Exhibit, but it's a letter from the IRS stating that this individual who had sent the other document was not required to make or file a tax return. She took those two documents to Mr. Leflar and Mr. Leflar, now he made a bet or wager --

THE COURT: Yeah, you told me that.

MR. STILLEY: If you can prove this, then you don't have to take the final return (sic). He could not say anything to rebut this evidence.

THE COURT: Well, that's all hearsay what Mr. Leflar. I don't think that can come in. I don't think she --

MR. STILLEY: No, it shows, it shows knowledge. That's the element.

THE COURT: Well, it shows knowledge maybe, you know, of this witness, but I'm not sure it shows anything about -- she's not the one that's charged with not filing the return.

MR. STILLEY: Well, how's he going -- how's Dr. Roberts going to testify to it? It will be hearsay and this is the very incident that allegedly caused him to be hauled into this investigation. If the man was the informant and we know who the informant is --

THE COURT: Well, we're past him. I've already ruled on that.

MR. STILLEY: If we can't get the evidence in with him, and we can't get into the evidence with her, I know what's going to happen when Dr. Roberts gets on the stand. You didn't hear that conversation. You didn't make that conversation. We can't get it in with anybody, but it's the most critical to head knowledge and we know it's subjective good faith, not objective, because objective good faith --

THE COURT: We've heard from everybody now but the court report and we're going to hear from him --

MR. YURKANIN: After the Eighth Circuit law while good faith is subjective, it is the Defendant's good faith. For example, if the Defendant were to go to a lawyer and the lawyer were to advise the Defendant that he did not have to file a tax return in that case and the Defendant did believe that lawyer, the Defendant could testify to that fact, and if the jury honestly believed the Defendant, then that would be permissible good faith. I believe defense counsel misstates what is the valid good faith affirmative defense within the Eighth Circuit.

THE COURT: Oscar, Mr. Stilley, I can't think of a way you're going to get this in. You're attempting to have her testify about something I don't think she can testify about.

MR. STILLEY: Well, and she knows his beliefs obviously, I mean he's her companion. Somebody's companion for ten years, you know their beliefs. Can she testify to what his beliefs are and to her opinion that his beliefs are sincere and genuine?

THE COURT: Well, what's her answer going to be about what his beliefs are?

MR. STILLEY: That he believes the law does not -- the Internal Revenue Code does not require him to file a tax return and he's believes it sincerely, genuine. It's a genuine belief.

THE COURT: Mr. Blackorby, you got any problem with that, if it's limited to that?

MR. BLACKORBY: Your Honor, one, he's got to lay a foundation of where he's coming from. I don't think he's done that. No. 2, I still don't believe it's proper under the circuit holdings that third parties can come in and testify.

THE COURT: Because it is going to the issue of good faith, is it not?

MR. BLACKORBY: Well, it does go to the issue of good faith, and I agree it's not hearsay if she gets it from him.

MR. STILLEY: Well, obviously he's made these statements to her. I mean he's lived with her this whole time, so then we don't have a hearsay problem.

MR. BLACKORBY: Well, no, I don't think you've laid enough foundation to establish that she's in a position to know.

MR. STILLEY: Well, that might be --

MR. BLACKORBY: Want me to take her on voir dire?

THE COURT: No.

MR. STILLEY: Yeah, sure.

THE COURT: No, I don't think we need to go there.

MR. STILLEY: You want to take over on voir dire?

MR. BLACKORBY: Oh, I'll get my chance.

MR. STILLEY: Yeah.

THE COURT: I tell you what, Mr. Stilley. I'm going to overrule the objection only to this extent. You may ask what his beliefs are -- if she's lived with him and knew his beliefs and what his beliefs were, but you need to -- I think if she says he didn't believe he had to file a tax return or whatever, I'm going to leave it at that.

MR. STILLEY: We already know that she lived with him, so we don't need to recover that ground, right?

MR. BLACKORBY: She hasn't said that, Your Honor. She says she has a lifetime commitment, whatever that is.

MR. STILLEY: Well, I'll ask her if she's lived with him. (Off the record briefly.)

MR. STILLEY: Okay. She'll say she lived with him and she has personal knowledge of his beliefs. Ask her about that.

THE COURT: Yeah. Does she know his personal beliefs about the filing of income tax returns? But I want you to keep it -- don't ask anything else.

MR. STILLEY: Regarding tax returns, right?

THE COURT: Yeah, or the filing or making or whatever it is.

MR. STILLEY: Okay. And then that she believes that that that's sincere.

THE COURT: Okay. That's all right.

MR. BLACKORBY: I think that calls for speculation.

THE COURT: Well, she can say in my opinion it's sincere. And I will give you -- I'm overruling the objection to that extent. I'll give you a ruling.

MR. STILLEY: Is that all? Is that all we can go to her on?

THE COURT: That's it. That's it. That's it. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:) BY MR. STILLEY:

Q How long have you lived with, lived with Dr. Roberts?

A Approximately nine years.

Q Have you talked with Dr. Roberts about his beliefs about any requirement of filing Federal income tax returns?

A Yes, I have.

Q How many times have you talked about that?

A Numerous occasions.

Q Have you ever seen any documents that he had pertinent to that question?

A Yes, I have. I've typed a lot of those.

Q And about how many of those documents have you seen?

THE COURT: I think you were going to ask about the beliefs as opposed to the documents she seen and this sort of --

Q Oh, yeah, I was just trying to lay the foundation. Hopefully I would not get objected to that I didn't have a foundation about it. About how many? Can I ask that question?

THE COURT: You may ask that question. Then you need to ask the testimony we discussed at barside.

Q Oh! About how many documents have you seen in the possession of Dr. Roberts that set forth or detailed his beliefs concerning any requirement or non-requirement of filing Federal income tax return?

A Are you talking about books or pamphlets or --

Q Well, let's start with papers right now, just like letters or pamphlets or other documents of that nature?

A Oh, I've probably seen hundreds of documents that rely on that information.

Q Okay. Have you also seen books?

A Yes.

Q Have you lived with him and talked with him enough to form an opinion about his belief?

A Yes, I have.

Q Okay. What is his belief with respect to whether or not that he believes that he is required to file a Federal income tax return?

A He believes that he is not because there is no law requiring the filing of that form.

Q Based on your personal observations, is that a sincere belief?

A Yes, it is. We've written letters to the IRS many times and have never heard a response and, in fact, he was indicted --

THE COURT: I think she answered the question.

MR. STILLEY: Yes. Can I take just a minute with counsel?

THE COURT: Yes. (Pause)

Q Based on your personal knowledge, do you know if Dr. Roberts has sent any documents to the IRS setting forth his beliefs with respect to whether or not he's required to file a Government income tax return?

A Yes. Most of those I typed personally and was the one that went and mailed them.

Q And do you collect the mail for you and Dr. Roberts?

A Yes, I do most of the time.

Q Fine. Based on your personal knowledge, has the IRS ever anything back in response to those letters that set forth any legal requirement of filing?

A Never. Never answered a question, any questions.

MR. STILLEY: Pass the witness.

THE COURT: Cross examine.

MR. BLACKORBY: Thank you, Your Honor.

CROSS EXAMINATION BY MR. BLACKORBY:

Q You work for Dr. Roberts?

A I have duties in the office there; yes.

Q Does he pay you a salary?

A No, I do not get paid.

Q You live with Dr. Roberts, right?

A Yes, sir, I do.

Q And how do you live on a day-to-day basis? Where do you get your money?

A To be honest with you, I usually don't shop. I don't --

MR. STILLEY: Object. This is beyond the scope.

MR. BLACKORBY: Goes to bias, Your Honor.

THE COURT: Well, it does. I'm going to overrule your objection. You may answer.

Q Where do you get your money to survive on a day-to-day basis?

A Dr. Roberts takes care of most of those needs.

Q Does he buy you a car?

A Yes.

Q What kind of car do you have?

A I have a Lexus.

Q What year?

A I believe it's a 90 --

MR. STILLEY: Objection. That's relevant to this.

THE COURT: It's overruled. She's on cross examination.

Q Is it a 99 Lexus?

A Yes, sir.

Q And he bought you the car, right?

A Yes, sir.

Q And the car's paid for?

A Yes, sir.

Q Where do you two live? What's the address?

A We live on Park Avenue and 49th Street.

Q And that's a condominium, right?

A Yes, sir, it is.

Q It's a fairly new one?

A Yes, sir. Well, they're -- almost four years old.

Q How much do you pay a month in rent?

A I believe we paid around a thousand dollars, somewhere through there.

Q So all your living expenses, your car, your boat, where you live, all that's all provided by Dr. Roberts, is that right?

A That's correct.

Q Now, have you filed your own income taxes?

A Um.

MR. STILLEY: Objection.

MR. BLACKORBY: Goes to bias, Your Honor.

THE COURT: That's overruled.

MR. STILLEY: I'm going to object on the grounds that -- Okay. Well, let her answer it. BY MR. BLACKORBY:

Q Have you filed your own taxes?

THE COURT: I think that means the objection was withdrawn, so you may answer.

A To income that I make?

Q Yes.

A I just told you I don't have any income.

Q Have you ever filed Federal, Federal income tax returns?

A When I was younger.

Q What was the last year you filed?

A I honestly have no idea.

Q Was it prior to meeting Dr. Roberts?

A I had filed income taxes prior to meeting Dr. Roberts; yes.

Q What was the last year that you filed?

A I have no idea.

Q Have you filed since 1993?

A I'm trying to think of my last employer, when I stopped working there.

Q Have you ever filed any documents that said you had income?

MR. STILLEY: Objection. Income has not been defined. BY MR. BLACKORBY:

Q Worked for somebody that they paid you a salary?

A I don't recall whether I have or not. I may have.

Q And you testified you're not married to Dr. Roberts?

A We do not have a piece of paper that shows that we are married, but we've never had a civil ceremony, no, sir.

Q And are you married to anyone else?

A No. I've never been married.

Q Have you ever filed a document to get a loan that said you made $6,000 a month?

A I'd have to see the document, sir.

Q All right. And when bought your 99 Lexus you remember filling out a financial application?

A I could very well have.

Q Is that your signature?

A Yes, sir, it is.

Q In flipping over to the fifth page it says your income was $6,000 --

MR. STILLEY: Objection.

Q -- monthly?

MR. STILLEY: The term has not yet been defined.

MR. BLACKORBY: I am reading from the document, Your Honor.

THE COURT: The document says income.

MR. STILLEY: Yes, but this is not being specified whether this means income as it's defined in the Federal Internal Revenue Code or has some other meaning.

THE COURT: It's overruled. You may answer. BY MR. BLACKORBY:

Q See the term, says applicant's gross monthly income from employment. It's Got your name at the top, is that right?

A Yes, sir. There it says applicant's gross monthly income from employment, $6,000 a month. It says amount of other monthly income and sources, spouse income, $14,000 a month. Total gross monthly income $20,000. Did you put that on your loan application?

A Right. I guess I did; yes.

Q So you have --

A But there's a correction there that doesn't look like my handwriting, so I don't know whose handwriting that is. That's --

Q Well, whose handwriting is this down below?

A That's mine. That's above it and --

Q The spouse's income, $14,000, a month. That's your handwriting?

A Yes, sir.

Q What spouse is that? Who is that?

A Dr. Roberts.

Q So the two of you together made $20,000 a month income at the time you filed this document?

A That's what the document says.

Q Well, you just said that's your handwriting, ma'am.

A Yes, it is. (Off the record briefly.)

MR. BLACKORBY: Your Honor, I'd like to move for admission of Government's Exhibit 44-1.

THE COURT: Any objection?

MR. STILLEY: Just a minute. Let me take a look. (Pause)

THE COURT: 44-1.

MR. STILLEY: I don't think I've got it, Your Honor. I don't see it anywhere.

MR. BLACKORBY: Your Honor, he may not, since this is a witness we didn't call.

MR. BLACKORBY: Your Honor, I would move for admission 44-1. The witness has identified the document from her handwriting and her signature.

THE COURT: Any objection?

MR. STILLEY: Yes. We object, the usual objections, and object that it's clearly not a material part of this. He can ask questions of her about it. We don't need to bring this in.

THE COURT: It's overruled. It will be admitted over your objection as Government's Exhibit 44-1.

MR. BLACKORBY: Yes, Your Honor.

Q Now, ma'am looking at 44-1 it looks like the car cost about $60,000 or $57,000, is that right?

A I don't recall right offhand, but somewhere around there; yes, sir.

Q You're talking about the price 56,500 and then there's some add-ons. You see the figures I'm talking to?

A Yes, sir.

Q And that car's now fully paid for, is that right?

A Yes, sir.

Q And Dr. Roberts paid for that car?

A Yes, he did.

Q And that's a 1999 Lexus, correct?

A Yes, it is.

Q And this is dated April 17, 1999. Is that when you took the car, ma'am?

A Yes, sir.

Q April of 99, is that when you got the car?

A Yes, sir.

Q So you're very interested in Dr. Roberts. Nothing happens to him, right, that he doesn't get convicted, because you live with him? He provides all your income. Provides your cars?

MR. STILLEY: Objection. That's badgering the witness.

THE COURT: It's cross examination, too, Mr. Stilley. I'm going to overrule that. BY MR. BLACKORBY:

Q You have a stake in this trial, is that correct, ma'am?

A I don't know what you mean by I have a stake in it.

Q Well, you wouldn't want to see Dr. Roberts convicted because he provides you with all -- essentially your life essentials or your good essentials, isn't that correct?

A I wouldn't want to see anything bad happen to anybody that I cared about; no, sir.

Q And you do care about Dr. Roberts?

A Of course.

Q Ma'am, would you dispute IRS records that shows the last time you filed a return was 1992?

A I'd have to see them. I don't recall working past or after 92 or three, somewhere through there when I worked at -- Sam's Wholesale Club was my last employer.

Q So even though on this 1999 auto loan application you put that you made $6,000 gross income a month, you still didn't file a return in 1999, for 1999, did you?

A No, sir.

Q So you made $72,000 in 1999 and you didn't file a return?

A I made $72,000 that year, is that what you're saying?

Q Ma'am, it's your handwriting. You testified to it.

A Does it say for 12 months there?

Q Well, it says --

A $6,000 for 12 months, I didn't see that part.

Q How many months did you work at Dr. Roberts' practice in 1999, last year?

A I worked all of last year.

Q Says right here of the applicant's gross monthly income from employment $6,000?

A That's what it says, yes, sir.

Q And below spouse's income, $14,000 a month?

A Right. I thought you had said 72,000 is what you had asked me, but I --

Q 6,000 a month for 12 months is how much?

A It's 72.

Q Okay. And actually 14,000 a month for 12 months is a lot more than that, isn't it?

A Yes, sir.

Q So even though you put this on this loan application in 99, you have not filed a 1999 income tax return?

A No, I have not.

MR. BLACKORBY: Pass the witness, Your Honor.

THE COURT: Any redirect?

REDIRECT EXAMINATION BY MR. STILLEY:

Q When you wrote down that $6,000, did you have the Internal Revenue Code there to look at and look up the definition of income?

A No, I did not.

MR. BLACKORBY: Objection, Your Honor. This is a legal argument. We've had this.

THE COURT: I'm going to sustain that. You can ask her what she thought income meant, if you want to, Mr. Stilley, but I think that's an improper question. I'll sustain the objection. BY MR. STILLEY:

Q When you wrote down income, is that just because somebody else had put that term there or was it because that you thought it meant some legal definition of income?

A The guy that was filling out the form was pressuring me. He just told me to write down a figure; that it didn't matter; and he was ready to be done with it. So I do not have a legal definition of income. No, I do not. I still don't know what a legal definition of income is.

MR. STILLEY: Pass the witness.

MR. BLACKORBY: One question, Your Honor.

RECROSS EXAMINATION BY MR. BLACKORBY:

Q You actually were getting a loan with these documents, isn't that right, ma'am? You didn't pay cash all that day and drive that Lexus off, did you?

A No. I don't believe so.

Q You financed it and paid it off about 30 days later, isn't that correct?

A Yes, sir.

Q So you needed to borrow some money on that day to get that car. Isn't that why you filled out the documents we just talked about?

A Yes, sir.

Q So you were actually putting that financial information on there, whatever you want to call it, to get that loan to convince them to give you that loan, isn't that right?

A Yes, sir.

Q If you would have put zero on there; I don't have a income, because I'm not paid anything, do you think he would have given you that loan?

A I don't know, sir. Q (By Mr. Blackorby)

MR. BLACKORBY: Pass the witness.

THE COURT: You may stand down. Thank you very much. Call your next witness, please.

MR. STILLEY: Dr. Roberts. (Witness sworn.)

THE COURT: Have a seat, Dr. Roberts. Speak directly into the microphone. If you didn't bring your water with you, there's water there, sir.

MR. BLACKORBY: Your Honor was the last witness excused?

THE COURT: Yeah. May she be excused?

MR. BLACKORBY: That's correct.

MR. BLACKORBY: That's fine for the Government, Your Honor.

THE COURT: Mr. Stilley, may the last witness be excused?

MR. STILLEY: Yes.

THE COURT: Well, she's in the courtroom and if she stays in the courtroom, she will not be permitted to be called back to testify.

PHILIP EUGENE ROBERTS, DIRECT EXAMINATION, SWORN BY MR. STILLEY:

Q Please state your name.

A Philip Eugene Roberts.

Q Where do you live?

A 4900 Park Avenue, No. 314.

Q And where do you work?

A Roberts Chiropractic Center, 302 North Greenwood Avenue in Ft. Smith.

Q And how old are you?

A I'll be 46 July the 5th.

Q What did your father do for a living as you were growing up?

A My father served 22 years in the United States Army and retired from there and worked for the railroad.

Q And where did you -- where did you grow up at?

A I grew up literally across the world. As the child of a career soldier, you travel quite frequently generally every two to three years new duty depots. I was in Europe as a small child and then spent the rest of my life traveling with my parents as they were stationed in the Continental United States.

Q Do you remember what your first job was?

A First job? I had a paper route when I was ten years old.

Q And how long did you have that job?

A I had that job two years.

Q Did you file tax returns on that?

A No, sir.

Q What was your next job?

A I worked in the bottoms in Van Buren picking watermelon cucumbers, cabbages, field labor work for the farm industry.

Q What was your age at that point in time?

A I was 13.

Q And how long did you have that job?

A I worked at that job for three summers.

Q And what did you do after that?

A I did some work in grocery stores as I went through high school, a stock boy and a sacker.

Q What did you do after you got out of high school?

A I made my first attempt at college. I had an ROTC scholarship and after the first semester of college I dropped out.

Q And what did you do after -- why did you drop out of college?

A Well, I made the fatal mistake a lot of 18 years old do. I went up there with not really knowing why I was going to college and got caught up in more of the comradery/friendship rather than the academic. It was evident that I didn't need to be there at that time, so I came home and told dad I was done.

Q What did you do after you quit college?

A I worked for a short period of time in I believe it was called Ft. Smith Rebuilders. They rebuilt carburetors and brakes and things like that for automobiles, but it was factory work rebuilding automobile parts.

Q How long did you work at that job?

A I would say just guessing it was about six months or so. Then I enlisted in the United States Army.

Q And for what was the year that you enlisted?

A I enlisted I believe in June of 1973.

Q Okay. Did you do that voluntarily?

A Yes, I did.

Q And was there any kind of war going on at that time?

A Yes, sir. It was the Vietnam war.

Q And for how long did you enlist?

A I enlisted for a term of four years.

Q And did you spend that full four years in the military?

A That's correct.

Q Where did you go to basic training at?

A Ft. Ord, California.

Q How long did that take?

A I think at that time basic training was about seven maybe eight weeks.

Q What did you do after you got out of basic training?

A After basic training when you become pretty familiar with just the basics of military, marching, and marksmanship and particulars like that, you go to more specialized training. I was enlisted in the field artillery and the fire direction center and had to get advanced individual training at Ft. Sill, Oklahoma.

Q And how long did that take?

A That was approximately between eight and 12 weeks.

Q And what did you do after that?

A I graduated top in the class there and was stationed at Ft. Sill, Oklahoma, with a field artillery battalion.

Q How long did you stay in Ft. Sill?

A I was in Ft. Sill approximately a year.

Q And what was your job there?

A I was the Fire Direction Center NCO. Actually I was a PFC acting in the capacity of E-5.

Q What did you do after that?

A I volunteered for airborne duty following in the heritage of my father and my older brother, went to Ft. Benning, Georgia, where I undertook my airborne training and graduated as an honor graduate, top of my class there. Was then stationed at Ft. Bragg, North Carolina, where I served out the remainder of my military time, except for some additional training, was sent back to Ft. Sill at one point in time for what is known as non-commissioned or Non-commissioned Officers Education System basic course, which I also graduated top in my class and attained a Master Gunnery Award.

Q You told us about some of the awards and about the fact that you were top of some of your classes. Did you get any other awards or commendations the military?

A Yes, I did.

Q Can you tell us about those?

A While I was stationed at Ft. Sill, Oklahoma, I competed for and achieved distinction as the Ft. Sill Soldier of the Month. And this is a competition where every battery and battalion sends representatives up and you compete through your job skills and knowledge and military bearing and all of everything to do with the military. And I won that award. When I was stationed at Ft. Bragg, North Carolina, I also won the 82nd Airborne Division Trooper of the Month, and before I left the service, I received the army commendation medals and numerous other accolades for services performed while I was there.

Q After this, after this and I believe you told us you did not re-enlist after the first time or did you tell us that?

A No, sir, I did not revolunteer.

Q Okay. Did you get in any trouble for not volunteering for another term?

A No, sir, I did not.

Q What did you do after you got out of the military?

A I got out of the military, had a couple of months where I was trying to get things in order in my personal life, and then was employed at Whirlpool Corporation on the assembly line.

Q How long did you work for Whirlpool?

A I worked for Whirlpool approximately two years.

Q When you worked on the assembly line, what did you do on the assembly line or was that a lot of tasks?

A Well, it was a lot of tasks. Every time that they needed to shoot a screw in a part they grabbed you and you did it. So I worked all over the factory both the pre-fabrication that they had at that time and then assembly line, just at different parts along the way installing parts on the air-conditioners, I'm sorry, the refrigerators.

Q And do you -- how old were you at the time you left that employment?

A I must have been 25 or so.

Q What did you do then?

A I went to work for the Missouri Pacific Railroad in Van Buren.

Q What was your job there?

A I was a brakeman.

Q Had any of your other your -- had any of your close family done that job in past?

A Yes. My father was a fireman. That's a job identical to that of the engineer, but in the time that he served, prior to that they were the guys that shoveled the coal, but the firemen and the engineer had the same job function at the time that he was employed. He was with the Frisco Railroad.

Q How long did you work for the railroad?

A I worked for the railroad approximately 18 months.

Q And what did you do then?

A I enrolled in college at West Ark Community College to begin a pre-chiropractic degree and continued in Kansas City, Missouri, at Cleveland Chiropractic College to complete my degree as --

Q Was there any particular reason that you went to enroll in West Ark College?

A Yes, sir. Certainly the location and I needed to get my prerequisites to be a chiropractor.

Q When did you get married, first get married?

A I believe I got married in 1973 or four. I honestly don't recall. I know I was already in the army at the time I got married.

Q At the time that you enrolled in West Ark did you have a small child?

A Oh, yes, I did.

Q And what was the name of that child?

A Well, I actually had two; Jeremy Bryan Roberts and Jennifer Dawn Roberts.

Q Was there anything about your children that caused you to think about going back to get an education?

A Yes, sir.

Q And what would that be?

A Well, there was an incident where my oldest daughter -- (Pause) I had had an accident. Excuse me.

THE COURT: Okay.

A Excuse me. Where she had waddled off the seat of the pickup truck when she was 13 months old and she landed on her head, and she struck her back, and she became chronically ill. Within 24 hours her symptoms were very dramatic and very severe. Do I need to get into a lot of detail on that, Your Honor?

THE COURT: Whatever your attorney wants to develop.

A Just suffice it to say that she was in severe agony and it was unrelenting. For four months we dealt with the medical community at Holcrock Clinic and every pediatrician that we could find to help us with the problem. She literally didn't sleep. She passed out in exhaustion between absolutely excruciating fits of pain. It was continuous. Her knees would draw up to her the chest. Her abdomen was as hard as this table top and she would just cry and scream and this was literally 24 hours a day for almost four solid months. As we left our final appointment at Holcrock Clinic with the pediatricians that had referred us to Children's Hospital, I had the opportunity to drive by a friend's office who had just gone into practice as a chiropractor. We stopped in and I just wanted to say hi to him and told him why we were in the area. He said, hey, he said, let the older doctor look at that baby. I said what can chiropractic do? He said, you'd be surprised. And I said, okay. The older doctor took a look at her, adjusted three areas; her occiput, which is her skull; her third lumbar vertebrae and left ilium, and handed her back to my wife and said, this baby is going to be fine. We were kind of amazed because no one else had been able to help. But that night she rested much better, was visibly calmer and less stress. I called him the following evening about 9:00 o'clock and he said, hey, how's she doing? I said, well, she's doing better. She's still having problems. He said bring her to the office. I want to look at her. So about 10:00 o'clock at night we went back and we met and he adjusted her again, the same three areas and he handed her back. He said your baby's going object to fine. And my daughter never, never had another symptom after that second adjustment. And that's when I committed my life to chiropractic, left my job, and went to school.

Q Did that motivate you to work real hard in school, do a good job?

A Absolutely.

Q What kind of grades did you have at West Ark?

A It was over a 3.5. I don't know exactly what my GPA was.

Q How long did you go to West Ark?

A It was somewhere in the range of two years.

Q And where did you go to school after that?

A Cleveland Chiropractic College in Kansas City, Missouri.

Q And how long did that take?

A It was a four-year curriculum of about 4600 contact hours and I finished it in three years.

Q What does it take a normal person to finish a course of study that is that rigorous?

A Well, they do have it set up either in trimesters or quarters so you can finish it in three years if you go through with no breaks, or it's four years if you take the summer break. It's the same curriculum as medical school generally speaking.

Q So then would it be fair to say that most people take four years to do that?

A Some do and some don't. Some really accelerate through because they're anxious. I would have to say the majority use the three year program.

Q Do you remember where you -- what your rank in the class was when you graduated there?

A I believe I graduated second in that class.

Q Out of how many students?

A 70 or 80.

Q And what did you do then?

A I came back to Arkansas, took the state boards and opened up practice in Ft. Smith.

Q Where did you open up your practice at?

A Initially with Maples Chiropractic Center on Jenny Lind right down from Whirlpool. I worked there eight months to a year and then opened my own office on North Greenwood.

Q Was that easy for you to do after you had been to school for that length time to go out and open up your own practice, find the money to do that?

A No, sir, it was very difficult.

Q Have you since that time been practicing in the same location?

A Yes, I have.

Q Have you at some point in time in your life filed tax returns?

A Yes. I'm aware they have been filed.

Q Okay. And you've already heard the testimony -- I don't care to bore the jury, but the testimony of the years when returns were filed either by you or for you more or less, correct?

A Ask that question again.

Q You've heard the testimony about the years for which Federal income tax returns were filed either by you or on your behalf. Is that recitation of the years for which those returns were filed more or less correct?

A I would say it's more correct.

Q Okay. Now, did you at some point in time stop the filing of the returns?

A Yes, I did.

Q Well, let's back up just a little bit. Why did you file returns?

A Like many of us, I was just told all my life that you're supposed to do it. Two things you do in life, pay taxes and die, and in order to get a job, they tell you to sign a W-4 and at the end of year you're told to do a return. And I never had an explanation to why.

Q When you were filing these returns or causing them to be filed, at any point in that time did you ever see a law requiring you to do that?

A No, sir, I never have.

Q So you your behavior then, I guess, would have been based on the simple assumption, correct?

A Yeah; absolutely.

Q When did you first hear information from which that you might have determined that, that you weren't required to file a tax return?

A Occasionally as I was carrying this stuff to the accountant and then we would get the forms back to sign to be filed, I would notice a little statement from the commissioner that was on that booklet that would talk about the voluntary nature of the income tax; thank you for the voluntary compliance; we have the greatest voluntary compliance; we have the most whatever voluntary. That began to trigger curiosity in my mind by that word alone. I began to try to glean information as to what does this mean voluntary? I know that I do it because I thought I was supposed to do it. And I was afraid not to do it, but voluntary was a whole different issue. So I began to read and this was somewhere probably in the neighborhood of 88 or so that I began to try to gather this information.

Q So if you began to gather this information in 88, you took a good while before you actually acted upon this information, is that correct?

A That's correct.

Q Did you spend a considerable amount of time reading and studying before you acted on this information?

A Endless time.

Q Did you -- were you making -- was what you were doing an honest search for the truth or were you just trying to get out of something that you thought you really had to do?

A No, sir. It was a definite and absolute search for the truth. If I was liable for it, I would be more than happy to participate, but if not, I wasn't going to, but I needed an answer.

Q Did you ever get a copy of the Internal Revenue Code so you could read directly from the law and see what it said?

A I never owned or possessed a personal copy. I have at occasion or on occasion reviewed it.

Q Have you -- how much of it -- can you elaborate a little bit further about what you mean by having read it from time to time?

A Yeah. As I read across certain information, that would direct me to certain places in the code. And it would say this is the area you go to determine whether or not you are required. It wasn't a blanket statement that everybody's required. It said if you are required, and it took you to specific sections of the code, so I would try to reference that and see if it would give me any information as to whether or not I was a person required to do this act.

Q In the material and pamphlets that you read or the books that you read, did you see actual citations to the Internal Revenue Code? Did you see the actual texts of the code set forth in there?

A Yes.

Q In all of those books or pamphlets did you see anything that made you look at it and say this doesn't make sense; this can't be true? When -- and I'm talking about the allegation that you would not be a person required to file a federal income tax return.

A Well, absolutely. As I began to uncover this information, my first response was, you know, I'm missing something. I've got to be missing something, because nothing's fitting that makes me a person required, but I've been doing it all my life. My dad did it and everybody does it. What am I missing? So I began to ask more information of professionals to try to get that information.

Q You asked professionals?

A Yes, I did.

Q What kind of professionals did you ask?

A I have asked accountants, CPA's, a local attorney in person, several documents from accountants and attorneys, and I even have an IRS CID agent booklet that he spells it out.

Q Did any of these people, these CPA's or this attorney or attorneys or anybody else show you anywhere in the law that you were required to file?

A I have never seen anywhere in the law where I'm required to file a form.

Q Did any of these professionals tell you that you weren't required to file a return?

A Yes.

Q And what kind of professional would that be?

A The information advice given to me by some was that the information is provided; it's not my position to tell you whether to do it or not to do it, but I'll give you the information. And I had one local attorney that told me emphatically I was not a person required to file.

Q When you began to -- do you remember when you first got the correspondence from the IRS suggesting that you were -- that maybe possibly you should be -- you were required to file?

A I have never gotten any information from the IRS that said I was required. I've had many letters, actually they're are form, computer-generated letters that made some inquiries as to where a fax form was and if I was liable for the form when I send it in, if I was not required to file the form, would I give them an explanation as to why I was not required? And that started -- I won't -- well, I've got a bunch of them here. I think this one is June 22nd, 1992, but I don't think that's the first one, because my first letter in response is dated the 22nd day of April, 1992, so it was sometime prior to 92 or at least 22nd of April of 92 that I had a request for information. Actually it's dated here on 4/20/92.

Q Is that a document that's already been admitted into evidence? Do you know?

A I have no idea.

MR. STILLEY: Your Honor, may I approach the witness.

THE COURT: Yes. (Pause. Off-the-record discussion between the witness and his counsel.)

MR. BLACKORBY: Your Honor, I would object to these off-the-record discussions between counsel and the witness.

MR. STILLEY: Your Honor, there's no malice involved. I'm simply trying to find out if this document --

THE COURT: I don't think he suggested any malice. Go ahead and ask your next question. (Pause) BY MR. STILLEY:

Q Do you have 2-4? I draw your attention to Government's Exhibit 2-4. Is that the document that you're talking about?

A It has a copy of the document. The actual cover letter on this one is dated March 16th, 1996. But every time they made an inquiry, I responded with a cover letter and all previous correspondence so that they would know exactly what I had done previously. My understanding or my feeling at the time was obviously somebody is not --

THE COURT: Dr. Roberts, if you can, I need you to respond to the question, because --

A I'm sorry.

THE COURT: -- if you start talking, I don't know what you're answering and I don't think Mr. Stilley does either. So if you've got a question for him, why don't you ask it, Mr. Stilley?

MR. STILLEY: Okay. Yes.

Q So then is this Government's Exhibit 2-4 the same thing that you had sent on a previous occasion in 1992?

A Yes, it is.

Q Right. And the reason I ask you that is I just don't want to burden the record with multiple copies of the same document. So this is a -- Government's Exhibits 2-4 -- Your Honor, do have I permission to put this on the DOAR?

THE COURT: Yes.

MR. STILLEY: Okay. We need to get this turned back on.

THE COURT: And before we turn it on, you may have to move some of the -- we'll try it and see. (Pause)

MR. STILLEY: Your Honor, may I ask the jury? I just want to find out if that's legible to the jury or let you ask.

THE COURT: I don't know. I can ask Officer Johnston. Can you read it?

MR. JOHNSTON: I can read parts of it; yes, sir.

THE COURT: Okay. Yeah. You may be -- you may have to make it a little larger in some areas and then maybe Miss Porter can help you, if you need some help. That looks pretty good.

MR. BLACKORBY: Your Honor, what I have on that page 2-4 has a different heading on it than what's being shown on the screen or lack of heading. (Off the record briefly.)

THE COURT: Why don't you use 2-4 that's admitted, Mr. Stilley? It may be --

MR. STILLEY: Yeah. (Pause)

THE COURT: 2-4 has how many pages tonight? Five pages in that Exhibit?

MS. PORTER: It's like four and an envelope.

THE COURT: Four and an envelope which is on the page. You're proposing to show what, the second page?

MR. STILLEY: That's correct.

THE COURT: Okay, sir. BY MR. STILLEY:

Q Okay. Let's get back to where we were. Can you see the document on your monitor?

A Yes, I can.

Q Okay. Is this the document that you sent in 1992?

A Yes, it is.

Q Do you remember where you got this document or where you got the information for this document, one of the two?

A I got the information specifically for this document from another physician that provided me this verbiage.

Q Okay. And why did you think that this particular document was really special or important?

A I saw the IRS response to this letter that he had received.

Q And what was the IRS response to that letter?

A Based on our information, you are not required to file a form.

Q And just a second. (pause)

THE COURT: Mr. Stilley, what's the problem, sir?

MR. STILLEY: Your Honor, I've got -- I know I've got a bunch of sets of these Exhibits and I had three sets that were outside of my notebooks and I can't seem to find them.

THE COURT: I think if you're going to ask questions concerning an Exhibit that's been introduced, it's best to use the Exhibit that was in fact introduced.

MR. STILLEY: That's correct, but on the --

THE COURT: Well, thank you.

MR. STILLEY: Okay.

THE COURT: But here though she keeps them here. Hopefully you're not keeping the Court's Exhibits on your desk.

MR. STILLEY: No, no, I'm not.

THE COURT: Well, did you need an Exhibit? If you'll give the number, I'll bet Miss Porter can find it for you in rapid order and we'll be about the Court's business. When I had to do what Mr. Stilley and these guys are doing, I had a bad habit of walking off with all of the Exhibits inadvertently, so I now have kind of z policy before any lawyer leaves the courthouse at the end of the day we make sort of a routine search to make sure they haven't inadvertently gotten away with an Exhibit. You-all want to take a quick break, come back in, and we may give everybody a chance to get -- okay. We're going to take by a ten-minute break. Everyone remain seated till the jury's out of the room. We'll be back in here by at least five after. Thank you very much. Remain seated till the jury's out of the room. Remember the admonition of the Court not to discuss this case with each or allow anyone to discuss it with you. (Jury leaves the courtroom at this time.)

THE COURT: We're going to be in recess for about ten minutes. During the ten minutes my suggestion would be for the attorneys and Dr. Roberts to see if they can get their Exhibits in order so we can move this without further delay. (Off the record at this time.) THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Remain seated. Court's in session. I don't know how long we're going to go. If I write excuses, can we go until maybe 5:30 or so? I'd like to. Hopefully we're going to get a little farther along. Continue your direct examination, please. BY MR. STILLEY:

Q Mr. Roberts, before we go into the area that I was in, I want to make sure on another area that I've covered it. You told us about asking an attorney, at least one attorney and CPA's. Did you ever ask anybody else in the position of authority if they knew of any legal duty to file a Federal income tax return?

A Yes. I presented the question to a U.S. Magistrate.

Q And what was -- what would be the name of that U.S. Magistrate?

A Do I need to tell that?

Q If there's no objection you can answer.

MR. BLACKORBY: It's going to be hearsay, Your Honor. He can't say what she said.

THE COURT: I'm going to sustain that objection and you'll not be permitted to answer that. Ask your next question.

MR. STILLEY: Your Honor, let me make sure I understand the --

THE COURT: Well, you need to come forward.

MR. STILLEY: Yeah.

THE COURT: And it's not a difficult objection and the ruling was pretty simple. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: Judge, I think the question I asked -- I know I'm kind of a scatterbrain sometimes, but I think I just asked what the identity of this magistrate was.

THE COURT: Well, you're trying to backdoor, you know, I think what you can't get in the front door. It is hearsay, and we had a hearing concerning Judge Jones yesterday and, you know. I ain't going to let you -- we ain't going there.

MR. STILLEY: It's not for the truth of the matter asserted, so how can it be hearsay?

MR. BLACKORBY: It's not even relevant.

THE COURT: That could be prejudicial. It's not relevant. It's prejudicial, and we're not going there.

MR. STILLEY: Well, what about what he said? That would be his own statement.

THE COURT: I don't want any conversations with the U.S. Magistrate, we're not going there. That's improper.

MR. STILLEY: I want to make an offer of proof, what it would be --

THE COURT: Talk and say anything you want to as long as it bears some resemblance to what he would say if he was actually giving testimony.

MR. STILLEY: What he would say is that he was talking to his friend, Beverly Stites, U.S. Magistrate Judge, who at this point in time --

THE COURT: Who was his patient, I thought.

MR. STILLEY: Yes, and friend. I mean she --

THE COURT: But I was here yesterday and heard her. Go ahead.

MR. STILLEY: Well, I -- one person's account is not necessarily a hundred percent the truth. I mean there's -- and there's two sides to every story. What happened was that he told her about his understanding.

THE COURT: Don't talk quite so loud. The jury is --

MR. STILLEY: He told her about his understanding and she raised her hand like this and said I can't go there. That's how I get paid, and that was that. See, it shows good faith.

THE COURT: On whose part?

MR. STILLEY: On his, that he -- see, if you was -- if you thought you was breaking the law, would you go to talk to the Judge?

THE COURT: I heard all of that yesterday.

MR. STILLEY: The jury didn't.

THE COURT: She testified she was a patient, that she wasn't quite sure what she told him she was doing, and would tell him about anything she could to get out of there and get on with the treatment and whatever. You know, I heard that. No, we're not going there and, you know, you've made your offer of proof. What's your next line of questions going to be?

MR. STILLEY: Well, I'll get off that one. It will be something else.

THE COURT: Well, I need to know. I need to know what something else is.

MR. STILLEY: Well, it would be where I left off.

THE COURT: Well, we ain't going there, though.

MR. STILLEY: No, I don't mean where I left off when I got my hand spanked again. I mean where I left off from Exhibit 12, the letter that he got.

THE COURT: I thought it was 4-2 --

MR. BLACKORBY: 2-4, Your Honor.

MR. STILLEY: Well, yeah, but he -- see that's -- the Government put in the letter that he sent. The Government didn't put in the letter that they sent back. See, that's kind of the key there.

THE COURT: Is that where we're going with this witness?

MR. STILLEY: Yes.

THE COURT: Do you have your Exhibits in order?

MR. STILLEY: I've got them in order this time. See, I had all three -- I had three sets all made up and I have lost them. I don't know what I did with them.

MR. BLACKORBY: Your Honor, he's said this about five minutes --

MR. STILLEY: Well, you're a fine one to be talking. You wouldn't give me --

MR. BLACKORBY: Hey, you've had exhibits for three weeks.

THE COURT: Hey, guys, listen. It's late. We're going to finish this testimony today.

MR. BLACKORBY: You want to go for sanctions, you just keep it up.

THE COURT: Listen. Let's -- let's all remain calm and cool and whatever. If anybody gets excited, it needs to be the judge. Guys, you know, but if he does have exhibits he's not seen, he needs to see them. We do not need to further delay this. But let's go --

MR. STILLEY: Well, I've got them in order and I've got three sets; one for me, one for him and one for you. (Pause)

MR. BLACKORBY: I don't see that any of this -- the parts of the Internal Revenue Code and the --

THE COURT: We're not going to introduce anything on the Internal Revenue Code.

MR. BLACKORBY: -- the Reduction Act --

THE COURT: We have ruled on that.

MR. STILLEY: Oh, wait a minute. It shows good faith that he's read the law.

THE COURT: I'll let you make an offer of proof, but they're not going to come in.

MR. STILLEY: I am going to have to come up here to make the offer of proof?

THE COURT: Well, you very well have to. Do I need to turn this jury loose and let us, you know, let us talk to you? Oscar, do you not -- I don't know what's happening, but you're not really functioning just exactly right. I don't know if you're not hearing or you're not comprehending from the, you know --

MR. STILLEY: Well, there's something up in that man's head right up there and that's the test, and that's what you're going to tell the jury the test is, and how do I get it from there?

THE COURT: I don't know, but you're not going to do it with the Magistrate. You're not going to do it with reading the law to him either.

MR. STILLEY: We cannot lay the law -- can I mention the law even?

THE COURT: No, but we've --

MR. STILLEY: Can I mention his ideas of the law --

THE COURT: I'm going to let you say that he thought he didn't have to, and I think he's done that. He's done that. He's testified about 20 or 30 minutes and that's what he said, he thought he didn't have to and whatever. He has talked to, you know, a CPA, an attorney, and whatever, and, you know --

MR. STILLEY: Well, are we going to be stuck with just a bare, I didn't think I have to, when he had read specific provisions?

THE COURT: No, no. You mean in the Internal Revenue Service Code he read several provisions?

MR. STILLEY: Right.

MR. WALTERS: He's already testified, Your Honor, he looked at various provisions in the code and he determined he didn't have to. There's no basis to read this section of the code.

THE COURT: I don't think there is either and I'm not going to let him do it. Ask something that's relevant. Let's try to get rid of this witness. After he finishes, what other witnesses do you have?

MR. STILLEY: This is the witness.

THE COURT: Okay.

MR. STILLEY: This is the Defendant.

THE COURT: Let's finish it then today. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

Q Mr. Roberts, I want to draw your attention to a document that's laying on your desk right up there and it is the bottom document. Can you take a look at that and tell us if you recognize it?

THE COURT: You still got one on the DOAR. Is that not the one you're asking about?

MS. PORTER: That's 2-4.

THE COURT: If you're not asking about that one, you need to take it off the DOAR. It's confusing to the jury.

MR. STILLEY: We will take it off. This document contains the document that was on the DOAR, but it also contains the Government's response to that document.

THE COURT: Well, I wasn't asking you to tell me what it was. If you're not asking questions about the document that's actually on the DOAR, it doesn't need to be there.

MR. STILLEY: Okay.

Q Do you recognize the document that's marked Defendant's Exhibit No. 12?

A Yes, I do.

Q And what is the front page of that document?

A It is an explanation of why I'm not required to file information?

MR. BLACKORBY: Your Honor, I'd object. There's nothing on this document that refers to Dr. Roberts. As far as I can see all the names have redacted. The dates have been -- no date is on it. No, the date has been redacted. Therefore, there's no relevancy to this witness or this issue.

THE COURT: Well, I guess if he can say that it was his letter, although it has been redacted --

MR. BLACKORBY: But, Your Honor, there's no names. He can nowhere point to this letter. Even the addresses have been redacted.

THE COURT: Well, as usual you all have me at a distinct disadvantage in that I don't have the Exhibits. You-all want to come back up and maybe I can look at it? (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: Your Honor, I can solve this problem real fast. I was looking at the front page and they were looking at the last one. The front page does have a date on it.

MR. BLACKORBY: The date is redacted, Judge. There's the date. Here we go. But where's his name? There's no names on any of those pages. There's no addresses.

MR. STILLEY: Well, now this is --

MR. BLACKORBY: We don't know what taxpayer this pertains to.

MR. STILLEY: You put this in? It has something that you've got --

MR. BLACKORBY: Well, put it in with all -- put it in. We put in. His names are on the ones we put in.

MR. STILLEY: Then do I need to go to the fourth page?

THE COURT: Well, listen. If Exhibit 2-4 is in and if that's --

MR. STILLEY: Well, it's not -- yeah, it's in, but this is -- this page four is the document that's not in.

MR. BLACKORBY: Where's it reference to Dr. Roberts on that page?

MR. STILLEY: It's not a letter to Dr. Roberts.

MR. BLACKORBY: Well, there's no relevance then.

MR. STILLEY: Sure, there is. Let me explain it.

MR. BLACKORBY: Quiet.

MR. STILLEY: As quietly as I can, other than he's got to hear.

THE COURT: Well, he's not, he's not hard of hearing.

MR. STILLEY: Right. Well, let me move over.

THE COURT: He has some problems, he has some problems, but that's not one of them.

MR. STILLEY: Right. All right. This -- the reason these two go together, and the reason that this is pertinent --

THE COURT: Well, we got a problem before we talk about what goes with what, you know. Why is there no name or address on it? That causes the Court some concern.

MR. STILLEY: They redacted all that out. If I get the right name on it, can we put it in? I can put the right name.

MR. BLACKORBY: It would be hearsay unless it's Dr. Roberts, Your Honor.

MR. STILLEY: Well, I don't think so. Even if it is hearsay when he just -- you're not trying to put in the truth of the matter asserted, hearsay is not -- it's even an issue.

MR. BLACKORBY: You have no basis to lay a foundation to somebody else's letter. I would have no way to cross examine this letter without the author or recipient on the stand.

MR. STILLEY: Well, it says right here it's the Internal Revenue Service.

MR. BLACKORBY: Not the way it's redacted.

THE COURT: Who took out the names? Did Dr. Roberts do that?

MR. STILLEY: Yeah. I believe so. It goes to protect the person that actually got that letter. I mean when it comes down to it, I mean it's not -- if you want to see the original, we've got it. I mean not the original-original, but the one that's got all that information on it.

THE COURT: Well, was it received? Does Dr. Robert's name go here? Is that what you're saying?

MR. STILLEY: No, no. That's another individual on the stand.

MR. BLACKORBY: Your Honor, this is all to another individual. I challenge the relevancy of it.

THE COURT: Yeah, it is, if it's not Dr. Roberts, then I don't think it is relevant.

MR. STILLEY: Well --

MR. BLACKORBY: Your Honor, shall we address the rest of these Exhibits?

THE COURT: Yeah. Why don't we go ahead and do that now? Tell me about the rest of your Exhibits. I'm not going to admit that one.

MR. BLACKORBY: Your Honor, number one, I believe is the first two pages of Government's 2-4.

MR. STILLEY: Let me get my whole list. I didn't bring my whole list up here. I'll look off of yours if you don't mind. Thank you.

THE COURT: Is your objection then, Mr. Blackorby, because he's only introducing two pages?

MR. BLACKORBY: Well, I mean I'm not -- if I could confirm that, I don't have an objection. I think it's already in, but --

MR. STILLEY: Sorry. I don't need to bother with going through asking foundation questions, do I? Is this 4-2?

MR. BLACKORBY: That's 2-4.

MR. STILLEY: 2-4.

MR. BLACKORBY: The first two pages of 2-4.

MR. STILLEY: Okay. This is yours.

MR. BLACKORBY: Number 2 is a letter I wrote Dr. Roberts advising him that he's being indicted, and this is the response he gave. Now, if this comes in, it forces me to put in my correspondence and cross examining him on that and I don't think that's proper. He's already been charged or is in the process of being charged.

THE COURT: It's not proper. We're past the Indictment. I'm not going to let that in. What's the other?

MR. STILLEY: Am I going to be prohibited from even asking him his response?

THE COURT: Yes. What's the other Exhibit?

MR. STILLEY: Wait a minute. Wait a minute.

THE COURT: Let's get the Exhibits in. Let's find them --

MR. STILLEY: Just a minute. I want to make sure we got a good record on this, and I don't think we've got a good record on this.

THE COURT: Fine.

MR. STILLEY: We've got a letter that Dr. Roberts wrote to --

THE COURT: No. You've got -- you're trying to introduce a letter through Mr. Blackorby that comes in saying to Dr. Roberts that you're going to be indicted. That's the first letter, is it not?

MR. BLACKORBY: Yes, sir.

THE COURT: And this is his response back to Mr. Blackorby?

MR. STILLEY: Well, surely we can get his response on the issue of good faith because he's made an offer. He said tell and I'll file. Show me the law and I'll file it, and, and there's no way -- I mean if you've even made a cursory glance at that, it's very clear that's what he's saying. You show me the law, I file the return, and everybody goes home happy. Now, what could be more relevant to the good faith of Dr. Roberts than an offer to --

THE COURT: Don't talk loud, Mr. Stilley. If you raise your voice again, I'm going to clear the jury from the room.

MR. STILLEY: What could be more relevant to the good faith, subjective good faith of Dr. Roberts than a letter in which he offers to file if you'll just show me the law?

THE COURT: Have we not already been through that about ten times --

MR. STILLEY: Oh, no, oh, no.

THE COURT: -- about the law? Yes, we have, Mr. Stilley. You apparently are not remembering it. I remember it. I can think about every time that we've done it.

MR. STILLEY: Judge, apparently what we're doing here is assuming not only that when he asks this question that he he's asking a question, but also that he's making a statement and also that we're trying to prove the truth of that statement and that's not true.

THE COURT: Let me see the letter he wrote Mr. Blackorby.

MR. BLACKORBY: This is not relevant to his state of mind in 93 and 94, Your Honor.

MR. STILLEY: Judge --

MR. BLACKORBY: It's a self-serving document. He was told he would be indicted.

THE COURT: What other documents do you have to come in, if this comes in?

MR. STILLEY: What we're allowed to, Judge. I'd like to bring in --

THE COURT: No, no. What other documents do you propose to introduce if the Court allows in Defendant's No. 2? I've not made that decision.

MR. STILLEY: You want me to go through my entire Exhibit list and tell you what we want brought in?

THE COURT: Yeah, we are going to have to sooner or later, and I need to know what they are.

MR. STILLEY: I want to introduce a Questionnaire, U.S. Census 2000.

MR. BLACKORBY: I object, Your Honor. These are Census Questionaires.

THE COURT: What in the world is that relevant to?

MR. STILLEY: Judge, I can hook this up because Dr. Roberts and ultimately on purpose here, Your Honor, Dr. Roberts had sent correspondence to the IRS asking them about whether or not they had a currently valid OMB number, and the law says that if a document doesn't have a currently valid OMB number, then a person cannot be punished.

THE COURT: What's that got to do with Defendant's Exhibit No. 3 --

MR. STILLEY: Well, let me show you.

THE COURT: -- an enumerated questionnaire?

MR. STILLEY: Let me show you. That's Exhibit 5 and we just want to get there anyway.

THE COURT: Now, it's Exhibit 3.

MR. STILLEY: What's that got to do with it?

THE COURT: Yeah.

MR. STILLEY: You see that OMB number at the top?

THE COURT: No, I don't.

MR. STILLEY: Or did they screw it up and -- it's got an OMB number at the top.

MR. BLACKORBY: Going to be irrelevant to the argument anyway. The courts have already ruled that such arguments are not proper.

MR. STILLEY: The original, I've got the original over there and try taking my word. I mean absolutely it's the truth and fact that at the top of it -- he's going to go get it. At the top of it has an OMB number with an expiration date. Now, in order to make that relevant, what I have to show you is what the law says. It says public protection. Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain --

THE COURT: Do not raise your voice, Mr. Stilley. I'm not going to tell you that again either, sir.

MR. STILLEY: Failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a currently control number assigned by the director or fails to state that such request is not subject.

THE COURT: What in the world has that got to do with something that happened in 93 and 94?

MR. STILLEY: The returns that this -- that the prosecution gave us part of have an OMB number that has no expiration date. So it's not a currently valid OMB --

THE COURT: What is that related -- How is that related to anything, Mr. Stilley?

MR. STILLEY: Because he asked -- now, you know, we got to get back. Duty or not, subjective good faith. He asked if they had a current valid OMB number for this. Got no response.

THE COURT: Defendant's No. 3 is not coming in either. What's your other exhibit, but I haven't made my mind up yet on No. 2. Show me Number 4.

MR. STILLEY: No. 4.

THE COURT: No. That's the statute. Yeah, we are not going to do any statutes.

MR. BLACKORBY: Your Honor, 5 is also the statute, Your Honor.

MR. STILLEY: Yeah, the statutes --

MR. STILLEY: Let me tell you what No. 4 says.

THE COURT: Well, I can read.

MR. STILLEY: Well, you haven't --

THE COURT: I'm not going to -- it's a statute. I've already told you we're not going to talk about statutes to the jury and have him read it or you read it or whatever.

MR. STILLEY: Well, the statute says -- and I can stay this in about one sentence. The statute says that OMB numbers can't last more than three years.

THE COURT: Fine.

MR. STILLEY: Therefore, they have to have an expiration date, but if I'm going do have to just provide and disclose my whole handle and everything to even getting anything in --

THE COURT: I want to know what your Exhibits are.

MR. STILLEY: This enumerator questionnaire is a 2000 --

THE COURT: No, I'm past that. I'm now up to 6. What is No. 6?

MR. STILLEY: I understand that, but can I make my record on this?

THE COURT: I thought you just did.

MR. STILLEY: No, I didn't.

THE COURT: I have ruled about 20 times in this case that you're not going to be permitted to talk about any statutes, any acts, any law, and I don't know, Mr. Stilley, how to get that across to you. You know, I don't -- you know, I don't think -- we're not connecting for some reason.

MR. STILLEY: That's not what I'm trying to do. What you're trying to do is to force my client to simply say I don't know of any law without demonstrating how he came to that conclusion. Subjective good faith is an issue. We have to know what went into his mind.

THE COURT: You're getting way off in quicksand, I'm fearful. What other Exhibits have you got that you think have some bearing on what his quote state of mind is?

MR. STILLEY: Judge, may I ask --

THE COURT: What other Exhibits do you have that you believe tend to reflect his state of mind? (Off the record briefly.)

MR. STILLEY: No. 6 is the regulations implementing the --

MR. BLACKORBY: The Paperwork Reduction Act, Your Honor.

MR. STILLEY: Yes, and it makes it very clear that nobody can be punished for not complying with an information collection request that doesn't have a currently valid OMB number.

THE COURT: Okay. And we've talked about OMB. What's No. 7?

MR. STILLEY: Do I take that to be a no?

THE COURT: It's no right now.

MR. BLACKORBY: Section on the Internal Revenue Code, Your Honor.

THE COURT: Section B and D of the Revenue Code? Do you think there's any way with the Court's previous ruling this should come in, Mr. Stilley?

MR. STILLEY: Absolutely I do.

THE COURT: You think the Court was just teasing when I issued these 20 or the 30 rulings that you can't get these things in?

MR. STILLEY: Judge, I need -- wait a minute. I need, I need to establish what my reason was for it, because otherwise we'll get up on appeal and boom, wham, I get my hand slapped again, if there is one. I hope not. Dr. Roberts made certain statements and they were admitted by the Government, and I'm sure glad I let them in, because if I hadn't, I guess it would have been all over. And I want to explain why he believes that --

THE COURT: Why he what?

MR. STILLEY: Why he believes that because his information, that comes straight out of the code.

THE COURT: I think that he is saying -- I don't want him trying to find exactly what I'm saying is this and that and this and whatever.

MR. STILLEY: You're not going to let him just look at this statute and say based on my understanding in reading this statute, I came to a certain conclusion --

THE COURT: We're not getting anywhere. I'm going turn this jury loose. (Off the record at this time.) (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Ladies and gentlemen of the jury, there's legal some issues we're going to discuss, and fearful that unfortunately we're not going to get them resolved today. With that in mind, we're going to break for the day. We've had a long hard day and let you go home. We'll reassemble here at 9:00 in the morning. I do need above all that you not discuss this with anyone at home or allow anyone to discuss it with you. Again, if there's newspaper accounts or television accounts or whatever, do not under any circumstances watch that or read it or whatever. Also, if there's any effort by anybody to contact you or any sort of communication or whatever, you need to advise this Court immediately. You-all have a good

evening. We'll have coffee and doughnuts and rolls and whatever here for you ready in the morning. Leave your notes here. Leave them upside down. You may want to start leaving your notes and, you know, whatever in the jury room. We'll remain, we'll remain in session until you're out of the courtroom. Thank you very much. (Off the record at this time.) (THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE OF THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: We certainly lost the jury. I had hoped we could conclude the testimony today you, but it became blatantly obvious that we weren't. The problem we've got stems from some exhibits and how many are there? Are there 12? Is that what we counted?

MR. STILLEY: That's correct.

THE COURT: We have 12 Exhibits. I think, Mr. Stilley, you need to tell me, first of all, how you believe these 12 Exhibits are relevant to the Indictment which alleges that income tax returns were not filed back in 93/94. Aren't some of these statutes and citations that you're doing, weren't they developed after 94 or 95?

MR. STILLEY: No, I don't think so. And I don't mean to be hyper-technical, but I believe the Indictments said make returns in 1993 and 1994.

THE COURT: I've already ruled on that, Mr. Stilley, and you don't need to remind me of that.

MR. STILLEY: We would have to take these one at a time if we want to discuss about whether or not they were pertinent for those years, is that correct?

THE COURT: Yeah. That's, you know, that's what we were trying to do up here and we were not making much progress. I probably ought to have a set.

MR. STILLEY: Okay. Well, let's start with Defendant's --

THE COURT: Well, I probably ought to get a set, you know, if --

MR. STILLEY: You don't have a set? Okay.

THE COURT: Mr. Blackorby, do you have a set?

MR. BLACKORBY: I don't have a full one, Your Honor. I think part mine may have stayed on the bench. I do not have two, three, four, five, six, or search. I have eight or nine. I have eight, nine, 10, 11, and 12. I'm missing some in the middle.

MS. PORTER: Here's some of yours, I think. (Pause)

MR. BLACKORBY: Thank you, Your Honor.

MR. STILLEY: Does everybody have a complete set now?

THE COURT: Do you have a set, Mr. Blackorby?

MR. BLACKORBY: Yes, I do, Your Honor.

THE COURT: What about Defendant's Exhibit No. 1? Did I not understand that was already in evidence?

MR. STILLEY: I believe that's correct, Your Honor.

THE COURT: Is it in evidence, Mr. Blackorby, in the same shape it's here? This is a two-page document.

MR. BLACKORBY: Your Honor, it appears that the Defendant's Exhibit No. 1 is the first two pages of Government's Exhibit 2-4. No, it's different, Your Honor. Defendant's Exhibit No. 1 does not have the notary completed, whereas Government's Exhibit 2-4 does.

THE COURT: If 2-4 is in, why do you need to introduce this one?

MR. STILLEY: I don't, Your Honor. I think we can move on from that one.

THE COURT: You withdrawing Defendant's Exhibit 1?

MR. STILLEY: Yes.

THE COURT: Defendant's Exhibit No. 2, a letter dated March 15, 2000, from Mr. Blackorby. And it's reference to apparently Mr. Blackorby's letter of March 3, 2000. Why is that relevant?

MR. STILLEY: Your Honor, the big issue here is knowledge, subjective good faith on the part of Dr. Roberts.

THE COURT: Well, is it not subjective good faith back in 93 and 94 as opposed the March 15 of 2000?

MR. STILLEY: Your Honor, I made that argument a lot of times in this case and we got stuff all the back to 1982 and all the way up 1998 or 99. So if they can go all over the last two decades -- and there's another thing. Even if it was improper for them to do that, if he had good faith in 1994, why wouldn't the same statements in 19 -- or 2000 indicate that he still had the same good faith he had all along? If this was the first letter that he wrote, we might question it. But he's saying the same things that he said again and again and again, or at least implying those things.

THE COURT: Mr. Blackorby?

MR. BLACKORBY: Your Honor, that's exactly why the Circuit Courts don't allow evidence like this. The Court's have made it clear, including the Eighth Circuit, that any evidence as to willfulness or good faith goes to the time when the returns were due as charged. All the Defendant is doing here, once he's been notified that he's going to be charged, he's writing a self-serving letter that is seven years after the crime.

MR. STILLEY: Your Honor, I'd like to hear a case citation on that.

MR. BLACKORBY: I refer you to my Motion in Limine, Your Honor.

THE COURT: I think we've already done that. Is there anything else you want to -- I'm not going to admit it. Anything else you want to put on the record in connection with Exhibit 2?

MR. STILLEY: Yes, there is. When I was here --

THE COURT: That's why I asked.

MR. STILLEY: -- Mr. Roberts and I was here on the day of the arraignment, I asked probably five times until I got shut down on what law, what specific law that it was that required Dr. Roberts to file this return. What is the -- the specific law he's charged with violating?

THE COURT: What has that got to do with a letter of March 15? We were here after that weren't we?

MR. STILLEY: Yes, we were. But your response to that was there may be a time when we will take that up, but that's not now. That will be later.

THE COURT: I don't think we're going to take it up with the March 15, 2000, letter. What's, what's Defendant's 3 about, an enumerated questionnaire concerning the 2000 year census?

MR. STILLEY: That's right. This is a legitimate Government document which complies with the Paperwork Reduction Act of 1980, and that it has an Office of Management and Budget number that has an expiration date, and I have -- there's some other things in here that we need go -- we will have to go into them that both by statute --

THE COURT: You need to go in -- you can be seated, if you need to.

MR. STILLEY: Okay. Both by statute and regulation, these laws state that a person who does not comply with an informational request that doesn't have a currently valid OMB number can't be punished for that. And what that law says is that this law, which is I believe it's 44 USC, 3507, I think it's 3507, it says that this law

supercedes any other law; in other words, notwithstanding any other provision of law. If the Government tries to get information --

THE COURT: How is this relevant back to the 93/94 tax returns?

MR. STILLEY: Because the partial tax returns that the Government tendered to Dr. Roberts and supposedly being complete returns have an OMB number that doesn't have an expiration date, which indicates that it's a bootleg request for information; that it does not comply with the Paperwork Reduction Act of 1980. And now I know what you've said about the law and I've heard that time and time again, but the question is what's in the mind of Dr. Roberts? Now, if Dr. Roberts asked questions about why there's no OMB number or can you explain this to me and he gets no response, and the law says that if he doesn't respond to that kind of a request, it doesn't have a currently valid OMB number, that notwithstanding any other provision of law, he will not be punished for that. How could he have a subjective bad faith that is in his mind think that he was violating a valid law? That's not possible. That's why I want to put in this enumerator questionnaire to show that the Government knows --

THE COURT: Do you have an enumerator questionnaire for 1993 or four?

MR. STILLEY: No, but they didn't -- they only do a census every ten years and that's on an even ten years, and I already knew or thought I knew what the Government would say about that was, well, this is a 1993 return, so you don't need an expiration date. It's just for 1993. Well, this enumerator questionnaire is for just for the Census 2000. After the Census 2000 is over, it's gone. But guess what. The Government, in compliance with the law, put an OMB number with an approval that all expired 12/31/2000. There they complied with the law.

THE COURT: Mr. Blackorby?

MR. BLACKORBY: Your Honor, as I said at the bench, a Census Questionnaire for the year 2000 has no relevancy to the conduct in 93 and 94 on filing Federal individual income tax returns. The Paperwork Reduction Act has already been addressed by the courts and the Internal Revenue Code, and the tax returns derived there from are in full compliance with the Paperwork Reduction Act. Therefore, there is no basis and there's no relevance for that or the following Exhibits by the Defendant that site the public law.

MR. STILLEY: Your Honor, if I could respond to that --

THE COURT: You need to respond to it, because what I would like to do is we're going to make a ruling on these tonight or however long it takes and then hopefully tomorrow we can get on with the testimony, Mr. Stilley --

MR. STILLEY: Okay. Your Honor, I think that's a red herring to suggest that because this is 2000 that it really doesn't count, and if that was really that important, I think we could get a macadamia nut survey for 1993 or 1994, which also complies with the Paperwork Reduction Act, and now, and the reason that that's important is because that survey is for a given year. And despite the fact that it's for a given year, it does have an approval, statement of approval, OMB number and an expiration date. Now, I think that's just a red herring. We don't need to go into that, because we've got an example here of a document that's only good for a certain time. That is the year 2000. But it has an expiration date on it in compliance with United States law. Now, and don't get me wrong. I'm not trying to put this in for the purpose of proving the law per se, but prove the subjective good faith.

THE COURT: Well, it's not coming in, but I think you've made your record on it. What about No. 4? Is that just a law you were trying to cite?

MR. STILLEY: Yeah. That's 3507 in which it says that, that a request for information or an OMB number approval can only be valid for three years. That's the maximum. If you see an OMB number right now for 2005, it has to be a bootleg request.

THE COURT: Mr. Blackorby, does that have anything to do with 93 and 94?

MR. BLACKORBY: No, Your Honor, nor the Internal Revenue Code, nor the filing of tax returns.

THE COURT: I'm not going to admit 4. What's 5?

MR. STILLEY: That it's the 44 USC, 3512, Public Protection which obviously does not apply in this case. Says not withstanding any other provision of law, no person shall be subject to any penalty for failing to obtain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the director, or fails to state that such request is not subject to this chapter. And we know that's not the case here because on this partial 1993 1040, at the top it says for Privacy Act and Paperwork Reduction Act Notice see page four, which, of course, we don't have page four. So that's why we think that Defendant's Exhibit No. 5 should come in, should come in for two reasons; one, because it's the law; and, No. 2, because knowledge, subjective good faith in that head right over there, Dr. Roberts.

THE COURT: You're saying he relied on that in 1993 and 1994?

MR. STILLEY: I believe that's right.

THE COURT: Mr. Blackorby?

MR. BLACKORBY: Again, it's arguing law, Your Honor. I don't think that's proper for a factual basis before the jury and I don't recall anything date 1993 or 1994 where Dr. Roberts raised this issue.

THE COURT: What was the earliest time you did raise this issue?

MR. STILLEY: Actually, I'm not, I'm not absolutely positive about that. I could check that tonight and find out.

THE COURT: Well, I'd kind of like to know this afternoon.

MR. STILLEY: You mind if I talk to my client a little bit?

THE COURT: No.

MR. STILLEY: Your Honor, I found out about that in 1990 or 1991, and I'll be honest with the Court he did not put in writing, but then again, he asked for numerous answers from the Government and they didn't put it in writing and they haven't gotten in trouble for it, so I feel like it's something that --

THE COURT: Well, when did he first put it in writing? Maybe I --

MR. STILLEY: He says he doesn't know when he put it in writing.

MR. BLACKORBY: Your Honor, since they have offered no basis to establish until today that Dr. Roberts has chosen this defense, I would move that it wasn't relevant in 1993 and 1994, and the Defendant hasn't established that it was relevant.

MR. STILLEY: Your Honor, he's started -- I mean I've represented to the Court and I'm willing to put his testimony on if we have to protect the record that he knew about this in 1990 or 91 and relied on it at that point in time, and I would submit that he doesn't have to write down. Obviously the IRS doesn't --

THE COURT: I tell you what. Let's go through and see if we can get worked on to what the Court's going to do. When I finish, if you need to put him back on to protect your record or whatever, you certainly can, out of the presence of the jury. Exhibit 5 I'm not going to introduce. What about 6? Is that more of the same?

MR. STILLEY: That's more of the same just making it more clear, more plain, more absolute confident it's got to be that way every time.

THE COURT: But this has to do again with the --

MR. STILLEY: That's regulations implementing --

THE COURT: OMB or --

MR. STILLEY: -- implementing the Paperwork Reduction Act of 1980.

THE COURT: And did he rely on that in 1993 and 94?

MR. STILLEY: I'm sure it did. It was 1990 or 91 that he knew about this issue.

THE COURT: Mr. Blackorby?

MR. BLACKORBY: Well, there's no evidence to that, Your Honor. They have introduced no evidence at all that either 4 or 5 -- either 4 or 6, which raises an issue by this Defendant until today.

THE COURT: Do you have any proof that it was raised before today?

MR. STILLEY: Your Honor, a citizen is presumed to know the law. There's limited exceptions. For example, as in and case on subjective good faith that he's presumed to know the law.

THE COURT: I didn't mean to make that a trick question. Do you have any information that he raised that before today?

MR. STILLEY: Yes, 1990 or 1991.

THE COURT: Okay. That's going to be your testimony concerning it?

MR. STILLEY: I think it is. I mean I'll put him on and ask him what his testimony is. I guess that would be the best proof. I know that he knew about that at that point in time and for the record let me make this observation. If he asked a whole bunch of questions more directly to the point and never got an answer, why should we expect him to put his beliefs in writing and ask for an answer to another question when they have never answered any of the questions that he had? Shall he be punished for that? This is a criminal case.

THE COURT: Well, I'm concerned, Mr. Stilley, he May just be raising it for the first time.

MR. STILLEY: Well, now, the jury would have to be the one to make that determination if he based it on fact.

THE COURT: No. I think going there's going to be some gate keeping duties before the jury gets to hear it, Mr. Stilley. And that's why we're here out of the presence of the jury.

MR. STILLEY: Well, let me ask you this then. If I was to put Dr. Roberts on and he was to testify that he had this understanding in 1990 or 1991, would the Court then undertake to determine the truth or the untruthfulness of that testimony to decide whether the evidence concerning that should come in?

THE COURT: Let me say this. I would certainly consider it. Let's go through them first and I think that's what I suggested that we do. Let's go through these and then if you do want to put on some testimony, you can, and the Court can certainly reconsider it further. What about 7, 7, 8, 9? These are statutes, are they not?

MR. STILLEY: Yes.

THE COURT: 10?

MR. STILLEY: Yes, they're statutes.

THE COURT: 11?

MR. STILLEY: Yes.

THE COURT: Have we not ruled on the statutes already?

MR. STILLEY: What was the ruling?

THE COURT: Mr. Blackorby, you have a ruling?

MR. BLACKORBY: Yes, Your Honor. It's in response to Government's Motion in Limine you've ruled on such statutes. These all pertain to the Internal Revenue Code. They're not admissible. The Defendant's already testified what his belief was and the statutes are an argument of law and, therefore, come from the Court and not evidence that is admitted.

MR. STILLEY: Your Honor, we would be willing to take an Instruction not to take his opinions of the law as the truth of the matter, in order for him to be able to look at this and show it to the jury and say, jury, the reason I came to my conclusions which would doubtless be marked for ridicule is because I read this in the law.

THE COURT: He read this in 1993 and 1994.

MR. STILLEY: I'm sure -- I'll bet it was 1990 or 1991. I'm not positive about that.

THE COURT: Is that in writing anywhere or is that just going to be his testimony?

MR. STILLEY: I'd say it was -- I'd have to ask him about that.

THE COURT: Well, I'm sure he's going to get asked about that, you know, on cross examination or by the Court, if that his testimony. I'm not inclined to admit 7, 8, 9, 10 or 11 because of the previous rulings of the Court. That is, that it is arguing law and arguing the statutes, but I'm going to hear you in a minute. If you want to put on some more testimony or put on Dr. Roberts for that limited purpose, you certainly can. What's the deal on 12? I wasn't quite sure that this hasn't already been someplace. Is it another Exhibit?

MR. STILLEY: Your Honor, part of that is set forth in the Government's Exhibit.

THE COURT: What number is it in? What Government Exhibit is it?

MR. STILLEY: I believe it's 2-4. I believe that's 2-4. Look at that.

THE COURT: Is it the same as Government's 2-4?

MR. BLACKORBY: No, it's not, Your Honor, because this has been redacted.

THE COURT: Okay. 2-4 has not been redacted.

MR. BLACKORBY: That's correct, Your Honor.

THE COURT: Is all of Exhibit 12 within 2-4?

MR. BLACKORBY: No, Your Honor.

THE COURT: It's the back page that's causing the problem. The one where it doesn't have a name? It's been blocked out?

MR. BLACKORBY: Your Honor, the second page, all the names have been redacted. Your Honor, we have no idea who this is directed to. There is no proof this was directed to Dr. Roberts. The last page even addresses the 1988 tax year. Now, I assume Dr. Roberts filed in 1988. His returns are already in the record and as was testified at the bench by Mr. Stilley or as stated to the Court, this is actually for another third party that they redacted their name to. I think the Court's trying to be misled here, Your Honor, by trying to infer that this is something Dr. Roberts had something to do with.

MR. STILLEY: Your Honor, we would never do that. I mean it's totally up to them on cross examination if he's telling a lie like that, and Dr. Roberts wouldn't tell a lie anyway. The reason that this is relevant, this last page of Defendant's proffered Exhibit 12 is because of this letter was sent so somebody else in response to page one of Defendant's proffered Exhibit 1. And because somebody else was able to send that letter and then got a letter back from the IRS stating based on our information, you are not liable for filing a tax return for this period, he thought that that should work for him. And that he also thought if the IRS tells people --

THE COURT: Well, Mr. Stilley, how do we have any idea what the person's situation was, whether they had any gross income or whatever, if we don't know who it was or -- I mean you just got a letter here and the letter has been redacted, and it says that based on our information, you're not liable for filing your tax return. And you just kind of picked that up, blocked everything out, and says that Dr. Roberts relied on that. How do we know the circumstances are even remotely similar?

MR. STILLEY: I'd have to lay a foundation for that if I was -- am able to do that. I would have to lay a foundation.

THE COURT: Well, I'm going to have to hear that, because this one I promise you is not coming in without not only foundation but real good testimony, but I'm not inclined to admit those for the reasons stated. Do you want to put on some testimony in connection with 2 through 12 in the form of Dr. Roberts? Don't have to, but certainly can.

MR. STILLEY: Yes, I do. I do. Just a minute. (Pause)

THE COURT: Dr. Roberts, I would remind you that you're still under oath, sir. It's 5:07. The Court has made a tentative ruling in connection with certain Exhibits and your attorney has elected to make an Offer of Proof outside the presence of the jury. The offer of proof will actually be used for two purposes; No. 1, it will help the Court perhaps in connection with its ruling, and, No. 2, it will be available to you should a jury convict you, should this matter be appealed, it will be in the record for the Eighth Circuit to review. So with that in mind, if you want to proceed, Mr. Stilley, go ahead, sir. I'm also going to allow the Government to cross examine Dr. Roberts.

MR. STILLEY: That will be fine. Are you allowing me to make a foundation on all of these documents that I want to lay?

THE COURT: You can, but, you know, I -- it's late and I confuse easily, so you may want to start with No. 2 and go forward.

MR. STILLEY: Okay.

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OFFER OF PROOF EVIDENCE

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DIRECT EXAMINATION BY MR. STILLEY:

Q Mr. Roberts, when did you first become familiar with the Paperwork Reduction Act of 1980 and more specifically the requirement that collections of information by Government agencies have an OMB number?

A In approximately 1990 or 1991.

Q And did you know something about what laws provided for that?

A Well, I was familiar with the Paperwork Reduction Act and that it had some requirements specific to Government forms and the gathering of information, and if that was not a current number, that it was considered -- I believe the term was bootleg and it was not to be used.

Q Did you in any way -- did that in any way affect your thinking about any duties that might have been placed upon you by the law?

A Well, certainly if I had a liability and got to the point that I needed to fill out the form, that would have been a matter of great concern.

Q Okay. I'm going to draw your attention to Defendant's Exhibit No. 7.

THE COURT: Well, I thought we were going to take them in order.

MR. STILLEY: Okay.

THE COURT: We were talking about 2, wasn't he?

MR. STILLEY: Well, actually, no, we weren't talking about 2 at all. We were talking -- I thought you had made a ruling on 2, but maybe you haven't.

THE COURT: Well, no. You know, I want you to make an offer of proof on all of them, if you want to. You know, I've made a ruling on all of them, but any offer of proof that you desire to make on -- start with Exhibit 2 going through Exhibit 12, you know, now is the hour. BY MR. STILLEY:

Q Draw your attention to Defendant's proposed Exhibit No. 2, do you recognize that document?

A Yes, I do.

Q And what is that document?

A This is a letter in response to notification from Mr. Blackorby concerning my need in his opinion to come in and negotiate a plea before I was indicted in reference to income tax matters in 93 and 94.

Q Whose signature is that at the bottom?

A That's mine.

Q Do the ideas that are represented in this letter represent the ideas that you have -- that you had in 1993 and 1994?

A Yes. It's consistent with that.

THE COURT: What's the earliest you expressed those letters or anything in writing that would be consistent with the proposed Exhibit 2?

A In its totality, in this response, the segments of it, the first time that I was notified by the Internal Revenue Service that they needed information from me when I presented to them my questions concerning the liability issue.

THE COURT: Yeah. And that was my question. When was that?

A I believe my first response was in 1992.

THE COURT: Okay. And you have -- do you have a copy of it?

A Yes, sir, I do.

THE COURT: What's the date of 1992?

A I believe it's 15 September, 92.

THE COURT: September 15th?

A Yes, sir. I believe that's correct.

THE COURT: Was that part of the documents contained within what 1-3, the Government's Exhibit?

MR. STILLEY: I believe that's correct. Well, I was thinking it was 1-4 or 2-4 and 2-6. I might be wrong about that, though.

MR. BARRINGER: It is 1-3, Your Honor. I'm looking at it.

THE COURT: Do you agree it is 1-3?

MR. STILLEY: I don't have it in front of me, but if he says it's that way, I'm sure it is.

MR. STILLEY: Yes, I agree, Your Honor.

THE COURT: Anything else you want to put on in connection with No. 2?

MR. STILLEY: I think that's enough for 2.

THE COURT: Mr. Blackorby, cross examine on No. 2?

MR. BLACKORBY: Okay, Your Honor.

CROSS EXAMINATION BY MR. BLACKORBY:

Q Dr. Roberts, your March 15th, 2000, letter was in response to my letter notifying you were about to be indicted, isn't that right?

A That's correct.

Q And asking you to advise me who your counsel was going to be and if you wished to enter into plea negotiations, is that correct?

A I remember the plea negotiations component. I don't recall the attorney portion.

Q Well, let me show you. Is this the letter? (Pause)

A Yes; that's correct.

Q Okay. Would you tell me, Dr. Roberts, and all of this correspondence took place in March of 2000, right?

A Correspondence that is related to this Exhibit 2?

Q Yes, sir.

A Yes, sir.

Q My letter to you?

A That's correct.

Q And prior to that we had had no contact, is that correct?

A That is correct.

Q Now, you've stated that you stated all of your positions before and in response to me in the document 1-3, is that your testimony?

A Are you referring to the September 15th, 92 --

Q Well, let me show you my copy of 1-3. (Pause) Is that --

A What was your question again?

Q When you testified to Mr. Stilley, you referred to Exhibit 1-3, what was your testimony? What was 1-3 verifying for you, sir?

A 1-3 was the information that I had relayed on numerous occasions to the Internal Revenue Service concerning my status as a non-taxpayer and a non-filer, and inclusive in that was some argument certainly based on my knowledge as to why I was not required to file.

Q Well, let me ask you, sir, and I think you testified everything in the letter you made to me on March of 2000, is referenced back in 92 in Government's Exhibit 1-3. Was that your testimony?

A Yes, sir, not specifically related, but certainly the gist of it's related.

Q Well, let me ask you in Exhibit 1-3 where do you talk about the OMB number?

A That's certainly the exception.

Q You didn't bring it up. It wasn't in 1-3, was it?

A No, sir, it was not.

Q Isn't it true the first time you document that anywhere is in your letter to me in March of 2000?

A That could be correct. I have a recollection that I had addressed that issue at one other time, but I couldn't tell you a date of a letter.

Q Do you have any other document other than the letter to me in March of 2000 that shows that you were talking about the OMB number?

A Not that I am aware of.

MR. BLACKORBY: Your Honor, that's all I have on Exhibit No. 2.

THE COURT: The Court's ruling that would be -- I'm not going to permit that to be admitted and that's still the Court's ruling. Anything else you want to ask him about the Exhibit 3, which is the OMB -- that's the questionnaire, isn't it?

MR. STILLEY: That's the questionnaire and, Judge, I think it will be a total waste of time. Wait a minute. No, it wouldn't be a total waste of time, because I do want to ask him to preserve for the record that he did have knowledge about this in spite of the fact that he has not written or published about it.

THE COURT: Okay.

MR. STILLEY: So I'll ask him a few questions. Can we take 3, 4, 5 and 6 together for purposes of questioning?

THE COURT: Yes, sir.

REDIRECT EXAMINATION BY MR. STILLEY:

Q I'm going to show you documents marked as Defendant's Exhibit proffered Exhibits 3 through 6. You recognize those?

A Yes, I do.

Q When did you first become aware that a public document or a request for collection of information by the Government from a citizen had to have an OMB number?

A Approximately 90 or 91.

Q And can you tell us a little bit about what you found out about the requirement of an OMB number at that time?

A I just found out that there was a Paperwork Reduction Act that required certain documents, certain paperwork that had to have specific numbers. I don't know if it was any regulatory procedures. I don't know that. I just know they had to have the number, and if it did not have that number or that number was not current, that those forms were not supposed to be used, and I'll use the term again that I learned that it was a bootleg form and it was not to be used.

Q Did anybody tell you that you needed to write something down or publish something in order to obtain the protection of the Paperwork Reduction Act of 1990?

A No, they did not.

Q Are you a citizen?

A Yes.

Q Thus you're presumed to know the law, correct?

A I would assume so.

Q As a general rule, is that not right?

A That's correct.

THE COURT: Anything else on Exhibits 3, 4, 5, and 6?

MR. STILLEY: Yes, I apologize, Judge. BY MR. STILLEY:

Q Sir, did you ever look at those statutes or regulations at about that time?

A Yes, I did.

Q Okay. And has anybody told you that this law would not apply to protect you?

A No.

MR. STILLEY: Pass the witness.

THE COURT: Mr. Blackorby, we're talking about Exhibits 3, 4, 5, and 6, sir.

MR. BLACKORBY: Your Honor, 6 actually goes to the Internal Revenue Code where the previous Exhibits talk about the Paperwork Reduction Act.

THE COURT: Okay. Let's do 3, 4 and 5 then.

RECROSS EXAMINATION BY MR. BLACKORBY:

Q Now, Dr. Roberts, other than your -- well, first, let me ask you. Your testimony was you're a citizen. You're sitting here as a citizen of the United States?

A I'm a citizen of the State of Arkansas, one of the 50 states; that's correct.

Q So in Exhibit 1-3 that you've already referenced to as supporting your position, when you state you're a non-resident alien, that's incorrect in 1-3, isn't that --

A Well, that refers to the fact that I am not a resident of the Federal United States as it's described in code.

Q I think you just testified you were a citizen of the United States.

A I said I was a citizen of the State of Arkansas, one of the 50 states.

Q Well, let me ask you. Isn't the Paperwork Reduction Act a United States Code enactment?

A Yes, I believe so.

Q So if you're not a citizen of the United States, the code -- you can't hide behind the code, can you?

A I'm not hiding behind it. If it doesn't apply to me, it doesn't apply.

Q So you have no basis to introduce these Exhibits for the Paperwork Reduction Act, isn't that true?

A Well, I have knowledge of them, sir. But you just said you're not a citizen nor do you have to comply with or utilize the United States Code? Isn't the Paperwork Reduction Act a United States Code?

A I believe that's correct.

Q Now, other than these Exhibits that are trying to be admitted today, where else have you documented that you studied or looked at the Paperwork Reduction Act?

A I have not.

Q I think you testified on a previous Exhibit that in the letter you addressed to me in March of 2000, was the first time you actually documented to anyone that you considered that an issue, isn't that right?

A That's correct.

MR. BLACKORBY: I have nothing more on these three Exhibits, Your Honor.

MR. STILLEY: I just have a few, one or two questions.

FURTHER REDIRECT EXAMINATION BY MR. STILLEY:

Q Was the Paperwork Reduction Act or your understanding of what the Paperwork Reduction Act said a component of your -- of the basis for your beliefs that you had in 1992 and 1993 with respect to any duty that you had with respect to Federal income tax returns?

A If I had found that I had a duty or liability, that issue would have been paramount. I never got to the form and it never became a direct issue with me, but certainly had I believed that I was compelled to fill that out, yes, it would have been an issue.

MR. STILLEY: That's all.

THE COURT: Let me get go ahead and hear you. No. 6 is -- is that just the Act or is that the Paperwork Reduction Act itself?

MR. BLACKORBY: On -- I stand corrected. It is, Your Honor.

THE COURT: I'm going to consider 3, 4, 5 and 6 together then.

MR. STILLEY: I beg your pardon?

THE COURT: Well, you and I when we originally talked, we were going to handle 3, 4, 5 6 together. Mr. Blackorby said he thought 6 didn't go with these other three and now he apparently thinks it does.

MR. BLACKORBY: It does, Your Honor. I correct myself.

THE COURT: That's all right.

MR. BLACKORBY: Your Honor, can I give the Court further argument on the Government's position on those?

THE COURT: Yes, but I -- is it something I haven't heard?

MR. BLACKORBY: Well, the only thing, there is case law that flatly said the Paperwork Reduction Act as a defense for failure to file tax returns is not a defense, and it said so in all circuits and so ruled on. And I cite United States versus Salburg, 969 F2d, 379, the Seventh Circuit, 1992.

MR. STILLEY: Your Honor, Dr. Roberts isn't offering this as a defense. Well, he is offering it as a defense, but at the same time he's offering it, No. 1, as a defense and, No. 2, as a component of his subjective good faith. And that's I think the big thing that we're arguing about here is can this go to form a component of his subjective good faith --

THE COURT: Well --

MR. STILLEY: -- that he can testify to --

THE COURT: But if you have a good faith defense it has got to somehow got to be relevant, does it, to the 1993 and 1994 tax returns?

MR. STILLEY: That is correct, but if you require the idea to be correct or at or at least reasonable in order to be such that you can present it to the jury, you've done away with the subjective good faith test. You've gone back to objective good faith and Cheek says, no, it's a subjective good faith. That's why it doesn't matter whether or not the Paperwork Reduction Act actually constitutes a defense in this case. The issue is whether or not that formed a component of Dr. Roberts' actual beliefs in his mind.

THE COURT: Mr. Blackorby.

MR. BLACKORBY: Your Honor, there's no testimony other than the Defendant's on the stand right now that he was even aware of this in 93 and 94. Two, Cheeks has also said that even with good faith, you have to have a reasonable basis -- rational basis and the Court's have said there's no basis to the attack on the 1040, the Internal Revenue Code based on an OMB number.

THE COURT: I'm not going to admit 3, 4, 5, or 6, and your exception -- I'll give you a continuing objection. you've made your offer of proof. What about 7, 7, 8, 9, 10 and 11? Can we take all of those together?

MR. STILLEY: Yes, I think we can.

THE COURT: Mr. Stilley?

MR. STILLEY: Yes. That's the way to do it.

THE COURT: Well, I -- you know, you don't need to compliment me.

MR. STILLEY: Oh, yes, I'll compliment you.

THE COURT: I may have a chest pains or something, which may please a lot of people.

MR. STILLEY: Oh, no, that wouldn't please me. We're friends. That's what I think.

THE COURT: Let's talk about 7, 8, 9, 10 and 11.

FURTHER REDIRECT EXAMINATION BY MR. STILLEY:

Q Dr. Roberts, I want to show you Defendant's proffered Exhibit No. 7. Do you recognize that and particularly 6331 of the Internal Revenue Code?

A Yes, I do.

Q And were you aware of this section or when did you become aware of this section?

A I became familiar with this in approximately 1988 or 89.

Q I want you to start with "levy" and read the sentence that begins with the word "levy," and I want you to read that?

THE COURT: What Exhibit are we talking about now?

MR. STILLEY: This is Exhibit 7.

THE COURT: 7? Okay.

MR. STILLEY: And we're looking at the fourth from the last line, right at the lower right hand corner and he's going to read the sentence that starts with "levy."

A "Levy maybe made upon the accrued salary or wages of any officer, employee or elected official of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia by serving notice of levy on the employer as defined in Section 3401B of such officer employee or elected official." Continue?

Q No. That's enough. I want to ask you a question about that. First thing I want on is on that specific sentence do you remember about the time that you first read that sentence?

A Again, it was in 88 or 89 as I was studying the income tax code.

Q What did you understand from the reading of that sentence? What did that tell you?

A It wasn't me. It didn't apply.

Q Did it tell you that the Internal Revenue Code might apply to somebody?

A Yes.

Q And who did you think that somebody might be?

A Officer, employee, or elected official of the United States, the District of Columbia or agency or instrumentality of the United States or District of Columbia.

Q Have you heard about people having their property confiscated by the IRS?

A Of course.

Q Did you -- did you ever stop and consider about the difference between the IRS confiscated property from a private citizen or simply refusing to pay one of its own employees? Let me rephrase that. If the IRS thought it had a claim or a if the Federal Government thought that its own employee owed them some money, would it seem reasonable to you that they might withhold that money from the check?

A Yes.

Q Based on your understanding of the law at that time and particularly in 1993 and 1994, was it your understanding that the Federal Government had a legal right to confiscate property of a person who is not a Federal employee without their permission or a Court Order?

A No. My knowledge and understanding is that they did not have that authority.

Q Did this understanding form a component of your understanding about your requirements or duties with respect to the income tax, Federal income tax in 1993 and 1994?

A Yes. It's a direct component, because this is the threat that people experience if they don't file, and if there's no authority for it, any property to be levied or anything, then certainly it would show you that maybe they didn't have the right to do it in the first place.

Q Have you ever looked for a statute that gives the Internal Revenue Service the legal right to confiscate people's property by levy, seizure or otherwise without their permission or a Court Order?

A Well, I have looked at that and no, not without their permission or a Court Order.

Q However, does it appear to you that the Internal Revenue Service can seize the property of its own employees?

A Yes.

Q I want to draw your attention to Defendant's proffered Exhibit No. 8. That's Section 151. Do you remember about the time that you became familiar or became aware of this section?

A Again, approximately 1988 or 1989 as I was researching the code.

Q And what code section are we talking about?

A 151.

Q Could you find anything in there that required you to file a tax return?

A No, I could not.

Q Draw your attention to Defendant's proffered Exhibit No. 9, do you recognize that?

A Yes, I do.

Q And can you tell us about when you became familiar with that Section?

A 1988/89, as I was researching the income tax code.

Q And can you tell us what section is set forth on Defendant's proffered Exhibit No. 9?

A Section 63, taxable income defined.

Q Is there anything in Section 63 that you understand that would require you to file a tax return?

A No, there's not.

Q Does that Section define income?

A I don't believe it does.

THE COURT: Are you looking at the same one I'm looking at? Have I got the right copy?

MR. STILLEY: I think so.

Q Does it define something other than income? Does it define taxable income?

A Yes, taxable income; yes.

Q But it does not define income?

A That's correct.

Q And did you tell us when that you first became familiar with this section?

A Again, in 88 or 89 as I was reviewing the tax code.

Q Draw your attention to Defendant's proffered Exhibit No. 10. Do you recognize that document?

A Yes, I do.

Q And when did you first become familiar with this or aware of this code section?

A Approximately 1988, 1989.

Q And what code section are we talking about?

A Code Section 61.

Q And what's the title of that code section?

A Gross income defined.

Q That defined gross income?

A Yes, it does.

Q Does it contain anywhere a requirement that you file a tax return?

A No, it does not.

Q Within the definition of gross income, what does it say under paragraph two? Gross income means and what does it say?

A Gross income derived from business.

Q Did your third grade teacher ever tell you anything about trying to define a term using that same term within the definition?

A It wasn't allowed.

Q I want to draw your attention to Defendant's proffered Exhibit No. 11. And do you recognize that document?

A Yes, I do.

Q And when did you become familiar with that document or the contents of that document?

A 1988 and 1999.

Q And what code section are we talking about?

A Section 6012, persons required to make returns of income.

Q Is there anything that you see in 6012 that requires you to file a Federal income tax return?

A Not to my knowledge; no.

Q We've been talking about several Exhibits up here, several, several code sections. Did all of these code sections form a point or part of a component of your belief, your subjective belief in your mind with respect to any duties or lack of duties that you might have with respect to the Federal income tax?

A Yes, they did. After you review this, it becomes apparent that some people are liable for and have a duty and others do not. In my opinion there's nothing here that led me to the belief that I had duty.

Q Is that your good faith belief?

A Yes.

Q Was that your good faith belief in 1993 and 1994?

A Yes, sir.

MR. STILLEY: Your Honor, may I have a moment?

THE COURT: Yes, you may. (Pause)

MR. STILLEY: Pass the witness.

THE COURT: Cross examine.

FURTHER RECROSS EXAMINATION BY MR. BLACKORBY:

Q Dr. Roberts, you said you first acquired this belief in 1988 or 89?

A Sir, that's when I first began the search for the truth and investigating the code to try to make the determination as to whether or not I was a person liable to file a return or make the return.

Q But for 88 and 89 you actually filed returns putting income and expenses and paying taxes, isn't that true?

A Yes, sir.

MR. BLACKORBY: Your Honor, I have no further questions for the witness. I do have further argument based on the Court's Orders of June 14th as to these Exhibits.

THE COURT: Okay. You want to -- you want to make them now?

MR. BLACKORBY: Yes, sir.

THE COURT: Make your argument now?

MR. BARRINGER: Your Honor, if I might, I don't mean to jump in. I think Mr. Stilley has about one or two questions on redirect.

THE COURT: Oh!

MR. BARRINGER: Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION BY MR. STILLEY:

Q Dr. Roberts, why did you continue to file tax returns while you were studying the law?

A Because at that time I was not sure of what I was reading. My understanding was incomplete. And I was continuing to, to search for the truth, and until I came to the determination that I was not an individual liable for the tax or one responsible for making a return, I continued to do so.

Q So then it would be fair to say that you were trying to make sure -- you were trying to make sure that you understood for yourself what the truth was before you acted upon your beliefs?

A That's correct.

MR. STILLEY: Pass the witness.

THE COURT: When's the first time you committed to writing anything having to do with what you now say you believe in 88 and 89 with reference to the statutes cited in Exhibits 7, 8, 9, 10 and 11?

A Your Honor, I don't recall that I have specifically made that argument with the Internal Revenue Service in writing at any time. I Didn't go specifically point by point through the code. I gave the information on that letter of September 15th, 1992, that expressed certainly my belief and opinion that none of these things were related to me at all. But I did not specifically go by statute and identify them.

THE COURT: Well, that's kind of what concerns the Court, because now you're going to, you know, say that you did rely and identify those specific statutes. You know, that's my dilemma, Dr. Roberts. You want to go ahead and make your argument or --

MR. BLACKORBY: Yes, Your Honor. I refer the Court to the Court's Order of June 14th and on page six the Court has stated, likewise, in the light of the above discussion of Cheek, the Defendant's precluded from making any arguments to the jury that the tax code is unconstitutional or otherwise invalid. Lastly, the Defendant is prohibited from making any of the anticipated jurisdictional or contractual arguments outlined in B and B is on the preceding page, Your Honor. And B is that the Federal Courts or agencies lack jurisdiction over Roberts due to the possible allegation that he is a citizen of Arkansas but not of the United States, and that he's a non-resident alien of the U.S.; that he does not reside in a Federal enclave. Also, on page seven of the Court's Order it states, Your Honor, finally the Court will not allow Dr. Roberts to argue that the Internal Revenue Code does not require the filing of a tax return. And I would site also the Court to United States versus Parshall, P A R S H A L L, 757 F2d, 211, Eighth Circuit, 1985, where the Court held it was not error to instruct the jury that a disagreement with the law or governmental policies does not constitute good faith misunderstanding of the requirements of the law. Your Honor, these are all references, these are all sections of the tax code, and, therefore, for the concerns of the Supreme Court raised in Cheeks about allowing in such statutory documents other than the Instructions the Court give, I feel there's no basis to admit these documents. They're not relevant to the willfulness.

THE COURT: Anything else you want to put on the record, Mr. Stilley, in the way of argument or any testimony concerning any Exhibits 7, 8, 9, 10 and 11?

MR. STILLEY: Yes, Your Honor. This has been mischaracterized and mis-cast. The Government seems not to be able to distinguish between making an argument that something is a fact and being able to argue that Dr. Roberts in his mind believed something, and this Court has -- and I don't know if I can put my finger on it now -- this Court has said that it would allow Dr. Roberts to make any arguments that he wanted to make or put on any evidence about his beliefs, even if they were irrational and incoherent. So the fact that these beliefs might be -- you might think that these beliefs are irrational or incoherent, but that is not a reason not to allow Dr. Roberts to state what his understanding was in his mind, what his belief was, and show that he did not have the subjective bad faith necessary to merit a conviction in this case. And there is, there is something I want to bring forth to the attention of this Court.

THE COURT: Well, is it still related to those Exhibits we're talking about? I need to know if there's anything else you need on the Exhibits testimony --

MR. STILLEY: Yes, it is. This is just right on to that. And I'll draw your attention to page two of the Order, Memorandum Opinion and Order of June 14, and on the second page it cites to 26 USC 1-A, B, C, and D, and then the second sentence later, it says 6012 of the same chapter specifically defines persons required to file

to make returns of income. If you can find in the same chapter a statute which specifically defines persons required to make returns of income, I'll give you a hundred dollar bill.

THE COURT: Well, that may be improper. Senator Hatch would probably hear about that, and we would all be in trouble. Any other arguments you want to make. I'll look at this. I'll look at the citation, and I'll go back and read the Court's opinion it in and I'll make this ruling early in the morning on Exhibits 7, 8, 9, 10 and 11, and I'm leaning towards not admitting them, but I'll -- I don't think I'm going to change my mind, but I most certainly can. Exhibit 12 is not coming in, but you want to make any offer of proof on that? That's the one where the good parts have all been left out?

MR. STILLEY: Yes.

THE COURT: We don't know who it is, when it was, what it concerned. It simply say -- it's a blank letter from the IRS saying you don't owe any taxes, you don't even have to file.

FURTHER REDIRECT EXAMINATION BY MR. STILLEY:

Q Dr. Roberts, I want to draw your attention to a document that is marked Defendant's Exhibit No. 12. Do you recognize that? And before you cite it, there is four to it. Take a look at all of them.

A Yes, I do.

Q Do recognize all of those pages?

A Yes, I do.

Q Can you tell us -- start with page one and tell us what each page is.

A Page one is a letter dated the 16th, dated March 1991, headed explanation why I'm not required to file. And it puts forth the position as to why an individual would not be required to file a form.

Q Page two?

A Page two is what appears to be one of the computer generated letters from the Internal Revenue Service, Memphis, Tennessee Branch, making a request for telephone contact for an individual.

Q Okay. Before we go any further, let's -- I want to find out where each of these things came from. On page one, where did you get that?

A Another physician in town brought me this information.

Q Okay.

THE COURT: For purposes of this hearing, I don't think I'm going to admit it, but I think that's enough. I don't want to know who the physician was.

MR. STILLEY: Okay. That's what I was thinking about, if I want to do that.

Q Anyway, that was a physician that brought you that letter, right.

A That's correct.

Q What about page two? Is it -- did it come from the same place?

A That's correct.

Q It came from a local physician?

A That's correct.

Q Was he a practicing physician?

A Yes.

Q Okay. And then the next page, did that come from the same physician?

A Yes, it did.

Q And what is that?

A It is a letter stating to this Pat McMahan of the Chief Automated Collection Branch in Memphis, Tennessee, referencing her letter dated 4/13/91, that he had responded to previous notices, the response was addressed to him in a letter dated the 16th day of March, 91, where he made corrections on your letter dated to 3/11/91 informing you of my correct address, my correct status during the time period in question, also my correct status as a non-taxpayer as described in the same letter. This letter to you dated the 16th day of March, 91, was sent by certified mail, received by you on March 22nd, 1991, as shown below. I enclosed a copy of the same in this letter for your review along with your letter of 4/13/91 in which I have made the appropriate corrections, sincerely without prejudice, USCC 1-207.

THE COURT: And then it's not signed. Is that the physician that didn't sign it?

A It was signed, Your Honor, but it had been marked out.

THE COURT: Okay. But you didn't sign it?

A No, sir. BY MR. STILLEY:

Q Do you have a copy that has the signature not marked out?

A Yes, I do.

THE COURT: This is the mystery document? Anything else? BY MR. STILLEY:

Q Is this -- was this signed by the doctor that you're talking about?

A Yes.

MR. STILLEY: Okay.

THE COURT: Anything else in connection with Exhibit 12?

MR. STILLEY: Well, yeah, we haven't yet got to page four, the exciting part.

Q Can you tell us what page four is?

A Page four is a response from the Automated Branch of Memphis, Tennessee, in response to the previous three pages that were sent to them.

Q And what does that say --

A It says.

Q Just summarize it.

A -- that based on our information you are not liable for filing the tax return for this period. If other issues arise, we need to contact you in the future. You do not need to reply to this letter.

Q Did you come into possession of all four of these pages at one once?

A Yes, I did.

Q Did you get those pages from this unidentified physician?

A Yes, I did.

Q Were presented to you as being authentic, genuine documents?

A Yes, they were.

Q Did you in your mind believe that they were genuine documents?

A There was no question about it.

Q Did that -- did the receipt of those documents cause you to have -- to form beliefs about whether or not you had a duty to file Federal income tax returns?

A It pulled everything together for me. I had been searching and looking for a long time, and when I saw this, I knew this is the way that you inform the Internal Revenue Service of your status, and they understood this letter. They understood the information. And they took you from a taxpayer status to a non-taxpayer status, and that was the end of it.

Q Do you remember about when you got this document?

A I got this document some time in 1992.

MR. STILLEY: Your Honor, may I have a moment?

THE COURT: Yes, you may. (Pause)

MR. STILLEY: Pass the witness.

THE COURT: Any cross examination? We've already addressed this. I think that was the barside conference that led to the dismissal of the jury as I recall, but you have anything else, Mr. Blackorby, you need to put on the record with reference to --

MR. BLACKORBY: Your Honor, would you permit me to ask who the physician is.

THE COURT: Well, you can. You know, I just hate for that -- and I'm not real sure --

MR. BLACKORBY: Well, if the Court's considering admitting this, I need to know for a hearsay objection, but if not, I'll stand on the arguments I made at the bench.

THE COURT: Yeah. Why don't we just call it an unidentified physician, but I assure you if it is admitted, you will be to go into it in some detail and you'll have to reveal the name of that physician. But having said that, the Court's determined that it is not admissible, and I'm not going to admit it, so, therefore, we'll never know hopefully the name of anonymous, unknown, mystery physician. Anything else? So that we don't have to do this all other again, so we all know where we are, as I understand it, Exhibit No. 1 has been withdrawn. I am not going to admit and have ruled against Exhibits 2, 3, 4, 5, and 6. I'm going to look at -- and 12. And I'm going to look at 7, 8, 9, 10, and 11 tonight, in a little more detail. But two -- No. 1, if they're admissible at all, the statutes, they must go to the good faith defense, but they also have got to be relevant to the tax year 93, 94. And I am a little concerned that -- I'm more than a little concerned that Dr. Roberts apparently has never, with reference to these particular Exhibits, put anything in writing. But he has testified in 88 and 89 that he had this, this awareness with I think with each of those particular Exhibits.

MR. STILLEY: Your Honor, if I could say one thing to that?

THE COURT: Sure.

MR. STILLEY: On 6331, that is directed toward this original document, because there he says I don't reside in a Federal enclave. I'm not a Federal employee. I don't have that right in front me, but I believe that's what it says. I know it's words to that effect. And then he goes on to say why I'm not a taxpayer. Well, if you read 6331, it gives the Government the right to levy on the wages or salary of Federal employees but nobody else.

THE COURT: Well, it would be good argument I guess to never be a Federal employee. I hope my staff doesn't hear this, Mr. Stilley. A little humor.

MR. STILLEY: Well, they might like their jobs. They might like it even with the taxes out of it.

THE COURT: Anything further for the record before we adjourn for the evening? Listen, but I am hoping -- why don't I meet the attorneys at what 8:00? Why don't we meet at 8:00? I'd like to do two things at that time. No. 1, I'm going to rule -- yeah, you can stand down, Dr. Roberts. I'd like to -- I'll give you the rulings on these additional Exhibits. And also at that time, before you leave, I'm going to give you a rough set of the Court's Instructions, and I think it's rough, R U F F, a couple of them -- the good faith thing, for example, I have left blank. I don't know what the -- I don't know where the Court's going to end up. But take them if you would. Look at them overnight. And then I think probably after we rule on the Exhibits in the morning, you will need to kind of give me a heads-up on where you think we're going with the jury Instructions. I don't want to especially hear your arguments at that time, but you do need to tell me if there's something there that shouldn't be there or if there's something missing that should be there. I don't expect you to agree with them, but if there's anything blatantly wrong with them at that point, then tell me. Then we'll try to put them in some sort of better form, and then redistribute the set the Court's going to give, and then before they're given, of course, I'll give you plenty of time to argument and make your objection and tender any instructions you want tendered, et cetera, and make the record.

MR. STILLEY: Judge, is there way we can come at 8:30 instead of 8:00?

THE COURT: Well, yes. I don't have any problem with coming at 8:30. I would like -- I think we've sort of -- and it's not anyone's fault particularly, but I think we've kind of imposed on this jury. I don't think there's any real reason why they shouldn't have had this case today, but they've had to go back and they got to go a long way and then - I would like for us to get started promptly at 9:00. I think the skinny on us is we try to accommodate jurors when we can. I hate to have jurors standing around not doing anything. So you think we can get all of this done? I've told the jury to come back at 9:00. You think we can get this done in 30 minutes?

MR. STILLEY: Yes, I do.

THE COURT: Okay. I'll meet the attorneys at 8:30, but let's be here on time and promptly and let's see if we can get this case moving. Do you have any other Exhibits that you haven't told us about?

MR. STILLEY: I wish I did, but I don't. Looks like I'm going to get shot down on nearly everything.

THE COURT: Well, you know, I used to -- when my son would make a negative comment, I would say, Dave, be positive, and then he would say I'm positive I'm going to get shot down. It's been a long day. I'll see you guys back at -- 8:30 is fine in the morning, but we will -- do we have Instructions for them? Do they have them now?

MS. ROYSTON: No.

THE COURT: Why don't we make them and if we can, why don't we give them more than a set, because -- yeah, why don't we do that? Anything further?

MR. BLACKORBY: Not from the Government.

THE COURT: We're in recess. See you in the morning at 8:30. Thank you very much. (Off the record the record at this time.)

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PROCEEDINGS OF JUNE 29, 2000

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THE COURT: When I last left you last evening, the Court had made some rulings in connection with several Exhibits that had been proffered by the defense. The Court then took under advisement Exhibits 7, 8, 9, 10, and 11. It's my understanding, Mr. Stilley, that in accordance with the Court's previous ruling they would not be introduced as part of your evidence in chief, but you are proposing to introduce them for the limited purpose of showing good faith on the part of Dr. Roberts. Is that my understanding of what you're trying to do?

MR. STILLEY: That's correct.

THE COURT: And, of course, if that is done, there will be a limiting Instruction that will accompany those Exhibits. Let me ask you this, Mr. Stilley, and you can remain seated. You may want to get on the mike where we -- you may want to switch seats, though, where we can hear you. (Off the record briefly.) You advised me yesterday that there would be -- that these were all the Exhibits that are going to be before the Court in this trial. I need -- will you have any other testimony from Dr. Roberts or any other source concerning good faith other than these Exhibits?

MR. STILLEY: Well, I mean those Exhibits, I wouldn't consider them to be per se in and of themselves good faith, but just simply a basis for which that I could put on evidence of good faith.

THE COURT: Well, what evidence of good faith -- will that just be testimony of Dr. Roberts? I thought what he said yesterday

and what you represented he was going to say was that, and I heard him say this, that he relied upon those, he reviewed them in either 88 or 89, and they formed the basis of his good faith belief in connection with 93 and 94 for his belief that he did not have to file tax returns? Is that not what the testimony was?

MR. STILLEY: I believe that's right.

THE COURT: Well, what else are you going to show then? I wasn't trying to make that a trick question.

MR. STILLEY: Okay. Well, I was going to just, just going to --

THE COURT: I'm trying to run a trial here, Mr. Stilley.

MR. STILLEY: I'm just going to ask Dr. Roberts a few more questions.

THE COURT: Okay. But there will be no other testimony concerning good faith other than Dr. Roberts?

MR. STILLEY: I'd have to talk that over with Dr. Roberts after we get through with that, if that please the Court.

THE COURT: I'm not trying to tell you how to try your case, Mr. Stilley, but I need to have a little better indication of where you think you're going. I'm doing everything I can to give Dr. Roberts a fair trial and it has become difficult a time or two. Mr. Blackorby?

MR. BLACKORBY: Well, Your Honor, if these Exhibits are admitted, I still think it's improper for Dr. Roberts and Mr. Stilley to sit there and go back and forth and read from these Exhibits, the statutes, as if that's the law --

THE COURT: No, we're past that, and I think Mr. Stilley understands that. Do you, Mr. Stilley? We're not going to read from those and say that is the law, but if they are admitted, it will only be for the only purpose of saying that in good faith, you know, he believed that statute gave him the authority or was what he relied upon to not file his tax returns in 93/94.

MR. STILLEY: Your Honor, I'm just a little bit shocked that Mr. Blackorby would object to somebody reading a statute and suggesting that it was the law.

THE COURT: Well, let's get past the shockness. I need some answers.

MR. STILLEY: I thought that that was the law.

THE COURT: You thought what was the law?

MR. STILLEY: I thought the Internal Revenue Code was the law. If the Internal Revenue Code was not --

THE COURT: Mr. Stilley, we're way past that. Do you understand what the good faith requirement is and the limiting Instruction that would accompany that if it is admitted? I'm beginning to get concerned that you may not understand that.

MR. STILLEY: I think I understand that, Judge, I really do.

THE COURT: Why don't you tell me what your understanding is then? If these are admitted on the issue of good faith only, what do you believe then that you could present through Dr. Roberts or anyone else concerning those Exhibits?

MR. STILLEY: Well, I would say that he would be able to read from those and say, state the reasons that he believed, obtained his beliefs.

THE COURT: Why don't we take them one at a time? No. 7, Exhibit 7, do you have it in front of you? If that is admitted for the sole purpose concerning the good faith issue, how much of that do you believe will be necessary to address? Exhibit 7 consists of two pages of Internal Revenue Section Code. That section, I think the code section referred to yesterday is 6331, which begins at the bottom of page 1649, and it looks like it's 12 or 14 lines on that page, and then it runs over to the first several lines on the following page. Is there anything else in connection with Exhibit 7 that you would propose to refer to or read or address in any manner?

MR. STILLEY: Well, if I understand your question correctly, what I was intending to read from was 6331, not 6332. Does that answer your question?

THE COURT: Well, partially, but do you intend to read anything other than 6331(a)? This has to do with levy and seizure of property, seizure and sale of property, successive seizures. I'm not -- do you think any of that is relevant even to the issue of good faith? Anything other than (a)?

MR. STILLEY: Well, I didn't have any plans to go to go past A.

THE COURT: Do you intend to use even all of (a)? Is there some sentence in it or that you're relying upon or is Dr. Roberts relying upon?

MR. STILLEY: Well, actually I intended to -- I intended to use -- well, it's kind of hard to say, because you cannot always tell how it's going to go, but the first sentence says if any person liable to pay any tax elects or refuses to pay the same, and I think that it would be quite pertinent to ask Dr. Roberts if he found any statutes that made him liable for the income tax.

THE COURT: No, and I think that's an improper question. I think what you can do -- I think what you told me yesterday he was going to say and what he said yesterday under oath with the jury out of the room is that this is one of the statutes that he relied upon as his authority that he believed he didn't have to pay income tax or make the returns. Is that not what he said?

MR. STILLEY: This is one of the things that he relied on to form the basis for his opinions as to any duties or lack of duties with respect to the Internal Revenue Code.

THE COURT: And that's his good faith duty. I'm limiting it to that.

MR. STILLEY: Right. Well, see, the next, the next sentence says who the levy may be made on. And if the Internal Revenue Service had the authority to levy on anybody's wages and salary, this really would not make any sense at all to put a sentence in and say that the levy can be made upon the accrued wages or salary.

THE COURT: Of Federal employees.

MR. STILLEY: Federal employees.

THE COURT: Federal employees only. If it is admitted as Defendant's 7, is there any reason why everything could not be redacted except the part you say you intend to use, Section 6331, subparagraph or little (a), authority of the secretary?

MR. STILLEY: Your Honor, I'll buy that.

THE COURT: Well, I'm not selling anything. I mean is that -- do you have any difficulty? I mean is that what you're proposing, that everything else be redacted but that if it is admitted for that limited purpose?

MR. STILLEY: Well, that wasn't what I proposed, but I would, if I had to take a back-up position, that's what I would take.

THE COURT: Well, okay. I guess that's an answer. Now, let's look at -- the remaining ones apparently go -- and that's 8, 9, 10, and 11, apparently go to -- tell me, tell me what your purpose is. Dr. Roberts says he relied upon those four also as part of his good faith belief forming his opinion that he didn't have to file returns for 93 and 94. Does that have anything to do with anything other than income? Is that why you're trying to do that? I'm having trouble following your argument and that's why you sort of need to give me a heads-up on why these Exhibits are relevant.

MR. STILLEY: Well, the so-called expert yesterday testified that, that these statutes -- that was how many statutes that you needed

in order to determine liability. And Dr. Roberts has testified that he's looked at these statutes and he doesn't see it. And I believe this would go to his good faith that he looked there and he couldn't see anything.

THE COURT: No, I think in order to be his good faith -- I think we've jumped track a little early, Mr. Stilley. I think he must say and I think he said this yesterday and I hope it's true what he said, was that he read these statutes, reviewed these in 88 and 89, and those statutes formed the basis of his belief when it came time to do the returns in 93 and 94 that he was not required to file them. Is that not the way you remember his testimony?

MR. STILLEY: Well, that was a component of it. I mean he took two years. He didn't just go off half-cocked. He took two years to read and study the law, and if you stop to think about it, for a person to have two years to think about something and form an opinion, you probably wouldn't hang your hat totally on four statutes, but it's part of the things that he saw in the law that led him to believe that he was not a person required through the Internal Revenue Code to make --

THE COURT: Well, tell me what he intends to rely upon or what the testimony is going to be this morning. If I admit, if I admit Exhibits 8, 9, 10 and 11, what portion of these statutes is he going to rely upon as part of his testimony this morning?

MR. STILLEY: Well, the whole statutes.

THE COURT: Has nothing to do then with income versus gross income versus taxable income? I thought that was where you were going --

MR. STILLEY: Well, I might go there, too. That, that sounds like a good idea.

THE COURT: This is not a game, Mr. Stilley. We're going to have some further conversations when this trial is over, I assure you, sir. I'm doing all I can to protect Dr. Roberts' Constitutional rights and, Mr. Stilley, you've made it difficult to say the least. Tell me why you want these documents. I'm not just going to let you go willy-nilly. If I admit these -- we have already ruled that these are not admissible to try and prove this was the law or not the law or what the law said. It would be admitted only for the limited purpose of showing his good faith belief when he reviewed them back in 88 and 89. Now, what testimony are you going to have on that limited basis?

MR. STILLEY: Well, the first thing I'd do is ask him if he's seen anywhere in those laws any language that where it said -- and I here's what I'll do. I'll just -- I didn't want to tell you, didn't want to tell you at all, but what I'll do is read from the jury Instruction what it says and I think I can find that here.

THE COURT: I don't think we've gotten the jury Instructions yet.

MR. STILLEY: No. I know we've not gotten the jury Instructions yet.

THE COURT: Or if we did, I missed it.

MR. STILLEY: I would probably ask him have you read anywhere in any of those statutes where it says a single person under 65 years old is required to make a Federal income tax return in 1993 if he had gross income in excess of $6,050?

THE COURT: And how do you think that would be proper, Mr. Stilley, if you were sitting here and I was sitting down there and you offered that question based on a ruling you just issued? This statute, if it comes in at all, is only going to come in on the issue of good faith.

MR. STILLEY: That's right. If he read that and he couldn't find that in the law, then it would go to his subjective head knowledge.

THE COURT: Because he relied on it back in 88 and 89?

MR. STILLEY: Right.

THE COURT: Well, I think that's totally different than the question you intend to pose after reading the Instruction.

MR. STILLEY: Wait a minute. Now wait a minute. We're not talking saying he relied on it in 88 and 89. In 88 and 89, obviously he didn't rely on it because he went ahead and filed his tax returns because he wasn't sure. In his mind he wasn't sure. In 1993 and 1994 he was, in his mind, satisfied of the truth of his beliefs. So that's when he relied. It's like this. If I come to a conclusion five years ago, but now I'm presented with a situation in which I have to make a decision, I may rely on an understanding that I got in 1995, but that doesn't mean that the reliance happened in 1995. The reliance happened when you had a decision to make.

THE COURT: That may have been what he testified. I think he testified in 88 and 89 then he became aware of these statutes and then began to study, and but they, nonetheless, then formed the basis for his belief in 93/94 he didn't have to file a return, is that correct? Is that what he said yesterday?

MR. STILLEY: That formed a component of his belief. Obviously he did not base his entire belief on four out of about 3,000 statutes in the Internal Revenue Code. He had to look at various other places and --

THE COURT: Well, does he intend to refer to any other today other than these Exhibits which you say are all admitted that will be introduced and will be considered?

MR. STILLEY: You're referring to any what?

THE COURT: Any other code provision. You said he reviewed thousands. Is he going -- are we going to get a specific number?

MR. STILLEY: I didn't necessarily say that he had reviewed thousands, but now that you mention it, he might -- well, I'm sure we would kind of like to take a look at 7203, since that is the statute that he is accused of violating.

THE COURT: How do you propose to do that, Mr. Stilley, under the prior rulings of the Court, if I admit these for the limited purpose of showing -- allowing you to permissibly argue good faith? How is 7203 going to be possibly be relevant?

MR. STILLEY: Well, that's the statute that he's charged with violating and it would seem to me that that would be very important for the jury to see the statute that the man is charged with violating.

THE COURT: You're saying in connection with Exhibits 8, 9, 10 and 11 you're going to refer to the whole statutes in an effort or the whole code section reflected within those Exhibits in an effort to try and show good faith and good faith only?

MR. STILLEY: If I understand that correctly, the answer would be yes. The intent is not to be circumscribed and cutoff and only allowed to refer to four statutes, but to say there's four statutes here.

THE COURT: These are Exhibits you proposed, Mr. Stilley. I didn't propose them. These were not the Court's exhibits. Defendant's Exhibit No. 8 is listed part five that's under Code Section 151 and it's listed deductions for personal exemption.

MR. STILLEY: Uh-huh.

THE COURT: Tell me what's that got to do with making or fulfilling the requirement of somehow believing that you do not have to file tax returns for 93/94.

MR. STILLEY: Well, that's where the expert said where you need to look if you needed to know whether that you were required or not. So that's really important, goes to subjective good faith. And, by the way, I do recall in previous sessions in this courtroom where

that the -- this Honorable Court said that they had -- that you had a copy of the entire Internal Revenue Code in Chambers. And if that was the way we need to do it, I certainly wouldn't have any objection just to admitting the whole code, which I'm not suggesting, you know, that you're going to do that, but we wouldn't have an objection to it.

THE COURT: Well, we do have the Internal Revenue Service Code as part of the United States Code. We have the entire United States Code in Chambers. There are also other books, Federal Reports, U.S. Supreme Court Record. Mr. Blackorby?

MR. BLACKORBY: Counsel's made no reference, has elicited no testimony from Dr. Roberts either in front of the jury or not to where at any time he looked up Section 151 in his determination whether he had to file the tax returns or not. The only thing that counsel has raised is that the revenue agent referenced that in his direct testimony. He has shown no basis in fact that back that 93 and 94 that Dr. Roberts was even aware of this section, and, therefore, I think there's no reason for it to come in, Judge.

MR. STILLEY: Your Honor, could I speak to that?

THE COURT: Yes.

MR. STILLEY: He says that Dr. Roberts looked at these statutes in 1988 and 89, but then that he wasn't aware of them. There's no proof that he was even aware of them in 1993 or 1994. That would be a very startling conclusion to come to. Human minds generally have the capability of carrying around information.

THE COURT: What I'm concerned about, Mr. Stilley, I want you to try your case and I want you to present it on what you need to within the previous confines or within the orders of the Court. I have previously ruled that either -- that ruling a dozen times that you cannot cite the statute as being proof that this is either this is right or this is wrong. It's my understanding when we started this hearing, and I think sometimes we forget that the hearing goes on. What we've already covered 20 minutes before was that if these were admitted, Exhibits 8, 9, 10, and 11, they will be for the sole and limited purpose of attempting to demonstrate that he had good faith in 93 and four for not filing. Is that agreeable? Is that where we are? I'm not going to let you go in and say does this statute say this and this? You can ask him if he believed and it may be that he's got no real logical reason for believing that, but as far as the good faith defense, I'm not sure how logical he has to be there, Mr. Stilley.

MR. STILLEY: Logic has no bearing on it. As this Court said, no matter how incoherent or irrational the beliefs might be in the eyes of the Court, he has the right to present those.

THE COURT: Well, but he has right to present them only in connection with a good faith defense, and I'm fearful that within two minutes after you start, we're going to have an objection that you're past the good faith, and I think you may be, Mr. Stilley, because I don't hear you saying that you understand what the Court's trying to get across to you.

MR. STILLEY: Well, Your Honor, if Dr. Roberts is being asked to just tell the jury that he's wrong about that, that's just not going to work. He's not going to say that he's wrong.

THE COURT: And I don't think anybody wants him to say or I don't want him to say and I'm not going to say that he must say that he was wrong. What I need for him to say or what he's going to have to say or you need to say is that anytime he tries to interpret these statutes, it's only going to be for the basis of an effort on your part to show good faith on his part. Good faith is only one small part of the defense -- and I'm inclined to let you -- give you some latitude in connection with your good faith defense, although I'm not sure that Defendant's Exhibit 8, 9, 10, and 11 are really relevant. But if they are permitted, Mr. Stilley, you need to understand, sir, that they are being admitted or will be admitted only for the limited purpose of showing or possibly showing good faith on the part of Dr. Roberts. Do we have that understanding? (Pause)

MR. STILLEY: Yes. We do have that understanding, but I mean we're going to have to -- we're going to have to ask some questions about that. I mean we're going to have to delve into to his thought processes and what he believed.

THE COURT: Well, I have no problem with it, but I don't need you saying how do you interpret this statute and whatever? This statute is only being admitted -- and then in closing arguments or whatever I don't need you showing the entire statute, you know, and saying the law says this, this, this and this. What you can do and what you can say is this is what Dr. Roberts testified he relied upon in forming his good faith opinion that he didn't have to comply with the rules and regulations in 93 and 94 and file a return.

MR. STILLEY: Judge, he never said that and he's not going to say that. He's not going to say that he didn't have to comply with the rules and regulations. What he said was that the rules and regulations -- and this is his belief, that the rules and regulations do not require him to make a tax return.

THE COURT: And that's his good faith defense, because he reviewed, read, and relied upon these statutes or these code provisions that you intend to introduce as Exhibits 8, 9, 10 and 11?

MR. STILLEY: That and a whole lot of other stuff. I mean stop and think about it.

THE COURT: I've been thinking about it for three days, Mr. Stilley, and I hope you have. Is there anything else we need to discuss on these before the Court issues the ruling?

MR. BLACKORBY: The only thing I would direct to 8, 9, and 10, Your Honor, if the Court's planning to let them come in, there's a lot of extraneous issues.

THE COURT: What I was trying to get this out, Mr. Blackorby, but he said he needs it all and they're going to refer to it all, and he's an officer of this Court and I'm sure would not intentionally misrepresent what he intended to do and what was in accordance with the Court's ruling.

MR. BLACKORBY: Your Honor, I don't understand like in Exhibit 9 what the relevancy is of the aged and blind exemption, which is the second page of that Exhibit, Paragraph F, or the marital status exemption of community property states.

THE COURT: Do you believe those are relevant to the issue of good faith, Mr. Stilley?

MR. STILLEY: Your Honor, I certainly don't see how they could prejudice the Government's case.

THE COURT: Well, you're not contending Dr. Roberts is blind? I don't think he is. I hope not.

MR. STILLEY: I think he sees clearly, very clearly and I think --

THE COURT: And his martial status I think has been established. We heard that yesterday I thought. I'm going to redact Defendant's Exhibit No. 7 in the manner agreed to in open court and I'm going to allow you to introduce that. It will be, however, strictly for the purpose of showing good faith on the part of Dr. Roberts. If it is introduced, and I assume you are going to, the Court's going to give a limited Instruction at the time the Exhibit is presented, and it will be along the lines as follows: The Defendant has given testimony that he reviewed the Internal Revenue Code Section in 88 and 89, and that he relied on that in concluding that he was not a person required to file an income tax return for the year 93'94. The code provisions as set forth within Exhibit 7 has been admitted solely for the purpose of aiding you in determining whether or not the Defendant's failure to timely make income tax returns for 93 and 94 was knowing and willful and you should not consider the statutes for

any other purpose or the code for any other purpose. You're not to consider this evidence as containing any law that you're to apply in making your verdict because all the law applicable to this case is set forth in other Instructions. That is the Court's limiting Instruction, and I intend to affix it to Exhibit 7 at the time it comes in. They will be stapled together, so anytime you refer to Exhibit 7, it's going to be with the provision and with the understanding that it is covered by the limiting Instruction that accompanies it. Let's talk about 8, 9, 10, and 11. Are you not going to attempt to redact those at all?

MR. STILLEY: I had no intention of trying to redact them, because otherwise -- well, the expert yesterday didn't, didn't say you needed to look at Section 61(a) or Section 61(c). He just said there's four statutes you needed to look at in order to determine your obligations.

THE COURT: And those just happen to be the same four statutes that Dr. Roberts started reviewing back in 88 and 89.

MR. STILLEY: Well, that bring us back to the limiting Instruction. On the limiting Instruction I really think that needs to say that this is one of many items upon which Dr. Roberts --

THE COURT: Well, the limiting Instruction only goes to the Exhibit that you're introducing. There will be a limiting Instruction also in connection with the jury Instructions at the end of trial, but this is at the time this is introduced. That's procedure, Mr. Stilley. It's been the procedure since the flood.

MR. STILLEY: Okay. Well, I just don't want it to be implied in any way to the jury that he just looked at this one statute and then he decided on the basis of one sentence and one or two sentences in one statute that he was not a person required --

THE COURT: The limiting Instruction, do you understand the very concept of that? I mean if this Exhibit is allowed in, its only going to be on the basis of showing the good faith and I'm, therefore, doing an Instruction limiting it to that, and I'm going to attach that instruction to the Exhibit.

MR. STILLEY: I understand that, but what I'm wanting to do is to make sure that limiting Instruction doesn't imply that Dr. Roberts hung his hat on one statute.

THE COURT: The limiting Instruction will only go to the Exhibit. And if you're Exhibit only has one statute, then the limiting Instruction can only address the one statute that's in your Exhibit. I don't know -- but in our jury Instructions, Mr. Stilley, there will be another limiting Instruction, if in fact, you know, I give more than one. It will say that the -- I assume if I introduce the other Exhibits, 8, 9, 10, and 11, are you going to introduce those separately or all at once or --

MR. STILLEY: Well, to save time I would like to introduce them all together.

THE COURT: To include, to include 7?

MR. STILLEY: I can do 7 separately, but 8, 9, and 10 I would like to introduce them all together.

THE COURT: Well, what about 11? You left it off.

MR. STILLEY: Oh, 11, yes. I want 11, too.

THE COURT: Tell you what we're going to do. I will admit Defendant's 7, 8, 9, 10 and 11 at once. We will have one limiting Instruction that will be attached to the outside of all of those, and it will -- instead of saying -- it will read something then solid as follows: The Defendant has given testimony he reviewed certain Internal Revenue Code Sections in 88, 89, and he relied on these in concluding that he was not a person required to file income tax returns for the years 93 and 94. Now, if I've counted correctly, the five code provisions, Exhibit 7, 8, 9, 10, and 11, have been admitted solely for the purpose of aiding you in determining whether or not the Defendant's failure to timely make income tax returns for 93/94 was knowing and willful, and you should not consider those statutes for any other purpose. You're not to consider this evidence as containing any law that you're to apply in reaching your verdicts, because all of the law -- because all the law applicable to this case is set forth in the other Instructions. That's the limiting Instruction. Any objections or problems with that?

MR. BLACKORBY: Your Honor, as to 8, 9, 10, and 11, all the other -- you want to admit them in its entirety?

THE COURT: They're going in their entirety. But I can assure you, sir, that if he -- if we start hearing questions on blindness and whatever --

MR. BLACKORBY: Yes, sir.

THE COURT: I'm in no position to redact his Exhibits for him, and I think on the issue of good faith I'm giving him substantial liberty. I think Dr. Roberts is entitled to that. There is a limit.

MR. BLACKORBY: Your Honor, for the record now, so I won't have to do it before the jury, I object to the admission for the grounds already stated, and I also object to them coming in their entirety because of the relevance of the other code sections and references in those code sections. So I'll just make that for the record, Your Honor.

THE COURT: Fine. And I'm going to overrule your objection, and I'm going to admit them for the limited purpose as stated reflected in the limiting Instruction, but we are not to get a feel from the limited Instruction in connection with these Exhibits. Anything further? We were going to talk about jury Instructions, but my jury is here, and I think we best get the testimony resumed, if we can. Let me give you one heads-up on the jury Instructions. Apparently we are going to hear some good faith testimony, so I think we need to be concerned about a good faith instruction. So will be working on or looking -- I think what I gave you last night, your packet has simply got good faith and it's a blank.

MR. STILLEY: Your Honor, I've got one. I've got one for you.

THE COURT: You need to give it to the clerk, if you have one, if you haven't already, and it will be considered. We also -- I'm not sure the Court in view of the good faith Instruction, the Court may consider giving a deliberate ignorance Instruction, but I'd say the Government ought to maybe look at that. I call it deliberate ignorance. I think it is sometimes called willful blindness. I'm not sure. They generally state the same thing, but -- anyone need to take a break before we get the jury back in? You-all want to take --

MR. STILLEY: Yes.

THE COURT: Listen! You guys have learned early. I saw about five hands go up. So why don't we -- is the jury all here?

MR. JOHNSTON: I don't know that, sir. I'll check.

THE COURT: Why don't we -- I would like to get started as soon as we can. Is 9:20 going --

MR. BLACKORBY: That's fine, Your Honor.

THE COURT: They were having a conference and I need to make sure everyone hears this. Is 9:20 enough time, 10 minutes?

MR. STILLEY: I think so.

THE COURT: Where is your co-counsel this morning? He's not sick.

MR. STILLEY: Sick again. He's sick.

THE COURT: What are you feeding the guy, Mr. Stilley?

MR. STILLEY: Well, we're trying to feed him good, but it's a lot of stress, I guess.

THE COURT: We'll be in recess until 9:20. Thank you very much. (Off the record at this time.) (THE FOLLOWING

PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Good morning to you.

JURORS: Morning.

THE COURT: Hope you had a good evening. Anyone have trouble getting home? Apparently east of here they had a substantial rainfall about the time that you guys were heading that way. So I hope -- I was hopeful you would all make it back. I think Mr. Hoeffer has heard this before, but the very first jury trial we tried was upstairs in the courtroom where you were selected. It was a civil case. We had seven jurors. The start of the second day, Juror No. 7 didn't come back. In a civil case it's not that serious. You can proceed with less than seven, but we sent word out. I said, well, why didn't the juror come back? And the answer was, oh, sir! He's from Clarksville. I don't need to -- we don't need to be specially picking on guys from Clarksville. I don't have -- I don't think we have a Clarksville person on the jury. In any event, we proceeded. Turned out the young man had a pretty good reason for not coming, but thank you for coming back. Yesterday Dr. Roberts was on the stand during direct examination. Mr. Stilley, would I ask Dr. Roberts to come back to the stand, please, sir. I remind you -- Dr. Roberts, have a seat, sir. You're still under oath. BY MR. STILLEY:

Q Good morning, Dr. Roberts?

A Morning.

Q I notice you've got a flag over here at the table that you have with you. Whose flag is that?

A That is the burial flag of my father.

Q When did he die?

A Easter of this year, April 23rd.

Q Was he sick for a long time?

A No, sir. He was sick for a brief period of time with a heart attack.

Q Did you get to be with him during his last illness?

A Part of the time I was, just the last few days before he passed away.

Q Okay. Were you -- previous to that were you able to be with him?

MR. BLACKORBY: Objection, Your Honor.

THE COURT: I'm going to sustain that objection, but I have no objection to the flag remaining in here nor the Bible, and I've announced that from the very start.

MR. BLACKORBY: I don't either, Your Honor. It's to the question.

THE COURT: Fine. BY MR. STILLEY:

Q Did you have any conversations with your dad about any duties or obligations you might have with respect to Federal tax laws?

MR. BLACKORBY: Objection, Your Honor. With all respect to the Defendant's dad, what his dad said is hearsay.

THE COURT: How's that relevant, Mr. Stilley? I intend to give you some leeway and I'm sorry about his father dying, but I'm not sure that that's relevant to the issue we've got here in front of us.

MR. STILLEY: I'm just trying to show good faith out of this.

THE COURT: I'm going to sustain the objection.

Q Do you know about how big the Internal Revenue Code regulations is?

A I know it's quite large, somewhere in the neighborhood of about 17,000 pages, the code and regulations, about ten million words, I believe pretty extensive.

Q Is it safe to say that you haven't read every word of that?

A No, I've not read every word.

Q Have you read considerable portions of that?

A I have read, as I have been directed through many, many sections of the Code, and anything that I was informed could lead me to any answers as to a requirement to file the form.

Q In your reading of portions of the Internal Revenue Code, have you ever read any law or seen any law which informs you of the meaning of the inflation rate?

A No, sir.

Q Have you ever seen anything, any statute in the law that requires you to file an income tax return?

A No, sir, I have not.

Q Have you ever seen any law which reads or words to the effect a person not married under age 65 who receives gross income in excess of $6,050 is required to file a tax return, U.S. 1040 Individual Income Tax Return?

A No, sir. I've not found that in the code anywhere.

Q Now, that was for 1993, have you ever seen anything in the code that says for a person not married for year 1994, under age 65 who receives gross income in excess of $6,250 is required to file a tax return, U.S. 1040 Individual Income Tax Return for the year 1994?

A Sir, to my knowledge that does not exist in the code anywhere.

Q What is your understanding -- have you seen the place where that you sign the form, the Form 1040?

A Yes, I have.

Q Do you know what that piece is called? Is that called a declaration under penalties of perjury?

A Yes, it is.

Q Do you have any objections to that?

A Yes. As I've researched it, I realize that --

MR. BLACKORBY: Objection, Your Honor. This is a failure to file case. The Court has already ruled on the attestation issue.

THE COURT: Yeah. I'm going to sustain the objection.

MR. STILLEY: Your Honor, I just wanted to get --

THE COURT: I know what you're trying to do and we've ruled on that previously, and it was objected to and I sustained it.

MR. STILLEY: Can I rephrase the question? I'm just trying to get to the good faith.

THE COURT: If it's a good -- if it's something dealing with good faith, you may inquire, yes, sir, but you're not going to visit that and call it good faith.

MR. STILLEY: Your Honor, I don't want to get in trouble in this. Can I approach the bench?

THE COURT: Well, I didn't mean to accuse you. I don't think it's that complicated. Let's approach. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: Your Honor, I wanted to tell you where I intended to go with this on the good faith issue. I wanted to ask him --

THE COURT: That's fine. We had the conference this morning, was trying to have a heads-up, so you we would have to be up here after seven minutes, Mr. Stilley. Tell me where you're going.

MR. STILLEY: I wanted to ask him if it was his understanding that a Congressional pronouncement contrary to the Constitution could be a valid law, and ask him what his understanding of the Fifth Amendment was.

THE COURT: We're not going there. There's objections to that and I've ruled on that, and you're not going there, sir, but you can make an offer of proof. You want to say what he would testify to?

MR. STILLEY: What he would testify to is that he has examined the law and that the Constitution is the supreme law of the land, and anything repugnant to the Constitution is null and void, and that -- I'm not quite through, and that any law that requires him to make an oath as to the truth and correctness of something as complicated, at least as complicated as an income tax return, that the Government cannot compel him to make that return under oath and then use it against him in a criminal proceeding. That's what he would say and that would be his --

THE COURT: That's your offer of proof?

MR. STILLEY: Yes.

THE COURT: All right. Fine. Where else are you going in trying to save us another trip back up here, Mr. Stilley? We had a hearing this morning and hopefully you remember that.

MR. STILLEY: Yes.

THE COURT: Are you going to introduce those Exhibits soon?

MR. STILLEY: Yes.

THE COURT: Let's get to that.

MR. STILLEY: I'm going to try to get to that here as quick as I can.

THE COURT: Well, I look forward to hearing that and then let's -- have you got something else that you think the Court is going -- there is going be objection to and the Court's going to rule? Any other areas that you can share with us without having to come back up?

MR. STILLEY: I think until we -- I don't see anything here I think is --

THE COURT: Okay. And I'm taking you at your word as an officer of this Court that you're not going to ask something that we've already addressed time and time again, sir. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Continue, please. BY MR. STILLEY:

Q You've already testified that you asked, in addition to an attorney, I mean in addition to CPA's and others, you asked an attorney. I just want to know when did you ask this attorney about, about your questions that you had about Federal tax laws?

A I'd been reviewing the IRS code since about 1988 and through 89, and I came in contact with an attorney that shared with me it was either 90, late 90 early 91, somewhere in that timeframe that we discussed the questions that I had in regards to the code, and he confirmed that I was not an individual liable to make that return.

Q When you did file tax returns, why didn't you file those returns?

A When I did file them?

Q Right.

A I had no knowledge that I was not a person not liable.

Q And you testified that you started looking at this issue in what, 88 and 89, is that correct?

A That's correct.

Q Why didn't you just stop immediately?

A Well, until I was -- well, to be quite frank, God's holy word says that my people perish due to lack of knowledge; that the truth will set you free. I didn't want to act without knowledge, so I did everything I could to read, study, to get expert opinions to try to determine the truth in this matter. Once I became totally convinced, that's when I stopped.

Q You also -- I believe you testified that, that you had spoken to a Magistrate Judge. Did you get any response from this --

THE COURT: We -- I sustained an objection to that yesterday and I think you recall that, and we're not going there, Mr. Stilley. What's your purpose in bringing it up again? Do you remember the Court's ruling on that yesterday? We had a hearing, as I recall, the day before yesterday. You're not to go there, Mr. Stilley.

MR. STILLEY: Beg your pardon?

THE COURT: You're not to go there, Mr. Stilley. Ask another question, sir, if you have another question. BY MR. STILLEY:

Q Did you ever ask -- send correspondence to the IRS and ask them to tell you if there was any law requiring certain things to be done?

A Yes. Initially I wrote a letter stating my position as my reason that I was not required to file and on subsequent contacts, I asked additional questions, none of which were ever answered.

THE COURT: Mr. Stilley, if you intend to use Government's Exhibits, you need to use the ones that were introduced yesterday.

MR. STILLEY: Oh, okay. And I know you did want me to ask permission before I put something on the DOAR. I want to put Government's 2-6 on the DOAR. Would that be --

THE COURT: What I'm suggesting is you get the Exhibits from Mrs. Porter. That's the way we do it in court. (Pause)

Q Dr. Roberts, can you see that?

A I can see portions of it.

Q Okay. Is this a letter that you sent?

A Yeah, it is; yes, it is.

Q Is that a letter -- and who did you send that letter to?

A To Mr. Bryan.

Q Did you ask him a list of questions in that letter?

A Yes, I did.

Q I want to show you the first question. Did you ever get a response to that question?

A No, sir, I did not.

Q Let's go on to question No. 2. Did you ever get an answer to that question?

A No, I did not.

MR. BLACKORBY: Your Honor, the agent has testified he didn't respond to this letter. I don't see any reason -- there's no challenge that there was no response to this letter.

THE COURT: Yeah. I thought that's what he answered that he didn't get an answer.

MR. STILLEY: Okay. Just that he didn't answer everything? I just wanted to go kind of go over this, some of these things.

MR. BLACKORBY: Your Honor, the jury can read the letter. It's in evidence.

THE COURT: It's in evidence. Let's move on to something else. Take it off the DOAR, Mr. Stilley. Let's go on to something else.

Q Well, we've got an answer that the Government never gave you any answers to your questions in writing. Did they ever tell you orally, give you any answers to your questions orally?

A No. I've had no oral conversation with anyone from the Internal Revenue Service.

Q There had been some testimony to the effect -- wait a minute. Your Honor, could I take just a minute? I'm going to ask the Government -- I'm thinking there's testimony to a certain effect, but

I'm not sure of that. And I don't want to spoil anything. If I could just take a second?

THE COURT: Yes, you may. (Pause)

Q Have you ever offered to file a tax return if someone will show you that you had a legal duty to do that?

A Absolutely I will, and I have.

Q In response to that offer did you get a response back to that?

A I got no response.

Q Were you sincere in that offer?

A Absolutely.

Q So you would have made a return if someone would have showed you had a legal duty to do that?

A Yes, Mr. Stilley. I make every effort to comply with every law, and, yes, I would.

Q Have you ever filed a lawsuit to try to get a declaratory judgment as to your rights and duties under the law?

A Yes, I have.

MR. BLACKORBY: Objection, Your Honor.

THE COURT: That's -- that's sustained. That's been covered in connection with the previous ruling. I think you received a copy of that, Mr. Stilley. But let's, let's go on to something else.

MR. STILLEY: Your Honor, I don't understand how that could be, since the Government --

THE COURT: Don't argue with me in front of the jury, Mr. Stilley. If you need to argue further, come forward, but we've already resolved that.

MR. STILLEY: Okay. Your Honor, may I approach?

THE COURT: Yes, you may. (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

MR. STILLEY: Judge, they have got copies of that in their own Exhibits. How can they object to me to what they had in their own Exhibits?

THE COURT: Hasn't the Court already ruled on that?

MR. STILLEY: I don't remember it.

MR. BLACKORBY: Those were marked for the Exhibits for the hearing, Judge. I mean we -- because I put an exhibit sticker on a document and then realize it's in another form is no basis to say it's admissible at this trial, and the Court's already ruled on it.

THE COURT: Was it admitted? You didn't move for its admission in this trial.

MR. BLACKORBY: I haven't brought it up at all.

THE COURT: It was not admitted. The Court's already ruled on that. We did that in an Order, Mr. Stilley. I'm hoping you're getting the Court's orders, because you're sure acting like you haven't seen some of them.

MR. STILLEY: Well, Judge, for the record, I would, I would say that I cannot think of a single thing that would be more probative of good faith.

THE COURT: Well, you have made your record on that. The Court's made its ruling. Let's move on to something else that I've not already ruled on, Mr. Stilley. Okay, sir? Your record is intact. If I've ruled on it previously, I'm not going to let you do it again. We're not going to go over that same plowed ground again.

MR. STILLEY: Maybe my memory is bad, but I don't remember you having ruled on this that we could not say anything about --

THE COURT: Well, if I didn't, I am now. I'm telling you it is sustained on nothing concerning any civil lawsuits he may have filed. That's improper. And I'm going to prohibit you from asking any question about it, and your record is about as clear as it can be. Do you have any questions about the Court's ruling?

MR. STILLEY: I think I got it now.

THE COURT: Okay. Well, is there anything else you need to get now? Where are we going from here?

MR. STILLEY: I'm going to ask him if he paid all his obligations on his loans. I'm going to ask him if he's ever committed any other crimes.

THE COURT: I think that's legitimate and then are we going to get into the Exhibit? Are you getting -- making any progress in getting him off the stand?

MR. STILLEY: Oh, yeah, I just haven't got there. I mean I just --

THE COURT: Well, you may not ever get there if you keep asking questions about that have already been -- you know, about issues that have already been resolved.

MR. STILLEY: Okay. Well, I'll try to hurry up. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

Q Have you ever been convicted of a crime?

A No, I have not.

Q There was some evidence about some loans. Do you have -- you paid all the loans that you have taken out?

A Yes, sir, I have fulfilled every obligation I've ever made in my life.

Q Do you know how many times that you have put forth some kind of an effort to find out about your duty with respect to the Federal tax laws?

A Well, probably hundreds of times, when you consider all of the people that I've consulted with, accountants, lawyers, and in terms of the Internal Revenue Service and the United States Courts, 10, 15 times.

Q Have you found out anything more about your duty during this trial?

A I have had no one tell me that I have any liability to file a form.

Q You told us about you taking your little girl to a chiropractor. Why did you decide that you wanted to be a chiropractor? Why didn't you just let somebody else be the chiropractor and you do something else?

MR. BLACKORBY: Your Honor, the Defendant has a right to testify, but we've been down this road before.

THE COURT: Well, I think we have, but I'm going to let him answer it. I think he answered it yesterday, but he can answer it again, sir.

A Well, without question, that was a high point in my life. My daughter was very, very ill, in fact, determined by one pediatrician as terminally ill, and when I saw the miracle that happened with chiropractic, I wanted to be able to share that with other people, so that's why I did it.

Q I want to draw your attention to some documents that have been marked as Defendant's Exhibit 7. Well, let's just start with Defendant's Exhibit 7. Do you have a set of those or not?

A No, I do not.

THE COURT: It's my understanding we were going to introduce them all at the same time, Mr. Stilley.

MR. STILLEY: Okay.

THE COURT: Mr. Stilley, you have redacted No. 7. You need to make sure that's the one you put on the DOAR.

MR. STILLEY: Yes, Your Honor. That's the trouble. I've got lots of sets, but I didn't have a set of the redacted ones. But I tell you what, if you don't mind, I'll just scrawl through this one so he knows what --

THE COURT: No, I don't want you scrawling through it. Exhibit No. 7 has been redacted. You have the original?

MR. STILLEY: I do. I can take that and show it to him, if would rather I do that.

THE COURT: It's in your left hand.

MR. STILLEY: Okay.

THE COURT: I only have one other copy of redacted No. 7, but I will give you my copy, Mr. Stilley. Give this to him, Miss Porter. Now, you're going to have to put it on the DOAR so I can see it.

MR. STILLEY: Okay.

THE COURT: Do you propose to introduce Exhibits 7, 8, 9, and 10, and 11?

MR. STILLEY: That's correct. That's correct. They're certain statutes or parts of statutes.

THE COURT: And those are Internal Revenue Code Sections that Dr. Roberts reviewed and relied upon?

MR. STILLEY: Yes, in 89 and 90. But the reliance was taking place in 93, 94, 95.

THE COURT: Ladies and gentlemen of the jury, the Defendant has given testimony that he reviewed certain Internal Revenue Code Sections in 1988 and 89, and that he relied on these in concluding that he was not a person required to file income tax returns for the years 1993 and 1994. The five code provisions you're going to see, Exhibit 7, 8, 9, 10, and 11, have been admitted solely and only for the purpose of aiding you in determining whether or not the Defendant' failure to timely make income tax returns for 93 and 94 was knowing and willful, and you should not consider the statutes for any other purpose. You're not to consider this evidence as containing any law that you are to apply in reaching your verdicts, because all the law applicable to this case is set forth in other Instructions. This is known as a limited Instruction and this Instruction is going to be placed -- it's called No. 1, and it will be placed on the top and will be affixed to those five Exhibits. Go ahead, sir. And that's Exhibit Number Defendant' No. 7.

MR. STILLEY: That is correct.

Q Dr. Roberts, can you take a look -- these have all been admitted, is that correct, for the limited purpose?

THE COURT: Yes, sir.

MR. STILLEY: Okay.

THE COURT: For the limited purposes of showing good faith on his part.

MR. STILLEY: Right.

Q Now, Dr. Roberts, you have -- and these documents have been admitted in which that you said you put forth your belief concerning your status as a non-taxpayer. Can you look at this portion of Code section and tell us what that you see there that would lead you to believe that everyone in the United States or any particular state is not necessarily a taxpayer just because they live in Arkansas?

A Well, you can reference the letter that I sent why I'm not required to file. And the levy and destraint is something that takes place when someone's does owe a tax and didn't pay it. And if you go down to, oh, about the last four lines starting with the word levy on the right side, it says levy may be made upon the accrued salary or wages of any officer, employee or elected official of the United States, the District of Columbia or any agency or instrumentality of the United States or the District of Columbia by serving a notice of levy on the employer as defined in Section 3401(d) of such officer, employee or elected official. If the secretary makes a finding that the collection of such tax in jeopardy, notice of demand for immediate payment of such tax may be made by the secretary, and upon failure or refusal to pay such tax, collection thereof shall -- by levy shall be lawful without regard to the ten-day period provided in this section. And again, it just showed me that the levy and restraint portion of the code related to failure to pay a tax only related to certain individuals and I didn't fit the category of any of those individuals, so again it helped confirm my belief and knowledge that I was not one required to file.

Q Did you look at -- did you find any other statute that would indicate that the IRS had the authority to seize your property without a Court Order?

A No, I have not.

Q Okay. For the years 1993 and 1994, were you an officer, employee or elected official of the United States, the District of Columbia or any instrumentality thereof?

A No, I was not. (Pause)

Q Now, we've got Exhibits 8 through 11. Do you have those in front of you?

A No, sir, I do not.

Q I didn't get those up there. Can you just tell us, just give us a list of what statutes that you have in front of you?

A I believe the Exhibit No. 8 is Section 151; Exhibit No. 9 is Section 63, taxable income defined. How many are supposed to be here?

Q There should be 10 and 11. Did I leave 10 and 11 off for you?

A I've only seen Exhibit markers for 8 and 9.

Q Pull that paperclip off.

THE COURT: You can approach the witness, if you need to --

MR. STILLEY: Okay.

THE COURT: -- get him on the same book and page with the rest of us.

A Okay. I see it now.

THE COURT: I say the rest of us. Remember, I have none and you've got my only copy.

A Exhibit No. 10 is Section 61, gross income defined, and Exhibit No. 11, Section 6012, persons required to make returns of income. (Off the record briefly.)

Q Have you, during the course of this trial, heard somebody list off those statutes?

A Yes, sir. They were referred to by I believe Agent Miller and Agent Bryan as well.

THE COURT: These are going to be relevant only for the limited purpose we stated; that he relied; that he read them, reviewed them in 88 and 89 and relied on them in connection with his non-filing in 93 and 94.

Q Okay. Dr. Roberts, did you read or review these code sections in 1988 or 1989?

A Yes. These were a portion of the many code sections that I had reviewed for those years.

Q Did you find anything in any of these statutes that said that you were required to file tax returns?

A No, sir. There's nothing here that states that I am an individual required to file a return.

Q Did that form part of the basis for your conduct in 1993 and 1994 with respect to Federal taxes?

A Yes, it did.

Q As we speak, are you able to find anything in these four statutes that states that you were a person required to file Federal income tax return?

A No, I cannot.

MR. STILLEY: Your Honor, may I have just a minute?

THE COURT: Yes. Anybody need a brief break? (Pause)

MR. STILLEY: Pass the witness.

THE COURT: Cross examine.

MR. BLACKORBY: Thank you, Your Honor.

THE COURT: What I'd like to do now is to make sure that we have Exhibits 7, 8, 9, 10, and 11 together, and I would like to staple the Court's limiting Instruction to the outside of that, if we could do that.

MR. BLACKORBY: Here's 7, Your Honor. (Off the record briefly.)

THE COURT: Mr. Blackorby, the Exhibits are assembled, sir, if you need them.

MR. BLACKORBY: Okay, Your Honor. Thank you.

CROSS EXAMINATION BY MR. BLACKORBY:

Q Dr. Roberts, in your initial direct testimony you testified that you resided at 302 North Greenwood?

A That's my place of business.

Q What's your home address?

A 4900 Park Avenue, No. 314, Ft. Smith.

Q And that's the same address as Brenda Gray, correct?

A That is correct.

Q And that's who you live with, right?

A Yes.

Q You also testified you were in the service during the Vietnam War, but it's true, sir, you actually didn't go to Vietnam, did you?

A That's correct. I was never deployed.

Q Sir, let's talk about your educational background and your training. I believe you testified that you were in the top of your class throughout all of your army training, is that correct?

A Yes, sir.

Q Went to master gunner school?

A I went to NCO, yes, basic, which is a gunnery school.

Q What branch?

A It's the field artillery with the United States Army.

Q And you were top in your class there?

A Yes, sir. I was the honor graduate.

Q So in all of those schools and training you had to deal a lot with FM's, training manuals, technical manuals and so forth, didn't you?

A Yes, sir.

Q You had to know how to read them and research them?

A To the best of my knowledge; yes.

Q And you accurately got the information out of those manuals to do the job the army wanted you to do?

A That's correct.

Q Then you came back. I know you had some jobs, but you west to West Ark, is that correct?

A That's correct.

Q What did you study at West Ark?

A I took the pre-chiropractic/pre-medical curriculum that dealt with the basic sciences and the math courses, chemistry, physics, those types of things to prepare for the graduate level work.

Q Take any accounting or business courses?

A No, sir.

Q Did you get good grades in your courses?

A Yes, sir, I did.

Q These sound like very technical courses. You had to do a lot of studying for those, didn't you?

A Endless hours of studying.

Q A lot of research?

A Tremendous amount.

Q You had to go to different volumes and different manuals and so forth to get information to answer questions, didn't you?

A Well, generally each course came with its own book for that semester and that's what we studied; yes.

Q But did you limit yourself always to the book of the course?

A I did certainly while I was in college.

Q You did?

A Yes. They were the required texts. And that's about all we had time to get through.

Q You never went to the library and looked for additional information on any course topic or anything?

A No, sir. While at West Ark I did not.

Q Well, let's talk about Cleveland Chiropractor. What about when you went to chiropractic school? Did you expand your research skills?

A I would try to stay current on some of the journals that came out as we were going through school, but that was very limited.

Q But you had to do -- at least I would hope at this point you had to do research and expand your area of research on where you went to get information, isn't that true?

A Well, there's no research study as a requirement. All of our studies were curriculum related. They had no research projects or anything like that.

Q So you didn't use the library?

A No, sir. I did use the library.

Q Now, to get your license, you had to take an exam, is that correct?

A That's correct.

Q How long did that exam last?

A It was a two-day examination.

Q And I imagine it covered various topics in the chiropractic field?

A Yes; that's correct.

Q And to get the questions right, you probably had to study for that exam, didn't you?

A A total of about six years worth of study. That's correct.

Q And to maintain that license -- I assume you're still licensed?

A Yes, sir, I am.

Q You have to take any kind of continuing education courses?

A Yes, I do.

Q How often do you have to attend or how many courses a year do you have to attend?

A We are required to take a minimum of 24 continuing ed hours every year to maintain our license in Arkansas.

Q Does that require additional reading and studying in addition to going through a course?

A Well, there's no testing generally related to that. It does require us to go and sit through classes where we have instructors present information to us, but there is no actual requirement of study or testing to maintain a license.

Q What about the course work? Is it in your field, your field of chiropractic and so forth?

A The post-graduate studies?

Q Yes.

A Yes.

Q All right. Now, within the field do you have certain regulations or requirements you have to adhere to be a chiropractor?

A There certainly is a -- we're licensed by the State of Arkansas through the Arkansas State Board of Chiropractic Examiners.

Q So you have to work with certain standards?

A Yes, sir.

Q And if you violate those standards, you can be -- I assume your license can be revoked?

A That is one possibility; yes.

Q Or some kind of punishment can assess to you if you violate those standards?

A That's correct.

Q What about professional organizations? You belong to any professional organizations?

A Yes, sir. I am a member of the Arkansas Chiropractic Association as well as a member of the American Chiropractic Association.

Q On your chiropractors license, do you have to pay a fee?

A Yes, sir. There is an annual fee for that.

Q How much is that?

A I believe the last time that I was aware of the invoice it was $155 a year.

Q And what will happen to you if you don't pay the fee?

A I'm not sure I've never not paid it.

Q You do you think you would lose your license if you didn't pay the fee?

A I'm sure that I would be notified that there was something wrong and I would have that opportunity to correct it.

Q Well, let's say you didn't pay the fee. Wouldn't you lose your license?

A I would assume that's a possibility. I don't know for certain what the ramifications are.

Q And if you didn't have a license, could you practice as a chiropractor?

A Not with the blessing of the state.

Q It would be an illegal practice, wouldn't it?

A In the eyes of the state; yes.

Q In your profession do you have to file any kind of medical reports, quarterly, monthly at any time saying how many patients you treat or what you do?

A No, sir.

Q So you don't report to any regulatory body or agency anything about your practice?

A No, sir.

Q What automobiles do you own, Dr. Roberts?

A I do not own an automobile.

Q What automobiles have you bought?

A Starting when?

Q Well, let's start this year.

A I have not purchased an automobile this year.

Q What about last year, 1999?

A Did not purchase an automobile last year.

Q Did you hear the testimony of Brenda Gray?

A Yes, I did.

Q And I believe she testified that you gave her the money to buy that 99 Lexus?

A I give her the money she needs; yes.

Q You gave her the money to buy the 99 Lexus?

A That's where it came from; yes.

Q Have you given anybody else any money to buy an automobile?

A No. I have not.

Q How do you get around, sir?

A Well, because we live together and have a relationship, she drives me.

Q In the 99 Lexus?

A That's correct.

Q Is there any other cars that the two of you have utilized, whether it's in your name or not?

A I have on occasion borrowed Brenda's brother's pickup truck when I need to haul stuff, and on occasion I have used my father's pickup truck when I needed to haul some stuff. Other than that, no.

Q So between the two of you the only vehicle available to you now is the 99 Lexus?

A That's correct.

Q And you paid for that, and I'll refer you again to Government's Exhibit 44-1, that was a $58,000 car, is that correct?

A I'd have to see the papers. I wasn't there when that transaction was made. What total are you referring to here?

Q Right here it says total, total price $58,757?

A Yes.

Q And there was $11,000 for a trade in. That was a 91 Lexus, wasn't it?

A That's correct.

Q Did you buy that car for her?

A Yes.

Q And the rest she made a cash payment of $29,765. See that figure?

A Thumb's in the way. Yes, I do.

Q And you gave her the money for that cash payment?

A Yes. I did.

Q And then she borrowed $16,990?

A Your thumb is in the way again. Yes.

Q Which was paid off 30 days later?

A That's correct.

Q And you gave her the money to pay off the $16,000?

A That's correct.

Q Now, sir. You testified you weren't part of this transaction?

A No, sir. I was not there when that deal was made.

Q How come on the customer information document that's part of the transaction your name is on there?

A Well, I guess they asked her. I don't know.

Q But it is true, sir, that her application for the loan proceeds states that you make $14,000 a month?

A I'll have to see it. I wasn't there. Yes. That's listed 14,000.

Q So in 1999, you made 14,000 a month?

A No. That's what she put on that form.

Q In 1999 you paid her $6,000 a month?

A No. I have given her money as she needs it to make purchases of things.

Q Well, she testified the only place she got money was from you?

A That's correct.

Q And, therefore, you gave her $6,000 a month, which is what she put on the form?

A I give her money when she needs it. She does not get a monthly amount, any set monthly amount.

Q Well, I assume if she's telling the truth, then you're giving her at least $6,000 a month?

A You're assuming that?

Q No. Is that a correct assumption?

A I can honestly tell you I do not give her $6,000 a month every month.

Q How much do you give her?

A I give her what she needs. Outside of that automobile purchase, it's very minimal. She doesn't ask for anything.

Q Well, this comes to $72,000 a year. So how much money in 1999 did you give her?

A I have no way of knowing.

Q Are you guys married?

A We are totally committed to each in our hearts. Yes, we're married in our hearts.

Q Yeah, but on this loan application it says you're her spouse.

A I'm sure that the way she feels, and that's the way I feel.

Q So between the two of you, you're telling the bank to get this loan -- her to get this loan, between the two of you, you're making $20,000 a month. That's correct?

A That's what's listed on that form; yes.

Q Which she put on there?

A Yes.

Q That's her handwriting, right?

A Well, let me look at it.

Q Did you hear her testimony yesterday?

A Yes, I did.

Q That's her handwriting?

A Yes.

Q You also paid $1,520 a month rent, is that correct?

A That is correct.

Q So you're paying her $6,000 a month or more, if this is to be believed, and you're paying $1,520 a month for rent.

A Well, the $1,520 a month for rent is correct. And, again, I don't give her a set amount of money on a monthly basis.

Q She wouldn't lie on a loan application, would she?

A Well, I don't know exactly what transpired during that time.

Q Well, whatever it was, the whole $58,000 for the car, you gave it to her?

A That is correct.

Q Now, sir. You testified or you heard testimony about a 94 Explorer which you bought in 1994. Do you remember that?

A Yes, sir, I do.

Q Government's Exhibit 38-2, could you bring that up? Now, you bought that car in your own name, didn't you --

A Yes, sir, I did.

Q -- from Randall Ford. And you paid $27,755. Is that right?

A That's correct.

Q And you paid for that cash?

A I believe I wrote a check for it.

Q But I mean you didn't finance it.

A I don't think I did.

Q Paid for it all at one time?

A I believe that's correct.

Q And was this money that you earned from your chiropractic practice?

A Yes. That's the only money I've made since I've gone into practice.

Q Same with the Lexus, the 99 Lexus. Is that -- do those funds -- did those funds come from your practice?

A Yes.

Q What about your monthly rent, does it come from your practice?

A Yes, it does.

Q So this 1994, one of the years you were charged for not filing a tax return, is that right?

A Yes.

Q You bought the Ford in 1994?

A Yes, I purchased that for my parents.

Q But you purchased it?

A That's correct.

Q Also in 93 and 94 you heard the evidence about the accelerated payments you made on the Sally Mae loans. Do you remember that?

A Yes, I do.

Q And you made those statements, didn't you?

A Yes, I did.

Q I believe this witness testified and this record reflects that this Government's Exhibits 30-3 that in 93 on one of the loans you paid it down from 57,000 down to zero in one year, in 19 -- or 1994, excuse me. IS that correct?

A I would have to refer to that document. According to this document that payment schedule is correct.

Q So you paid over $50,000 in one year to pay that loan off?

A That's correct.

Q Again, did this come from the fees of the chiropractic practice?

A Yes, they did.

Q Now, Sally Mae as the witness testified, sir, that's funded with Federal tax dollars, isn't it?

A No, sir. It's a guaranteed. If someone defaults on the loans to those individual providers, the Government then steps in and takes over the loan and comes after the individual that defaulted, but it's my understanding that money is provided by private sources, only guaranteed by the Government.

Q But if you hadn't paid, Uncle Sam would have had to step in and pay that, isn't that right?

A It would have paid that note and come after me, but they were paid.

Q But they were paid from a profession that that Federally-guaranteed loan allowed you to undertake and train for, isn't that right?

A I guess you can put it in those words. The Federal Government did guarantee those loans.

Q Well, we'll let the jury do that, sir?

A All right.

Q What real property do you own, Dr. Roberts?

A I don't believe I own any.

Q There's no property in your name? Land?

A None to my knowledge.

Q Is there any property you've ever paid for and still plan any type of ownership that's not in your name?

A That I claim ownership to?

Q Uh-huh.

A No, sir.

Q Is there any property in Brenda Gray's name, real property, land, buildings, houses?

A I believe that she had entered into an agreement with her brother last year on some property.

Q Did she buy some property?

A I believe that she is -- she and her brother are working together to purchase some property; yes.

Q Where did she get the money to pay for it?

A I believe that it's self-generated income off of the rent from the property and the car lot that her brother is operating off of that property.

Q Out of this $6,000 a month that you're giving her?

A No.

Q Sir, let me ask you, what business names do you use?

A Currently the name that the clinic that I work for is Orthoneuro Medical Associates.

Q And what was it before that?

A It was Roberts Chiropractic Center, which is still kind of a subsidiary or sub portion of that Orthoneuro.

Q What else makes up Orthoneuro?

A There's a medical physician that works in the clinic as well as a massage therapist that works in the clinic. It's a multi-disciplinary healthcare facility.

Q Whose the physician?

A Dr. Morton Wilson.

Q And how long has he been in the clinic?

A I believe he's been there working on two years.

Q And what about the therapist, what's her name?

A I believe Sue Barnes.

Q And how long has she been there?

A I think she is also working on the second year.

Q And what's -- where is the actual location of Orthoneuro? Is that your practice on Greenwood?

A That's the site facility; yes.

Q Okay. Well, it was introduced Government's Exhibit 27-7 from Wal-Mart where you told them the location of Orthoneuro was Grand Turks Island, which I believe is in the Caribbean. What do you have in the Caribbean?

A Well, at one time that was a Pure Trust Company that had all the paperwork filed in that area.

Q Why would you file in the Grand Turks Islands?

A Well, that was the filing of the trust. The trustees took care of all of that.

Q Who's your trustee?

A I don't know what the name is on that. That has since been changed.

Q You don't know who your trustee is?

A No, sir. I haven't looked at those documents in a long time.

Q But it's your trust?

A I don't own the trust, sir.

Q You owns the trust?

A I guess the trustees and the certificate holders.

Q And who's that?

A I don't know. I'd have to refer to the documents.

Q So who's the trustees?

A I don't have that information on this form.

Q The only name on the form other than Orthoneuro is your signature, is that right?

A That's correct, unless it is the agent for that trust.

Q So you're the agent. What assets does this trust own?

A It owns all of the equipment, the accounts receivable, everything that has to do with that clinic.

Q Your chiropractic practice, right?

A As well as the medical practice and everything that's there.

Q The medical practice, you're talking about the doctor that works with you on Greenwood?

A That's correct.

Q And you go ahead and you register that practice, which was under Roberts Chiropractic which is now Orthoneuro, and it's registered as a business in the Grand Turks Islands?

A Well, it was at that time. Again, that has been changed.

Q And what's it changed to now, sir?

A I haven't referred to those current trust documents since that was done, but I believe it's now all in Arizona.

Q In what town?

A Sir, I'd have to refer to the documents, and I don't have them.

Q But you're the agent, right?

A I was the agent at that time. I'm now the manager.

Q And this, this document is dated November 97 when it was in the Grand Turks Islands. When did you move it to Arizona?

A I believe that that transfer was made certainly some time after that and, again, without referring to the documents, I don't -- I couldn't tell you that.

Q Well, that's less than two years ago, sir, and you can't remember that?

A No, sir, I cannot.

Q Does the trust -- what name is the trust in Arizona?

A Orthoneuro Medical Associates.

Q The what does the Arizona trust own?

A That's owns everything.

Q Your accounts receivable, your practice?

A Everything.

Q The doctor that works with you and the masseuse?

A Well, they work for that same trust.

Q Did you try to move this into a trust so the IRS couldn't get after your accounts receivable?

A No, sir. I had no fear of that, because I don't have a liability.

Q What's the purpose of creating the trust in the Grand Turks Islands?

A Well, financial advisors told me that certainly the liability risk when you involve yourself with multidisciplinary clinics, you take on the liability of everyone that works there, and that the best protection you have is to have everything in a trust so that your liability is greatly decreased should anybody else make a mistake or harm someone in the practice.

Q So in other words, if you make a mistake and harm someone, they can't come after you?

A Not me, no.

Q Let me ask you about that, sir. In addition to the masseuse and the doctor, do you have employees?

A I have people that contract to work there.

Q And what do they do?

A They are certainly the office manager that works out of nothing but love and commitment, and that's Miss Gray that you met, and then there's some other ancillary staff, the receptionist and assistants that help to provide therapy to the patients.

Q How many people is that?

A Total in the clinic?

Q Not counting the doctor and the masseuse. Your assistants and the -- the officer manager is Brenda Gray, right?

A That is correct.

Q So the love includes $6,000 a month?

A Sir, I don't give her that. We've already talked about that.

Q Well, that's what the document said, isn't it?

A That what's that document said; yes.

Q Okay. But who else is there as your assistant?

A A lady by the name of Amy Rhodes is there and we just hired a new one during the course of this trial and I have not met her yet, and so I couldn't tell you that name.

Q Well, let me ask you, sir, on these people that are assistants, do you withhold payroll taxes and pay that over to the IRS?

A No, sir, I do not.

Q Do you pay any Social Security tax on them?

A No, sir, I do not.

Q Now, sir, it came into evidence from the lady from Pine Cove Marina, Exhibit 48-1, about your boat rental slips. You remember the checks coming in or the list of checks? You still have a slip over there, don't you, sir?

A Yes, I do.

Q And how much do you pay a month now?

A I'm not sure. I don't see anything listed here for 99.

Q But are you still making monthly payments on it -- well, let me help you. Have you had a slip? Let me rephrase that. But are making payments now on that slip?

A On a slip, yes. Not this one.

Q And I think she testified that slip was 51 feet long.

A I thought I heard hearsay 50, but, yes.

Q Close enough. I'll give you 50. Do you have a boat in that slip?

A I do not own the boat in that slip; no.

Q Do you have a boat in that slip you use?

A There is one there that I use.

Q Who owns that boat?

A It's owned by NXS Maritime Supply.

Q And who owns NXS maritime Supply?

A The trustees of the trust.

Q Which trust?

A NXS Maritime Supply.

Q Do you have anything to do with that trust?

A Yes. I am the manager of that trust as well.

Q What other participants, human participants are in that trust?

A Well, again, the trustees, certificate holders of the trust, myself.

Q You're it?

A I'm the manager of the trust; yes.

Q And who else is a participant in the trust? Who's the certificate holders?

A I would have to pull out those documents. Again, they're filed away.

Q How much did this NXS, of which you're the manager, pay for the boat that's in that slip?

A I believe the cost of that boat was approximately $175,000.

Q That's a big boat, isn't it, sir?

A Pretty big.

Q Let me show you some pictures. Are those pictures of your boat, sir, or the NXS?

A Yes. Those are pictures of that boat.

Q It's called Opus I?

A That is correct.

Q And who -- do you normally -- who utilizes that boat?

A Well, they're a lot of folks that utilize it. I primarily am the operator of that boat.

Q What else -- what other -- first of all, Your Honor, I'd like to move for admission Government's 50-2, 50-4, 50-1, 50-5 and 50-3, which are pictures of the boat.

THE COURT: Any objection?

MR. STILLEY: Your Honor, I'd like to see pictures of the boat.

THE COURT: They will be admitted over the objection of the Defendant.

MR. STILLEY: Judge, I wasn't -- I didn't state an objection. I just wanted to see a picture of it.

THE COURT: Have you not seen pictures of it before?

MR. STILLEY: No, I haven't seen a picture of it. No objection at all.

THE COURT: They'll be admitted without objection. BY MR. BLACKORBY:

Q Now, sir, just so the jury can see before we go on, is that your boat, same picture you looked at?

A That's the boat that's in that trust in NXS Maritime Supply; that's correct.

Q Where did the money come from to buy that boat, sir?

A The money that came from Orthoneuro Medical Associates.

Q Which is your practice?

A Partially my practice; that's correct.

Q Well, who else contributes or has funds going into that practice?

A Well, everyone that provides service there.

Q The masseuse, the doctor you talked about?

A Yes, sir. They generate revenue from that.

Q Well, if we bring them in and ask them how much revenue they contribute, what would they say?

A To the clinic?

Q Yes.

A I don't know what they would say.

Q This is the boat, isn't it?

A That is correct.

Q And that's your American flag on your boat?

A Yes, it is.

Q Now, sir, you haven't filed, the testimony has been, since 1990. That's right, isn't it? You haven't filed a tax return since 1990?

A I believe that's correct.

Q Haven't paid any taxes, Federal taxes on your income since 1990 or since 1989? Excuse me.

A I have not filed a return since 1990.

Q But your practice has done really well with revenue, hasn't it?

A Since when?

Q All the years?

A It's progressively grown; yes.

Q You saw the figures that came in here. We're going to look at those in second, but I think you had receipts of $132,000 in 93 and $207,000 in 94. Do you remember those figures?

A Yes, I do.

Q Those were good figures, weren't they?

A Yes.

Q And you have done better each year since then, haven't you?

A That's correct.

Q So to when we get to 1999 or 1998, what were your receipts in those years, sir?

A I have no idea. I've not added them up.

Q Well, if we have printouts from the Internal Revenue Service that just reflect your 1099 income that show in 98 you had over $300,000, would you dispute that?

A I couldn't dispute it without looking at the 1099's.

Q You know what 1099's are, don't you, sir?

A I am familiar with that.

Q Now, here's -- it's under seal, Government's Exhibit 1-5 for the 1998 year for Roberts?

MR. STILLEY: Your Honor, I'm going to have to object on two grounds on this. We're only dealing with years 1993 and 1994, and I'd like to let the man have a little latitude, but the other objection is it's just a total waste of time, and it's prejudicial under 403.

THE COURT: Mr. Blackorby?

MR. BLACKORBY: Your Honor, it is an exception to 403. This gentleman hasn't filed since 1989. He's continued the same pattern of not filing returns or paying taxes and I believe the Government has a right to show that his failure to file since 1989 wasn't due to mistake or misconception or anything; that it was a willful pattern of not filing returns, and I think his income level in the subsequent years from when he stopped filing to demonstrate that.

MR. STILLEY: Judge?

THE COURT: I'm going to overrule the objection. I'm going to admit them. What are the numbers? BY MR. BLACKORBY:

Q 1-5, 1-9, 1-6, 1-7, and 1-8. Now, sir, if you'll look on the last page of 1-9, we're talking about the 1998 year, and most of these are filed under the name of Orthoneuro Medical Association. Would you look at the total figures on the last page, sir? Now, isn't that the total -- at least from your 1099, $260,952, plus these figures under that?

A That's the total that's marked here; yes.

Q And W-2 or 1099's in your own name for the same 1998 year, and I'll hand this to you in a second, don't they total $37,824?

A That's what this total says; yes.

Q So in 1998 alone just in 1099 income you have over $300,000? Isn't that right?

A That's what this would add up to; yes.

Q Do you dispute that?

A I'm not disputing those numbers; no.

Q In addition to the 1099 income, sir, isn't it right you have other sources of locations that pay you directly?

A Yes. There are some patients that will pay by check

Q So essentially you had more income in those years than even those forms reflect, is that right?

MR. STILLEY: Objection. He characterized this as income. We've already decided that before we discuss income, that the Court will provide the jury with a definition of income from the Internal Revenue Code.

THE COURT: It's overruled. You can answer if you can, sir.

Q Your income would be greater or is greater than what those 1099's show, isn't it?

A Well, the monies received into the clinic would be higher than those amounts on the 1099's; that's correct.

Q Now, as parts of your practice in any of these years, do you get Medicaid or Medicare or any payments in that form?

A There are payments made to us on behalf of the Medicare. I'm not a Medicaid provider, but since the medical doctor came to the practice, I believe there have been some Medicaid payments, and those payments are made on behalf of the individuals that received the care.

Q So you do get public tax dollars as part of your fees?

A Well, those dollars are paid on behalf of the patients. They get the benefit and the money, yes, is paid directly to us.

Q For your treatment?

A For to the care provided in the facility; that's correct.

Q All right, sir. You heard the testimony and I believe you even testified that you graduated from high school when?

A 1972.

Q Okay. And you've been more or less employed or going to school since then, is that right?

A Employed or going to school?

Q Yes.

A Yes; that's correct.

Q And I believe the testimony has been that you have filed returns since shortly after 1972 up until 1989?

A I believe that testimony is correct; yes.

Q And in all of those instances, whether it was you, you and your wife or you alone, you put income and expenses on those returns, you paid the taxes when you made money; in other words, you filed returns with financial information on them, isn't that correct?

A Yes. I never made the returns or put the information on there. I've never done that. At one point in time my wife did those things and then, as she stated, as things got a little more complicated and confusing, we had an accountant or a bookkeeper do that.

Q Well, let's look at your 87 return that came in through your accountant, sir. Your accountant testified that you brought in the information to go on that return. That's true, isn't it?

A Well, I won't dispute that. That was a long time ago. I may have dropped that information off to him.

Q But the information you dropped were dollars and cents, Schedule C, if we could bring that up, listing your receipts of over $50,000 from your practice and your expenses. You provided him with that information, isn't that right?

A Mr. Ruffin provided me with a book that had column headings, and his bookkeeping system was to then categorize the expenses in the practice, and I would bring him that accounting booklet, and he's the one that then made all of these forms. So he took the information from the booklet that he had provided me, and under the headings that he had told me to put, and then he extracted the numbers and did these forms.

Q But you put the dollars and cents figures in there, right?

A I may have on occasion done it. Most often it was my wife.

Q Well, she testified you did it. She also testified you set up your own books and records of the clinic.

A That was under the direction of Mr. Ruffin. He told me how to categorize the things to put them in the columns so it would be easier for him to prepare these forms.

Q So Government's Exhibit 6-4, which I think is a summary sheet, is that correct? There's a copy of it.

A Yes, this is an example.

Q Your 1989 summary sheet, is that right?

A That's what it appears to be.

Q Is that your handwriting on the sheet?

A No. That is not my handwriting.

Q Where did the information come from?

A The information came from the cancelled checks and receipts from the office.

Q But this is what you took from Mr. Ruffin?

A Yes. This is this booklet I dropped off to him.

Q So you did take him information?

A Well, according to him, I dropped this off also, so I'll say yes, I did.

Q Okay. Let's look at your 88. That's 87. Let's look at your 88 return, Government's Exhibit 1-1. First, is that your signature?

A Yes, the top signature is mine.

Q And as Mr. Ruffin testified, he prepared this returns, put the dollars and cents figures in from what you brought him. Do you remember that testimony?

A I remember that; yes.

Q So you brought him the information?

A I'm not sure I brought or dropped it off on this year, but that information did come from that booklet that we filled out.

Q Let's look at Government's Exhibit 1-2. Is that your signature on that return, sir?

A Yes, it is.

Q And, again, do you remember Mr. Ruffin's testimony that you brought him the income and expense figures for your practice as well as the other deductions?

A Yes.

Q And, sir, you don't dispute, do you, that you haven't filed since 1989, which is reflected in Government's 1-4?

A I don't despite that all.

Q Nor have you filed any state income tax returns, have you?

A I've no requirement to file the state either.

Q Sir, you remember the big blow-up of Special Agent Bryan's figures?

A No, I do not.

Q Government's Exhibit 2-18(a)? To be brief, do you remember this blow-up now?

A I remember you referring to it. I don't know if I could see it or not. I think I was facing the jury.

Q Well, my question is: Do you dispute, based on the bank deposit -- the analysis of your bank account that these are the income and expenses in the amounts as reflected on here?

A I have no way to dispute that, because I've never totaled those figures.

Q Yeah. But weren't you given the opportunity to go over the check spread prepared by Special Agent Bryan? Didn't he send that to you in a letter -- cover letter?

A Yes, he did send me a cover letter asking me to denote whether checks that he had published there were for personal use or for business use.

Q And that was Government's Exhibit 2-5, right?

A I'd have to see it.

Q And you chose not to respond to that letter or not to do the bank analysis, is that right?

A Well, without a sufficient Miranda warning, I was hesitant to give anything to Mr. Bryan.

Q Didn't Mr. Bryan offer to meet you at the initiation of his investigation? Didn't he set an appointment with you?

A Yes, he did.

Q And didn't he write a letter later asking to meet with you?

A Yes, he did.

Q And on both occasions you turned down that personal interview, didn't you?

A Yes, I did.

Q Now, sir, did your kids go to public schools?

A I believe they did go to public school, and I know there was time when one or more went to a Christian school which was a privately -- private school.

Q Okay. Let me ask you, sir, when you have someone that comes into your practice and doesn't pay their bill, what do you do?

A To be honest, we write it off.

Q You ever take them to small claims court?

A Two occasions.

Q Are you sure it's two occasions?

A I believe it's two is all that I recall.

Q Would it be about four or five each year, if we brought the Sebastian County records in here?

A No.

Q You've only taken people to small claims court on two occasions?

A I can only recall two occasions. The reason that we quit doing it is because we got judgments and then people filed bankruptcy and never paid us anyway, so it wasn't worth our time.

THE COURT: Could I see the attorneys just briefly here. (Off the record bench conference.)

THE COURT: I've been getting your vibes and whatever. We're going to take a take a break. I'm not picking on my smoker, but do we need a pretty good one we think?

JUROR: No.

THE COURT: I may send you a bill when this is over for nicotine aversion or something. We're going -- we're going to be in recess probably for 15 to 20 minutes, but we'll remain in session till you're out of the room. Remember the admonition of the Court not to discuss this with anyone or allow anyone to discuss it with you. Thank you all very much. You-all can remain seated till they're out of the room. (Jurors leave the courtroom.) 10:40. Anything we need to put on the record with the jury out of the room?

MR. BLACKORBY: Not from the Government, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: No.

THE COURT: Fine. We'll be in recess then until 11:00 o'clock. Thank you all very much. (Off the record at this time. THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: You have a good break?

JURORS: Yes.

THE COURT: We'll probably go till probably try to cut you loose about 12:00. It's not raining today, so we all may walk outside for lunch. Continue, please, sir.

MR. BLACKORBY: Thank you, Your Honor.

Q Dr. Roberts, you testified on direct you received advice from various CPA's and local attorneys. Who are those people?

A Well, I've got them here. Law firm of Curtis & Curtis.

Q May I see those?

A Paralegal Bill Conklin and Floyd A. Wright, Public Accountant.

Q Curtis & Curtis is in Nebraska, is that right?

A That's correct.

Q I thought you said local?

A Well, I have had local conversations. I again don't remember. I didn't keep a list of them. A lot of times the conversations would come up casually and see if anyone could direct me to a specific law that required me to do this. And I've never gotten that answer from anyone.

Q But, sir, there's nothing in here that tells us what you told the law -- the law which you get back from a lawyer depends on what you tell them, isn't that right?

A I would presume questions that you ask; yes.

Q So where in this letter where -- where do we know what you told the law firm?

A Well, this first line says, "Dear Mr. Roberts, I'm enclosing my legal opinion as you requested, but as you will note in my letter, the IRS and the courts do not agree with this position. This does not mean that there is any change whatsoever in the opinion stated in the letter." It is exactly the same. I requested his opinion on this.

Q Yeah. But direct your attention, sir. What's the date of the letter?

A That opinion was April 28th, 1998.

Q So back in 93 and 94, when you were not filing those returns, you had not even consulted this firm, is that right?

A No, sir. I had not consulted that firm at that time. That's part of the continuing search for the truth.

Q Well, still in your letter or his cover letter it doesn't say what areas or what information you were inquiring about to cause this response, does it?

A No. It was -- I'd have to look at that first line again. I'm closing my legal opinion as you requested. It does not state specifically what the request was, but the body of the letter would make that very, very self-explanatory to anyone who read it.

Q Do you have anything else, sir, on professionals that you can identify, the professionals you consulted with?

A Well, I've got a 90-page report from Joseph R. Bannister, and ex-IRS/CID agent that gave the same opinion.

Q And this appears to have been published in 1999, sir?

A That's correct. 1999.

Q Do you have anything else? Who's your local CPA's and attorneys?

A Well, again, that conversation has just come up several times casually. I did not specifically direct in a letter to get an opinion.

Q But, sir, who are they? Who did you talk to?

A One local attorney that took me hand and foot, line by line, section by section was Mr. Oscar Stilley.

Q Your defense counsel?

A That is correct.

Q Who can't be put on the stand in this trial, can he?

A I don't know if he can or not.

Q Anybody else, sir?

A I've got many letters here and an information from Bill Conklin, a paralegal and communication -- a language expert that explained a lot of the code and further clarified my understanding.

Q May I see those?

A Sure.

THE COURT: How do you spell the last name Conklin?

Q C O N K L I N. He's a paralegal in Denver, Colorado, is that right?

A That is correct.

Q Now, these are all dated 1999.

A That's correct.

Q So you weren't consulting these in 93 and 94, were you?

A I had not consulted these individuals at that time; no.

Q Anybody else local?

A None other than the ones that specifically I've discussed and the one name that I've been told that I can't tell.

Q I'm afraid you're going to have to tell that, sir?

A That's the U.S. Magistrate.

Q No, you can't go into that.

A Okay.

Q Anybody else? I think you testified on direct you consulted a local CPA. Whose that?

A No. I talked to this and had this discussion with several accounting people and bookkeepers and CPA's as I became acquainted with them, and I would ask a question, can you show me the statute or the law that requires me or any individual to file or

make a Federal income tax return, and can you do that without a waiver of Fifth Amendment right?

Q Sir, I just asked you who they are. We've heard your testimony before?

A Categorically I don't have a name. I can't give you that.

Q Well, let me ask you sir. In the Exhibits that Mr. Stilley introduced through you on direct, Defense Exhibits 7, or correction, 7, 8, 9, 10, and 11, do we have those originals? Do you remember those, the tax code sections that were introduced by Mr. Stilley?

A Yes, I do.

Q Now, the first one, Exhibit 7, you testified that's a section 6331 levy in destraint. Do you remember that Section?

A Yes, I do.

Q And you read the where it references that it pertains to essentially Federal employees, isn't that right?

A Yes.

Q Now, I don't want you to go in and read, sir, but I want you to look at the other Exhibits, 8, 9, 10 and 11, which I think they talk about various gross income, tax income and so forth. And tell me, sir, if any of those sections which I think you said you've already reviewed and consulted talk about Federal employees?

A No, not specifically.

MR. BLACKORBY: I pass the witness, Your Honor.

THE COURT: Any redirect based upon the cross examination of the Government? That a yes.

MR. STILLEY: Yes, yes.

THE COURT: Fine.

REDIRECT EXAMINATION BY MR. STILLEY:

Q If you needed to sell that boat in order to pay a tax that somebody showed you that you were in fact by the Internal Revenue Code liable to pay that tax, would you sell that boat?

A I would sell the shirt off my back to fulfill any requirement, any liability that I had.

Q There's been made quite a bit a deal that you had a note that was guaranteed by -- apparently guaranteed by the Federal Government. Have you ever had a bank account?

A Yes.

Q Did they say anything about FDIC?

A That's correct.

Q Do you know what FDIC insurance is?

A Federal Deposit Insurance something.

Q Have you ever seen a place that you could open a bank account that didn't have Federal insurance?

A No, sir. I'm not aware of any. There may be some through the Indian nations and their banking system, but I don't know.

Q It's been made quite a big deal that you did not want to meet face-to-face. Were you willing to correspond with Mr. Bryan about any concerns he had?

A More than willing and, in fact, did that. Anytime I would try to glean information, I certainly wanted the opportunity to be able to look at it, read the questions and understand what they were. So I wanted to do all of that in writing. You're at great risk anytime you talk to someone under the penalties of perjury and you certainly want to make --

THE COURT: Dr. Roberts, just answer the questions, if you can. Try not to make a statement or a speech or whatever. just respond to his questions.

A All right.

Q There's been be quite an issue made that you might have filed suits to try to collect some money --

THE COURT: There was an objection made, sustained, and it was sustained, and the Court's ruled on that and we're not to visit there, Mr. Stilley.

Q Is that everything about lawsuits?

THE COURT: Mr. Stilley, you have read prior Orders of this Court. We've discussed with you this morning at length including once a barside. We will not go over that again, sir. Ask another question, if you have a question on redirect that's relevant to what you heard on cross examination.

MR. STILLEY: Your Honor, I --

THE COURT: Mr. Stilley, don't argue with me.

MR. STILLEY: Can I --

THE COURT: If you've got a question, ask a question. BY MR. STILLEY:

Q You said, you said you paid for or it was your money that bought a $60,000 car for Brenda, is that not correct?

A That was money that was generated through the practice; yes.

Q Did you also say that you gave her money from time to time?

A Yes, as she needs it.

Q Do you think that that might maybe be a thousand dollars a month or so?

A Could be or less or a little more; as she needs it.

Q How much -- if you took $60,000 added $12,000, how much would that be?

A Sixty and added 12?

Q Right?

A That would be 72.

Q Okay. 72,000 divided by 12 months, how much would that be?

A Be six years.

Q No, no, how much a month?

A If you -- if it was 72,000 provided to Brenda during a year, and there's 12 months in that year, how much would that be averaged out on a per month basis?

A I don't have my calculator. I guess it would be somewhere around 6,000.

Q You testified that, that you had talked to Oscar Stilley about your duties with respect to the Federal income tax. When did this happen?

A That was in 90 or 91.

Q Okay. And what kind of information did you --

MR. BLACKORBY: Objection, Your Honor.

THE COURT: That's improper, Mr. Stilley, and you know it, sir. That objection is sustained. Go on to something else.

MR. STILLEY: Your Honor, may I approach? I really --

THE COURT: Yes. In fact, I want you to approach (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: I made the comment I think yesterday that I had just heard the most objectionable question asked by you, Mr. Stilley, I had ever heard. I take that back. It was this morning. It was that question. What in the world are you thinking, Oscar, Mr. Stilley?

MR. STILLEY: Well, he had a right to rely on the --

THE COURT: You are testifying? Are you going to take the stand? This is the most improper -- this is the worst conduct I've ever

seen of a lawyer, Mr. Stilley. I am appalled. What do you want to say? Put it on the record, because we are -- we're going to visit this further at length, Mr. Stilley. The practice of law, sir, is a privilege, especially in Federal Court. You're close to losing that privilege in this Court, Mr. Stilley. You got anything else you want to ask the witness?

MR. STILLEY: I absolutely do, Judge. I --

THE COURT: Well, if you're going ask something that's relevant or something that was brought out on cross examination, you can ask it, but I don't want you to do this anymore. This is improper.

MR. STILLEY: Well, Judge, I want -- I don't want to get back in trouble when I go back down there.

THE COURT: Well, you're going to be in trouble if you ask questions that we've already ruled on or something that is as improper as this. There is not a first-year law student that would attempt to ask that question, Mr. Stilley.

MR. STILLEY: Judge, here's what I wanted to, to make an offer of proof on. What I'd like to do is ask him questions.

THE COURT: Mr. Stilley, you can make an offer of proof on this, but anything you say could and may be used against you at some point. You know, you need to be real careful about the proof you make in connection with conversations he's had with you about violating the law.

MR. STILLEY: Judge --

THE COURT: I can't represent you, Oscar, but you can make any sort of offer of proof you want to make.

MR. STILLEY: If you could just calm down a little bit. I'm not trying to go to that same place. I've got a new place go to, Judge.

THE COURT: All right. Tell me what you want to do.

MR. STILLEY: Here's what I want to do. See, the Plaintiff got up and just smeared my client about how much money he had and how much he -- his big boat and how much he made in 1999. Well, now he's opened the door for me to show that he has filed three lawsuits for declaratory judgment.

THE COURT: We've already visited that and I've already ruled.

MR. STILLEY: That was before that they had brought all of this irrelevant stuff up in.

THE COURT: I'm denying it once again.

MR. STILLEY: He can't show in the face of accusation bad faith because he had a lot money, he can't show that he tried to get a declaratory judgment to ascertain his responsibilities?

THE COURT: Absolutely not, N O T, period.

MR. STILLEY: Okay. Well, I object highly.

THE COURT: Fine. I want you to object as highly as you need to be, but what else do you have?

MR. STILLEY: Let me see. Your Honor, there was a real insinuation that he had sued more people than he's sued. There was a real insinuation that he had sued more people than he said he had sued.

THE COURT: Well, ask him that, you know.

MR. BLACKORBY: You talking about small claims?

THE COURT: Yeah. Small claims?

MR. STILLEY: Well, what I wanted to ask him. I don't want to go way off deep into this, but what I wanted to ask him is if he had to sometimes sue lawyers because the lawyers tried to beat him out of his bills --

THE COURT: What has that got to do with anything?

MR. STILLEY: Well, I think that that's what they're looking at. They're claiming that he filed --

MR. BLACKORBY: No. All I asked was about small claims with patients. I specifically limited my question to patients, if he had a patient that he --

THE COURT: And he said only two. Are you going to ask him if it is only two?

MR. STILLEY: Well, I -- maybe I can't go that -- Let me try this one.

THE COURT: Well, I want to know where else we're going before we break again.

MR. STILLEY: There was a story some years back that he read in the paper about a Newsweek test where they gave 200 accountants one set of facts and they all came up with a different story anywhere from saying that the person owed 30,000 to that they had 40,000 coming back.

THE COURT: How is that relevant on redirect examination? Did he bring out something about a magazine article that appeared --

MR. STILLEY: Well, he didn't. No, he didn't say anything about a magazine article, but that -- I think that that would be relevant to show, you know, well, No. 1, he looks at these things and that --

MR. BLACKORBY: Plus it -- it's hearsay.

MR. STILLEY: Lots of people, lots of people, they can disagree about various matters of the tax law without being kooks.

THE COURT: Mr. Stilley, you have -- you're not going there, sir. What else?

MR. STILLEY: Well, let me see. I want to ask him about on the trust if he knew, if he knew what LLC means after a lawyer's name, because most lawyers seem to have LLC, and there's an insinuation that he's somehow a bad person because he used a trust.

THE COURT: Is LLC behind this trust?

MR. BLACKORBY: I didn't see it.

MR. STILLEY: Well, you got trusts. You got corporations. You got limited liability companies. You got all kinds of things.

MR. BLACKORBY: That's not in the documents.

MR. STILLEY: No, no. I'm just trying to show that he's not the only first person that ever figured that he might limit liability by some legitimate means.

MR. BLACKORBY: He already testified to that. He testified to that on cross examination.

THE COURT: You can ask him again if he's changed his mind since it was brought out on cross examination.

MR. STILLEY: Well, I want to ask him if he's seen other people used limited liability companies or corporations to try to limit their liability.

THE COURT: I'm going to permit that. Anything else? Is that going to be your last question?

MR. STILLEY: No, no.

THE COURT: Well, it very well could be, unless you tell me what they are. Now, the jury has been waiting over there about five minutes and they're getting impatient and so am I, Mr. Stilley.

MR. STILLEY: There was an insinuation that he tried to put his money where the IRS couldn't get it. And I want to ask him if he's heard anytime that the IRS has seized property without a Court Order or without his permission, without the permission of Your Honor.

THE COURT: That's improper. He's not to do that. We're not here on a seizure of property case. We're here on, you know, a failure to file in 93 and 94.

MR. STILLEY: Well, that would show a legitimate reason for the trust.

MR. BLACKORBY: It's hearsay.

THE COURT: I'm not going to permit it. What else you got? (Pause)

MR. STILLEY: I just want to ask about the LLC's and then I'd like to take just a minute and --

THE COURT: I want to hear just a question or two. I'm going to permit him to ask that over your objection, Mr. Blackorby. You'll have a continuing objection to it, but I'll let him go into it just a couple questions.

MR. STILLEY: Fine. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

Q Dr. Roberts, have you ever heard of anybody besides you ever using a corporation or a trust or a limited liability company in order to limit their legal liability?

A Yes.

MR. STILLEY: Your Honor, could I have just a minute?

THE COURT: Yes, sir. (Pause)

MR. STILLEY: Pass the witness.

THE COURT: Any recross? Based upon the redirect or the Federal attorney.

MR. BLACKORBY: No, Your Honor.

THE COURT: May stand down, Dr. Roberts. Thank you very much. Call your next witness, please.

MR. STILLEY: Defense would rest.

THE COURT: Ladies and gentlemen of the jury, the defense has rested. There are some matters we're going to need -- we'll need to take up with the attorneys. Let me see the attorneys up here briefly for a barside conference. The Court has requested -- you want to come up, Mr. Blackorby? (THE FOLLOWING PROCEEDINGS WERE HAD AT THE BENCH BETWEEN COURT AND COUNSEL AND OUT OF THE HEARING OF THE JURY:)

THE COURT: You going to have any rebuttal?

MR. BLACKORBY: No, Your Honor, I'm not.

THE COURT: Okay. I propose that we turn the jury loose. We'll hear Mr. Stilley's motions and then you can say, announce that you have no rebuttal, and then your renewal again. At that point I'd like to discuss instructions with you. Do you want to -- did you-all tell me you wanted to argue and instruct or instruct and argue? Have you-all -- have we discussed that?

MR. BLACKORBY: I would prefer --

THE COURT: I've been in trial since I think 1978 and I'm not sure what I've said on what day, but have we discussed arguing and instructing or instructing and then arguing?

MR. BLACKORBY: No.

THE COURT: We haven't? Do you have a preference, Mr. Stilley? I'll ask you first.

MR. STILLEY: No, I really don't.

THE COURT: Okay. Mr. Blackorby? It doesn't matter. The Federal rules say that we're not supposed -- we're supposed to argue and then instruct.

MR. STILLEY: Well, let's do it that way.

THE COURT: Well, I've been doing this for two and a half years. We've probably had hundred trials and we've not done that that way yet. The state court way is to have the instructions and then to argue it, but I'll let the attorneys decide. At least through this case they have always decided and they have decided the other way, but --

MR. BLACKORBY: My only thought is, Your Honor, there's two areas I think that go to the elements of 7203 which the Court has already instructed on, and the other is going to be the good faith, what would be the good faith jury instruction. I'm sure in closing arguments there's going to be a lot of argument about good faith. And I don't know whether it would be better if the jury heard the argument first, then the instruction, or the instruction first.

THE COURT: Well, I tell you what. Why don't I get this jury out of here? Are you all speaking? See if you all can agree on what you want to do. I will do whichever.

MR. STILLEY: I want, since that's the way that the rules state it, I want to do it the way the rules state it.

THE COURT: Fine. That's the way we'll do it.

MR. BLACKORBY: Which is what? I'm sorry. We're going to argue and then instruct?

THE COURT: Yeah. We're going to argue and then I'm going to instruct. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE HEARING OF THE JURY:)

THE COURT: Ladies and gentlemen of the jury the proof has been concluded in this matter. There will be several items I'll need to take up with the attorneys concerning jury Instructions and other matters. We try very hard not to waste your time. I hope you-all appreciate that. You may not, but the attorneys most days and the Judge, for that matter, we come a little earlier than the jurors. We stay a lot later, but we're not trying to get a raise or anything. Just want you to know that we do take what you do seriously and we don't try to impose on you unnecessarily. But it is -- we're going to let you break for lunch. And it will probably be about 1:00 o'clock before we start again. But we are in hopes and we're going to have the arguments of the attorneys when we come back and then we'll follow that with my Instructions and then following that I've been telling you for what, three days you're not to discuss it with each other? I'm going to take that back and allow you and insist that you discuss it with each other. Also, I hate -- all of the proof is in, Mrs. Williams and Mrs. Wiley, you are the alternates. I'm going to let you go to lunch with the crew, but assuming no one is struck by a bus or hit by something falling or whatever, when we do come back, I guess we'll go ahead and have the -- I guess you can hear the arguments and Instructions. I don't think we're going to lose anybody, but you never know. But then when we are -- when it is finally given to the jury after the arguments and after I instruct them, I'll discharge the two of you with the thanks and appreciation of the Court. And you can the first ones home this evening. We're going to remain in session until you're out of the room, but, again, remember the admonition of the Court not to discuss it with each other or allow anyone to discuss it with you. Thank you very much. (Jury leaves the courtroom at this time. THE FOLLOWING PROCEEDINGS WERE HAD OUTSIDE OF THE PRESENCE AND HEARING OF THE COURT:)

THE COURT: You-all -- you want to review your Instructions and take a short break before we discuss them? It's a little awkward to not discuss these in Chambers with attorneys, but in view of the developments in this case, I'm doing everything on the record, which makes it a little awkward.

MR. STILLEY: Judge?

THE COURT: I assume I can handle the awkwardness. Yes?

MR. STILLEY: When do you want to take up the directed verdict, Motion for Directed Verdict?

THE COURT: You want to renew it now?

MR. STILLEY: Yes, if that would please the Court.

THE COURT: Yes. I think it's -- whether it pleases the Court or not, it's the time to make it, so you can go ahead. I will consider the Motions for Directed Verdict previously made by the Defendant to be renewed at the end of the Defendant's case, and the rulings of

the Court will be the same. Anything else you want to add other than what the Court's just announced?

MR. STILLEY: Your Honor, I practice in state court and Federal court, and I think the rules state that I -- I don't know in state court I would state all that again in order to protect the record. I may be wrong. I may not be required in Federal Court.

THE COURT: You can make any record you want to, Mr. Stilley. We have leaned over backwards to make your record in this matter. We've made an extensive record. You may proceed.

MR. STILLEY: Well, I'm going to rely on what you just said. I'm not -- and I appreciate that very much. But I'm also going to make some statements so to make it very clear.

THE COURT: Well, make -- but make a Motion instead of a statement. I think that's what lawyers do, so you know --

MR. STILLEY: Okay.

THE COURT: -- make a statement in the form of a Motion --

MR. STILLEY: Okay.

THE COURT: -- and that way your record will be covered.

MR. STILLEY: The Motion is for directed verdict or for judgment as a matter of law. The basis for that is that, No. 1, there's absolutely no proof that Dr. Roberts failed to make a return for 1993 and 1994. There is proof that he did not file one for that year. But there is no proof that he did not make a return for that year, and that is what the Indictment states. No. 2, the expert, Brian Miller, testified that he could not point to any requirement in the law stating that a person with $6,050 of gross income, gross receipts was required to file a Federal income tax return in 1993. And he made a similar statement for 1994, except the number was $6,250. He stated that where he got this information was not from the law, but from a copy of the Internal Revenue Code and from pamphlets or publications put out by the IRS. Those documents are not law. They purport to say what the law is, but they are not the law. So our expert has testified affirmatively that he does not have a basis for saying from his personal knowledge that a person who made the -- received the requisite amount of gross receipts or gross income for $6,050 in 1993 or 6,250 in 1994 would be required to make a return. And, in fact, Brian Miller testified that part of this calculation was based on the inflation rate, and we had absolutely no testimony of what the inflation rate was. We had absolutely no testimony of how we could actually arrive to that figure and ascertain or determine that that figure is correct. As a matter of fact, I believe that Mr. Miller testified that the inflation rate or the consumer price index was calculated by some other third party. It's not decreed by Congress. It's not part of Congress' law, and, therefore, we cannot look at the law and say that Dr. Roberts was required to file or file or make a return based on that particular -- the status that we have been talking about. And that is without -- certainly without prejudice to any other bases for stating that Dr. Roberts was not a person required to make a return. There is absolutely no proof that Dr. Roberts had knowledge of a legal duty to make a return or file a return. The only evidence so far as I can tell that the Government even proffers for this issue is that he took the returns to somebody else in the past and had that person make the returns. The specific reason he had this other person make the return is because he didn't know how. He didn't have that knowledge of the law. And if that was sufficient to prove knowledge or a belief in 1994, then I think that we could prove everyone of us or nearly everyone of either believes in Santa Claus or the Easter Bunny or both. Therefore, there's been absolutely no proof of duty and absolutely no proof of knowledge of a legal duty. There's been no proof of willfulness acting in violation of a known legal duty to perform a certain act. Income is not defined in this proceeding to the jury. There was a statement previously that income would be defined to the jury, the statutory definition of income. That has not been done, and, therefore, there wouldn't be a basis to send this case to the jury on that ground as well. On these bases and on all the other bases that have been raised, which I will not take the time to go through each one since the Court has stated that, that you have reconsidered all of these things and have denied these other motions and particularly the written motions that have been made before, on the basis of that statement, I'm going to rely on that statement that all of those motions are denied again and I make my Motion for Directed Verdict.

THE COURT: It will be denied. You want to put anything on the record, Mr. Blackorby?

MR. BLACKORBY: I would just stand by my earlier argument, Your Honor.

THE COURT: And Mr. Blackorby, I understand you have no -- there's no rebuttal?

MR. BLACKORBY: No, Your Honor. I would just stand by my earlier argument and just state that the -- in the Defendant's case in chief he's presented nothing that has rebutted or negated the three elements for willful failure to file tax returns of a violation of 7203. Therefore, I think it's proper to send this case to the jury.

THE COURT: I need, if you would, I'm going to hand you copies of the Court's proposed good faith Instruction and one on deliberate ignorance. I need for both sides to look at those two Instructions, if you would, in addition to the other Instructions that I've previously tendered to you. You all want to go through these now? You want to take some time and come back say at 12:30 or something or --

MR. BLACKORBY: Your Honor, Mr. Yurkanin will be dealing with the Instructions for the Government.

MR. YURKANIN: Your Honor, if you give me a moment or two to do this, I'm prepared to do this now or whatever pleases the Court.

THE COURT: What about you, Mr. Stilley? You want to take a break, come back at 12:30?

MR. STILLEY: Yes, let's take a break.

THE COURT: Come back at 12:30 and discuss Instructions?

MR. STILLEY: Yes. Well, wait a minute. Wait a minute. What time is it now? Yeah. That would be okay. Could I really have a little bit more time like 12:40? Do you think we could do that?

THE COURT: We can do that, Mr. Stilley, if you have no more than 20 minutes of objections and corrections and whatever. I'm fearful that may not be enough time. I would like to get this jury back in at 1:00 o'clock. They have worked long and hard. I think we have abused this jury. And I'd like to get it to them starting at 1:00, your arguments if I could. But -- Do you need that much? You want me to bring you a sandwich or --

MR. STILLEY: No. I was going to go get something to eat. I would just like to have a long lunch. I've got spoiled in my old age.

THE COURT: Well, listen! We'll accommodate you in a long lunch. What about 12:40? Is that all right?

MR. STILLEY: 12:40, that will be good.

THE COURT: We'll talk about Instructions at 12:40. Thank you very much. (Off the record at this time.)

THE COURT: Let's talk about jury Instructions. Mr. Yurkanin, I understand you're going to preside or talk on behalf of the Government.

MR. YURKANIN: Yes, Your Honor.

THE COURT: I propose to send back with the jury Instructions a copy of the Indictment and two verdict forms. That's in addition to the Exhibits. You-all need to make sure that we have a complete set of Exhibits and the ones that are here have been

introduced and that nobody has inadvertently carried one off. I'm sorry. We don't have a Docket Clerk. She took the jury to lunch. Anyway, you can stand there, sir, or you can go to the podium or whatever. Any problems with the Instructions or any suggestions? We didn't have our helpful meeting this morning that I usually like to have, but, and I apologize for that. We ran out of time.

MR. YURKANIN: Your Honor, Miss Royston provided me with the relevant Instructions, and the only comment I would have is merely along the line of a clerical error. With respect to the Court's proposed good faith Instruction, in the first paragraph --

THE COURT: What -- let me get my number here. No. 11? I've not numbered my Instructions yet and, you know, I -- because every time I number them, I have to go back and make them again, and --

MR. YURKANIN: It appears to be No. 11, yes, Your Honor.

THE COURT: All right.

MR. YURKANIN: In the third line where it's beginning willful failure to make a return --

THE COURT: Uh-huh.

MR. YURKANIN: -- if it is inconsistent, I think that should be a return because it is inconsistent.

THE COURT: Because it is inconsistent?

MR. YURKANIN: Yes, Your Honor.

THE COURT: Because as opposed to if?

MR. YURKANIN: Yes. And if the Court -- if you read the sentence in its entirety, good faith is a complete defense to the charge of a willful to make a return because it is inconsistent with willfulness.

THE COURT: Which is an essential element of the charge?

MR. YURKANIN: Yes, Your Honor. The other item I'd like to point out to the Court is in the third paragraph we would just request that where you refer to Exhibits 7, 8, 9, 10, and 11, that the Court insert Defendant's Exhibits, sir.

THE COURT: Okay, sir. I'll do that. I'll make both of those suggested changes.

MR. YURKANIN: And there was one other item, Your Honor.

MR. STILLEY: Which one are we on right now?

THE COURT: It's the good faith. It's No. 11. It's about two-thirds of the way through.

MR. YURKANIN: The final item I'd like to direct the Court's attention to is the explanation of the bank deposits method. I reviewed with Revenue Agent Brian Miller, and if you go to the third paragraph, the last line which begins with which is then compared with the minimum gross receipts, I believe that word should be gross income.

THE COURT: You're right. And I've made that change.

MR. YURKANIN: Thank you, Your Honor. That's all the Government had. We've seen Defendant's proposed willful Instruction which he just handed us and we would object to that since it's inconsistent with what the Court has already provided.

THE COURT: Is that the one that I just got?

MR. STILLEY: It is, Your Honor.

THE COURT: Mr. Stilley? Would it be easier for you to do them from there and keep your paperwork straight or something?

MR. STILLEY: Yeah, that would be just fine, Judge.

THE COURT: We can probably get that mike down that way towards you, if you can. I mean you can go to the podium.

MR. STILLEY: Okay. I think I'll go to the podium and won't have to go back and forth.

THE COURT: Let's kind of, if we can start, from the beginning and go towards the end.

MR. STILLEY: Okay.

THE COURT: Any objection to the verdict forms, No. 1, No. 1 and No. 2?

MR. STILLEY: Yes. I've got objections to the verdict form. And it's, it's not the crime of failing to make a Federal income tax, it's a crime of willfully failing to make a Federal income tax return. I think that needs to be changed.

THE COURT: Mr. Blackorby?

MR. YURKANIN: Your Honor, we believe the verdict form is fine as it is. The crime and the elements of the crime are already explained in the Court's charge.

MR. STILLEY: Your Honor, that would be inconsistent with the Indictment because the Indictment does say that it's a willful failure.

MR. YURKANIN: Actually, Your Honor, I -- I believe I'll leave it to the Court's discretion.

THE COURT: I'll look at it. What else?

MR. STILLEY: Your Honor, and I take it since you've got copies of my proposed Instruction No. 2 --

THE COURT: Is that province of the jury?

MR. STILLEY: No, actually, this one and I -- this is a little bit confusing.

THE COURT: Well, Mr. Stilley, and I don't mean to confuse you, but I think what you need to do, would you start with my Instructions to include -- we started with the verdict forms. Would you go 1 through 20, and if you have objections to those, and then, you know, we'll talk about yours and how they should be inserted and whatever? It may make it easier.

MR. STILLEY: Okay. As to the first one, the beginning charge, province of the Court, I don't have an objection to that.

THE COURT: Province of the jury, do you have a problem with it?

MR. STILLEY: Yes. That still indicates that the not guilty plea was the plea of the accused and he didn't make that plea.

THE COURT: Well, you know, and I'll note your objection, but, you know, you either enter -- pleas are entered, either a guilty, not guilty or we wouldn't be here in this trial. So a plea was entered so -- and that plea has been entered on his behalf. So I note whatever objection you've got and that's going to remain. What else? Summary of the Indictment?

MR. STILLEY: That's okay.

THE COURT: Evidence to be considered?

MR. STILLEY: I have the same objection.

THE COURT: Pled not guilty? That will be overruled. Bank deposits method?

MR. STILLEY: Yes. That's just simply not --

THE COURT: Change -- Pardon?

MR. STILLEY: -- simply not pertinent to this case at all as far as I can tell, because this is not a tax evasion case, and they're not saying that, that they had to go through and do this in order to figure out what his true income was as opposed to what he said he made. What they're saying is that they only had to prove 6,050 or $6,250 in gross receipts in order to make their case, and this I think these bank deposits would simply just confuse the jury.

THE COURT: Okay. Anything else? What about credibility of witnesses?

MR. STILLEY: Oh, before we leave bank deposits, there's another reason that I object to that or the Defendant objects to that and that is that it says income-producing activity. Without -- and also appearance of current income. Then under deposited income -- but nowhere do we have a definition, a statutory definition of income from the Internal Revenue Code.

THE COURT: Okay, sir.

MR. STILLEY: And without waiving the objection to the Instruction altogether, I would object to any of these Instructions that talk about income without having defined the word "income" within the Instructions.

THE COURT: Okay. Your objection is noted and overruled. Credibility of witnesses?

MR. STILLEY: That's okay.

THE COURT: Opinion evidence, expert witness?

MR. STILLEY: That's okay.

THE COURT: Essential elements Count I?

MR. STILLEY: That's what I've got set up as my proposed Instruction No. 2 that I supplied to you last night, and I would have to object or on behalf of my client would have to object to that, because the expert that came into this case didn't say that it was $6,050, that it said that in the law. He said that he got those figures from somewhere outside the law and just assumed that they were correct. And there would be no reason that I can see not to just leave all this other stuff out, and let them take what the expert has said and try to apply that to this case, because otherwise the Court would be taking up the question of fact from the jury and directing and in essence at least in part directing a verdict in favor of the Government.

THE COURT: Well, are you looking at the essential elements Instruction? That's what the Government's got to prove.

MR. STILLEY: That's right.

THE COURT: That's straight out of the Eighth Circuit, you know, the --

MR. STILLEY: Well, it's not exactly straight out of the Eighth Circuit. The Eighth Circuit does not say $6,050. That's the objection that I've got, because --

THE COURT: Is that your only objection that the word section 6,050 is there and the word 6,250 on the other one?

MR. STILLEY: Well, then we've got gross income which says gross income includes the following: Gross income and we all know that you can't define the term by using the same term within a definition. We still don't have a definition of income, so I would object to this additional matters for the same reason. Now, if we could just leave all of that out --

THE COURT: Well --

MR. STILLEY: -- and let the jury decide. See, the jury can decide the facts. That -- and when we -- all through this case we've been told and we're going to have an opportunity in front of the jury to let the jury decide and the Government will have to prove its case. If the Government has proved its case, surely they would not object to letting the jury decide --

THE COURT: Your objection is noted and you want to show that your No. 2 was tendered and refused?

MR. STILLEY: Yes, that's what I'd like to show.

THE COURT: Okay, sir. Willfulness?

MR. STILLEY: Yes, we would object to that one, too, and I have -- do you have a copy of my proposed Instruction on willfulness?

THE COURT: That's the one I just got. Yes, I do.

MR. STILLEY: Okay.

THE COURT: I will. Go ahead and make your objection.

MR. STILLEY: There's a case, United States versus Brooks that clearly -- and I believe it's paragraph 12 of that. Your Honor, may I approach to bring you a copy of this decision?

THE COURT: I've seen the decision. Why don't you cite it for the case, though?

MR. STILLEY: It's U.S. versus Brooks, 174 F3d, 950, Eighth Circuit, 1999.

THE COURT: Okay.

MR. STILLEY: And in paragraphs 12 it just very clearly says that there's three elements. Willfulness as construed by prior decisions in criminal tax cases requires the Government to prove that the law imposed a duty on the Defendant; that the Defendant knew of this duty; and, that he voluntarily and intentionally violated that duty. That's willfulness. I don't see how in the world that a person could take three elements and cram it down into two. And I've got one, an Instruction here that lays that out just the way that this case says it should be.

THE COURT: Mr. Yurkanin, any response?

MR. YURKANIN: Your Honor, Instructions provided in the Eighth Circuit Pattern states exactly -- is exactly consistent with the Brooks case, and we would suggest saying that the Instruction as --

THE COURT: Well, it was my intent to copy it verbatim. Did I leave anything out as far as --

MR. YURKANIN: As far as I know, yes, Your Honor.

THE COURT: I will show this as tendered, your what, No. 3, Mr. Stilley? Your willfulness Instruction tendered as No. 3 is refused.

MR. STILLEY: Okay, yes, yeah, put it as tendered No. 3.

THE COURT: Okay, sir.

MR. STILLEY: Okay. The next one is good faith, and I have a --

THE COURT: Mr. Stilley, what was your Number 2?

MR. STILLEY: No. 2 was elements of the offense.

THE COURT: Okay, sir. Yeah.

MR. STILLEY: Then that was to be elements of the offense for both years.

THE COURT: And what about deliberate ignorance? Do you have an objection to that?

MR. STILLEY: Oh, yes, sir, big objection to that. That just overrides Cheek it seems to me if you can put -- let me take a look at this. Wait a minute.

THE COURT: Hopefully you've looked at it before now.

MR. STILLEY: Well, I have. I have. I have looked at it. Do you want to take up deliberate ignorance before we go to good faith?

THE COURT: Yeah, I've got it before that.

MR. STILLEY: Okay.

THE COURT: You know, but let me tell you I had some thoughts about whether it maybe should go after it, but the Government have any position on that? Should deliberate ignorance go before good faith or does it matter?

MR. YURKANIN: Your Honor, it would make I believe more sense for it to go after, but we'll leave it to the discretion of the Court.

THE COURT: I agree with you. I agree with you, Mr. Stilley. We're going to switch the Order. Now, let's talk about good faith, sir.

MR. STILLEY: Okay.

THE COURT: Any objection to the Court's good faith Instruction?

MR. STILLEY: Actually, Judge, I think I can agree with that. I had supplied one, but -- I have supplied an Instruction and I think that's correct. Well, no, I think I would object to the part of it that says that, that Exhibits 7, 8, 9, 10, and 11 have been admitted solely and only for the purpose of aiding you in determing whether or not the Defendant's failure to timely make income tax returns was knowing and willful, just to preserve the record on that.

THE COURT: Okay.

MR. STILLEY: And I do have a tendered good faith Instruction. Can we mark that No. 4?

THE COURT: Yes, we can. I'm not sure I have it, but if you have got an extra copy, give it to --

MR. STILLEY: If you do not have that, I do have an extra copy. Would you like me to bring one up?

THE COURT: Yeah, if you wouldn't mind. We'll show it tendered as No. 4 and refused.

THE COURT: Deliberate ignorance?

MR. STILLEY: Yes, deliberate ignorance, straight off the bat we have absolutely totally no proof that Dr. Roberts was ever deliberately ignorant of anything. We've got proof that he asked and asked and asked and, you know, offered to make a return if somebody would show him where he was required to file, and he did everything that he could possibly reasonably do to try to find out what the law was, and there just -- there is no basis for deliberate ignorance -- second -- on the facts here. The second reason that deliberate ignorance shouldn't come in here is that we've got the term here high probability. And that's not defined, so that that would have to be -- it would seem to me that would have to be defined for the jury if we're going to tell them that there's a high probability.

THE COURT: You don't think a jury could understand what high probability meant?

MR. STILLEY: Well, they might come to various different conclusions about that, and if that word is going be used, I think it will need to be defined.

THE COURT: Well, you have a suggestion on how to define it?

MR. STILLEY: My suggestion is that we just to take it out.

THE COURT: Okay. Let's just go on to the next one. I'm going to note your objection. I'm going to give that one.

MR. STILLEY: I'm not through. I just want a little bit more.

THE COURT: Let's go ahead and get them stated, if we can, Mr. Stilley. We delayed this so you could have lunch, you know, and I think we interfered with your press conference, but the jury is here and I want to get the jury in at 1:00 o'clock, sir, so go ahead.

MR. STILLEY: Okay. Well, this deliberate ignorance would just simply overrule Cheek, and for that reason I would strongly object to that.

THE COURT: On or about, do you have any problems with that?

MR. STILLEY: Yes. Statute of Limitations.

THE COURT: Okay. Fine.

MR. STILLEY: That would interfere with his Statute of Limitations defense.

THE COURT: Okay. Your objection is noted and overruled. Each tax year is separate. Any objection to it?

MR. STILLEY: Oh, Judge, one other thing. Now, Judge, on deliberate ignorance, I don't believe you put in the entire Instruction, did you?

THE COURT: Well, I'm past that one. If we need to come back -- let's get through these, and if we need to go back, I assure you we'll go back. All right?

MR. STILLEY: All right. Each tax year is separate.

THE COURT: Yeah.

MR. STILLEY: Oh, yes, that's fine.

THE COURT: Similar acts?

MR. STILLEY: That's okay.

THE COURT: Charge from summary is admitted?

MR. STILLEY: That's okay.

THE COURT: Burden of proof, reasonable doubt?

MR. STILLEY: That's okay.

THE COURT: Punishment?

MR. STILLEY: That's okay.

THE COURT: Verdict Instruction?

MR. STILLEY: That's very good.

THE COURT: Election of forepersons, general verdict?

MR. STILLEY: That's okay.

THE COURT: Jury's responsibility?

MR. STILLEY: That's okay.

THE COURT: Okay. Let's go back. Which one did you want us to go back to?

MR. STILLEY: It's the second paragraph on deliberate ignorance. We would like and we would reserve our objections to try to put in deliberate ignorance in all --

THE COURT: Number 10? Okay. All right. I think you did object to that, didn't you?

MR. STILLEY: Well, I didn't object on the specific grounds that it's not a complete statement of the Eighth Circuit's Instruction. Judge, can you just add that second paragraph in and we'll reserve our objection to the Instruction in its entirety?

THE COURT: You went me to add something in and then you're going to object to it? Okay. Fine.

MR. STILLEY: You mean, Your Honor, I'm going to actually get that?

THE COURT: Yeah. I'm going to add it and I'm going to show that you objected to it after you added, and then I overruled your objection. The only thing I think we have to worry about here, unless if you've got anything else, Mr. Stilley, is when I put in willfully failing to make a Federal income tax return, and I will look at that. It is two after 1:00. How long do you all want to argue?

MR. BLACKORBY: Your Honor, I'll probably take 15 minutes, maybe 20 initially, probably 10 in rebuttal.

THE COURT: You want 30 minutes then all together?

MR. BLACKORBY: Yes, Your Honor.

THE COURT: Okay. Mr. Stilley, you have to do yours in one whack. Is 30 minutes sufficient, sir?

MR. STILLEY: I'd like 45.

THE COURT: I'll give you then, Mr. Blackorby, you can take as much of 45, sir, as you want, but you don't have to use more than 15, and then you use whatever you need, you know, when he finishes. Just because you each now have 45, doesn't mean you have to use them. Anything further in the way of Instructions?

MR. BLACKORBY: No, Your Honor.

MR. STILLEY: I think we've covered it. Are you going to decide whether or not to give willfulness later?

THE COURT: Yeah. Well, I tell you what. Let me -- I think I can, but I will give you a heads-up before it is given so that if it's not the way you think it ought to be, you can have an objection. What did the Government say? What was their response to the willfulness? I don't know what the law is. I'm going to go look it up.

MR. YURKANIN: Your Honor, we will go with the pattern Instructions, recommend going with the pattern. That would be our position.

THE COURT: What does the pattern say? The pattern's in the other office.

MR. YURKANIN: The pattern Instruction on willfulness is what the Court had in its proposed charge, I believe.

MR. BLACKORBY: Well, this is adding the word "willfulness" to the guilty/not guilty block. Is what we're talking about?

THE COURT: I think that's what he's recommended or suggested or whatever.

MR. BLACKORBY: It's not the overall definition of willfulness.

THE COURT: No. No. He's --

MR. YURKANIN: I must be mistaken. Our position would be, excuse me, our position would just be that the crime is fully explained within the charge itself and the verdict form is fine as it is.

THE COURT: Well, I'm going to look it up and it looks like I'm going to make somebody unhappy either way. We're in recess probably for about ten minutes and then we'll get the jury in. (Off the record at this time.)

THE COURT: Before we bring the jury in a minute, I've handed you copies of the final proposed Instructions. Mr. Stilley, we did change verdict forms one and two to make it the willful failing to make a tax return. Does that satisfy the objection?

MR. STILLEY: That's correct. It does.

THE COURT: This is closing arguments. And they are just arguments, but the arguments need to be based upon facts that have been presented and the Court rulings that have been sustained. We don't need a lot of extraneous stuff in closing arguments that haven't been lawfully and legally ruled upon by the Court. I don't ever like to interrupt closing arguments. I've not seen it done probably more than a half dozen times in 35 years, but if you do have an objection to some closing argument, what's going on, I suggest that you try and get the attention, let's stop it and, then let's present it up here. The Court has worked very hard to try and keep a mistrial from occurring in this matter, and I surely don't want to it occur at this late date. I assure you I don't think it would be in anyone's best interests. Bring the jury in, please. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Ladies and gentlemen of the jury, we're now going to have closing arguments in this matter. We will first hear from the Government, and when the Government finishes, we'll hear from Mr. Stilley. Mr. Blackorby?

MR. BLACKORBY: Thank you, Your Honor.

INITIAL CLOSING ARGUMENTS OF THE GOVERNMENT

MR. BLACKORBY: May it please the Court?

(Off the record briefly.)

MR. BLACKORBY: Good afternoon, ladies and gentlemen. The first thing I want to do is to thank you. It's been a very busy three days, and I want to thank you for your diligence and thank you for your patience in listening to the evidence and the witnesses that have been put forth. I just briefly want to take a few minutes and reiterate what I said in my opening statement; that why we're here, and that it wasn't difficult. I hope by now you've seen it's not a difficult issue. We've had a lot of discussion and evidence on taxes and accounting as I described in my opening statement, but the issue is the same; that Dr. Robert in 93 and 94 had a requirement to file 93 and 94 tax returns, Federal returns. The money triggered it. He knew he had that requirement to file, and, three, did he willfully not file those tax returns? And that's the issue, ladies and gentlemen, that you're faced here with now. And as I showed you earlier and the Court has instructed you earlier and I'll instruct you again, those are the three elements that the Government has to fit its various pieces of evidence into to meet the beyond a reasonable doubt standard. And ladies and gentlemen, again, let's start with No. 1 and see what came into you before the jury. Required to file a federal income tax return for a specific year: In other words, did he make enough money or over the minimum that was required to file him -- -- to cause him to file an individual income tax return? You heard from Revenue Agent Brian Miller. He testified to you based on the code sections that he gave you as well as the other information that he drew from that the amount, minimum amount to require in 1993 was $6,050. The minimum amount in 1994 was $6,250. That if you're gross receipts, gross income exceeded those two figures, regardless of the consequences after that, you had to file tax returns. Nothing difficult about that, nothing difficult about the way the computation was made. You saw the 1040 forms put up on the screen. You'll see those and nothing else under Government's Exhibit 3-1, 2, and 3. Right on the form it gives you those figures. All you have to do is total them up. The standard deductions and exemptions. If you have more money than that, you have to file a return. It was also available to anybody that wants to look in the various IRS publications as well as the Internal Revenue Code itself. So it was clear what the requirement was, and, therefore, those are the tests of the first element in No. 1. Now, to show that Dr. Roberts exceeded these, we had Special Agent Tom Bryan testify to you, and he explained how he utilized the bank deposits method to determine Dr. Roberts' gross receipts for the years involved, the gross income. We introduced a lot of sub-schedules, but in essence those sub-schedules in analyzing the bank accounts came down to these figures; that for the year 1993 Dr. Roberts 99 percentwise, the only thing -- only difference is there's going to be about fifty dollars in interest in each year came in from his practice $154,000. He took some checks out, put some checks in based on the year end clearing of those checks and he came down with gross taxable deposits in 93 of $132,000 and in 94 of $207,664. He adds this little bit of interest income in here, and now we have the gross income, $132,000 plus in 93, and over $207,000 in 94, clearly exceeding these figures, clearly. And that's our element No. 1, ladies and gentlemen; that like I said earlier my opening statement, it's not even a close call on the element No. 1. But the agent explained to you that in addition to the bank deposits, he actually went out and verified a large percentage of these receipts right here. He took the checks and went to the third parties that had sent the checks to Dr. Roberts for fees and actually confirmed it was for fees and it was for treatment that Dr. Roberts made to their patients or to their insureds. And you heard some of those people testify. We had seven or eight insurance-type witnesses come in and testify to you the amounts that they have paid Dr. Roberts and they had paid him for services that he had performed to their insureds. I believe the agent introduced the schedule that showed you that in 1993 alone of this $153,000, he verified by going to third parties over $74,000. And in 1994, he verified over a hundred thousand dollars. From there the agent explained that he took it on down to taxable income. You've got your gross income here. He explained to you how he allowed the business checks, determined the personal checks and -- I do about as well as I do with the microphone -- that the correct taxable income for 93 and 94, 93 was over $46,000, and in 94 it was over $101,000. And from that he computed the tax, the tax being in 93, $18,771 and $40,096 in 94. No other figures there are relevant because Dr. Roberts didn't file and he didn't pay any taxes. So there was nothing to offset those

figures, ladies and gentlemen. Dr. Roberts from the stand right there didn't deny any of that. He confirmed that he made that or more in each of those years, and if he made that or more for every year current -- including the current one. So there's no issue about how much money Dr. Roberts made or if he made enough money to file. Even by his own testimony, he clearly exceeded these minimum figures for 93 and 94. Element two, he knew he was required to file such a return. Again, you heard from basically the witnesses, the former wife, the accountant, and Dr. Roberts himself. He had filed, with his wife starting in 1974 until 1979, tax returns. he started out as an individual employee, he was in the army. He filed returns for being in the army, he and his wife up through 1989. In 1987 you heard not only his testimony which confirmed it, but you heard from the accountant, yes, he came to see me in 1987. He's already in his practice as a chiropractor. He brought in the information. Regardless of what he wanted to say to you on the stand, he brought the information to the accountant. You look at the tax returns. 6-1 is the 87 return. 1-1 and 1-2 are the Exhibits for the 88 and 89 returns. And the only way that accountant got that information was for Dr. Roberts to bring it to him already itemized. Dr. Roberts didn't bring in bank records, didn't even bring in books or ledgers or anything to let the accountant figure it out. Dr. Roberts had already made the call when he brought in those summary sheets: Here's my income; here's my expenses; here's my other items that go on the return. And the accountant just plugged them in. Dr. Roberts provided the information already netted out how to do those tax returns. So there's no issue at all about Dr. Roberts' knowledge on how to do tax returns and what information the accountant needed to do those tax returns. Don't forget, ladies and gentlemen, he had been doing tax returns legitimately for over 15 years, since the seventies. And it wasn't until in 1989 after he had started making a lot of money in his practice, a lot of money that's continued to grow ever since then, that all of a sudden now he can't quite figure out how to get his tax returns filed or made and filed. After the 1989 year, as the accountant told you, he was upset. The accountant went over the returns. He was upset at the high tax liability because he had a lot of money, was making a lot of money now. And that was the last year that he filed returns. He took his books and records and went away. He also quit filing or had an accountant filing his employment tax returns. He testified to you on the stand he still got employees. Whatever he wants to call them, they work for him. But he no longer pays his share of their Social Security tax or anything. Those employees are on their own. When he quit in 1989 or 1990, he not only quit for himself, but he quit for those employees. That leads us to the third element, ladies and gentlemen. Willfully failed to file the required tax return in each year, be 93 and 94. And then you're going to hear a definition I believe from the Court. Willfully is to voluntarily and intentionally violate a known legal duty. We've already shown and the evidence has shown you that he had a requirement to file many times over. He knew how to file, because he had been doing it for years, and he dealt with his accountant, and he set up his own books as the wife testified at his practice, and took that information summarized to the accountant. That all goes to show willfulness, ladies and gentlemen. Also, the other things, look at all the money he was making. The agent tested that this wasn't a hardship case, ladies and gentlemen. That the checks written for personal expenditures -- in 1993 he had over $75,000 to spend on himself. I believe his girlfriend lived with him at that time per her testimony. In 1994 he had $132,000 of personal money to spend. There was no shortage of money. It wasn't a hardship. He had the knowledge. He had the information. He had the money. He wanted to keep it all. He didn't want to file his returns and pay his taxes. Ladies and gentlemen, you've heard a lot from the defense on the so-called good faith. Dr. Roberts' good faith here was greed. Don't forget. He didn't have a problem with the tax system or filing his returns and so forth as long as the taxes were low or actually in 87 he had a loss. But once he started making good money, excellent money, now all of a sudden he had this, wherever it came from, he had this vision that he didn't have to file tax returns and he stopped filing tax returns. Instead of filing returns and putting his income and expenses on there and then going to the IRS and saying where do we go from here? We just didn't file. He just tried to drop out of the system. And that was easy for him to do on his tax returns, ladies and gentlemen, but it's not always easy to do on other areas where you have to pay the taxes up front. And don't forget. This was a highly-educated individual, as he told you from the stand; top in his high school class, top in the army in everything you can imagine, top at West Ark, top at Cleveland Chiropractic School that he went to, No. 1, got all the awards, a very technical profession. He knew exactly where to go and find information. Therefore, it would have been no problem for him to figure you out, which he had done for 15 years, how to continue to file his returns. But he had areas where he had to pay taxes up front or he couldn't get the benefit of what's going on. It was brought up about gasoline tax. Sure, we pay gasoline tax up front. If you don't pay at the bump, you don't get gas. You don't go anywhere. Same with sales tax, property tax. The property tax records on his cars, regardless of who he says or what name they're in, the property tax records on those cars were paid, because why? If you don't pay your property tax record or taxes that came into as an Exhibit, you don't get tags for your car. Your car is not licensed. You're not driving your car in this state. Therefore, even with the army, to achieve when he was in the army, he had to do what he was told, research things, look in the TM and as long as he did that, he was successful and achieved things. It's just like the taxes, if there's an immediate reward or an immediate detriment to you to do something, you're going to do what it takes to get the job done to get that reward or escape that detriment. And in all of those other areas, from the taxes, the gas tax, to the licensing with the State of Arkansas as a chiropractor, if he doesn't pay for that license, what happens? He doesn't get to practice. That's not the situation with his tax returns, with anybody's tax returns. If you don't pay; you just walk away. And he forces the Government, the Internal Revenue Service to come forth, track him down, reconstruct your income and your expenses and try to figure out whether you had a requirement to pay, and if you should have paid, which is why we're here today, ladies and gentlemen. But think about, you know, with all of this wealth he accumulated and all the knowledge he had about his past taxes, he knew how to spend his money. You saw the information come in on the 94 Ford Explorer bought brand new for cash by him in his name in the Spring of 1994. In 93 and 94, you've got a man from the Sally Mae, a witness. In 94 I believe or -- correction 94 he paid over $54,000 in loan money. He paid that off in one year. He paid over $11,800 I believe in the previous year. And this was a Federally-covered loan. This was a loan system that allowed him to go to the Cleveland Chiropractic School. Yes, he paid it back, but he paid it back with a diploma and training that the loan allowed him to do. If he hadn't of paid that, the taxpayer dollars would have been gone. So it's nice for him to go forward and say I don't have to file; I don't have income; I'm not going to pay taxes. But he sure utilized the system, again, when it was to his benefit. Remember the 1099 documents that came in on cross examination of Dr. Roberts. His income has constantly gone up in every year since, and don't forget he hasn't filed at all either Federal or state since 1989. The testimony came out that through 1998 he had over $300,000 in patient fees coming into him and that was just from the 1099's. That did not even cover the patients that would have paid him directly. Ladies and gentlemen, it's not good faith to comply with the law only when you want to and when it's to your benefit. And that's what Dr. Roberts has done. You've seen his nice lifestyle. You've seen his cars, and you've seen his boat. And he wanted to use his money for all of these other things, and it was money and it was fees and it was income to him and receipts to him when he could do what he wanted to do. But when he was called upon to file his return and pay his share, he chose

not to, and now it's not income anymore. It's not receipts. It's not something that should be taxed. My profession as a chiropractor is not a profession that generates income that needs to be taxed. Selective good faith, ladies and gentlemen. If it is good faith why hide? Why have your corporation change your name, for one, to Orthoneuro and why move it to the Grand Turk Islands? Why have no assets in your name? Why utilize your girlfriend to have your car in her name? Essentially, if you have an issue with the system, whatever the system is, confront it. Don't hide from it. If in good faith he had an issue, why hide? And he chose to hide. That's why there's no good faith here, ladies and gentlemen. He has constantly used the benefits of tax revenue that's come into this country, its roads, schools, universities, student loans. His patients, some of them, even pay Medicaid. He gets his fees from the Medicaid/Medicare System. Federal tax dollars pay that system. And that's where he gets part of his fees, but yet he won't pay his share of the taxes. And what's he say? Professionals told me I don't have to file. Remember what we found out about those professionals. What documents he had on the stand, one, are all dated in 1988 and 1989 after this investigation started or after he was charged or close to the time that he was charged with this crime. Done by a paralegal or a law firm in Nebraska that we've never heard of. Could he name any others? No. Ladies and gentlemen, as I said in the beginning, it is a simple issue. Did he make enough money to file? Not an issue. Clearly he did. Did he know he had to file? He did it for 15 plus years. From the -- in the last three years he filed for the same business in the same way with the same information and the same sources of income. Did he willfully not file those returns? Given his conduct of how he utilized this money and how he tried to hide with his money, how he tried to run with his money, I think it was clear, given the knowledge he had of the system that he was required the file, that he willfully failed to file his returns. I thank you again for your patience and your diligence, and I ask that once you deliberate and look at all of this evidence, that you return a guilty verdict on both Counts I and II. Thank you very much.

THE COURT: Thank you, Mr. Blackorby. Mr. Stilley?

CLOSING ARGUMENT OF THE DEFENSE

MR. STILLEY: May it please the Court? Good afternoon, ladies and gentlemen. I too am very pleased and very thankful that you have come here and I'm also very thankful for our founding fathers, the framers of our Constitution who gave us certain rights by the Constitution. One of those rights is a right to trial by jury. They didn't give us a right to trial by jury because they thought that was the most efficient system or even because they necessarily thought that would create the best result most of the time or every time. They gave us the right to trial by jury because they wanted protection for the citizen from their Government so that that no one could be held to account -- no one could be convicted of a crime except by the judge and a jury of their peers. There's a lot of questions in this case and there are more questions that are unanswered, and I've got some questions for you. If you were going to a house, if there was a real estate agent that was showing you a house, would you go inside and flip on a light and you hear something scurrying. They flip the light back off. Don't worry about that. Don't worry about that. You go open a drawer. You hear scurrying. Don't worry about that. Shut that drawer. What do you think? Those dishes are just fine in that cabinet. They're clean as can be. What do you think about that? What does that put in your mind? When the real estate agent knows you've heard something. You haven't seen it, but they don't want you to see it. What does that tell you? Let me ask you another question. Let's suppose you went to church somewhere and the preacher got up and told you this is the Bible and I'm going tell you all about the Bible. But you take -- well, I tell you what. I'm going to show you the Bible from my Sunday school book. I will show it straight out of that Sunday school book, and I'll tell you out of the Bible. Don't go to anybody else. Don't ask anybody else about the Bible, because I'm your exclusive source for information from the Bible. I've got a real nice system so I can put this up on the board, but don't read it for yourself. What would you say about that? What would you think about that? Would you trust this preacher? Would you trust him with your religious beliefs? What if then the preacher -- you asked the preacher about something in the Bible and he said -- and maybe you ask him if it was Old or the New Testament and he said what's a Testament? You heard Brian Miller talking about the Internal Revenue Code. We didn't hear Brian Miller say that he -- he didn't even know that there was subtitles to the Internal Revenue Code and certainly didn't know what any of the subtitles were. Did that do anything to your confidence? Would you believe what that person said if they said you can disregard anybody else's opinion about the Bible. You only take my Instructions on the Bible and apply them because everything that you need to know about the Bible is included in my Instructions. Basically, would you believe that preacher? Would you accept his word on what the Bible says? We've had testimony from Mr. Bryan that he was conducting a four-year investigation, over a four-year investigation of Dr. Roberts. Dr. Roberts sent him a letter that said can you answer some of my questions? There's a lot of questions there. We've got Government's Exhibits. That's Government's Exhibits, not Defendant's Exhibits,2-4 and 2-6, and they have been kind enough to introduce themselves. The questions that Dr. Roberts to the Government, what did Mr. Bryan say when I asked why he wouldn't respond in writing? Oh, I've got a little policy that I made up that I don't answer questions in writing. Is that your policy? Oh, yes. That did not come down from above. I just made, made that policy for myself that I don't answer questions in writing. We could get into a letter writing contest and we really wouldn't want that. What's harder, spending four years on an investigation -- you know that they worked real heard on this investigation -- or simply writing down the answers to some questions? Even if they figure those questions are unreasonable, they have got an answer. You would think that they would be able to answer them. Now, let's think about this case. I want to emphasize and hone in on two elements of this case. One of them is duty and the other one is knowledge. And the reason we have to hone in now is because this is a case where the subjective bad faith of the Defendant is required before he can be convicted. You have to find not only did he have a duty to perform an act, but he knew of that duty, in his mind he knew of that duty. Even an unreasonable belief that a person was not required to make a return is sufficient to defeat a prosecution of willful failure to make a tax return, because it has to be shown that in his mind that he believed that he was doing something. He was about to get away with something. He decided he would just go ahead and do it anyway. Do we see anything in here about that? Do we see any subjective bad faith? Have you ever heard of somebody that was committing a crime when it's embarrassed the Government and say can you tell me what law specifies that my conduct is not legal? How many bank robbers send letters to the Government can you show me a law that says that I shall not rob banks? And if a bank robber did that, the Government a letter, not one of them, numerous times, do you think the Government would just sit there and say nothing about it and never respond in writing? Does that make sense to you? Does that show subjective bad faith on the part of this gentleman right here? Let me ask you this? If you were about to enter into one of the greater transactions of life, let's say you want to buy a house, let's go back to the house where we went and heard the scurrying sounds. Don't worry about that. Shut that door real fast. Now, let's suppose this agent says -- you say, well, I'd like to get this in writing. Oh, I don't want to write this down. I've discovered that when I write things down I just kind of get into a contract writing contest, and I don't want to do this. I promise you I'll sell you this house and it will be a great house, but I just -- and I just made this up myself. My boss didn't do this, but I

just made up this policy myself that I don't put these things in writing, but you will like them a lot better the way I do it, if you'll talk to me, I'll just -- man, this is a great house. I'll sell you that house. That's one of the greater transactions of life. This is one of the greater transactions of life. If somebody came to you and told you, just flat out told you, I don't answer questions like that in writing, would you enter into a transaction with that person on the basis of what he said orally? I submit that no reasonable person could that and let's don't forget, I won't bore you with this, that it's subjective bad faith that we have to prove on the part of the Defendant. There's another kind of bad faith. and that bad faith is objective bad faith. Objective bad faith is when a person acts in a manner that a reasonable person would believe was wrong. We're not asking whether Dr. Roberts is reasonable or not. We're asking whether or not he was sincere. Did he really believe what he said when he believed it? Amazingly enough, Dr. Roberts testified that he sent a letter to the Government and said, I will make this return if you will show me in the law where I'm required to make this return. What did he get? Nothing. That was uncontradicted by the Government that he made this offer and that the offer was -- that he got nothing in response to that offer. Would a criminal -- would a man who's trying to hide something send a letter to the Government and confess and tell on himself, especially when it's a man who's got a question about his Fifth Amendment rights under the Constitution? Would he do that? Would he send something to the Government if he thought it incriminated him? Certainly he would not. Of course, now, we didn't see that letter. We heard scurrying. We didn't see the letter. We saw Mr. Miller on the stand telling us. He's reading from a Sunday school book is what he's doing. Yes. Now, you see up here on this tax return? You can see on this tax return that it says that, you know, you got to add this up, but if you, as a single person, you're required -- well, just a minute. A single person under 65 years old was required to make a Federal income tax return for 1994 if he had gross income in excess of $6,250. Ladies and gentlemen, I will ask you. You look and see if you can find that anywhere in any of the stuff that you've got except in the jury Instructions. See if you can find that. Now, I tell you somewhere where you can -- you can look at the tax returns. Did anybody here testify to you that the 1993 and 1994 tax returns were logged? Did anybody testify to you that they sent those forms to this man right here and told him, Dr Roberts, that's the law, and if you transgress the law, then you'll be punished for that. Did you hear that? No, you didn't hear that. I know you didn't hear that. We also heard testimony -- well, you can see it in this pamphlet here. Are we going to see this pamphlet? And the pamphlet see says -- it's got a little chart there and it says, if you -- well, I've already the statement, don't need to read it again. That's basically what it says. But is that law? Did anybody send that pamphlet to Dr. Roberts and say, Dr. Roberts, the Congress of the United States has published this pamphlet as a law. It has been published in the Federal register and you are liable to obey this pamphlet? Did you hear that anywhere? No, you didn't hear that anywhere. Does that tell you that you can find that he had a duty and that he willfully, intentionally violated that duty? Of course not. Of course not. That cannot be found there. This case is really a case about the rule of law. If a law is not clear, Congress sits in session nearly all the time, they can change the law. If they want to make a law that reads a single person under 65 years old is required to make a Federal income tax return for 1994 if he had gross income in excess of $6,250, they can write that law. Now, if it's unconstitutional, that's another question. We're not worried about unconstitutionality of the law in this proceeding. They can write that law if they want to put the people like Dr. Roberts on notice that if they transgress a certain commandment, then they will have to pay the penalty for that. See if you find that anywhere, look real close. We've heard some scurrying, but we haven't seen anything. What is an expert? You heard expert Brian Miller expert on the Internal Revenue Code doesn't know what a subtitle is, doesn't know what the subtitle to income taxes are, barely knew that there might even be a subtitle to it. What's an expert? Is that not somebody who has superior knowledge in a certain specific area? And if the Government has to get an expert in here to tell you about the requirements, and that expert goes not to the law but the pamphlets and the tax code and everything but the law to tell about the law and tell you what the law is, what's that tell about Dr. Roberts? Does Dr. Roberts have the expertise of this man up on the stand, Brian Miller? Does he have that expertise? No, he does not. If it takes an expert even to know this, how can you say that Dr. Roberts had the subjective bad faith necessary to sustain a conviction? We need to pay close attention to what kind of sentiment people are appealed to when they ask us to do something. Are they asking us to uphold the law? Appeal to the noble sentiments. Are they asking -- well, now, let's look at this? We got a boat. That's a nice boat and I'd like to ride on it. He's got a car. It's a nice car, and I've road in it, and I like it. What is the Government appealing to in this case? Does that help you find that he had a duty, okay, legal duty? Does that help you find that he had a legal duty? Does that help you find that he had knowledge? He told you, ladies and gentlemen, that he would sell that boat. He would sell the shirt off his back to put any tax for which he was liable. Did you hear anybody say or show you any law that says that anybody is liable to make an income tax return or liable to pay an income tax? Just think about something. The Government was gracious enough to put in at least part of the individual master file of Dr. Roberts. And they tell us they have got all kinds of information on Dr. Roberts on how much he made on 1992 all the way up to the present. Do you know what it shows on their records? Zero. They have a law that allows them to assess a tax against somebody. They have a law to make somebody liable for that tax. Why didn't they just calculate those returns and send Dr. Roberts a bill? We hear the scurrying sound, but the door gets slammed shut. We don't know what's in there. We are going to be told about what -- not what just income means. We're going to be told about gross income. And now they might say, well, gross income and income, that's, you know, that's about the same thing. Does lightning mean about the same thing as lightning bug? Those little adjectives, those little modifiers make a big difference in the meaning of a word. But they say that gross income includes gross income. I learned in the third grade that you can't define a word by using the same word. So we don't have a definition of that. Once again we've got some scurrying feet, but we don't know what it is, and the doors slammed shut and we don't know. Where in the law did the experts say that the $6,050 figure could be found? He said it couldn't be found. He said that you would have to take some figures and you'll have to look here in this statute and this other statute and then you would have to know what the inflation rate was, and presumably that would be computed by some other Government agency, not Congress. You would have to know that and then you would have to perform a calculation in order to figure out what this figure is. There has to be a specific law. In criminal law a person must violate a specific law in order to be held to account for that. So we've got the expert saying, no, we don't have that in the law, but I think we can calculate it. Does Congress do that? Well, no Congress didn't do that. No, that is not in the law. That is -- by the testimony of the Government's own witness, something that was calculated by somebody else, and they ask you to take -- to hang your hat on that and conclude that that is the law or to say -- otherwise, to just simply say, well, that's close enough. Man he got a lot. Surely inflation is not that high. Well, that's not the point. The point is do we have a law that's specifies that a person, a single person under 65 years old is required to make a Federal income tax return for 1994 --

MR. BLACKORBY: Objection, Your Honor.

THE COURT: That is -- I'm going to sustain that. You are not to argue the law, Mr. Stilley.

MR. STILLEY: What did the Government have on knowledge? This has to be a non-legally -- Dr. Roberts previously filed tax returns. That's their knowledge. By that same logic, I believe that we could all prove that there is a Santa Claus, because most people at some point in life they belief in Santa Claus or the Easter Bunny or other concept that they have later abandoned. What to we hear from Dr. Roberts? He began to have questions in 1988. He didn't stop filing in 1988. He didn't stop filing in 1989. He stopped only after about two years of studying the law, after he had satisfied himself that he was correct on the law. How can that be a showing of knowledge on the part of Dr. Roberts that he knew that he was violating a specific law that required him to do a specific thing? The Government says he can't. They said he changed the name to Orthoneuro. His business is now Orthoneuro. Does anybody here think that the public is going to be deceived because Orthoneuro is now the name of the clinic? That's absurd. It can't be true. And they implied that he put his money into a trust because he was afraid the Government would come and get it. Well, the Government has not assessed a single penny. How could they collect any money if they have no assessment? Their own records show zero liability. How could they go collect that money? That would be impossible unless they could simply manufacture a liability out of thin air. Let's stop and think about it, too. Common knowledge tells you that IRS so many times, so many times has went in people's houses without a Court Order, ransacked that house, took all the stuff, seized bank accounts, months or years later they go, oh, sorry, we made a mistake about that. Is it unreasonable for a person to protect himself against things like that? If it is, let's stop and think about all the corporations in this world, lots of corporations. That is a separate entity and it's created in order to limit liability on the part of that person. There's all kinds of corporations and trusts, limited liability companies in this world, and it does not prove one thing to indicate that this man is acting out of anything but a perfectly good faith. Is it wrong for Dr. Roberts to ask -- was it wrong for Dr. Roberts to send a letter to the IRS? Was it wrong for him to want an answer to specific questions that he had about the law? Was it wrong for the Government to refuse to put an answer in writing? Let's stop and think about this. If Dr. Roberts didn't know the answers to his questions before this trial started, would he have any knowledge after this trial is over? Stop and think about it. We didn't hear a word yesterday, and I know I heard this word. It came straight out of Blackorby's mouth on a question to the witness. Mr. Bryan, what about Social Security contributions? What's contributions? The contribution tax? If they told -- and you know from your own personal knowledge that you can look all through all kinds of IRS publications and they talk about your Social Security contributions all the time. What happens when you decide not to make that contribution, if you file a tax return? They come and seize your stuff, do they not? That's common knowledge. Now, if the Government cannot compel you to make what they call a contribution to Social Security, is it totally unreasonable for Dr. Roberts to believe that there is not a law requiring him to make an income tax return? I submit to you that that is not unreasonable. And even if it is, if you believe that he believed it, you must acquit. There's lots of things in this world that have been held as everybody should know it, and you've heard that implied here lots of times. Everybody knows you have to file a tax return. I mean you don't have to look at the law to know that. You just, you just know that. Well, people have just known that about a lot of other things in this world for a long time and those ideas and those attitudes have changed. Remember Copernicus? He said the world went around the sun. It was not the sun going around the world. It was the other way around. He made those statements. He nearly lost his head for that. As a matter of fact, he recanted on some of these ideas that he knew to be the truth. But to his friends he would still say, I know it's the other way around. But he would recant, and obviously he didn't want his head lopped off, and I don't know anybody that wants their head lopped off. What about slavery? We have actually had slavery in this country. Just more than a century ago we had slavery in this country. Where was there a law that said the white man had the right to possess a black man? They point to a law and said, yes, that's the law. Certainly in a court of law and at least in the South if a white man went to retrieve a black slave, oh, yes, it's the law Whether or not they might point to the law and say that it was, absolutely that is the way it is. Now we look back and shudder and say how could we do this? How could we say that one person had the right to own another? And how could we say it was law? Let me tell you something. People that have stood up against this make tremendous risks, took tremendous risks and made tremendous sacrifices because they really believed in something truly. And I will submit to you that very few of them could be said to have been acting in bad faith. They believed in what they were doing. Let me tell you something else. This man right here believes in what he's doing. He's not doing it just because he doesn't want to pay taxes. He's doing this because he wants a rule of law. If the law is not clear, it's Congress' job to change the law. It's not his job to say there is a law when he can't find it. If Dr. Roberts is wrong in his ideas, he wants to know. He's demonstrated clearly that he wants to know if he's wrong by asking again, and again and again somebody tell me; if I'm wrong, tell me. And they will certainly will not do that in writing. If he's right, he wants everybody to know. If the law needs to be changed, if the Government needs revenue, he has never indicated any desire to deprive the Government of revenue. He's been a military man. His father has been a military man. He loves this country. He certainly would not deprive the country of the revenue that it needs to operate. Revenue of the Government to operate must take a second place to the rule of law. Certainly the Government has the power to tax. We all know about that. The Constitution gave the United States Government the power to tax any item except exports. They can't tax exports with only two limitations. Direct taxes must be apportioned and indirect taxes must be uniform throughout the United States. They have got plenty of power, complete power to tax. They just have to obey the law. They just have to make it specific. They just have to make it clear in order to bind a man such as Dr. Roberts and compel him to obey that law. The question arises what does the Government want out of this? When the Government has spent four years on an investigation to escape having to write a letter, what did they want? Did they want a front page billy-club to tell everybody else you do what I say or you're going to face this. We're going to take you down regardless of the costs? Or do they want to uphold the rule of law? Who's trying, who's trying to show what the law is? Who's begging to put it out? And who's slamming the door when it hears the scurrying sound. I want you to think about this. I started this out by telling you about our wonderful history, our Constitutional history and the right of individuals to have a jury trial. Today, right now you've got Dr. Roberts in your hands. He's asked the Government show me the law. He's got rights. You've got him in your hands. Every one of you have the power to protect him. You don't have to open your hands. You don't have to let him fall. You've got that power and duty as jurors to protect him, to defend him, to do justice for him. He's shown the utmost of good faith and he proposes his trust in you to bring back a true and just verdict. Thank you.

THE COURT: Thank you, Mr. Stilley. Mr. Blackorby?

MR. BLACKORBY: Thank you, Your Honor.

CONCLUDING CLOSING ARGUMENT OF THE GOVERNMENT

MR. BLACKORBY: I think it's always interesting in comparing closing or opening and closing arguments to listen to what was said in the opening and compare what the evidence was and what you heard in the closing. This is a good example here. Mr. Stilley's opening, you remember he said in the opening, that you're going to find that Dr. Roberts has paid so much tax to the U.S. Treasury that if

everyone paid as much taxes as Dr. Roberts, we would have a huge surplus. Where did we see any evidence at all that Dr. Roberts has paid any tax to the U. S. Treasury, unless it was gasoline taxes, so forth. He hasn't even filed since 1989, ladies and gentlemen. Therefore, he's paid no tax. And there's been a lot of talk about this master file, Government's Exhibit 1-4 that has no assessments. You can look at that, but as the agent's explained to you, it has nothing to do with assessments. It just says there's no record of Dr. Roberts filing since 1989. The zeros are on there because he paid no taxes, not that they were assessed. Nowhere is it required for the Government or the Internal Revenue Service to go out to every taxpayer every year determine your income, your expenses, your withholding and file the returns for you. That's what the law puts on you. You talk about the rule of law. That's what the law puts on all of us. The same law is on Dr. Roberts. It's also interesting and look at Government's Exhibits 1-3, 2-4 and 2-6 that Mr. Stilley brought out because Dr. Roberts raised no issues issue until the IRS contacted him first. Look at the dates in those letters attached to his documents. That was from the IRS Service Center asking where's your 91, 92, 93 tax returns? And look at his initial responses. His initial responses were not show me where I have to file, but his initial responses were I don't have to file because I'm a non-resident alien. Look at the document. I'm not a citizen of United States. I'm only a citizen of the State Arkansas, which is kind of interesting, because he didn't pay any Arkansas tax either. I don't live in a Federal enclave. Therefore, I'm not subject to United States jurisdiction. Those are the defenses he first raised when he was originally contacted by the Internal Revenue Service. The Internal Revenue Service sends an agent, Special Agent Tom Bryan, out to interview him in 96, February of 96. I don't want to talk to you. Asked him twice, actually asked him three times when he asked to go over the check spread, no, let's not do this face-to-face. Let me send in some more documents. But now as it did on the stand did today, which I think when we look at the dates of things, he comes up with a brand new defense. Once he's charged with a crime and it is the tax code, nowhere in the tax code that I can read shows me where I have to file. There's no longer any talk about, hey, I'm no longer a non-resident alien. You know, I want the American flag. I no longer only a resident of Arkansas. I'm no longer going to argue that I don't live in a Federal enclave. I mean he admitted on the stand, yes, Arkansas is part of the United States. So now let's come up with a new defense. Let's see if we can sell it to this jury. What didn't work before clearly because I mean the IRS came after me. I couldn't justify it before. With this jury, I'm going to come up with a whole new defense. And look at his Exhibits. Defense Exhibits 7 through 10. Those Internal Revenue Code sections, the one section talks about Federal employees and how you can levy on Federal employees salaries even though you're levying the Federal Government. In other words, the Government puts a levy on itself. That's all it talks about. Look at those other sections he introduced. There's nothing in there that limits assessing tax or paying tax or defining income on anybody. It talks about all of us. Talks about all areas of income, even practicing chiropractors, as the revenue agent told you, business or profession. (Pause) Ladies and gentlemen, Dr. Roberts has put down about whatever theory he can to try and show you or convince you that he had a justified reason to not file his tax returns. The only real reason he had and he knew it all along was greed, just what I told you in the opening statement, and that hasn't changed, greed to keep his money, use greed to spend over $75,000 a year any way he wanted to, greed to buy cars and boats. And the car, I know harped on the car a lot, but for one, why lie on the form to get the loan? Look at the form versus what you heard.

MR. STILLEY: Objection; that's arguing matters not in evidence.

THE COURT: I think that form is in evidence.

MR. BLACKORBY: 44-1, Your Honor, is the Exhibit.

MR. STILLEY: Your Honor, the objection I have --

THE COURT: It's overruled. This is closing arguments. Be seated, sir.

MR. BLACKORBY: He either made $14,000 a year or he didn't. Gray either made $6,000 a year or not. They're trying to tell you in the courtroom, oh, we didn't make that. When they needed the loan, when we wanted to talk to a bank, we have got to show enough to the bank. The loan was only $16,000, but the loan --

MR. STILLEY: Your Honor, I'm going to object that he's arguing about income and income has not been defined.

THE COURT: You're overruled. Sit down, sir.

MR. BLACKORBY: But now he wants to use the terms income, and that's what I make, and 14,000 plus $6,000, $20,000 a month to his benefit to get a car loan and put it in his girl friend's name. But now that same money he makes as a chiropractor he doesn't want you to call it income in this courtroom. It's the same money from the same source. So ladies and gentlemen, it's time that you tell Dr. Roberts to take his boat, his shirt, and take them off and cash them in and pay his taxes. And the way you do that is you look at this evidence and you go back there and you return verdicts of guilty on both counts, because that's exactly what this man is. He may be a good chiropractor. He may be a good father, but when it comes to his taxes and what he owes, he's a cheat and he's a fraud. So ladies and gentlemen, I thank you very much and I ask that you start your deliberations, and I ask that once you consider the evidence, that you return verdicts of guilty on both counts. Thank you.

THE COURT: Thank you, Mr. Blackorby. I've been telling you for three days not to discuss it. We're just about there where you are going to not only get to discuss it, but have to discuss it. It's time for the jury Instructions and I wish I could give them to you some other way other than reading them to you. I thought about putting them to music or doing something. But having said that, the law says I must read them to you, although I know all of you can read. What I will do, however, is we will send a complete set of the ones I read to you to the jury room. You'll have those. Along with the jury Instructions, we also will have the two verdict forms which I'll read to you. I'm also going to send the Indictment back. It may take us awhile, but we also will get all of the Exhibits back. We'll get those back to you at some point. Anyone need to take a break before we instruct you? It's probably going -- it will take 25 or 30 minutes probably. We have several yes votes on the jury. You all have learned if nothing else this three days to express yourself when you need to. We're all going to remain seated till the jury is out of the room and we'll assemble back in here in about 2:15. I Will give you 15 minutes. Remember the admonition of the Court so far. Don't discuss it with anyone or allow anyone to discuss it with you. Thank you very much. (Off the record at this time. Jury leaves the courtroom.) Let the record reflect it's 2:11. The jury is out of the room. Anything you want to put on the record after the closing statements and before we give the jury Instructions at 2:25?

MR. BLACKORBY: Not for the Government, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: No, Your Honor.

THE COURT: We'll be in recess till 2:25. Thank you very much. (Off the record at this time.) (THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Good break? That was a good idea. I was kind of hoping you-all would suggest that. Now that you've heard the evidence, it becomes my duty to give you the Instructions of the Court as to the law that's applicable to this case. (At this time the

Court read the Instructions to the jury, after which the following proceedings were had:)

THE COURT: We'll get these to you to retire to the jury room. Mrs. Williams than Mrs. Wiley, we sincerely appreciate your service. You will need to leave your juror buttons in the jury room as well as any notes that you've taken. Leave them upside down and we'll shred them when this trial is over. It looks like everyone is in pretty good health, so I think we're going to turn it over to these 12. We are appreciative, you know, and you've had to work hard and it's time -- I think it's unfortunate that you don't get to vote, but I don't make those rules, but that's the way they are, and thank you so very much, you know, for your service. My suggestion would be that you all take another short break, and here again, Miss Minta, I'm not picking on you. If you need to smoke, you certainly can, but do not start deliberating until all 12 of you get in the room and in a circle around the table and say he's been telling us for three days to not discuss it and now's the time to discuss it. We're going to remain seated until you're out of the room, but, again, Mrs. Williams and Mrs. Wiley, we sincerely appreciate your service. (Off the record at this time.) (The time is now 2:47 p.m. and the jury is retiring to the; jury room to deliberate upon their verdict.) (THE FOLLOWING PROCEEDINGS WERE HAD OUT OF THE HEARING OF THE JURY.) (4:00 o'clock p.m.)

VERDICT

THE COURT: It's my understanding we have a verdict. I'd ask everyone to remain seated until the jury is in the room please. We, of course, have no way of knowing what this verdict is. I would tell people in the courtroom the Court wants to hear no outburst of any kind. If you think a decision may be that you can't handle it, I would ask you to excuse yourself at this time. (THE FOLLOWING PROCEEDINGS WERE HAD WITHIN THE PRESENCE AND HEARING OF THE JURY:)

THE COURT: Mr. Hoeffer, you got the job again?

JUROR HOEFFER: Yes, sir, Your Honor.

THE COURT: That may be a permanent job for you.

JUROR HOEFFER: I hope not.

THE COURT: If you'll hand it to the Court Security Officer who will hand it to Miss Porter... Was this a unanimous verdict?

JUROR HOEFFER: Yes, sir.

THE COURT: Dr. Roberts, you want to stand, please, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Stand with him, the attorneys.

Verdict Form No. 1: we, the jury find the Defendant Phillip E. Roberts guilty of the crime of willfully failing to make a Federal Income Tax Return for 1993 as charged in Count I of the Indictment. Dated 6/29/2000. Signed by Mr. Hoeffer as the Foreperson.

Verdict Form No. 2, we, the jury find the Defendant Philip E. Roberts guilty of the crime of willfully failing to make a Federal Income Tax Return for 1994 as charged in Count II of the Indictment. It is signed -- it's also signed, dated, also signed by Mr. Hoeffer as the Foreperson. Is this a unanimous verdict, sir?

JUROR HOEFFER: Yes, sir.

THE COURT: You-all can be seated. I need, if we can start in -- it's -- Mrs. Martin, I don't went to pick on you, but you are -- I've got you down as No. 1 juror. I need for you to each stand. We'll go all the way across the top and then start if you would, Mrs. Chamberlin, and go back and just say that is my verdict, if it is your verdict, Mrs. Martin.

A Janice Martin, my verdict.

THE COURT: Mrs. Maxwell?

A Doris Maxwell. That is my verdict.

THE COURT: Mr. Lowder?

A Larry Lowder. That's my verdict.

THE COURT: Mr. Furstenberg?

A Tommy Furstenberg. That is my verdict.

THE COURT: Miss House?

A Elizabeth House. That is my verdict.

THE COURT: Ms. Bangs?

A Jackie Bangs. That is my verdict.

THE COURT: Mrs. Chamberlin?

A Gail Chamberlin. That is my verdict.

THE COURT: Mr. Hoeffer?

A Forrest Hoeffer. That is my verdict.

THE COURT: Mrs. Organ?

A Betty Organ. That is my verdict.

THE COURT: Mrs. Nagle?

A Betty Nagle. That is my verdict.

THE COURT: Mr. Harvell?

A Rex Harvell. That is my verdict.

THE COURT: Mrs. Minta?

A Sherri Minta. That's my verdict.

THE COURT: Fine. Thank you very much. Any other voir dire questions for the jury?

MR. BLACKORBY: Not for the Government, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: No.

THE COURT: We'll make copies of the verdict forms and hand them to you. You are -- I'm going to ask the Court to remain in session until you have been excused. We are deeply appreciative of your service, the time and attention you've devoted to it. You've been very attentive. You need to remove and leave your juror buttons here. You also need to leave your notes, if you would, in the jury room. Those will be picked up and they will be shredded.

We have a rule within the Western District of Arkansas that you're -- that jurors cannot be contacted, and that rule is going to remain in effect. I would say if you are contacted by anybody in connection with this case, you need to notify the Court immediately. You'll be notified, Ms. Porter, by mail --

MS. PORTER: Yes, sir.

THE COURT: -- by mail again on when to report. I promised Mr. Hoeffer he wouldn't have to serve last week for awhile because he had had service, so, you know, you may be back sooner than you hope, but thank you, and I appreciate the time and attention you devoted to this case. Thank you very much. (Jury leaves the courtroom at this time.)

THE COURT: We're going to pass out copies of the verdict forms. Dr. Roberts, you've been convicted on two counts; however, they are misdemeanors. You're under a -- I think, Mr. Hudson, a $25,000 bond that what we have got?

MR. HUDSON: I believe so, Your Honor. I would have to check the dollar amount, but it's an unsecured bond.

THE COURT: Any objection to the Defendant continuing on bond in this matter?

MR. BLACKORBY: Not to the amount I don't believe now Dr. Roberts now that he's convicted has ever filled out the application to apply for the bond, and I think he needs to do that. He doesn't

have a Fifth Amendment privilege now. It's been waived by the conviction.

THE COURT: I'm going to continue the bond at present through the sentencing. I will tell you this, Dr. Roberts, and Mr. Stilley can advise you, sir, the probation, sir, will need to obtain some information from you and your attorney. Anytime you're interviewed, you certainly have a right to have Mr. Stilley present. If you decide early that you're not going to fill out the -- completing the information, you need to advise the probation office, and the Court will take it from there. Anything further?

MR. BLACKORBY: No, Your Honor.

THE COURT: Mr. Stilley?

MR. STILLEY: No. No, Your Honor.

THE COURT: We're in recess. Thank you very much. (Off the record at this time.)

C E R T I F I C A T E

State of Arkansas

County of Sebastian

I, Rick L. Congdon, a Registered Merit Reporter, and Official Court Reporter for the United States District Courts, Western District of Arkansas, do hereby certify that the foregoing transcript, taken before me at the time and place herein designated, consisting of pages 1 through 756, was taken down by me in machine shorthand and then transcribed via computer either personally or under my supervision and that this transcript is a true, correct, and complete transcript of said proceedings as reflected herein. Signed this 25th day of April, 2000, in the City of Ft. Smith, County of Sebastian, State of Arkansas.

_____

RICK L. CONGDON, RMR
OFFICIAL COURT REPORTER
U. S. DISTRICT COURTS
WESTERN DISTRICT OF ARKANSAS