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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	
Plaintiff,)	CR 10-00400-PHX-DGC
)	
vs.)	Phoenix, Arizona
)	April 21, 2011
Janice Sue Taylor,)	
)	
Defendant.)	
)	

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL - DAY 3 (Pages 499 - 754)

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08:31:58 1 **P R O C E E D I N G S**

2 (The following proceedings took place in open court
3 outside the presence of the jury.)
4

08:31:59 5 THE COURT: Thank you. Please be seated.

6 Morning, everybody. All right. Let's talk about the
7 jury instructions. At the final pretrial conference on April
8 1st, I provided you with proposed jury instructions.

9 Let's start with the government. Counsel, do you have
08:32:29 10 comments or corrections with respect to the jury instructions?

11 MR. KNAPP: Let me pull them up, Your Honor. If I
12 may.

13 I don't think we have any objections to any of them.
14 I will just note that on the 4.3 instruction, Other Crimes,
08:32:54 15 Wrongs, or Acts of Defendant, I think all that's been
16 introduced are the -- again, the things that we noticed, the
17 prior and subsequent tax years and essentially the uncharged
18 tax conduct, tax-related conduct. So I don't know if the Court
19 wants to tailor that instruction or if the instruction is
08:33:15 20 unnecessary since it implies actual crimes. Maybe it's
21 unnecessary.

22 I guess we would propose that we just maybe strike out
23 the word "crimes" and say something along the lines of, "You've
24 heard evidence that the defendant committed other wrongs or
08:33:46 25 acts not charged here, including uncharged tax-related conduct.

08:33:51 1 You may consider this evidence only for its bearing, if any, on
2 the question of the defendant's intent, motive, plan,
3 knowledge, absence of mistake, or willfulness and for no other
4 purpose."

08:34:13 5 THE COURT: Ms. Taylor, do you understand which
6 instruction he's referring to?

7 MS. TAYLOR: Is it 4.3?

8 THE COURT: Right. It's on page 15. He is proposing
9 some modifications to that instruction. Do you have thoughts
08:34:34 10 on the government's proposal?

11 MS. TAYLOR: He wants to strike the word "crimes"?

12 THE COURT: Yes. And then limit the second sentence
13 to, "intent, motive, plan, knowledge, absence of mistake."

14 MS. TAYLOR: And would you repeat that. Leave that
08:35:00 15 "intent, motive," or to strike that?

16 THE COURT: Yes. Leave it in. I think we would --
17 under their proposal we would strike "opportunity," we'd
18 probably strike "preparation, identity, absence of accident."

19 The idea of this instruction is that I have allowed
08:35:20 20 into evidence, evidence of things that happened before the tax
21 years in question because they go to the question of
22 willfulness and whether or not your failure to pay taxes was
23 willful.

24 The reason an instruction like this is given is so
08:35:42 25 that the jury won't look at that evidence and say, "Well, if

08:35:46 1 she did that, she must be guilty of the crimes charged." The
2 purpose of this instruction is to say the only basis upon which
3 they should consider those prior acts is really to go to your
4 state of mind. So that is why this instruction is given.

08:36:01 5 And the government -- I agree that we should take out
6 the word "crimes" because you weren't charged with crimes with
7 respect to any of that previous conduct. But that's the reason
8 for the instruction. And so my question to you is: Do you
9 have an objection to the instruction? Do you have an objection
08:36:20 10 to the government's proposed changes? Or do you have other
11 proposed changes?

12 MS. TAYLOR: So then you're taking out the -- on the
13 other one, you're taking out "preparation" did you say?

14 THE COURT: Well, I'll tell you what I would do. This
08:36:39 15 is my proposal based on what the government has said. I would
16 take out the word "crimes" and "wrongs" in the first sentence.

17 MS. TAYLOR: "Crimes" and "wrongs."

18 THE COURT: So that it would say, "You have heard
19 evidence that the defendant committed other acts not charged
08:36:52 20 here." I don't think, as the judge, I should be characterizing
21 those prior acts as wrongs.

22 And then in the second sentence I would say, "You may
23 consider this evidence only for its bearing, if any, on the
24 question of the defendant's intent, motive, plan, knowledge, or
08:37:15 25 absence of mistake, and for no other purpose." And then I

08:37:23 1 would leave in the last sentence.

2 MS. TAYLOR: Yes, that's fine.

3 THE COURT: Okay. Let me make a note of that.

4 Go ahead, Mr. Knapp.

08:37:31 5 MR. KNAPP: Your Honor, it may be redundant but I
6 would add in "willfulness" after "absence of mistake."

7 THE COURT: Do you understand that last point that he
8 just made, Ms. Taylor?

9 MS. TAYLOR: No, I didn't hear it. I'm sorry.

08:38:28 10 THE COURT: What he said was, he would add to that
11 list of things they may consider it for, the word
12 "willfulness."

13 MS. TAYLOR: After "acts," "willfulness"?

14 THE COURT: Probably after "absence of mistake" in the
08:38:41 15 second sentence.

16 MS. TAYLOR: "Absence of mistake."

17 Does "willfulness" have to be in there?

18 THE COURT: Well, you can take a position on that.

19 I'll tell you that the instructions, the other instructions, as
08:39:11 20 you know, said that you can be found guilty only if your
21 violation of the law was willful. And the evidence that I have
22 allowed in for the periods before 2003 I had thought was
23 relevant because it goes to the issue of willfulness. So I
24 think it is appropriate to put it in. But if you don't, I'm
08:39:28 25 happy to hear your reasons.

08:39:35 1 MS. TAYLOR: Well, as you know, I don't -- I'm not a
2 lawyer on this so all these technical terms --

3 THE COURT: You're free to speak with Ms. Anderson,
4 who is next to you, on this issue.

08:39:56 5 MS. TAYLOR: Okay. I guess I would object to the
6 "willfulness" because it is not a form of the standard.

7 THE COURT: It's not in the standard instruction?

8 MS. TAYLOR: I guess.

9 THE COURT: All right. I think I understand that
08:40:07 10 point. I'm going to include "willfulness" in the list. I'm
11 going to leave in the last sentence as well.

12 Do you have other comments on other instructions,
13 Mr. Knapp?

14 MR. KNAPP: Not on others, Your Honor, but I'll just
08:40:20 15 note that -- and I understand the Court's position. I will
16 just note that because willfulness is an element, I don't want
17 the jury to get confused by that last sentence. I do think
18 that evidence as it goes to willfulness can be evidence of
19 guilt in this case. I understand that the instruction probably
08:40:36 20 intended to convey that they shouldn't convict on this charge
21 because they thought she committed some other crime.

22 THE COURT: I see. So you think the last sentence is
23 confusing when I'm telling them they can consider it for an
24 element of the crime but they can't consider it on the issue of
08:40:59 25 guilt?

08:41:02 1

MR. KNAPP: Yes, Your Honor.

2

THE COURT: Any thoughts on that, Ms. Taylor?

3

MS. TAYLOR: Where are you wanting this to be in?

4

08:41:28 5

THE COURT: Well, what the government is proposing is that we not include the last sentence. And the reasoning is, we are telling the jury they can consider it on willfulness.

7

That's an element of the crime. And it may confuse them if we

8

say that and then in the next sentence say you can't consider

9

it as evidence of guilt because it -- I think the government's

08:41:47 10

point is, it is evidence of guilt to the extent it helps

11

establish willfulness. So they are concerned about that being

12

confusing to the jury.

13

MS. TAYLOR: Well, I guess taking that sentence out

14

would make some sense if the "willfulness" was not there. But

08:43:06 15

it is leading to -- if it was there. But we already have

16

"willfulness" there, right?

17

THE COURT: Right. Right.

18

MS. TAYLOR: We already have "willfulness" there. So

19

isn't that sentence kind of leading the jury to believe that --

08:43:24 20

or suggesting guilt on -- you know, that they should look at

21

this as a guilty instead of innocent. I'm innocent until

22

proven guilty so isn't this kind of --

23

THE COURT: Well, I do think it is confusing if we

24

leave the last sentence in when we put "willfulness" in the

08:43:44 25

sentence before. Because in one sentence I'm saying you can

08:43:48 1 consider it, in the next I seem to be saying you can't. So I
2 think I am going to take out the last sentence and include
3 "willfulness" in the sentence before.

4 All right. Mr. Knapp, do you have other comments on
08:44:04 5 the instructions?

6 MR. KNAPP: Nothing else, Your Honor.

7 THE COURT: Ms. Taylor, do you have comments on any of
8 the instructions?

9 MS. TAYLOR: 316 I object to.

08:44:33 10 THE COURT: 316?

11 MS. TAYLOR: Yes. It's not an element of the charge.

12 THE COURT: How about that, Mr. Knapp?

13 MR. KNAPP: May I have a moment, Your Honor?

14 THE COURT: Sure.

08:45:01 15 MR. KNAPP: Your Honor, we don't think it is required
16 in this case, but we do think that the fraud will come up.
17 It's part of what the theory of the case is that defendant is
18 doing, and we think it may be helpful to the jury to explain
19 what that means.

08:45:17 20 THE COURT: Where -- where does the jury have to make
21 any determination about whether there was an intent to defraud
22 in the elements of the offense?

23 MR. KNAPP: I don't believe they do, Your Honor.

24 THE COURT: All right. I'm going to sustain
08:45:29 25 Ms. Taylor's objection and take out 316.

08:45:31 1 MS. TAYLOR: Thank you, Your Honor.

2 THE COURT: Do you have other instruction comments,
3 Ms. Taylor?

4 MS. TAYLOR: Give me a minute, please.

08:46:16 5 THE COURT: All right.

6 MS. TAYLOR: Okay. I would move to strike all the
7 standard instructions -- all but the standard instructions on
8 the crimes charged.

9 THE COURT: Okay. Which ones specifically are you
08:47:15 10 asking to have stricken?

11 MS. TAYLOR: Government's Requested Instruction
12 Number 2.

13 THE COURT: What page are you on?

14 MS. TAYLOR: 20.

08:47:45 15 THE COURT: Actually, although that is titled
16 Government's Requested Instruction, I think that may be the
17 standard instruction. I think I may have used the Ninth
18 Circuit instruction. I'm not certain of that. Let me look at
19 what the government had proposed.

08:48:03 20 I mean, we clearly need an instruction on 7201. I
21 actually don't have a copy of the Government's original
22 proposal. We're going to look at the standard -- or the
23 government -- do you know, Mr. Knapp, if the instruction on
24 page 20 is the standard instruction?

08:48:47 25 MR. KNAPP: I believe it's -- at least closely tracks

08:48:49 1 the standard instruction 9.37. I think we changed a little bit
2 of the wording. I believe. But I mean, it's pretty similar to
3 9.37.

4 THE COURT: Well, I will compare it against the
08:49:02 5 standard instruction, and if it's different, then I'll bring --
6 I'll come back and we can talk about it. My intent when I went
7 through was to hew as closely to the standard instructions as I
8 could, and so maybe the reason I used theirs was simply because
9 it put in the relevant tax years. But I'll double-check that.
08:49:18 10 If it is the standard instruction, I'm assuming you're not
11 objecting to it, Ms. Taylor?

12 MS. TAYLOR: No.

13 THE COURT: Is that right? Okay. We'll come back and
14 look at that one.

08:49:28 15 Is there another one that you objected to?

16 MS. TAYLOR: One moment, please.

17 Page 24.

18 THE COURT: All right. So you're objecting to the
19 instruction on page 24?

08:50:24 20 MS. TAYLOR: Yes. I believe I objected to it before
21 because it was unnecessary and not part of the model
22 instructions.

23 THE COURT: All right. Your response, Mr. Knapp?

24 MR. KNAPP: Your Honor, we believe it is a correct
08:50:34 25 statement of the law and believe it would be helpful to the

08:50:36 1 jury; for example, especially telling the jury that the
2 deficiency arises on the date the return was due and the third
3 paragraph noting that we do not need to prove a specific amount
4 of tax due for the calendar years charged in the indictments.
08:50:51 5 We had -- we cited some cases in our initial submission, I can
6 provide that to the Court --

7 THE COURT: That's okay. I've got the initial
8 submission, obviously, on the docket. I'll go back and look at
9 that one again and let you know after I've looked at it and the
08:51:06 10 cases whether I think it's appropriate.

11 So we'll come back on that one as well.

12 MS. TAYLOR: Page 25, also, Your Honor. I also put
13 that that was unnecessary and not part of the model.

14 THE COURT: Your response, Mr. Knapp?

08:51:41 15 MR. KNAPP: This, too, Your Honor, we believe is a
16 correct statement of law. It is not a model instruction as far
17 as I know. We cited authority for it, and we've also cited
18 authority for the same kind of proposition in our trial memo
19 where we describe what kinds of evidence can be affirmative
08:51:53 20 acts of evasion.

21 THE COURT: All right. I was uncertain about this,
22 that's why I have a question mark at the top. I will go look
23 at the cases on that as well.

24 MS. TAYLOR: Page 26.

08:52:07 25 THE COURT: Same objection, Ms. Taylor?

08:52:10 1

MS. TAYLOR: Yes.

2

THE COURT: I assume it's the same response,

3

Mr. Knapp?

4

MR. KNAPP: Yes, Your Honor, except for we didn't

08:52:16 5

cover this in the trial memo, but, yes.

6

THE COURT: All right. I will look at the case. You

7

cited cases in the proposed instruction, right?

8

MR. KNAPP: Yes, Your Honor.

9

THE COURT: Okay. I will look at that.

08:52:31 10

Ms. Taylor?

11

MS. TAYLOR: Page 27, also.

12

THE COURT: Same objection? That is, not standard and

13

unnecessary?

14

MS. TAYLOR: Yes.

08:53:03 15

THE COURT: Okay.

16

MS. TAYLOR: Also, that's giving a broad -- like I

17

said, a broad concept of income. It's not saying what income

18

actually is defined as in the code or in the court cases.

19

THE COURT: All right. Mr. Knapp?

08:53:24 20

MR. KNAPP: Your Honor, we do think it is helpful to

21

the jury. We do think it is a correct statement of the law.

22

We cited the code as well as a case.

23

THE COURT: Okay. I'll look at those citations.

24

Did you have other objections, Ms. Taylor?

08:53:42 25

MS. TAYLOR: One moment, please.

08:54:04 1 Well, I had submitted some other jury instructions
2 which you declined. I would like for you to revisit those and
3 go over some of them.

4 THE COURT: All right. I will look back over your
08:54:21 5 proposals again when I look at these government instructions.

6 Let me ask a question of both of you. There is on
7 page 23 a definition of "knowingly." Is knowingly an element
8 of any of these offenses?

9 MR. KNAPP: I believe it is, Your Honor. I believe --
08:54:57 10 let me pull the instruction. Your Honor, in our -- in the
11 proposed attempt to evade, defeat assessment of tax, it does
12 say, "Second, the defendant knew that more federal income tax
13 was owed than was declared."

14 THE COURT: All right. Ms. Taylor, do you know yet
08:55:33 15 whether or not you're going to testify?

16 MS. TAYLOR: At this time I don't --

17 THE COURT: All right. At this time you don't know?

18 MS. TAYLOR: I don't know.

19 THE COURT: So we'll just leave 3.3 and 3.4 in, and
08:55:47 20 we'll have to choose between one of those when you make that
21 decision.

22 MS. TAYLOR: Okay.

23 THE COURT: Okay. I will go back and look at these
24 instructions we've talked about, as well as the others that you
08:55:54 25 proposed, Ms. Taylor.

08:55:56 1 My intent was to use the stipulated verdict form that
2 you all provided. I thought it was fine. So I'll just plan to
3 use that.

4 Does the government have additional matters you want
08:56:05 5 to raise before we get started?

6 MR. GALATI: Your Honor, may I? One matter. Your
7 Honor, you may recall yesterday at the conclusion of -- during
8 the examination of Dolpha Larsen she testified about the
9 five -- what she says are the five trusts that were set up or
08:56:25 10 she was made beneficiary of by the defendant without her
11 knowledge.

12 All that was disclosed. The memorandum of the
13 interview was disclosed. The exhibit was disclosed, 185, that
14 detailed those matters. Ms. Taylor wanted to cross-examine.
08:56:44 15 She said she had forgotten to bring her papers. The witness
16 was excused but Ms. Taylor wants to recall her.

17 At the conclusion of the testimony, when the witness
18 was out of the courtroom, you asked if she had to be
19 re-subpoenaed to be recalled in the defendant's case. I said
08:57:04 20 we would certainly facilitate getting her back here, as far as
21 I'm concerned she doesn't have to re-subpoena her.

22 I went out and talked to Ms. Larsen. She was in
23 tears. She was emotionally distraught over having to testify
24 against her sister. She said, "I'm not coming back under any
08:57:19 25 circumstances." She said she has to babysit her granddaughter.

08:57:22 1 She had to take off yesterday to do that. She's the caregiver.

2 I asked -- I told all this to both Ms. Anderson and
3 Ms. Taylor last night. I haven't seen the papers that
4 Ms. Taylor says she wants to cross-examine with or to utilize.

08:57:38 5 And I don't know where that leaves us but I wanted to bring
6 that to your attention. And I -- that's the situation.

7 When I said we would facilitate it, Ms. Saldate is
8 back here and she's been our witness coordinator. You know, my
9 intent was, yes, we'll call her, we'll tell her when she has to
08:57:55 10 be here, things like that. But that's where we are, Judge. I
11 really don't know what more to say about it.

12 THE COURT: Ms. Taylor, do you have thoughts on that
13 issue?

14 MS. TAYLOR: Do we have to bring her back right today
08:58:25 15 or tomorrow? Is this something that has to be decided on right
16 now?

17 THE COURT: Well, what I don't want to have happen is
18 have the conclusion of the trial delayed to get her here. The
19 government indicated yesterday that they think that their
08:58:53 20 evidence will go through the entire day today. Is that still
21 true?

22 MR. GALATI: Yes, Your Honor. We believe so.

23 THE COURT: But if they finish today or tomorrow
24 morning, then it would be your turn to put on your defense.

08:59:04 25 And if she's one of the witnesses you want to call, then you'll

08:59:07 1 need to have her here as part of your defense.

2 My concern is that if we need to subpoena her again,
3 then that's something that ought to happen today if you want
4 her here tomorrow to testify. If the government finishes its
08:59:24 5 case at the end of the day, and you're starting tomorrow
6 morning and you decide you want her here, I don't know that we
7 could get a subpoena served on her before you would finish your
8 other witnesses.

9 And that's what I want to avoid is getting to a point
08:59:37 10 where we're done with the trial except for her, and we've got
11 to have the jury wait over the weekend or for another day while
12 we subpoena her. So I do think it is something we need to
13 decide today if you want to subpoena her.

14 MS. TAYLOR: Well, Your Honor, my witnesses that I had
08:59:55 15 coming, I had told them -- because I was under the impression
16 that the defense attorney was going to have all of this week
17 and then mine was going to start on Tuesday so I have told all
18 of my witnesses that they will not have to be here until
19 Tuesday.

09:00:09 20 I have not confirmed with them to be here tomorrow.
21 So -- and I couldn't get ahold of anybody late last night to
22 relay that to even if I would have known that. So I'm not
23 sure. They were going to come in over the weekend and possibly
24 Monday, Sunday or Monday --

09:00:35 25 THE COURT: Are some of them from out of town?

09:00:37 1

MS. TAYLOR: Yes.

2

THE COURT: Do you have a sense, Ms. Taylor, for how long your witnesses will take?

4

MS. TAYLOR: Maybe -- maybe a day.

09:00:54 5

THE COURT: Which of them is from out of town?

6

MS. TAYLOR: Three of them, I believe.

7

THE COURT: Which three in the list?

8

MS. TAYLOR: Five of them would be.

9

THE COURT: We couldn't hear that, Ms. Taylor.

09:01:28 10

MS. TAYLOR: Five of them are -- five are from out of town.

11

12

THE COURT: Which five on the list?

13

THE WITNESS: Larry Becraft, Tommy Cryier, Mr. Rivera, Joseph Bannister, and Christopher Chapman.

14

09:01:41 15

THE COURT: And you're having them all come here?

16

MS. TAYLOR: Yes.

17

THE COURT: And you've told them that they need to be here and ready to go Tuesday morning?

18

MS. TAYLOR: Correct.

09:02:17 20

THE COURT: All right. Did you want to say something, Mr. Knapp?

21

22

MR. KNAPP: Yes, Your Honor. We asked defendants for expert disclosure in the past, and we haven't really received much in the way of expert disclosure for any of these witnesses other than they are alleged experts on tax matters. I have a

23

24

09:02:25 25

09:02:30 1 feeling that we're going to have some pretty extensive argument
2 about whether they can even testify, whether they have the
3 expertise, and also, that's assuming if the late disclosure is
4 excused.

09:02:44 5 THE COURT: Well, are you intending any of these five
6 to testify as experts, Ms. Taylor?

7 MS. TAYLOR: No.

8 THE COURT: Are they going to testify about you?

9 MS. TAYLOR: Yes.

09:02:56 10 THE COURT: So you remember the long discussion that
11 we had in one of the hearings in the last couple of weeks about
12 how it's entirely appropriate for you to present evidence to
13 show to the jury that your actions were not willful, that you
14 had a good faith belief that you did not have to pay taxes.
09:03:18 15 That's appropriate.

16 What is not appropriate is for you to present evidence
17 to the jury that the tax laws are invalid. Because as we
18 talked -- as we discussed, it's the Court's determination -- it
19 is the Court's decision on what the law is and the jury's
09:03:35 20 decision on what the facts are. And so I will give them the
21 legal instructions and they will decide the facts.

22 Are any of these individuals coming to testify that
23 the law is invalid, that there is no valid tax law or that the
24 law doesn't tax income or anything of that sort?

09:03:55 25 MS. TAYLOR: Not to my knowledge. I'm -- not to my

09:03:59 1 knowledge.

2 THE COURT: Okay. Well, I'll tell you what I think we
3 ought to do. I think it's -- I think it is -- it was
4 reasonable for Ms. Taylor to plan to have her witnesses here on
09:04:14 5 Tuesday because it was the government's estimate that its case
6 would take four days. Since they're coming from out of town, I
7 think trying to get them here tomorrow is not possible,
8 especially since we're in trial today and Ms. Taylor hasn't
9 communicated with them. So I think we ought to plan on having
09:04:31 10 you present your witnesses on Tuesday, Ms. Taylor.

11 But let's do this. Let's go through the day today and
12 when we get near the end of the day, see where the government
13 is. If you're just about done, then I think what we'll do is
14 not be in trial tomorrow, and I'll tell the jury that we're not
09:04:48 15 in trial tomorrow. If you've got another two or three hours,
16 then I'll have us come back for a half day tomorrow and get
17 that done and then break for the weekend, and we'll start with
18 your case on Tuesday.

19 And so what that does mean is that you can take some
09:05:03 20 time to think about whether you want to subpoena your sister.
21 Let's make sure if we're breaking for the weekend at the end of
22 today, that we talk about that so that if you want her
23 subpoenaed, we can take care of that tomorrow. All right?

24 MS. TAYLOR: Right. It is my sister, and I have -- I
09:05:22 25 don't like bringing family members. That's --

09:05:27 1

THE COURT: I understand.

2

MS. TAYLOR: -- a bad scene.

3

THE COURT: Okay. Lisa tells me that we have a juror who is stuck on the freeway, who has called us, that isn't here yet.

09:05:40 5

6

MR. GALATI: Same with one of our witnesses, Your Honor. There's allegedly a big traffic jam or something.

7

8

THE COURT: Apparently there's a truck on fire on the freeway somewhere. Are there additional matters that the government wants to raise this morning?

09:05:51 10

11

MR. GALATI: No, Your Honor.

12

13

THE COURT: Ms. Taylor, do you have matters that you want to raise before we get started this morning?

14

09:06:04 15

MS. TAYLOR: I do, Your Honor, I'm just trying to find my paperwork here, just give me a minute, please.

16

17

I'll bring it up later. I can't find my paperwork right now.

18

19

09:07:38 20

21

THE COURT: Okay. That's fine. All right. I'm going to -- I'm going to step off the bench. We will bring the jury in as soon as that juror gets here. Is this witness somebody who is testifying now?

22

23

MR. GALATI: Your Honor, we have a couple of others that are present.

24

09:07:50 25

THE COURT: So we can go ahead even if that one is not here?

09:07:50 1

MR. GALATI: Yes, Your Honor.

2

THE COURT: Okay. When we get that juror here, we'll get started then. Thanks.

3

(Recess taken from 9:08 to 9:30. Proceedings resumed in open court with the jury present.)

09:07:54 5

6

THE COURT: Thank you. Please be seated.

7

Morning, members of the jury. I understand one of you has been sitting in traffic for a while. My law clerk was in the same traffic jam. It sounds like a bad one.

8

9

09:30:11 10

Okay. We're going to continue with the government's case this morning. Mr. Galati.

11

12

MR. GALATI: Thank you, Your Honor. Azenith Larson.

13

THE COURT: Ma'am, would you come all the way to the front of the courtroom, please, to be sworn as a witness.

14

09:30:28 15

16

THE COURTROOM DEPUTY: Please state and spell your name for the record.

17

18

THE WITNESS: Azenith Larson, A-Z-E-N-I-T-H, and L-A-R-S-O-N.

19

AZENITH LARSON,

20

called as a witness herein, after having been first duly sworn or affirmed, was examined and testified as follows:

21

22

D I R E C T E X A M I N A T I O N

23

MR. GALATI: May I proceed, Your Honor?

24

THE COURT: You may.

09:31:07 25

MR. GALATI: Thank you.

DIRECT EXAMINATION - AZENITH LARSON

09:31:07 1

BY MR. GALATI:

2

Q Ms. Larson, good morning.

3

A Good morning.

4

Q Ms. Larson, would you just pull the microphone close to

09:31:11 5

you. It is very flexible. You can move it. Thank you very

6

much.

7

A Okay.

8

Q Would you tell the ladies and gentlemen of the jury your

9

full name, please.

09:31:19 10

A Azenith Larson.

11

Q And on -- what city do you live in, Ms. Larson?

12

A Arizona City.

13

Q And is that down in Pinal County?

14

A Yes, it is.

09:31:26 15

Q And how long have you lived in the Pinal County area?

16

A 14 years.

17

Q Are you married?

18

A Yes.

19

Q And what's your husband's name?

09:31:34 20

A Raymond.

21

Q Raymond Larson?

22

A Raymond Larson, yes.

23

Q Thank you.

24

And, Ms. Larson, before you lived in Arizona City,

09:31:43 25

where did you live?

DIRECT EXAMINATION - AZENITH LARSON

09:31:46 1 A In Casa Grande at 1931 South Tate Road.

2 Q And at 1931 South Tate Road, can you just describe what the
3 property is like there.

4 A It's 10 acres of land and a very nice home, and it's up on
09:32:01 5 the side of a mountain.

6 Q And when did you and your husband buy or move into that
7 property?

8 A In 1996.

9 Q And how long did you live there?

09:32:14 10 A We lived there until 2003, December of 2003.

11 Q Did there come a time there prior to December of 2003 that
12 you and your husband decided to sell the property?

13 A Yes. It was on the market for about two years.

14 Q And did you eventually sell it?

09:32:34 15 A Yes.

16 Q And to whom did you sell it?

17 A To Ron and Suzi McBride.

18 Q And I want to ask you --

19 MS. TAYLOR: Objection, Your Honor.

09:32:42 20 THE COURT: What's the objection?

21 MS. TAYLOR: There's no evidence that it was sold to
22 Ron and Suzi McBride.

23 THE COURT: Overruled. She can testify and provide
24 evidence that she has. Go ahead.

25

DIRECT EXAMINATION - AZENITH LARSON

09:32:57 1 BY MR. GALATI:

2 Q Did you have the house on the market prior to selling it?

3 You said for two years; is that correct?

4 A Yes. Yes.

09:33:03 5 Q Did -- well, let me back up here. You mentioned Ron and
6 Suzi McBride. The person known to you as Suzi McBride, is she
7 in the courtroom?

8 A Yes.

9 Q Can you point her out.

09:33:14 10 A Over there.

11 MS. TAYLOR: Objection, Your Honor.

12 THE COURT: What's the objection?

13 MS. TAYLOR: She has no personal knowledge that I am
14 Suzi McBride.

09:33:22 15 THE COURT: Well, you'll be able to cross-examine on
16 this. He's calling for her testimony. Objection is overruled.

17 BY MR. GALATI:

18 Q And is the person known to you as Ron McBride in the
19 courtroom?

09:33:32 20 A Yes.

21 Q Can you point him out.

22 A He's in the back there, the gray-haired gentleman with the
23 big mustache.

24 Q Thank you.

09:33:40 25 Now, you called them Ron and Suzi McBride. Why do you

DIRECT EXAMINATION - AZENITH LARSON

09:33:45 1 call them that?

2 A Because that's the way they introduced themselves when they
3 came to look at the property.

4 Q And do you recall the first time you saw them when they
09:33:52 5 came to look at the property?

6 A Yes.

7 Q And describe that if you would, please.

8 A They just drove up. They had seen the real estate sign for
9 sale, and they drove up and asked if they might look at it.

09:34:06 10 And they apologized. She said she was a real estate agent, and
11 they apologized for not going through our realtor. We said,
12 no, that was fine. And we just took them and showed them the
13 property. And they liked what they saw and that very same day
14 they made an offer.

09:34:24 15 Q When you said that -- did you say that Suzi McBride said
16 she was a real estate agent?

17 A Yes.

18 Q And did she indicate to you whether they were interested in
19 this property for themselves or for a client?

09:34:37 20 A No. Probably for themselves. I don't know. I'm
21 speculating that but I assumed that they were going to live in
22 it.

23 Q All right. I mean, they looked at the house, they liked
24 the house, and they made the offer on the house?

09:34:52 25 A Yes.

DIRECT EXAMINATION - AZENITH LARSON

09:34:52 1 Q All right. All in the same day?
2 A Yes.
3 Q And did you eventually come to terms with them on the home?
4 A Yes, we did.
09:35:02 5 Q And did it eventually close and actually the transaction
6 took place?
7 A Yes, it did.
8 Q Can you tell the ladies and gentlemen of the jury what the
9 sales price was.
09:35:10 10 A \$450,000.
11 Q Now, let me -- as an aside here, you've got a box there or
12 an envelope sitting next to you.
13 A Yes.
14 Q Does that contain documents pertaining to this?
09:35:23 15 A Yes. It's the closing statements.
16 Q I'm going to ask you to testify from your memory. And to
17 the extent that you need to refresh your recollection about
18 something, let us know, all right?
19 A All right.
09:35:33 20 Q Again, the sales price was?
21 A 450,000.
22 Q And do you remember how much was paid at the closing?
23 A 250,000 was paid at the first closing and then we carried
24 the second 200,000 for six months.
09:35:51 25 Q With or without interest?

DIRECT EXAMINATION - AZENITH LARSON

09:35:53 1 A Without interest.

2 Q And at the conclusion or close to the conclusion of those
3 six months, did you have a conversation with --

4 A Yes. I called and asked when they would, you know, pay the
09:36:06 5 other 200,000, and Suzi said they needed another week to gather
6 the money. So they -- we went back to the title company and
7 the final transactions were made.

8 Q And the other final 200,000 was paid?

9 A Yes.

09:36:22 10 Q Do you recall approximately when that was that it --

11 A It was in May. May -- I can't remember the exact date but
12 I have it in the --

13 Q That's all right. Of 2000 and what year?

14 A 2004.

09:36:37 15 Q Thank you.

16 And you did use a title company for this transaction?

17 A Yes, we did.

18 Q Do you remember what the title company was, which it was?

19 A American Title.

09:36:47 20 Q And was it located in Casa Grande?

21 A Yes.

22 Q Do you recall when the final \$200,000 was paid, was there a
23 separate check or a separate amount of money in the amount of
24 \$26,000 that made up part of that \$200,000?

09:37:15 25 A There is evidence of it, but I can't remember that exact

DIRECT EXAMINATION - AZENITH LARSON

09:37:18 1 amount.

2 Q You don't remember it, that's fine. That's fine.

3 I want to ask you: Does Herbal Research Institute

4 mean anything to you?

09:37:26 5 A Yes. It was on one of the pieces of paper that I have in

6 my folder.

7 Q And do you recall what it did?

8 A It was -- no, I don't.

9 Q Okay. That's fine.

09:37:44 10 A I just --

11 Q Does -- does -- I'm sorry?

12 A I was going to say that the rest of the names on there is

13 MMM Land and Trust --

14 Q MMM Land Trust.

09:37:55 15 A Yeah, I think so.

16 Q And what did MMM Land Trust have to do with this?

17 A That was who really bought the property --

18 Q The property --

19 A -- the name on it, yeah.

09:38:06 20 Q It was conveyed to them?

21 A It was conveyed to them.

22 Q And did you know anything about MMM Land Trust?

23 A I just knew it was a ministry that they had.

24 Q Did -- was it explained to you by Suzi McBride what it was?

09:38:20 25 A Yeah, it was --

DIRECT EXAMINATION - AZENITH LARSON

09:38:21 1 Q Yes or no?

2 A Yes.

3 Q And do you know what MMM stood for?

4 A Music Ministries.

09:38:31 5 Q Was it McBride Musical Ministries?

6 A McBride Musical Ministries, yes.

7 Q Did Suzi McBride tell you who -- which people were McBride

8 Musical Ministries?

9 A Yes. It was she and her daughter, I believe.

09:38:53 10 Q And do you recall her daughter's name?

11 A Desiree.

12 Q And she told you, "Desiree and I are McBride Musical

13 Ministries or MMM Land Trust"?

14 A Yeah. I'm not sure if she specified that but I knew that

09:39:13 15 Desiree was in that and it was her daughter.

16 Q And a few other things if you would. At some point did

17 Suzi McBride tell you that she -- did the name Taylor come up?

18 A Please repeat that.

19 Q Yes. Did Suzi McBride, did she also use the name Suzi

09:39:37 20 Taylor?

21 A Yes.

22 Q Did she tell you that?

23 A Yes.

24 Q Did she tell you under what circumstances she used that

09:39:43 25 name?

DIRECT EXAMINATION - AZENITH LARSON

09:39:43 1 A No. Just I assumed it was because she was in business with
2 the realty. I didn't -- I don't think she told me why.

3 Q Did you ever go back to the property after they bought it?

4 A Yes, we did get to go up one time and she showed us --

09:40:10 5 MS. TAYLOR: Objection, Your Honor, relevance.
6 Irrelevant.

7 THE COURT: What is the relevancy of this?

8 MS. TAYLOR: What does that have to do with the issue
9 at hand?

09:40:18 10 THE COURT: I understand the objection. I'm asking
11 Mr. Galati --

12 MR. GALATI: Improvements made to the property, Your
13 Honor, with regard to disposable money, income.

14 THE COURT: Objection is overruled.

09:40:27 15 BY MR. GALATI:

16 Q Let me back up a little before we get to that. Did you
17 socialize to some extent with Ron and Suzi McBride after
18 initially meeting them?

19 A We had dinner with them one time.

09:40:39 20 Q And you told me they were very friendly and very nice; did
21 you not?

22 A Yes, that's right. They are.

23 Q You liked them?

24 A I liked them.

09:40:46 25 Q Yes. And did you go back to the home?

DIRECT EXAMINATION - AZENITH LARSON

09:40:48 1 A Just that one time.

2 Q And --

3 A We had driven up and just looked, you know.

4 Q Inside, though.

09:40:53 5 A No. Just the one time.

6 Q Just one time.

7 A Um-hmm.

8 Q And do you recall how long after they bought the property

9 that you went there?

09:41:03 10 A Maybe three or four months.

11 Q Did you see what had happened to your craft room?

12 A Um-hmm. They showed us a beautiful recording music room

13 where he recorded Christian music.

14 Q And did you have -- when you had the property, did you have

09:41:26 15 a pool table room?

16 A Yes, we did.

17 Q And what did they do with that?

18 A She had it for her office.

19 Q And --

09:41:33 20 A She had a nice desk and so on.

21 Q A nice desk. And what else did you see in there?

22 A Probably file cabinets. I don't really recall all the

23 furniture -- furnishings.

24 Q And what do you recall about the furniture that you saw?

09:41:46 25 A It was very nice, elaborate furniture. But we had

DIRECT EXAMINATION - AZENITH LARSON

09:41:51 1 elaborate furniture, too. It was a very nice home and it
2 needed that kind of furniture.

3 Q Did you discuss with Suzi prior --

4 MS. TAYLOR: Objection, Your Honor. Irrelevant. No
09:42:02 5 timing. Lack of foundation.

6 THE COURT: Are you objecting to the question that is
7 now being asked or to the last one?

8 MS. TAYLOR: The last one. The one that was just last
9 asked.

09:42:16 10 THE COURT: Objection overruled.

11 BY MR. GALATI:

12 Q Did you discuss with Suzi McBride the success of her real
13 estate business?

14 A Yes. She said she made a lot of money in her real estate
09:42:29 15 and that Las Montanas, they showed us where that was because we
16 had never even heard of it. And it was -- they took us for a
17 nice ride out there and showed us, you know, those properties.

18 Q Was that a property that she was selling?

19 A Yes.

09:42:45 20 Q And did you ride -- whose car did you ride out there in?

21 A I believe in theirs.

22 Q Do you recall what kind of vehicle it was?

23 A It was a Cadillac Escalade.

24 Q Did Suzi McBride talk to you about properties she owned in
09:43:05 25 Colorado?

DIRECT EXAMINATION - AZENITH LARSON

09:43:06 1 A Yeah, they said they were working on a fixer-upper in
2 Silver Creek. I can't remember the -- I think it was Silver
3 Creek.

4 MS. TAYLOR: Objection, Your Honor. Irrelevant.

09:43:16 5 THE COURT: Overruled.

6 BY MR. GALATI:

7 Q Did you -- in preparation for today's testimony did you
8 look through all the documents that you've got relative to the
9 transaction where Ron and Suzi McBride bought your home?

09:43:31 10 A Yes.

11 Q Does the name Ron McBride or Suzi McBride or Suzi Taylor
12 appear anywhere on any of those documents?

13 A No. It's all MMM Land Trust.

14 MR. GALATI: I don't have any further questions,
09:43:51 15 Your Honor.

16 THE COURT: All right. Cross-examination.

17 C R O S S - E X A M I N A T I O N

18 BY MS. TAYLOR:

19 Q Hi, Azenith. Good to see you again.

09:44:14 20 A Hi. Nice seeing you.

21 Q How's Lee?

22 A He's good.

23 Q Good.

24 When was the last time we talked?

09:44:20 25 A Oh, I don't know. It's probably been six or seven years

CROSS-EXAMINATION - AZENITH LARSON

09:44:23 1 ago. It's been a long while.

2 Q Yes, it has.

3 A Yeah. We were always going to get together and we just
4 never did.

09:44:30 5 Q Yes, that's true.

6 Isn't it possible, I mean, that sometimes as time goes
7 by people tend to remember things in a certain way and they
8 either not -- they have a perception in their mind that -- say,
9 for instance, when Ron and I drove up to your house, would it
09:44:55 10 be uncommon for you to think of a couple coming up there that
11 we were married? I mean --

12 A Yes.

13 Q Yeah. So perhaps maybe you had a presumption in your mind
14 of thinking that we were married when we really weren't maybe?

09:45:19 15 A Yeah, I assumed that you were Mr. and Mrs. McBride.

16 Q Right. And isn't it true that later on I told you that my
17 name was Sue Taylor, and I gave you my card?

18 A Yes.

19 Q I probably -- it's normal when you see two people together
09:45:40 20 looking at houses to think that they're married, and it's not a
21 crime not to be married, is it?

22 A No, it isn't.

23 Q And a lot of people do live together and are not married?

24 A That's right. And some people are still married and use
09:45:54 25 their old names, too.

CROSS-EXAMINATION - AZENITH LARSON

09:45:56 1 Q Right. That's true.

2 A That's what I assumed was happening.

3 Q Oh. So your assumption is, it was -- you were just
4 assuming that I was Suzi McBride?

09:46:07 5 A Yes.

6 Q Okay. Let's see. Also, when you came and looked and -- do
7 you remember a conversation about us talking about it being a
8 church sanctuary, that we were planning a church sanctuary
9 there?

09:46:32 10 A No, I don't recall that.

11 Q You don't recall that.

12 Okay. Do you remember my daughter indicating anything
13 about that or -- did you meet my daughter?

14 A No, I never did meet her.

09:46:43 15 Q Okay. I didn't remember if you did or not.

16 A No.

17 Q Okay. So to the best of your -- the only evidence that you
18 have really of who owns the property is MMM Land Trust?

19 A Yes, that's right.

09:47:03 20 Q And was there a beneficiary listed on that MMM Land Trust?

21 A Yes. It was that Herbal Research.

22 Q Herbal Research.

23 A Uh-hmm.

24 Q Okay. And did I tell you that that was my daughter's
09:47:17 25 institution, or did I not mention that?

CROSS-EXAMINATION - AZENITH LARSON

09:47:20 1 A I don't remember if you told me that or not.

2 Q Okay. All right. You did see the musical room you said
3 that --

4 A Yes.

09:47:40 5 Q -- that Ron had planned. Did -- at any time did he mention
6 to you that that was for the sanctuary of the church?

7 A He mentioned that you were going to record, you know,
8 Christian music and stuff. Because my daughter was a singer,
9 and he mentioned that she might come up and sing and record,
09:47:59 10 too. So I don't recall him mentioning that it was going to be
11 the sanctuary but, you know, it was possible that he --

12 Q It's been a long time?

13 A It's been eight years ago.

14 Q Yes, it's been a long time. You forget what you ate last
09:48:13 15 week.

16 A Yeah.

17 Q But -- so -- let's see, what else do I want to cover here?

18 As far as, like, perhaps the furnishings or anything
19 that were in the house, like you said, everybody tries to
09:48:38 20 furnish nice -- furnish nicely. You don't know whether those
21 were new or whether they came from a previous home?

22 A I think you told me that you got new because you still had
23 to leave your furniture in the other place in Chandler, but it
24 was very nice furniture, but we had very nice furniture, too.

09:48:59 25 And the way you did it was very good.

CROSS-EXAMINATION - AZENITH LARSON

09:49:13 1 Q So it could be that -- that you really weren't of the --
2 you really don't know exactly whether -- what the purpose of
3 the build -- of your house was, whether we were going to use it
4 for a sanctuary or whether it was going to be a home?

09:49:34 5 A No.

6 Q Okay. And you also just assumed that we were married
7 and --

8 A Yes.

9 Q That's -- that's typical, when time goes by.

09:49:57 10 MS. TAYLOR: I think that's all I have of you, Zee.
11 That's all.

12 THE COURT: Okay. Thank you, Ms. Taylor.

13 Mr. Galati.

14 MR. GALATI: Just briefly, Your Honor.

11:19:09 15 R E D I R E C T E X A M I N A T I O N

16 BY MR. GALATI:

17 Q Ms. Larson, I know it's been a long time but I want to ask
18 you this: You say you assumed that they were married.

19 A Yes.

09:50:23 20 Q Did they introduce themselves as Ron and Suzi McBride?

21 A I specifically cannot recall whether they --

22 Q All right. Let me ask you this.

23 A -- did that.

24 Q You were interviewed concerning this matter for the first
09:50:44 25 time in September of 2007; is that correct?

REDIRECT EXAMINATION - AZENITH LARSON

09:50:48 1 A Yes.

2 Q And this gentleman over here, Agent Votaw, interviewed you,
3 correct?

4 A Yes, he did.

09:50:55 5 Q And I have talked to you at least -- I have talked to you
6 twice in person, correct?

7 A Uh-hmm.

8 Q Once at your home about a month ago?

9 A Yes.

09:51:03 10 Q And Agent Votaw was with me?

11 A Yes.

12 Q And then once out here, correct?

13 A Right.

14 Q And on both occasions did I show you the report that Agent
09:51:11 15 Votaw made of the conversation that he had with you?

16 A Yes, you did.

17 Q And did I ask you if the report was accurate?

18 A Yes. I thought it was accurate.

19 Q And did you tell me that it was?

09:51:22 20 A Yes, I did.

21 Q And in it -- if I show it to you again, will it refresh
22 your recollection concerning this matter?

23 A Well, I do think that they introduced themselves as Ron and
24 Suzi McBride.

09:51:43 25 MR. GALATI: All right. Thank you. No further

REDIRECT EXAMINATION - AZENITH LARSON

09:51:45 1 questions, Your Honor.

2 THE COURT: All right. Thank you, ma'am, you can step
3 down.

4 Sir, would you come to the front of the courtroom to
09:52:42 5 be sworn, please.

6 MR. KNAPP: Your Honor, the United States calls Gary
7 Kehias.

8 THE COURTROOM DEPUTY: Would you state your name and
9 spell your last name for the record.

09:52:50 10 THE WITNESS: My name is Gary Kehias, K-E-H-I-A-S.

11 **GARY KEHIAS,**

12 called as a witness herein, after having been first duly sworn
13 or affirmed, was examined and testified as follows:

14 D I R E C T E X A M I N A T I O N

11:19:00 15 BY MR. KNAPP:

16 Q Good morning, sir. How are you doing?

17 A Good. How are you?

18 Q Doing well.

19 Please introduce yourself to the jury.

09:53:20 20 A My name is Gary Kehias. I'm a real estate broker and --

21 Q How long have you been in real estate?

22 A 30 years.

23 Q In what geographic area?

24 A Pretty much Pinal County area, Casa Grande, in that area.

09:53:36 25 Q For most of the period of time it's been in Casa Grande?

DIRECT EXAMINATION - GARY KEHIAS

09:53:40 1 A Yes.

2 Q I'll just cut right to it. Have you ever -- do you recall
3 ever having a real estate deal where you worked with Sue Taylor
4 as a real estate agent?

09:53:49 5 A Yes.

6 Q I'm going to show you what's been marked and introduced as
7 Exhibit 255, so this is in evidence. Government's Exhibit 255,
8 page 1.

9 It should be on your screen there.

09:54:04 10 A Okay.

11 Q I have a hard copy of it, too, if you want.

12 A That's fine.

13 Q If it's easier.

14 If you look at the top of that, is this the deal where
09:54:14 15 you worked with Ms. Taylor?

16 A Yes.

17 Q Okay. Can you just tell me briefly about that. How did
18 you come about it?

19 A We had a piece of property, my partner --

09:54:25 20 THE COURT: Excuse me, sir.

21 THE WITNESS: -- Paul Mooney --

22 THE COURT: Excuse me, sir. Can you pull that mike
23 over. Yeah, you can slide it either way but just so you talk
24 right into it, it will help us hear you more clearly.

09:54:35 25 THE WITNESS: We owned a piece of property between

DIRECT EXAMINATION - GARY KEHIAS

09:54:37 1 myself and a partner, Paul Mooney, worked with me. And he had
2 a company called Copper State Development. I have my parent
3 company called Monster Development. We purchased this property
4 for investment speculation. It was -- I think it was 70 some
09:54:51 5 acres down -- down by Picacho, by Picacho Peak area.

6 Paul was pretty much instrumental in acquiring -- at
7 that time we were buying and selling a lot of properties, and
8 it was just one of the ones we came across, we liked it, and we
9 purchased it. We didn't like the fact that the property was
09:55:16 10 landlocked and it was a floodplane property but because of the
11 price we liked the idea so we purchased it.

12 And then we ended up selling it to Sue Taylor. And I
13 think Paul handled most of the negotiations back and forth. We
14 talked about it. We went into escrow, pretty quick escrow.
09:55:37 15 Cash deal, we were satisfied.

16 MS. TAYLOR: Did you --

17 THE WITNESS: Our main concern was that --

18 THE COURT: Excuse me, sir. There's an objection.

19 MS. TAYLOR: Did you say you sold it to Sue Taylor or
09:55:45 20 through? I'm sorry, I didn't hear that.

21 THE WITNESS: We sold it through -- we were co-broked
22 on my company through Sue Taylor's company.

23 BY MR. KNAPP:

24 Q Just -- this has been five plus years ago.

09:55:59 25 A Yes.

DIRECT EXAMINATION - GARY KEHIAS

09:56:00 1 Q Would you recognize Ms. Taylor if you saw her again today?

2 A I -- maybe.

3 Q Do you see her in the courtroom?

4 A I think that's her. That lady. I mean, I didn't have much
09:56:14 5 dealings with Sue, to tell you the truth.

6 Q How many times did you meet face to face with Ms. Taylor?

7 A Maybe three or four times in my life, I don't know. We
8 weren't ongoing friends --

9 THE COURT: Sir, could -- yeah, if you could pull that
09:56:27 10 mike a little closer. It's hard to hear in this room.

11 THE WITNESS: We weren't ongoing friends or anything
12 like that.

13 BY MR. KNAPP:

14 Q And during this deal did you talk by telephone much?

09:56:36 15 A I don't recall whether I did or Paul did, tell you the
16 truth. Might have but I don't remember.

17 Q Let me walk you through some of these -- some of the
18 paperwork here. Now, again, you recognize this as paperwork
19 relating to this --

09:56:46 20 A Yes, this is it.

21 Q And this says, "Seller's final closing statement," at the
22 top, right?

23 A Right.

24 Q And this shows total consideration 592,000 and change,
09:57:00 25 right? Does that sound about right?

DIRECT EXAMINATION - GARY KEHIAS

09:57:03 1 A That's right, yeah.

2 Q Maybe 582, something like that. It's hard to read.

3 Here we go. And this shows a commission to National

4 Land Bank Home and Land Sales. Do you know who that was based

09:57:27 5 on your involvement in this transaction?

6 A I believe that was Sue Taylor's entity.

7 Q That was -- was that the brokerage --

8 A Co-broke is what it was, yes.

9 Q And this details the commission paid to Sue Taylor's

09:57:42 10 brokerage?

11 A Yes.

12 Q Okay. Let's look at page 2. And, again, this is a -- says

13 "Counteroffer" at the top, right?

14 A That's correct.

09:57:59 15 Q And this is written on -- it says National Land Bank, LLC,

16 right below that. What does that mean to you? Does that mean

17 that this is one of her -- who prepared this purchase contract?

18 A I believe they did, the other part -- the -- Sue Taylor or

19 the Land Bank, they prepared the counter, or the

09:58:18 20 counteroffer 2. This is counteroffer 2. There must have been

21 a counteroffer 1.

22 MR. KNAPP: I apologize, Your Honor. May I publish to

23 the jury. This is in evidence.

24 THE COURT: You may.

25

DIRECT EXAMINATION - GARY KEHIAS

09:58:34 1 BY MR. KNAPP:

2 Q All right. Let me just go back to that first page. This

3 is what we were looking at and talking about a moment ago. I

4 want to make sure the jury has a chance to see this. And here

09:58:55 5 it says that Copper State Development is the seller, that was

6 you and your partners?

7 A Yes. His -- he owned I think half and I owned half.

8 Q And Picacho Land Trust was the stated buyer?

9 A Right.

09:59:10 10 Q And if you look down there, it says commissions to National

11 Land Bank home and sales of \$17,000.

12 A Correct.

13 Q And here's the document titled "Counteroffer" we were

14 looking at.

09:59:31 15 A Yes.

16 Q And then toward the bottom it says -- it's hard to read but

17 do you see where there's a signature that begins with an R?

18 A The R.J. --

19 Q Do you see a line for the buyer's acceptance?

09:59:58 20 A Yes.

21 Q Okay. And does that appear to read R.J. McBride, trustee?

22 A That's what it says, yes.

23 Q Did you ever meet a person named -- at the time of this

24 transaction did you ever meet a person named of R.J. McBride?

10:00:15 25 A No, sir.

DIRECT EXAMINATION - GARY KEHIAS

10:00:16 1 Q Did you -- at the time of this transaction did you know who
2 that was?

3 A No, sir.

4 Q At the time of this transaction did you meet anyone who
10:00:25 5 claimed to represent -- who claimed to be Picacho Land Trust?

6 A I don't recall if I met anybody else, no, I don't think so.

7 Q At the time of the transaction did you meet anyone on the
8 other side of this deal other than Ms. Taylor?

9 A I don't think I did.

10:00:42 10 Q And this was -- this was a transaction for raw land or
11 developed land?

12 A That's correct.

13 Q Was it raw or was it developed?

14 A It was undeveloped raw land, um-hmm.

10:01:00 15 Q I'm showing you Government's Exhibit 255, page 5. And do
16 you recognize this kind of document, the general nature of it?

17 A It might be -- I'm not sure. I'm not sure where it came
18 from. It doesn't look like a title company but it could be. I
19 don't know.

10:01:31 20 Q If these were records obtained from a title company, would
21 this kind of -- would you be familiar with this kind of check
22 register?

23 A It looks like it was deposits made to an account that --
24 you know, yeah, that they were asking to collect money and it
10:01:53 25 was what money was collected.

DIRECT EXAMINATION - GARY KEHIAS

10:01:54 1 Q That -- typically in these real estate transactions do the
2 title companies track money coming in and going out?

3 A Yeah, they have to account for the moneys they receive.

4 Q Okay. At the bottom here, it says \$17,000 going to Sue
10:02:13 5 Taylor. That was the commission that we looked at a moment
6 ago, right?

7 A Right.

8 Q And then it notes some money going to McBride Musical
9 Ministries. Do you know who -- at the time of this transaction
10:02:24 10 did you know who McBride Musical Ministries was?

11 A No, sir.

12 Q I'm showing you Government's Exhibit 255, page 11. At the
13 top it says, "Fidelity National Title Agency of Pinal County."
14 Can you tell just from that that this is some sort of title
10:02:50 15 document?

16 A Yes. Fidelity title documents. This is a receipt for
17 something, I'm sure, yeah. Interest bearing.

18 Q On this page it notes that there's -- it says, "Maker of
19 check Herbal Research Institute for the benefit of R.J.
10:03:07 20 McBride." Is that how that reads?

21 A Yes.

22 Q Did you know anything about -- at the time of this
23 transaction anything about Herbal Research Institute?

24 A No.

10:03:17 25 MS. TAYLOR: Objection, Your Honor. Irrelevant.

DIRECT EXAMINATION - GARY KEHIAS

10:03:20 1 THE COURT: Overruled.

2 BY MR. KNAPP:

3 Q I'm showing you page 12 of the same exhibit, and here's a
4 copy of the actual check. It says, "Herbal Research
10:03:37 5 Institute." Can you tell what the signature is on the bottom
6 there? Can you read that?

7 A It looks like Sanders or Rosy Sanders? I'm not sure.

8 Q Do you know that person? Was that person, as far as you
9 know --

10:03:53 10 A No.

11 Q -- somebody you dealt with in the transaction?

12 MS. TAYLOR: Objection, Your Honor. No personal
13 knowledge.

14 THE WITNESS: I have --

10:03:58 15 THE COURT: Overruled. He can respond.

16 THE WITNESS: I don't know who that person was.

17 BY MR. KNAPP:

18 Q Okay. I'm going to go back to the same exhibit, page 3.
19 This is, again, part of the purchase contract, correct?

10:04:13 20 A Um-hmm.

21 Q You mentioned this is a cash deal; is that right?

22 A What's that?

23 Q A cash deal? Is that what you said this was?

24 A I didn't say --

10:04:24 25 Q Oh, was this a cash deal?

DIRECT EXAMINATION - GARY KEHIAS

10:04:26 1 A Yes. It was a cash deal.

2 Q And what does that mean?

3 A It means that there was no seller financing or no mortgage
4 company involved. We just sold the property for cash.

10:04:35 5 Q And that was -- this line here says --

6 A Cash due, yeah.

7 Q -- something over \$500,000 due in cash upon closing, right?

8 A That's correct.

9 Q So there wasn't a bank that came and financed it?

10:04:49 10 A No.

11 Q You didn't finance it yourself?

12 A No, we didn't.

13 Q At the time did you have any reason to think that
14 Ms. Taylor was buying it for herself or that she would have an
10:05:00 15 ownership interest in the property?

16 A Not that we were aware of.

17 Q Would you expect it to -- is there anything that suggested
18 to you that she did not have an interest in the property?

19 A You know, if she was buying, she didn't disclose it to us
10:05:15 20 that she was the principal so I don't know, you know.

21 Q Sorry, say that again.

22 A I don't -- I don't think there is anything in the documents
23 that disclosed she was a principal to us.

24 Q Would you have expected that if she had been buying it for
10:05:26 25 herself or had an ownership interest in it?

DIRECT EXAMINATION - GARY KEHIAS

10:05:29 1 A As a broker you're required, yeah, to express you're, you
2 know, a principal.

3 Q Is that true whether -- in your experience, is that true
4 whether you have it in your personal name or as part of a
10:05:39 5 partnership?

6 A Any time we're involved in a real estate transaction,
7 because I hold a broker's license in the State of Arizona, I'm
8 obligated to disclose that to all parties.

9 Q Do you know, based on your own personal experience, what
10:05:55 10 you've seen, whether Ms. Taylor is involved in any other real
11 estate transactions in the area?

12 A The only --

13 MS. TAYLOR: Objection, Your Honor. That's not
14 firsthand knowledge.

10:06:11 15 THE COURT: Overruled.

16 THE WITNESS: The only way I know of Sue Taylor was
17 that I was involved with a project called Las Montanas up north
18 for the ownership of Terrarika Development, and I helped them
19 with laying out some of the design and development of that
10:06:28 20 stuff. And one of the principals or one of the engineer end up
21 buying the first phase, and I think Sue was marketing a lot of
22 that first phase. I saw her signs consistently out in the
23 area, and I think she was selling lots in the area.

24 MS. TAYLOR: Objection, Your Honor. That's just
10:06:44 25 speculation.

DIRECT EXAMINATION - GARY KEHIAS

10:06:45 1 THE COURT: Overruled.

2 BY MR. KNAPP:

3 Q Did you see a lot of her signs in that area?

4 A I kind of watch that subdivision, and I would say several
10:06:55 5 times there would be two or three or -- signs out in the area
6 with her name on it and -- you know, Sue Taylor, I remember
7 that red-and-white sign with her name.

8 MR. KNAPP: No further questions, Your Honor. Thank
9 you.

10:07:08 10 THE COURT: All right. Cross-examination.

11 C R O S S - E X A M I N A T I O N

12 BY MS. TAYLOR:

13 Q Hi, Gary.

14 A Hi, how are you?

10:07:28 15 Q You're right, I don't think we have seen each other very
16 often. I can't remember the last time.

17 A Long time.

18 Q Yes. You made a statement that said that -- the
19 prosecutors made a statement I believe that -- something to the
10:07:40 20 effect that buyers and sellers sometimes get together. Isn't
21 it a normal -- wouldn't you say in your normal run of business
22 that usually buyers and sellers do not get together? Usually
23 it's just the realtors that mostly handle the deals?

24 A Yeah. Consistently in commercial products, yeah, a lot of
10:08:06 25 times it's that way.

CROSS-EXAMINATION - GARY KEHIAS

10:08:07 1 Q Yeah. Sometimes it's done owners -- owners selling and
2 then of course that's a little different, but usually if
3 there's a realtor involved, it is basically done with realtors;
4 is that correct?

10:08:18 5 A That's correct. We deal with just realtors usually, yeah.

6 Q So it's not uncommon for the realtors to meet the
7 principals on either side?

8 A Not uncommon.

9 Q And do you have any firsthand knowledge that I had any
10 interest in that property other than just being a realtor?

11 A No.

12 Q I believe you already stated we are bound to disclose that
13 and that is true, if we are any kind of a principal.

14 Is it -- to your knowledge, do you know that -- or to
15 your knowledge, do you believe that just because a check is
16 entered from somebody other than what is the name of the
17 principal that is buying the property, is that an illegal
18 action?

19 A No.

10:09:20 20 Q Is it sometimes common for lots of different checks to come
21 from different people?

22 A In commercial real estate, yes. Checks can come from a
23 variety of different sources involved in the transaction.

24 Q Yes. And just because it does, it doesn't necessarily mean
10:09:38 25 that they are part of the transaction?

CROSS-EXAMINATION - GARY KEHIAS

10:09:43 1 A Sure. It doesn't necessarily mean they're part of the
2 transaction. It may be a loan from another party or something
3 like that, or it could be a lot of things.

4 MS. TAYLOR: Right. All right. Thank you, Gary.

10:09:54 5 THE WITNESS: Okay.

6 THE COURT: Any redirect?

7 MR. KNAPP: No, Your Honor.

8 THE COURT: All right. Thank you, sir.

9 THE WITNESS: Thank you, sir.

10:10:19 10 MR. GALATI: Your Honor, our next witness is Patrick
11 Gleason.

12 THE COURT: Sir, would you come all the way to the
13 front of the courtroom, please, to be sworn as a witness.

14 THE COURTROOM DEPUTY: State your name and spell your
10:10:31 15 last name for the record.

16 THE WITNESS: Patrick F. Gleason, G-L-E-A-S-O-N.

17 **PATRICK GLEASON,**

18 called as a witness herein, after having been first duly sworn
19 or affirmed, was examined and testified as follows:

10:10:54 20 MR. GALATI: Miss Richter, I'm going to use Exhibits
21 188 and 197. Thank you.

22 And may I, Your Honor?

23 THE COURT: You may.

24 D I R E C T E X A M I N A T I O N
25

DIRECT EXAMINATION - PATRICK GLEASON

10:11:02 1

BY MR. GALATI:

2

Q Mr. Gleason, good morning.

3

A Good morning.

4

Q Would you pull the microphone close so everyone can hear.

10:11:07 5

Thanks very much.

6

And would you tell the ladies and gentlemen your full name, please.

7

8

A Patrick F. Gleason.

9

Q What is your occupation, Mr. Gleason?

10:11:16 10

A Insurance agent.

11

Q And where do you do that business?

12

A Phoenix. Phoenix, Arizona.

13

Q How long have you been in that business?

14

A 34 years.

10:11:26 15

Q Are you married?

16

A Yes.

17

Q What's your wife's name?

18

A Cindy.

19

Q And what city do you live in?

10:11:33 20

A Chandler.

21

Q Thank you.

22

Mr. Gleason, I want to direct your attention, if I

23

might, to approximately early 2003. At that time, were you

24

interested in purchasing some land for investment purposes or

10:11:51 25

perhaps other purposes?

DIRECT EXAMINATION - PATRICK GLEASON

10:11:52 1 A Yes.

2 Q Does the name Circle G Partnership or Circle G Development
3 mean anything to you?

4 A Yes, it does.

10:12:01 5 Q What is that?

6 A It was -- Cindy and I were thinking about building a home
7 in Circle G. It's a custom home community.

8 Q Where is it located approximately?

9 A Well, there's a number of -- there were a number of
10:12:15 10 locations, but this one was out in the Gilbert area.

11 Q Does the name Gerry Ricke mean anything to you?

12 A Gerry Ricke?

13 Q Yes.

14 A No.

10:12:27 15 Q Did you ever deal with him?

16 A No, I don't --

17 Q I want to ask you if -- what you did in order to
18 investigate buying property at Circle G there in Gilbert. What
19 is the first thing you remember doing?

10:12:40 20 A Well, I know they've always had a very good reputation
21 because there's a location near where we used to live so I
22 called up their home office and told them I was interested, and
23 they told me where the various locations were.

24 Q What did you do after that?

10:12:59 25 A Then we found a location, and they put us in touch with

DIRECT EXAMINATION - PATRICK GLEASON

10:13:03 1 someone.

2 Q Who was that someone?

3 A Sue Taylor.

4 Q And is Sue Taylor in the courtroom today? Do you recognize

10:13:14 5 anybody in the courtroom as Sue Taylor?

6 A Yes.

7 Q Would you point her out, please.

8 A I think it's that lady back there to the left.

9 MR. GALATI: May the record indicate identification,

10:13:23 10 Your Honor?

11 THE COURT: Well, which --

12 MS. TAYLOR: Object, Your Honor.

13 THE COURT: The objection?

14 MS. TAYLOR: Can he 'pecifically point out who he is

10:13:34 15 talking about.

16 THE WITNESS: The lady standing up.

17 THE COURT: All right. The record will reflect the

18 identification.

19 MR. GALATI: Thank you.

10:13:40 20 BY MR. GALATI:

21 Q Let me ask you this: Have you seen Sue Taylor since 2003

22 or thereabouts?

23 A When we sold the lot in 2004, we saw her because she sold

24 it for us.

10:13:53 25 Q And we'll talk about that in a little bit.

DIRECT EXAMINATION - PATRICK GLEASON

10:13:56 1 Since then, that's like seven years ago, have you seen
2 her in the last seven years?

3 A No, sir.

4 Q You were told by somebody at Circle G, go see Sue Taylor,
10:14:10 5 correct?

6 A Yes.

7 Q Why?

8 A I don't have any idea. I just --

9 Q Who did they tell you she was?

10:14:15 10 A She was the exclusive representative for the -- this
11 project at Greenfield and Ocotillo in Gilbert.

12 Q So as a result of learning that what did you do?

13 A Then we called her and went down to see her and --

14 Q Where did you see her?

10:14:30 15 A At a very -- almost a shack looking like building on -- in
16 Gilbert, downtown Gilbert.

17 Q 20 North Gilbert?

18 A That could be the location, yes, sir.

19 Q To the best of your memory, was that her office?

10:14:43 20 A Yes.

21 Q Does Lot 26 at Circle G at Ocotillo phase two mean anything
22 to you?

23 A Yes. That's the lot we purchased.

24 Q And from whom were you purchasing this lot?

10:15:03 25 A Well, it was from Sue Taylor -- from Sue Taylor, who was

DIRECT EXAMINATION - PATRICK GLEASON

10:15:07 1 the -- from what I was told, was the exclusive representative
2 for Circle G at that location.

3 Q Okay. You're confusing me.

4 A Okay.

10:15:17 5 Q Who was conveying the property to you? Let me ask that.
6 Who did you think was conveying the property to you?

7 A Circle G.

8 Q And Sue Taylor was?

9 A Their exclusive salesperson.

10:15:31 10 Q I want to show you, first of all, Exhibit 188.

11 MR. GALATI: It's in evidence, Your Honor, I believe.
12 May we display it to the jury?

13 THE COURT: When was it placed in evidence?

14 MR. GALATI: When Mr. Ricke testified. I know it was
10:15:57 15 admitted at that point.

16 THE COURT: Let me just go back and check.

17 All right. Yes, it may be displayed.

18 MR. GALATI: Thank you.

19 BY MR. GALATI:

10:16:11 20 Q Let me ask you, Mr. Gleason, do you recognize what
21 Exhibit 188 is?

22 A Yes. This is the paperwork we were given.

23 Q By whom?

24 A By Sue Taylor.

10:16:21 25 Q And would you turn it over, look on the back. What do you

DIRECT EXAMINATION - PATRICK GLEASON

10:16:24 1 see there?
2 A Those are my initials.
3 Q And so is that the piece of paper you gave to Agent
4 Votaw --
10:16:31 5 A Yes.
6 Q -- out of your file?
7 A Yes, sir.
8 Q On the front page where it says, National Land Bank,
9 20 North Gilbert, what is all that, as far as you know?
10:16:42 10 A I really don't know. I mean, it's just -- I'm not sure.
11 Q Does National Land Bank mean anything to you?
12 A Well, again, I was under the impression that all this was
13 Circle G. I don't know if this is a holding company or what --
14 that owned -- that Circle G owned or --
10:17:01 15 Q You don't know what National Land Bank is --
16 A No.
17 Q -- at this time. All right.
18 It has Sue Taylor's name on here?
19 A Yes.
10:17:08 20 Q It has a phone number?
21 A Yes.
22 Q It has 20 North Gilbert?
23 A Yes.
24 Q All right. And is Lot 26 depicted on here?
10:17:19 25 A Yes, it is.

DIRECT EXAMINATION - PATRICK GLEASON

10:17:22 1 Q Is that the lot you purchased?

2 A Yes.

3 Q And it's up there in the -- I would say the upper left
4 quadrant; is that correct?

10:17:31 5 A Yes.

6 Q And there's an "A" there. Do you know what that means?

7 A Available.

8 Q And there's an "A" on Lot 19. Do you know what that means?

9 A I -- well, yes, right down there it says, "Available lots."

10:17:49 10 Q And are those -- are there any other A's on this diagram?

11 A No.

12 Q Did you wind up purchasing Lot 26?

13 A Yes, we did.

14 Q I would like you to -- if you would look at Exhibit 197,
10:18:07 15 please.

16 MR. GALATI: I believe that is also in evidence; is
17 that correct?

18 THE COURT: Yes.

19 MR. GALATI: Thank you. Thank you. Want to make
10:18:23 20 sure.

21 BY MR. GALATI:

22 Q Do you recognize what Exhibit 197 is as you thumb through
23 it?

24 A It looks like closing papers --

10:18:38 25 Q For your purchase of Lot 26?

DIRECT EXAMINATION - PATRICK GLEASON

10:18:40 1 A Yes.

2 Q Would you look at the upper portion of the first page.

3 Does it indicate who the seller and the buyer is?

4 A Yes.

10:18:52 5 Q And it says, Seller/buyer, R.J. McBride, Patrick F.

6 Gleason.

7 A Yes.

8 Q Patrick F. Gleason is you, correct?

9 A Yes.

10:19:03 10 Q Do you know who R.J. McBride is?

11 A No.

12 Q Did R.J. McBride appear anywhere during the course of this

13 transaction, as far as you can recall?

14 A I don't recall.

10:19:17 15 Q Would you look at the second page, which is 10607. Does

16 that appear to be a check from the title company to Sue Taylor

17 in the amount of \$2800?

18 A Yes.

19 Q Do you know what that was for?

10:19:35 20 A I would imagine it's her commission but I'm just

21 speculating.

22 Q The fourth page is 10609, the Bates number that is in the

23 bottom. Could you take a look at the top half there. Again,

24 it says, Seller R.J. McBride; is that correct?

10:19:59 25 A Yes.

DIRECT EXAMINATION - PATRICK GLEASON

10:19:59 1 Q And it has Patrick and Cynthia Gleason as the buyers; is
2 that right?

3 A Yes.

4 Q The next page is Bates number 10610. At the top at line
10:20:16 5 702, does it indicate a commission of \$2800 -- 701 and 703
6 indicating a \$2800 commission to Sue Taylor?

7 A Yes.

8 Q And the next page is 10611, paragraph 15, which is near the
9 top, with regard to brokers, does it say, National Land Bank,
10:20:42 10 the seller's broker, and -- is going to get a 2 percent sales
11 commission?

12 A Yes.

13 Q So does that refresh your memory as to what National Land
14 Bank is per chance?

10:20:55 15 A Yes.

16 Q If it doesn't, that's fine.

17 A Well --

18 Q Just tell us what you remember.

19 A I just felt it was basically all owned by Circle G so I
10:21:08 20 don't -- I just thought maybe it was a division of them or
21 something.

22 Q The next page is 10612, and the top half of the page again
23 has some -- does it have your signature on the left-hand side
24 under "Buyer"?

10:21:24 25 A Yes.

DIRECT EXAMINATION - PATRICK GLEASON

10:21:24 1 Q And then also your wife's signature?

2 A Yes.

3 Q Now, on the right side it says "Seller" and it says, Spring
4 Irrevocable Trust, correct?

10:21:32 5 A Yes.

6 Q What's that?

7 A I don't know.

8 Q And down near the bottom of the page again it indicates
9 seller's broker is National Land Bank; is that correct?

10:21:44 10 A Yes.

11 Q In the lower right corner.

12 And I neglected -- I'm sorry, if we can go back to the
13 top, the top half. Under Spring Irrevocable Trust it is signed
14 by R.J. McBride, trustee; is that correct?

10:22:05 15 A Yes.

16 Q I mean, to the best -- I realize it's been a number of
17 years now, but to the best of your memory, was Spring
18 Irrevocable Trust ever mentioned as part of this transaction?

19 A I'm just sorry to tell you, I just kept thinking this was
10:22:20 20 all different divisions of Circle G because that's the one I
21 had the confidence in so --

22 Q Did anybody ever tell you anything to the contrary?

23 A No.

24 Q 10613 is called Supplemental Instructions, and I want you
10:22:41 25 to take a look at that, the upper half. Did you and I look at

DIRECT EXAMINATION - PATRICK GLEASON

10:22:48 1 this a week or so ago in my office?

2 A Yes.

3 Q And at the time you looked at it did you have any
4 recollection previous -- any previous recollection of what's
10:23:00 5 described here?

6 A Not really.

7 Q This is your signature down near at the bottom of the page,
8 Patrick F. Gleason?

9 A Yes, it is.

10:23:11 10 Q And somebody is signing as Sue Taylor for National Land
11 Bank; is that right?

12 A Yes.

13 Q And your wife has signed?

14 A Yes.

10:23:18 15 Q And R.J. McBride, trustee, for Spring Irrevocable Trust has
16 signed?

17 A Yes.

18 Q The body of this says, does it not, that the parties --
19 that means -- you're one of the parties, correct?

10:23:30 20 A Yes.

21 Q Acknowledge that the subject property is simultaneously
22 being acquired for a purchase price of \$108,000 -- \$108,100,
23 through Lawyers Title, there's an escrow number, and sold for a
24 sales price of \$140,000 through Lawyers Title with an escrow
10:23:47 25 number.

DIRECT EXAMINATION - PATRICK GLEASON

10:23:49 1 What price did you pay for this?
2 A I think it was 140,000.
3 Q And does this indicate to you that the Spring Irrevocable
4 Trust is acquiring it the same day it is selling it to you?
10:24:06 5 A I suppose. I don't --
6 Q Did you know -- again, your signature is on that?
7 A Yes.
8 Q Do you recall reading it when you -- before you signed it?
9 A Yes.
10:24:17 10 Q Where did you sign all these documents? Do you have any
11 idea?
12 A It was on Gilbert Road, too. It was a closing company. I
13 just know the lady's name.
14 Q At a title company?
10:24:29 15 A Yes.
16 Q And how many documents do you think you signed that day?
17 A Like anybody else, when you're buying something, a number
18 of them.
19 Q And did you read every one --
10:24:40 20 A No. No. Because we would -- at that time we were buying a
21 number of properties, et cetera, so.
22 Q After you made your first phone call to Circle G making
23 inquiry about a location and all that, and they directed you to
24 Sue Taylor, did you deal with anybody else from Circle G?
10:24:58 25 A Well, I don't know if you want me to go into detail, but I

DIRECT EXAMINATION - PATRICK GLEASON

10:25:02 1 just was a little nervous about the place I had to go into, so
2 I wound up calling Circle G and then they -- I went to a real
3 professional looking office next to a Dairy Queen down there,
4 and they said that you deal with Sue Taylor, so I said fine.

10:25:22 5 Q So other than that, once you got to Sue Taylor, did you
6 ever deal with anybody else from Circle G?

7 A No.

8 Q All right. And then the next page is 10614. And it says
9 Special Warranty Deed. See if we can get this. Thank you.

10:25:43 10 Up at the top it indicates that the Special Warranty
11 Deed -- it says R.J. McBride, who is the trustee of the Spring
12 Irrevocable Trust, is conveying to Patrick F. Gleason and
13 Cynthia M. Gleason. Is that what it says?

14 A Yes.

10:26:06 15 Q There it says, Trustees of the Gleason Family Trust, and
16 that is crossed out and H/W is above it. Did you buy this
17 individually or as trustees of the Gleason Family Trust?

18 A I think we bought it individually.

19 Q Is that why it is crossed out --

10:26:24 20 A Yes.

21 Q And what does H/W stand for?

22 A I'm not being smart. I don't know. I don't --

23 Q Husband/wife?

24 A Oh, that could be, yeah.

10:26:35 25 Q You're not sure, though?

DIRECT EXAMINATION - PATRICK GLEASON

10:26:36 1 A No.

2 Q Okay. That's fine.

3 And the very last page is an affidavit of property

4 value. It's 10615. And, again, does this indicate on the

10:26:53 5 upper left-hand quadrant there that R.J. McBride at 20 North

6 Gilbert Road, Number A, is the seller?

7 A Yes.

8 Q And, again, what was at 20 North Gilbert Road, Number A?

9 A It was like an old shack building type thing.

10:27:14 10 Q It was Sue Taylor's real estate office?

11 A Yes.

12 Q How long did you hold this property?

13 A We bought it in February 28th, and then we -- of '03, and

14 then we sold it in July of '04 --

10:27:39 15 Q Did you --

16 A -- so 16 -- 15, 16 months.

17 Q Thank you. I apologize.

18 Did you use a realtor for that?

19 A Yes.

10:27:46 20 Q Who did you use?

21 A Sue Taylor.

22 Q And did she collect a commission both times?

23 A Yes.

24 MR. GALATI: I don't have anything further, Your

10:27:58 25 Honor.

DIRECT EXAMINATION - PATRICK GLEASON

10:27:59 1 THE COURT: All right. Cross-examination.

2 C R O S S - E X A M I N A T I O N

3 BY MS. TAYLOR:

4 Q Sorry you didn't recognize me. I thought you were looking
10:28:14 5 at her.

6 A Oh, that's okay.

7 Q I just have one question to ask you, Mr. Gleason. I notice
8 that you had -- to be honest with you, I don't remember your
9 trust or anything about that. But is it normal for people of
10:28:36 10 all walks of life to put property into trust when they buy it?

11 A I don't know how to answer that.

12 Q Do you have a trust?

13 A Yes.

14 Q Do you put property -- some property that you purchased
10:28:51 15 into trust at different times?

16 A Yes.

17 Q So you would say that anybody at any time can put property
18 into a trust?

19 A Yes.

10:29:01 20 Q And what are the reasons they put it into trust for? Do
21 you -- could you tell us that?

22 A Oh. To protect your assets, I would imagine, you know.

23 Q And so you have quite a few different properties in trust?

24 A No. I used to. Not any more.

10:29:18 25 Q Not any more. But at one time you do and --

CROSS-EXAMINATION - PATRICK GLEASON

10:29:21 1 A Yes.

2 Q And it would be -- in your opinion, you would say that it's

3 a routine thing for various different people?

4 A Yes.

10:29:31 5 Q And that's not an illegal act?

6 A No. No. No.

7 MS. TAYLOR: Okay. That's all I have to ask you.

8 Thank you.

9 THE COURT: Any redirect?

10:29:40 10 MR. GALATI: No, Your Honor.

11 THE COURT: All right.

12 Thanks. You can step down.

13 THE WITNESS: Okay. Thank you.

14 MR. KNAPP: Your Honor --

10:29:49 15 THE WITNESS: Should I leave these?

16 THE COURT: Sure.

17 Go ahead, Mr. Knapp.

18 MR. KNAPP: Thank you, Your Honor. Your Honor, the

19 United States calls Kathy Lilly.

10:30:06 20 THE COURT: Ma'am, would you please come to the front

21 of the courtroom.

22 THE COURTROOM DEPUTY: Please state and spell your

23 name for the record.

24 THE WITNESS: Kathryn A. Lilly, K-A-T-H-R-Y-N, A.

10:30:27 25 Lilly, L-I-L-L-Y.

10:30:29 1 THE COURTROOM DEPUTY: Please raise your right hand.

2 **KATHRYN LILLY,**

3 called as a witness herein, after having been first duly sworn
4 or affirmed, was examined and testified as follows:

10:30:45 5 MS. TAYLOR: Your Honor, may we approach?

6 THE COURT: Sure.

7 (Bench conference as follows:)

8 MS. TAYLOR: I didn't get the name of Kathy Lilly on
9 the witness list. I didn't know she -- who she is.

10:31:14 10 MR. KNAPP: She's the custodian for the Arizona
11 Department of Revenue.

12 THE COURT: So she's a custodian of records?

13 MR. KNAPP: Yes.

14 THE COURT: Do you know what that means?

10:31:22 15 MS. TAYLOR: Yeah, I know what a custodian of records
16 is but they just didn't tell us she was going to be a witness.

17 THE COURT: You mean they didn't name her?

18 MS. TAYLOR: I didn't see it on anything.

19 MR. KNAPP: I believe she's on there. I have to go
10:31:33 20 back and check.

21 THE COURT: Hold on. I've got the list.

22 MS. TAYLOR: I may have missed it.

23 THE COURT: Let's check. Is that who it is, custodian
24 of records --

10:32:01 25 MR. KNAPP: No, that is the county recorder.

10:32:03 1 THE COURT: -- Maricopa County?

2 MR. KNAPP: No, that would be the county recorder.

3 THE COURT: Who is she with?

4 MR. KNAPP: The Department of Revenue.

10:32:21 5 May I have a moment, Your Honor, to look at my --

6 THE COURT: Yeah.

7 MR. KNAPP: I don't see it, Your Honor. The exhibits

8 have been marked for -- she's a custodian for exhibits that

9 have been marked as exhibits for some time now.

10:33:05 10 THE COURT: What are the exhibits?

11 MR. KNAPP: It's two tax returns, state tax returns,

12 from earlier years, and then there's a letter of nonexistent

13 records that she would testify about. It's also been disclosed

14 in the past.

10:33:19 15 THE COURT: When did you disclose the records?

16 MR. KNAPP: A year ago.

17 THE COURT: Are you familiar with the records he's

18 referring to, Ms. Taylor?

19 MS. TAYLOR: No, Your Honor.

10:33:29 20 THE COURT: Have you got copies?

21 You go ahead and confer.

22 Do you want to go ahead and get the exhibits, please?

23 (Pause in bench conference.)

24 THE COURT: Members of the jury, if you want to stand

10:33:58 25 up while we're doing this, feel free to do that.

10:34:01 1

(Bench conference resumes.)

2

THE COURT: Why don't you show them to Ms. Taylor, if you would.

3

4

10:36:25 5

MS. TAYLOR: I want to object to these records on irrelevance and because they're state instead of federal, and they're for previous years, way previous years. And they're state, they're not federal. 404(b) prejudice on me. Prejudice 404(b).

6

7

THE COURT: Okay.

10:36:45 10

Your response, Mr. Knapp?

11

MR. KNAPP: If I may, Your Honor.

12

13

14

THE COURT: We need to have you talk so the mike can pick up what you're saying, and try not to shuffle the papers too loudly because that tends to be picked up more than voices by the mike.

10:37:03 15

16

MR. KNAPP: Certainly.

17

18

19

Your Honor, I believe this is noted in my recent supplemental 404(b) notice. At the very least on August 18, 2010, in my letter to Ms. Taylor, I state that, we intend to introduce evidence provided in discovery including evidence of, quote, failure to pay state and federal taxes outside of the charged years.

10:37:24 20

21

22

23

THE COURT: Well, the objection Ms. Taylor just made isn't a lack of notice.

24

10:37:37 25

MR. KNAPP: Oh, okay.

10:37:40 1 THE COURT: I don't believe -- it is a relevancy
2 objection and a 404(b) objection.

3 MR. KNAPP: Okay. Look, for the 404(b) I wanted to
4 point out the notice. The relevance of it is that it goes to
10:37:52 5 absence of mistake. It's not just that she forgot her lack of
6 requirements or was mistaken under requirements under federal
7 law, but she also did not pay -- did not file under state law.
8 She filed in the past but then for the charged years did not
9 file under state law.

10:38:08 10 THE COURT: Tell me what the years are that are
11 covered by these various exhibits.

12 MR. KNAPP: We want to introduce two tax returns, 1997
13 and 1998, because she filed. We want to introduce a lack of
14 records for the charged years, 2003, 2004, 2005, 2006.

10:38:28 15 THE COURT: So your argument, if I understand it, is
16 going to be that she paid state taxes in '97 and '98 and failed
17 to file returns in 2003 through 2006?

18 MR. KNAPP: Yes. At least filed tax returns in 1997
19 and '98.

10:38:46 20 THE COURT: Okay.

21 MR. KNAPP: The payment is another matter.

22 THE COURT: What is the relevancy of that state tax
23 conduct to the federal charges in this case?

24 MR. KNAPP: Your Honor, I think it goes to show this
10:38:55 25 isn't some mistake she made just about the federal tax code,

10:38:58 1 you know, some misunderstanding about the requirements under
2 federal law or some principle objection, which obviously would
3 not even be a defense, but this is instead just an evasion of
4 taxes in general. It goes to show, again, willfulness and the
10:39:15 5 absence of mistake.

6 THE COURT: Did you want to talk to Ms. Anderson for a
7 minute?

8 MS. TAYLOR: It's more prejudicial than probative, and
9 it's going to confuse the matters. It will require a different
10:39:50 10 trial on the state level than on a federal level. It will
11 require another trial.

12 THE COURT: Right. I understand. You're making what
13 is a 403 --

14 MS. TAYLOR: 404?

10:40:06 15 THE COURT: -- objection. Yeah, I understand the
16 objection you're making. I think Mr. Knapp does, too. It's an
17 evidentiary objection.

18 MR. KNAPP: Your Honor, if I may, I don't know if I --
19 in the 404(b) supplemental notice I listed some case law and at
10:40:24 20 least one of those I know talks about state taxes as being
21 relevant. Obviously it's not binding on your determination
22 whether in this case it has relevance, but there is some
23 support in the 404(b) notice that I filed.

24 THE COURT: All right. Well, I think this is a close
10:40:39 25 call. I think I want to think about it. Which means we

10:40:43 1 probably ought to excuse this witness until after lunch, and
2 I'll look at those cases over lunch, if you can get me a copy
3 of that notice.

4 MR. KNAPP: Certainly.

10:40:52 5 THE COURT: You know, I can see some relevance in your
6 argument that this wasn't just a federal position she was
7 taking, but she generally was not paying taxes. On the other
8 hand, it does get us into a whole other area that could be
9 prejudicial. It could require additional evidence. I just
10 want to think about it. So I'm going to take this under
11 advisement. Let's go ahead and excuse the witness now until
12 after lunch, and I'll look at those cases over the lunch hour.

13 MR. KNAPP: Okay.

14 MS. TAYLOR: Okay.

15 (Bench conference concludes.)

16 THE COURT: All right. Thanks for your patience,
17 members of the jury.

18 There is a legal issue that I need to consider, and I
19 need to consider and make a decision, Ms. Lilly, before your
10:41:47 20 testimony. So with your indulgence, we're going to excuse you
21 and probably call you after lunch because I'm not going to be
22 able to look at the law on that legal issue until the lunch
23 hour. So we apologize for keeping you waiting. But we'll
24 excuse you at this point so I can look at that issue over
10:42:05 25 lunch.

10:42:07 1

THE WITNESS: All right.

2

THE COURT: Thanks, Ms. Lilly.

3

MR. KNAPP: Shall we call our next witness, Your

4

Honor?

10:42:23 5

THE COURT: Yes, please.

6

MR. KNAPP: Your Honor, the United States calls Agent

7

Dave Votaw.

8

THE COURT: Would you come forward to be sworn,

9

please.

10:42:33 10

THE COURTROOM DEPUTY: Please state your name and

11

spell your last name for the record.

12

THE WITNESS: David Votaw, V, as in Victor, O-T-A-W.

13

DAVID VOTAW,

14

called as a witness herein, after having been first duly sworn

15

or affirmed, was examined and testified as follows:

16

THE COURT: Mr. Knapp, you may proceed.

17

MR. KNAPP: Thank you, Your Honor.

18

D I R E C T E X A M I N A T I O N

19

BY MR. KNAPP:

10:43:13 20

Q Good morning, Agent Votaw. How are you doing?

21

A Well.

22

Q Please introduce yourself. Tell us where you work.

23

A My name is David Votaw, and I work for the IRS criminal

24

investigation unit.

10:43:26 25

Q And what's your role in this case?

DIRECT EXAMINATION - DAVID VOTAW

10:43:29 1 A I was the special agent assigned to this case.

2 Q So you are the case agent in this case; is that right?

3 A That's correct.

4 Q How long have you been with the Internal Revenue Service?

10:43:41 5 A It will be almost seven years this year.

6 Q What was your background? Do you have any sort of finance
7 background or accounting background?

8 A I have a graduate degree and an undergraduate degree in
9 accounting with an information technology emphasis.

10:43:55 10 Q All right. Tell me briefly how you picked up this case,
11 how you got started with the investigation.

12 A Approximately January of 2006 I was notified that the civil
13 side of the IRS -- there's kind of two sides of the IRS. Most
14 people are familiar with the -- an audit or an exam, that's
10:44:18 15 kind of the civil side. Then there's a criminal investigation
16 side, which is the part I'm -- the side I'm a part of, part I
17 belong to. There was a referral that had come from the civil
18 side, and that's how it started for me. That's how I first
19 came to know about this case.

10:44:36 20 Q All right. And I should ask, is this your first time
21 testifying in federal court?

22 A In the -- not in federal court. In a trial, yes.

23 Q If I go too fast, just stop me.

24 A Okay.

10:44:54 25 Q All right. And I'll try and speak slower.

DIRECT EXAMINATION - DAVID VOTAW

10:44:58 1 What did you -- when you picked up the case, January
2 2006, what did you do to -- did you have any sort of idea of
3 what generally the case is about?

4 A I did. When the civil side referred the case, there had
10:45:11 5 been quite a bit of contact with the taxpayer as far as
6 examination, as far as collections of tax due. So I was able
7 to talk and -- go and talk to those people and see -- and read
8 their case histories and just kind of look and see what the
9 history was at that point.

10:45:28 10 Q Based on that review, did you know this had something to do
11 with real estate?

12 A I did.

13 Q What was your understanding of Ms. Taylor's role in real
14 estate?

10:45:37 15 A I understood she was a real estate agent and a real estate
16 broker.

17 Q You were at least initially trying -- what were you trying
18 to find, related to Ms. Taylor for this case?

19 A Part of what I'm looking for is if someone has any income.
10:45:53 20 So I was looking to see if I could find that she had income.

21 Q Now, again, you weren't -- you're not -- you're not an
22 auditor or an examiner, right?

23 A I'm not.

24 Q So you don't need to -- your job here isn't to arrive at
10:46:08 25 the precise number for tax liability; is that right?

DIRECT EXAMINATION - DAVID VOTAW

10:46:11 1 A That's correct. I'm not an examiner and don't claim to be.

2 Q But you were looking at income because?

3 A It's part of some of the elements of the invest -- the
4 statutes that I investigate is that someone actually has a tax
10:46:26 5 due and owing.

6 Q So what records did you try and get to figure out
7 Ms. Taylor's income?

8 A Originally I looked into bank records, escrow files -- bank
9 records and escrow files in this case just because it involved
10:46:48 10 real estate, and those are -- I traditionally work with
11 historical cases, and you're looking -- I'm looking for --
12 historical records are usually kept in places like banks and
13 escrow companies.

14 Q Did you have any difficulty in finding information?

10:47:02 15 A Yes.

16 Q Why?

17 A The banks are difficult in -- they were difficult in that
18 when you apply -- when any of us apply for a bank account, we
19 use our name and our social security number. And when I issue
10:47:17 20 a subpoena or a request to the bank for any information, those
21 are the kinds of -- that's the type of information I would
22 request from the bank. Say John Smith's name and John Smith's
23 social security number.

24 In this case, I requested that type of information and
10:47:33 25 initially not everything was -- came back to me. And the same

DIRECT EXAMINATION - DAVID VOTAW

10:47:37 1 thing with escrow companies.

2 Q Tell me -- start with the escrow companies. Why did you
3 have difficulty getting complete information from them, these
4 kind of requests?

10:47:50 5 A Originally I thought I would be pretty smart and I could
6 talk to different title companies that would have been
7 identified from the civil side. Sue Taylor was involved in a
8 few real estate transactions so I thought I'd go back to those
9 title companies and ask them, "Can you provide all of the title
10:48:07 10 files that Sue Taylor was affiliated with?" And I thought I'd
11 get a full listing of those.

12 But however, I found out and was told that if
13 someone's a real estate agent or a real estate broker, that
14 information is in the title files; however, it is not a
10:48:25 15 queriable or it's not a field they can search on. They
16 can't -- you can't search for a title company and say, I want
17 to know every title or escrow file that a certain brokerage or
18 broker or real estate agent was involved with.

19 Q So what did you have to do to figure out the commissions?

10:48:42 20 A Part of what I did was I looked into bank accounts that
21 were affiliated with Sue Taylor, and I noticed there was checks
22 written from title companies, and on them I could -- you could
23 note as part of the caption was what appeared to be a number
24 that I later found out indicate escrow numbers. And I could
10:49:05 25 then take that escrow number, find out what escrow company it

DIRECT EXAMINATION - DAVID VOTAW

10:49:07 1 was affiliated to, and then go back and find out if indeed
2 Ms. Taylor was affiliated with that escrow file.

3 Q Was this a time-consuming process?

4 A Yes.

10:49:21 5 Q How long did it take you?

6 A I'm still doing it to this day.

7 Q You're still -- what are you finding?

8 A Just that Sue Taylor's still involved in real estate
9 transactions that I wasn't previously aware of. In fact, I
10:49:38 10 just heard from my office there's another escrow file --

11 MS. TAYLOR: Objection, Your Honor.

12 THE COURT: Excuse me.

13 Yes, ma'am.

14 MS. TAYLOR: Relevance.

10:49:46 15 THE COURT: Sustained.

16 BY MR. KNAPP:

17 Q You're still looking at records for 2003, 2004, 2005, 2006,
18 right? That's the income you're looking for?

19 A Specifically, yes.

10:49:58 20 Q And you're saying even today you're still looking for that
21 income; is that right?

22 A Yes.

23 Q Why couldn't you just go to -- you mentioned banks. Did
24 you find -- well, through the course of your investigation, did
10:50:13 25 you have an idea of the name of the brokerage through which

DIRECT EXAMINATION - DAVID VOTAW

10:50:16 1 Ms. Taylor was earning commissions?
2 A Yes.
3 Q What was the name of that?
4 A National Land Bank Sales.
10:50:21 5 Q Did you find a bank account for National Land Bank?
6 A Revenue agents prior to me had discovered some with other
7 banks, and I found those and I found others.
8 Q Did you find one for National Land Bank?
9 A I did.
10:50:35 10 Q Why couldn't you just go to National Land Bank and get, you
11 know, a list of all the transactions from that bank account to
12 calculate accurately the commissions paid?
13 A Originally it was kind of my thought I could -- you know, I
14 could find all the commissions, see where they were deposited,
10:50:51 15 and make a tally. But during the course of my investigation I
16 realized not all the commission checks were deposited into this
17 bank account.
18 Q Were there other reasons -- during the course of your
19 investigation did you find -- in general can you describe the
10:51:16 20 kinds of transactions that you found that would make it
21 difficult to track the transactions through the National Land
22 Bank account?
23 A Yes. There were times where Sue Taylor would apply the
24 commission -- her entire commission towards the closing cost of
10:51:35 25 her clients.

DIRECT EXAMINATION - DAVID VOTAW

10:51:39 1 Q What else?

2 A There was other times she had changed the payee. She
3 instructed the title company to change checks made either to
4 her or her National Land Bank, LLC, to other entities.

10:51:55 5 MS. TAYLOR: Objection, Your Honor. Just conjecture
6 on his part.

7 THE COURT: Overruled.

8 BY MR. KNAPP:

9 Q What else did you see?

10:52:06 10 Did you see situations where -- maybe you already
11 mentioned this, where the checks were negotiated at other
12 banks?

13 A Yes. There were times when Sue Taylor would take the
14 checks -- for example, if Fidelity Title wrote you a check,
10:52:24 15 they have a bank account they draw the check on, and she would
16 take the checks to that bank and as opposed to depositing the
17 check, she would negotiate and cash the check and with that
18 money create cashier's checks and take out cash. And so the
19 difficulty for me was, there would be no record. I'm looking
10:52:45 20 for historical records, and in instances like that there was no
21 record. It was very difficult to find.

22 Q Okay. I'm going to show you some exhibits. We have hard
23 copies but I'm going to show them on the screen if that's all
24 right with you.

10:53:01 25 A That's okay.

DIRECT EXAMINATION - DAVID VOTAW

10:53:02 1 MR. KNAPP: These are all admitted into evidence. May
2 I publish to the jury?

3 THE COURT: You may.

4 BY MR. KNAPP:

10:53:10 5 Q First Government's Exhibit 158.

6 Okay. I'm showing you a check. This is Government's
7 Exhibit 158, page 2, a check written to Sue Taylor from First
8 Financial; is that right?

9 A Yes.

10:53:46 10 Q This is for escrow number -- it's hard to read. Let me see
11 if I can get you the hard copy.

12 MR. KNAPP: Your Honor, may the witness be shown the
13 folder for Exhibit 158?

14 BY MR. KNAPP:

10:54:26 15 Q Can you see that exhibit?

16 A I can. It is a photocopy and -- a small photocopy but it
17 is more legible than what's on the screen.

18 Q And what is that check?

19 A It's a check for \$17,435.72 made payable to Sue Taylor at
10:54:45 20 20 North Gilbert, drawn on a First Financial Title Agency of
21 Arizona account.

22 Q And does it have an escrow number on it?

23 A It does. It appears to be 00045337-055, space, JP 1.

24 Q In your experience based on what you've done in this
10:55:11 25 investigation, can you draw any conclusions about what the

DIRECT EXAMINATION - DAVID VOTAW

10:55:14 1 nature of the check is?

2 A Yes. During this course of this investigation I saw quite
3 a few commission checks, escrow checks, just in general, and
4 here you can see where the large print says "escrow number" and
10:55:26 5 just below that is where I read this number from, and that just
6 indicates the number of the escrow check. And then
7 oftentimes -- I can see here it says JP 1. Oftentimes at the
8 very end of the escrow number are initials, and those are
9 traditionally the initials of the escrow or title officer who
10:55:43 10 was involved in this transaction.

11 Q In looking at that exhibit what can you tell us about where
12 it was negotiated, where it was cashed or deposited or
13 otherwise?

14 MS. TAYLOR: Objection, Your Honor. There's no
10:56:03 15 firsthand knowledge of that.

16 THE COURT: Overruled.

17 THE WITNESS: Like I had mentioned, this is a bank
18 account from First Financial. It appears the check is drawn on
19 Sunstate Bank, and the back of the negotiated check in the
10:56:22 20 lower right-hand quadrant there is the negotiation, and there's
21 a signature that appears to say Sue Taylor or S. Taylor.

22 And from the back there I can tell that this check was
23 taken to Sunstate Bank, and from this -- what we're looking at
24 here and the rest of this exhibit, I can tell that it was
10:56:46 25 negotiated and two cashier's checks were purchased, paid to the

DIRECT EXAMINATION - DAVID VOTAW

10:56:51 1 order of Sue Taylor in the amount of \$5,000 each. And on the
2 very first page it says there was 7,435 --

3 BY MR. KNAPP:

4 Q Let me stop you for a moment. I'm showing you page 3 of
10:57:06 5 this exhibit; is that right?

6 A Yes.

7 Q These are the two checks -- a little hard to read on the
8 screen, the two \$5,000 cashier's checks you were talking about?

9 A Yes. It is more legible in my copy.

10:57:19 10 Q So sum it up. Just what did -- what happened with this
11 check? Where was it negotiated, and what was -- what came out
12 of it?

13 A It was negotiated at Sunstate Bank.

14 Q Did you find any accounts for National Land Bank or other
10:57:29 15 entities associated with Sue Taylor at that bank?

16 A I went to Sunstate Bank, and I did not find any accounts in
17 either of those entities.

18 Q And this check that appears to be a commission check is
19 negotiated for what?

10:57:42 20 A For two cashier's checks and cash.

21 Q And does that make it difficult for you to trace income?

22 A Makes it very difficult.

23 Q How or why?

24 A There's certain standards that the banks follow. For
10:58:00 25 example, had this check been cashed completely and all the cash

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10:58:07 1 drawn, \$17,000 would have triggered a report by the bank, and
2 that is something that is part of my investigation. I queried.

3 Q Tell me about that. What are the requirements?

4 A Basically any time you or I or anyone withdraws or deposits
10:58:24 5 the amount of anything over \$10,000 in cash, a report is
6 automatically generated by the bank.

7 Q What kind of report is that?

8 A The nickname or the acronym is CTR but it's called the
9 currency transaction report.

10:58:39 10 Q Is it a rule or is it just bank practice?

11 A No. It's law.

12 Q What kind of information needs to be included in the
13 report?

14 A The banks capture a person's name, social security number,
10:58:52 15 address, occupation. There's quite a bit of information in
16 those reports.

17 Q And you're saying if this were taken directly to the bank
18 and cashed, it would have triggered one of those filing
19 requirements?

10:59:05 20 A Yes, it would have.

21 Q And that would have been something you would have been able
22 to find?

23 A It would have come up quickly on my -- I could only do one
24 query on all the banks and nothing came back for Sue Taylor.

10:59:17 25 Q What about if this had just been, rather than negotiated

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10:59:21 1 for cash, deposited into the National Land Bank account, would
2 that have made it easier or harder to trace?

3 A It would have. If it had been into one of the accounts I
4 found for National Land Bank, there would have been some sort
10:59:34 5 of paper trail. But in this case there was none.

6 Q For this check did you try to get the escrow file?

7 A I did.

8 Q What happened?

9 A Initially talked to the bank, found out that First
10:59:46 10 Financial Title Agency was a client of the bank's. Reached out
11 to First Financial Title Agency and found out that sometime
12 after the date of this check, which is in May of '05, that
13 First Financial Title Agency actually went out of business.

14 Followed up with subsequent custodians of records to
11:00:11 15 find out if I could find this title, see where the escrow files
16 were, and in the end, I discovered that the actual files had
17 been kept in a storage locker. Someone didn't pay the storage
18 fees, and everything was destroyed for this company.

19 Q So in general terms, not being able to go back to an escrow
11:00:29 20 company and get files, what did that have -- what effect did
21 that have on your investigation when you're trying to figure
22 out Sue Taylor's income?

23 A I wasn't able to ascertain. You know, this was an escrow
24 file I couldn't see because I was also looking at other forms
11:00:44 25 of income, receipts received, moneys flowing in and out of

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11:00:47 1 escrow files. But without the actual escrow file I couldn't do
2 that.

3 Q Let's look at Government's Exhibit 159, which is in
4 evidence.

11:00:56 5 THE COURT: We're going to go ahead and break first,
6 Mr. Knapp.

7 We'll take a 15-minute break, members of the jury, and
8 we'll return at 11:15. Please remember not to discuss the
9 case, and we'll see you then.

11:01:09 10 (Recess taken from 11:01 to 11:18. Proceedings
11 resumed in open court with the jury present.)

12 THE COURT: Thank you. Please be seated.

13 Mr. Knapp, you may continue.

14 MR. KNAPP: Thank you, Your Honor.

11:19:13 15 BY MR. KNAPP:

16 Q Agent Votaw, when we left off, I started to ask you about
17 difficulties you had in calculating commission income in this
18 case; is that right?

19 A Yes.

11:19:21 20 Q Again, you're not a revenue agent, right?

21 A I'm not.

22 Q But you wanted to figure out the income to see whether you
23 would find evidence of whether Ms. Taylor was evading taxes; is
24 that right?

11:19:32 25 A Right. I wanted to see if there was any income.

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11:19:35 1 Q Let me step back, then, for a moment and say, have you
2 reviewed the escrow records and bank records admitted into
3 evidence in this case?

4 A I have.

11:19:47 5 Q And have you created a summary chart at Exhibit 148,
6 Government's Exhibit 148?

7 A Yes.

8 MR. KNAPP: Your Honor, we move for admission of
9 Government's Exhibit 148 into evidence.

11:20:05 10 THE COURT: Ms. Taylor, any objection?

11 MS. TAYLOR: I don't have that.

12 THE COURT: All right. Take a minute and look at it.

13 MS. TAYLOR: Your Honor, I object. The foundation has
14 not been laid that these are all my commissions, I don't
11:24:08 15 believe. I was a broker.

16 THE COURT: I'm assuming you're moving this into
17 evidence under Rule 1006?

18 MR. KNAPP: Yes, Your Honor.

19 THE COURT: Okay. I think you do need to lay
11:24:21 20 additional foundation as to how the agent created the chart and
21 the basis for his conclusion in the fourth column that the
22 amounts shown constitute commission income. As a general
23 matter, I think you need to lay foundation as to what it was he
24 did to verify this information.

11:24:44 25 MR. KNAPP: Certainly, Your Honor.

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11:24:46 1 BY MR. KNAPP:

2 Q Agent Votaw, do you have Government's Exhibit 148 up there
3 with you on the witness stand?

4 A I do not.

11:24:54 5 MR. KNAPP: May the witness be shown Government's
6 Exhibit 148.

7 BY MR. KNAPP:

8 Q What's in Government's Exhibit 148?

9 A This is a document I created detailing real estate
11:25:20 10 commissions earned by Sue Taylor.

11 Q How did you create this document?

12 A I gathered records from the types of businesses we had
13 talked about before, banks, real estate -- or title companies,
14 and also testimonies of people affiliated with these
11:25:40 15 transactions. Took that information, entered it into the
16 spreadsheet, and that's what we're looking at.

17 Q Again, you do have an accounting background, right?

18 A I do.

19 Q There are actually two charts in that exhibit; is that
11:25:53 20 right?

21 A There are.

22 Q One chart, the first chart, has lower numbers on it, right?

23 A That's the first two pages, correct.

24 Q Tell me about that. What's that -- what are the numbers in
11:26:04 25 that chart based on?

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11:26:06 1 A These are commissions where I had either bank records
2 and/or title escrow files. So I actually had both. Well, not
3 in all cases but I had a title file that I could look at. Like
4 we've talked -- we've kind of seen in court that you could see
11:26:27 5 maybe a line item that says commission to Sue Taylor for an
6 amount, and I would see that same amount, see the check, and so
7 that's what this first two pages is. Those are the records
8 that I knew emphatically were commissions.

9 Q So for this first two pages you actually have the records
11:26:49 10 from the escrow company that note that it's a commission?

11 A I had them and I believe they're in records of the court as
12 well now.

13 Q And you've noted which exhibit number they are in your
14 chart?

11:27:01 15 A I did.

16 Q For the second chart with the higher numbers, how did you
17 calculate that chart?

18 A On this chart, there was -- like many of these, you know --
19 like many of the first two pages, there was checks with escrow
11:27:22 20 numbers written on them, and then the first two pages I had the
21 actual escrow file.

22 In looking at accounts associated with Sue Taylor, I
23 was able to see similar checks with escrow title numbers
24 written with escrow numbers that appear to be the same thing,
11:27:37 25 and they all -- also, so this is a more robust or more --

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11:27:42 1 there's more commissions on this one, there was also checks I
2 believe that were in this list where there was no escrow file.
3 Q So the check we were just talking about before the break at
4 Exhibit 158, where it was negotiated at a third-party bank, the
11:28:01 5 escrow company's bank, but you couldn't go back and get the
6 escrow file because the escrow company had closed down, that's
7 the kind of transaction that would be on the second chart?
8 A That in addition to others.
9 MR. KNAPP: Okay. We move again for admission of the
11:28:16 10 charts, Your Honor.
11 THE COURT: I think you need to lay foundation on what
12 the others are. He said, "In addition to others."
13 BY MR. KNAPP:
14 Q What sort of others?
11:28:25 15 A There was checks written by a Dennis Barney and a Gerry
16 Ricke, and I was not able to find an escrow file for that.
17 However, I went and spoke to one of those gentlemen and he told
18 me the purpose of the checks they had written, and so that's
19 what I included.
11:28:40 20 Q And you've listened to Mr. Ricke's testimony in court,
21 right?
22 A I did.
23 Q And he spoke -- are those the checks he spoke about during
24 his testimony?
11:28:47 25 A Yes.

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11:28:49 1 Q So those are situations where you have the check but not
2 the escrow file but some other indication that it's a
3 commission?

4 A Yes. And that's what I was indicating was "others."

11:28:58 5 Q So the first chart has just checks where you have the
6 escrow file, and the second chart with the higher calculation
7 has checks where you have the bank records at the very least
8 and possibly oftentimes the escrow file as well?

9 A That's correct.

11:29:17 10 MR. KNAPP: We, once again, move for admission, Your
11 Honor.

12 MS. TAYLOR: I object, Your Honor.

13 THE COURT: All right. And the basis for the
14 objection, Ms. Taylor?

11:29:34 15 MS. TAYLOR: Lack of foundation for each check.

16 THE COURT: Mr. Knapp, have each of the exhibits
17 listed in this chart been admitted into evidence?

18 MR. KNAPP: Your Honor, I'm hesitating only because
19 Exhibit 215, which I don't think is on this chart, hasn't been
11:30:04 20 admitted but will be admitted, I anticipate, through Agent
21 Votaw's testimony. All of the others have been admitted into
22 evidence. I'm sorry.

23 BY MR. KNAPP:

24 Q Agent Votaw, do you know if there are any commissions on
11:30:35 25 this chart that have not been admitted into evidence?

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11:30:38 1 A Yes. It appears the last one in 2005 and page 4 of 4.

2 Q Oh. I see that.

3 THE COURT: That's where there is no exhibit listed;
4 is that right?

11:31:02 5 THE WITNESS: That's correct.

6 BY MR. KNAPP:

7 Q And what are you basing that transaction on?

8 A I've seen a copy of this escrow file, and actually this
9 morning, if I'm able to talk to it, I was -- I actually have a
11:31:14 10 copy of this, a certified copy of this escrow file on my desk
11 right now.

12 Q Is this something you just recently got in?

13 A Yes.

14 Q When did you receive it?

11:31:26 15 A I believe my -- I've not yet received it. It's on my -- I
16 was informed it's at my office. I don't have it yet.

17 Q Are there any other records related to this transaction
18 that have been provided for inspection to defendant before
19 today?

11:31:42 20 A No.

21 MR. KNAPP: Your Honor, we --

22 THE COURT: Well, your question just now, Mr. Knapp,
23 was, are there any other records related to this transaction
24 that have been provided for inspection to defendant before
11:31:58 25 today, and he said -- oh. You're referring to that specific

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11:32:03 1 transaction, not to the exhibit?

2 MR. KNAPP: Correct, Your Honor. I think they
3 received -- they've had the exhibit for a couple days now but
4 not the underlying records for that one.

11:32:09 5 THE COURT: For that one transaction?

6 MR. KNAPP: That one transaction.

7 THE COURT: All right.

8 Ms. Taylor.

9 MS. TAYLOR: Objection, Your Honor. Some of them have
11:32:17 10 been based on interviews. That's hearsay. So he said just
11 now.

12 THE COURT: All right. I'm going to ask for the
13 jury's patience. Let's talk about this for a minute at
14 sidebar.

11:32:43 15 MR. KNAPP: Yes, Your Honor.

16 (Bench conference as follows:)

17 THE COURT: I didn't look at this issue ahead of time,
18 and I don't know if I've encountered it before, but Rule 106
19 allows the contents of voluminous writings that cannot be
11:33:33 20 conveniently examined because of their volume to be presented
21 in the form of a chart, summary, or calculation. And it says
22 that originals or duplicates need to be made available for
23 examination at a reasonable time and place. I assume you're
24 going to do that with respect to this last file that has been
11:33:53 25 mentioned.

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11:33:54 1 MR. KNAPP: Certainly can, Your Honor.

2 THE COURT: But it seems to me since what you're
3 requesting, Mr. Knapp, is not simply that the witness be
4 allowed to use the chart to explain his testimony, but that the
11:34:04 5 chart itself come into evidence --

6 MR. KNAPP: Yes, sir.

7 THE COURT: -- then I need to be satisfied that
8 there's an evidentiary basis for all of the information
9 reflected in that chart. And it sounds as though the second
11:34:16 10 half of the chart is based in part upon statements that were
11 made to Agent Votaw by Dennis Barney or by Mr. Ricke; which
12 would mean that those conclusions in the chart are based on
13 hearsay.

14 MR. KNAPP: Mr. Ricke was available -- he testified.
11:34:37 15 He was available for cross-examination. It's those statements
16 that support the --

17 THE COURT: Well, but I don't remember him being asked
18 transaction by transaction to say that this was a commission
19 check or this was a commission check. So to the extent he said
11:34:53 20 that to Agent Votaw, that is an out-of-court declaration.
21 That's not one he made in court. The fact that he's available
22 for cross-examination doesn't mean it's not hearsay.

23 MR. KNAPP: We did have Exhibits 150 and 151A. And
24 Mr. Galati will jump in if I misspeak, but I believe those are
11:35:11 25 the transactions that are excerpts from the bank records that

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11:35:14 1 were shown to the witness, and he said, are these the ones --
2 would these all have been commission payments?

3 MR. GALATI: And I said you need to ask Mr. Votaw
4 Exhibit 150-A and 151-A, are those the checks you pulled out of
11:35:29 5 the general bank record that you think are the commission
6 checks Mr. Ricke testified are commission checks?

7 THE COURT: Well, my question would be, are there any
8 commission transactions on that chart that are not supported by
9 a document in evidence other than this one you just mentioned,
11:35:47 10 that were based upon what the agent was told, and that are not
11 the subject of those exhibits? In other words, is there any
12 commission line in here that was based on what Dennis Barney
13 told him?

14 MR. KNAPP: There are other indicia in addition to
11:36:05 15 just, you know, out-of-court statements, and there's also the
16 fact that it's a check, a check from a title company, the
17 escrow number referenced. I mean, that's what the witness'
18 testimony was. I believe he said that. But --

19 THE COURT: Well, the problem I'm having is, he said
11:36:22 20 that in the second chart there were others that were based upon
21 what he was told by Mr. Barney and Mr. Ricke in interviews.
22 He's not specified which they are.

23 It hasn't been established through his testimony that
24 every check in that category is one that was shown to Mr. Ricke
11:36:43 25 and that he testified was a commission check. And so as far as

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11:36:47 1 I can tell, there may be commissions in that chart that are
2 based not on Mr. Ricke's testimony or on another document in
3 evidence, but on what Mr. Barney told Agent Votaw out of court;
4 and therefore, they would be based on hearsay, and I have a
11:37:02 5 concern about that.

6 MR. GALATI: Mr. Barney is dead and has been dead for
7 a long four years --

8 THE COURT: Yes, he is.

9 MR. GALATI: I agree. I think --

11:37:15 10 THE COURT: We can't hear you, Mr. Galati. Step over
11 to the --

12 MR. GALATI: I think if you ask Agent Votaw -- he's
13 your witness but I think if you ask him, he's going to say all
14 those checks I'm talking about are in 150 and 150A and 151-A, I
11:37:29 15 think that's what he's referring to.

16 THE COURT: Well, I think maybe what we ought to do is
17 this. I think you ought to go over that with him during a
18 break, we're going to have a lunch break in 20 minutes, rather
19 than have him have to go through and compare 151 and 158 what's
11:37:44 20 on the chart. I assume you've got other ground you want to
21 cover with him.

22 MR. KNAPP: Yes. And actually, could I just introduce
23 the chart with the lower numbers, that is -- that does
24 contain -- that's based on escrow records that are in evidence,
11:37:59 25 and then just hold off on the higher chart that has the --

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11:38:08 1 MS. TAYLOR: May I have a moment?

2 THE COURT: Yes.

3 MS. TAYLOR: I don't think the records are too
4 voluminous to be examined one by one.

11:38:51 5 THE COURT: All right. Well, I think they are. The
6 fact is that this chart reflects dozens of different exhibits,
7 and I think that would be a burdensome process in the court to
8 go through. But I am concerned about the reliability of every
9 entry in that chart so I'm not going to admit it at this point.

11:39:11 10 I would ask you, Mr. Knapp, to -- if you think that
11 the second chart contains either commissions that are supported
12 by documents in evidence or commissions that Mr. Ricke
13 testified were commission checks, then you'll have a chance to
14 talk to him about that at lunch and establish that foundation.

11:39:37 15 MR. KNAPP: Okay.

16 THE COURT: Now, with respect to the first half, the
17 first two pages you've moved in evidence, was your objection to
18 that, Ms. Taylor, that they're not too voluminous? Do you have
19 another objection to the first two pages?

11:39:51 20 MS. TAYLOR: I was suggesting that all of them are not
21 too voluminous.

22 THE COURT: Okay. Do you have any other objection to
23 the first two pages?

24 You can confer with Ms. Anderson, that's all right.

11:40:28 25 MS. TAYLOR: I don't know if these are all my

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11:40:31 1 commissions or not. They haven't laid the foundation yet.
2 Those first two pages, either of them.

3 THE COURT: Okay.

4 I'm going to overrule that objection with respect to
11:40:46 5 the first two pages. Agent Votaw testified that those are the
6 commissions for which there was a document identifying it as a
7 commission, as I recall. Is that correct, Mr. Knapp?

8 MR. KNAPP: I'm sorry, could you say that again, Your
9 Honor.

11:41:04 10 THE COURT: Yeah. My memory is he testified the
11 commissions in the first two pages are those for which he had a
12 document identifying it as a commission.

13 MR. KNAPP: Yes, Your Honor.

14 THE COURT: I think that's sufficient foundation. And
11:41:16 15 all of the documents in those first two pages are in evidence,
16 correct?

17 MR. KNAPP: Yes, Your Honor.

18 THE COURT: All right. Then I'm going to go ahead and
19 admit the first two pages of Exhibit 148, and we will take up
11:41:30 20 the last four pages --

21 MS. TAYLOR: What? Here?

22 THE COURT: -- after lunch. Okay.

23 MR. KNAPP: Your Honor, I just want to note one more
24 thing for the record. Just so it's clear, the second half of
11:41:44 25 the chart -- and I understand your ruling. I just want to note

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11:41:47 1 that those checks that we're referring to are contained in
2 Exhibit 150, I believe. It's just that they -- to confirm that
3 they're commission checks, that was based on the testimony of
4 Mr. Ricke.

11:41:57 5 THE COURT: Well, yeah. The column I'm concerned
6 about is the one that says "Commissions." So I want to make
7 sure there's a sufficient evidentiary foundation for that
8 column if this is going into evidence in front of the jury. So
9 that's what you can confirm.

11:42:11 10 MR. KNAPP: Your Honor, the other thing I want to put
11 on the record is that we did at the outset of the case provide
12 a summary chart. It's changed over time. We before trial
13 tried to give them updates but I just want to note that so it
14 wasn't that we walked in on Tuesday with this.

11:42:26 15 THE COURT: All right.

16 MR. KNAPP: Thank you.

17 (Bench conference concludes.)

18 THE COURT: Thanks very much for your patience,
19 members of the jury.

11:42:49 20 BY MR. KNAPP:

21 Q Agent Votaw, let me just make sure we cover this. The
22 first two pages of Exhibit 148, those -- how did you determine
23 those were commission payments? Did you have the actual escrow
24 files?

11:43:02 25 A Yes.

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11:43:03 1 Q And did those escrow files -- what did those escrow files
2 tell you about whether they were commission payments to
3 Ms. Taylor?

4 A In each escrow file it indicated there was a commission
11:43:15 5 earned by Sue Taylor or National Land Bank with -- associated
6 with Sue Taylor.

7 MR. KNAPP: Your Honor, we move in the first two pages
8 of Government's Exhibit 148.

9 THE COURT: For reasons stated at sidebar, I will
11:43:27 10 admit the first two pages of Exhibit 148.

11 (Exhibit 148 admitted.)

12 MR. KNAPP: May I show him on the document projector,
13 Your Honor?

14 THE COURT: Yes. You want them on the Elmo?

11:43:38 15 MR. KNAPP: Yes.

16 THE COURT: And you wish to display it to the jury?

17 MR. KNAPP: Yes, Your Honor.

18 THE COURT: All right.

19 BY MR. KNAPP:

11:44:00 20 Q Agent Votaw, just, if you can, explain what this chart is
21 showing us.

22 A The title is Real Estate Commissions Earned by Sue Taylor.
23 The first column lists the check date. That's the actual date
24 that I found the check was written on.

11:44:18 25 The second column is escrow company. That is the

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11:44:20 1 escrow company associated with the check.

2 The payee would list and note the -- who the check was
3 paid to.

4 The next column is the amount of the commission
11:44:29 5 income.

6 The last two columns are the exhibits that have been
7 introduced in court or the escrow files themselves and/or
8 checks from the escrow files.

9 Q In looking at this chart again, this chart does or does not
11:44:50 10 include additional checks that you found that you believe to be
11 commission that you have not been able to obtain the escrow
12 accounts for?

13 A Does not.

14 Q This chart does or does not include proceeds that you
11:45:03 15 believe belong to Ms. Taylor through buying and selling real
16 estate?

17 A It does not include those numbers.

18 Q So it is just the commissions for the escrow files you have
19 and that have been introduced into evidence?

11:45:18 20 A That's correct.

21 Q And you have the commission income listed and the exhibits
22 where you draw that information noted on the chart; is that
23 right?

24 A That's correct.

11:45:31 25 Q And I'm going to show you the second page of that chart.

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11:45:46 1 All right. Same thing. Just different tax years, correct?

2 A That's correct.

3 Q So this does not capture all of the income that you -- this
4 does not count all --

11:46:01 5 MS. TAYLOR: Object, Your Honor.

6 THE COURT: What's the objection?

7 MS. TAYLOR: Referring to facts not in evidence.

8 THE COURT: Overruled.

9 BY MR. KNAPP:

11:46:14 10 Q This does not capture all of the income that you believe
11 was commission payments to Sue Taylor that you found during the
12 course of your investigation?

13 A That's correct, it does not.

14 Q So this does not capture the transaction we talked about in
11:46:26 15 Exhibit 158?

16 A I'm at a loss. I don't recall --

17 Q The Sunstate Bank transaction where I think you testified
18 you couldn't find the escrow company or the file.

19 A That's correct.

11:46:43 20 Q All right.

21 And you have a total at the bottom of nearly \$400,000
22 in commission income for those four years; is that correct?

23 A That's correct.

24 MR. KNAPP: Your Honor, may I switch back to the
11:47:09 25 laptop. Thank you.

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11:47:11 1 BY MR. KNAPP:
2 Q All right. I'm going to show you what's been marked and
3 admitted as Government's Exhibit 159. Let me show it to you on
4 the screen.
11:47:20 5 MR. KNAPP: May I publish, Your Honor?
6 THE COURT: Yes.
7 BY MR. KNAPP:
8 Q Do you see that check?
9 A I do.
11:47:37 10 Q Were you here when -- was it Mr. Kehias was testifying?
11 A Yes.
12 Q Do you recognize the numbers, either the escrow number on
13 this check or the amount of the check?
14 A I recognize both of them.
11:47:48 15 Q What is it?
16 A This was the escrow file -- the escrow number that
17 Mr. Kehias was involved in that was related to Sue Taylor, and
18 he had noted that the commission, I think he said it was
19 17,000, but the exact number is 17,483.40.
11:48:08 20 Q And this check is written to Sue Taylor care of National
21 Land Bank Home and Land Sales, correct?
22 A Yes.
23 Q Looking at this check can you tell whether it was deposited
24 into the National Land Bank account you found?
11:48:24 25 A It was not.

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11:48:24 1 Q Again, that National Land Bank account that you found is in
2 evidence as Exhibit 150; is that right?

3 A Correct.

4 Q All right. What can you tell from this check about what
11:48:36 5 happened to it?

6 A Just directly above where the pointer is, it says, "Cash
7 check." This indicates this check was taken to -- if you
8 scroll up a little higher, we could see the actual bank. Right
9 there. Bank One of Arizona. So someone took this to Bank One
11:48:55 10 of Arizona and negotiated this check and did not deposit it
11 into an account there or anywhere else.

12 Q And, again, does that sort of thing make it difficult for
13 you to trace income during this investigation?

14 A Yes.

11:49:07 15 Q Let me show you what's been marked and admitted as
16 Government's Exhibit 266.

17 MR. KNAPP: May I publish, Your Honor?

18 THE COURT: Yes.

19 BY MR. KNAPP:

11:49:40 20 Q What is this check?

21 A This is a check made payable to Sue Taylor care of National
22 Land Bank, LLC, drawn on Bank One of Arizona associated with
23 Fidelity National Title.

24 Q Is this another situation where -- did you find this in the
11:49:55 25 National Land Bank account?

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11:49:56 1 A I did not.

2 Q Can you tell from looking at this check what happened to
3 it?

4 A Again, like the previous check, it was taken to Bank One of
11:50:08 5 Arizona and negotiated and not deposited into a bank account.

6 Q Do you have any -- do you have any -- based on your
7 experience, any sense of whether this was negotiated for cash
8 or otherwise?

9 A Based on my experience, no. Had this been negotiated and
11:50:30 10 cashed entirely, it would have generated, like I talked about
11 previously, a report from the bank saying that someone had
12 either deposited or withdrawn or had some sort of transaction
13 dealing in cash over \$10,000.

14 And as that was not the case during -- that I
11:50:47 15 discovered during the course of my investigation leads me to
16 believe that this debt -- no, this -- this was not cashed --

17 Q And it --

18 A -- just for cash.

19 Q It wasn't deposited because it wasn't in her account,
11:51:00 20 right?

21 A Correct.

22 Q So have you seen in the course of your investigation use of
23 cashier's checks by Ms. Taylor?

24 A Yes.

11:51:07 25 Q How extensive has that use been?

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11:51:10 1 A Very extensive.

2 Q And if Ms. Taylor had taken this check into the account
3 where she was not a customer but instead somebody else's bank,
4 like the escrow company's bank, and negotiated it for multiple
11:51:26 5 small amount cashier's checks, would that have triggered the
6 reporting requirement you were talking about earlier?

7 A No. If you were to take this and if it was not cashed and
8 cashier's checks were generated, there would not be a report
9 generated.

11:51:43 10 Q I think you mentioned earlier -- when I asked you about
11 different things you had seen during the course of your
12 investigation, you mentioned diverting commission checks to --
13 well, let me ask you this: Did you find different bank
14 accounts associated with Ms. Taylor during the course of the
11:51:58 15 investigation?

16 A Yes.

17 Q Some of those bank accounts had been admitted into
18 evidence; is that right?

19 A Yes.

11:52:04 20 Q In general terms what was one clue that suggested to you
21 that Ms. Taylor had -- that those bank accounts were associated
22 with her?

23 A She was on the signature card.

24 Q Which meant she could write checks out of the account?

11:52:17 25 A Correct.

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11:52:18 1 Q Was Peace Pipe one of those accounts that you found?

2 A I believe it was -- yes. Peace Pipe, LLC.

3 Q That is Exhibit 151, correct?

4 A That's correct.

11:52:32 5 Q I'm going to show you Government's Exhibit 151, pages --
6 starting with page 82.

7 MR. KNAPP: And this is in evidence, and I'd like to
8 publish.

9 THE COURT: You may.

11:52:47 10 BY MR. KNAPP:

11 Q What are we looking at here?

12 A This is a checking deposit ticket. And by the account
13 number I can tell this was for the Peace Pipe account.

14 Q Do you recognize the signature on the bottom left?

11:53:02 15 A I do. That is Sue Taylor's.

16 Q How do you recognize that?

17 A I've seen her signature a lot during the course of this
18 investigation.

19 Q I'm showing you what's been marked as Government's Exhibit
11:53:13 20 151, page 84. This is one of the checks mentioned in that
21 deposit slip, correct?

22 A Yes.

23 Q And, again, is there anything on this that indicates to you
24 it is a commission check?

11:53:35 25 A Yes. Right below where it says "file number," as in the

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11:53:39 1 previous check it said "escrow number," here it says "file
2 number." There is a long line of digits followed with
3 abbreviations. That indicates to me that is an escrow file
4 indicating at the end who the escrow officer was.

11:53:54 5 Q It is written from a title company, right?

6 A It's written from the bank account of a title company, yes.

7 Q Do you recognize those initials?

8 A Yes.

9 Q Whose initials are those?

11:54:06 10 A Sue Taylor.

11 Q Did you see other activity in Government's Exhibit 151, the
12 Peace Pipe account, that indicated to you Ms. Taylor had
13 ownership or control over the money in it?

14 A Just the flow of moneys to and from other accounts.

11:54:32 15 Q Did you see any cash withdrawals or checks for cash from
16 that account?

17 A Yes.

18 Q I'm going to show you what's been marked as Government's
19 Exhibit 151, page 45.

11:54:50 20 MR. KNAPP: This is in evidence. May I publish?

21 THE COURT: Yes.

22 BY MR. KNAPP:

23 Q Agent Votaw, what is this?

24 A This is a check drawn on this Peace Pipe account paid to
11:55:08 25 the order of a Sue Taylor and signed by Sue Taylor in the

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11:55:13 1 amount of 28,107.43 -- I'm sorry, 73 cents.

2 Q I'm going to show you Government's Exhibit 151, also in
3 evidence, page 234. What is this?

4 A This is a cash withdrawal checking debit memo from Meridian
11:55:42 5 Bank, the bank that this was -- this transaction was conducted
6 with, with the name of the account Peace Pipe, LLC, with the
7 initials of S.T. or Sue Taylor.

8 Q Did you also see transfers between accounts during the
9 course of your investigation?

11:56:06 10 A I did.

11 Q I'm going to show you what's been marked and admitted as
12 Exhibit 150, page 63.

13 MR. KNAPP: And I'd also like to publish, if I may?

14 THE COURT: You may.

11:56:14 15 BY MR. KNAPP:

16 Q What are we looking at here?

17 A This is, again, a checking debit memo from Meridian Bank,
18 and this is from the National Land Bank account to the Peace
19 Pipe, LLC, account in the amount of \$25,000. And on the very
11:56:37 20 top it says, "Per Sue Taylor."

21 Q And I'm going to show you what's been marked and admitted
22 as Government's Exhibit 151, page 151.

23 MR. KNAPP: I'd like this also to be displayed to the
24 jury.

25

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11:57:03 1 BY MR. KNAPP:

2 Q This is the same -- this is a record from the Peace Pipe
3 account; is that right?

4 A That's correct.

11:57:26 5 Q Did you see during the course of your investigation any
6 expenditures out of these accounts -- well, let me step back.

7 Did you find any accounts with Ms. Taylor's name on
8 them?

9 A Yes.

11:57:41 10 Q And did you find an account with the National Land Bank
11 name on it?

12 A Yes.

13 Q Did you find expenditures -- what seemed to be personal
14 expenditures from the accounts that weren't under Ms. Taylor's
11:57:53 15 personal name?

16 A Yes.

17 Q And I'm going to show --

18 MS. TAYLOR: Objection, Your Honor. That's
19 irrelevant.

11:58:01 20 THE COURT: Overruled.

21 BY MR. KNAPP:

22 Q I'm showing you what's been marked and admitted --

23 MR. KNAPP: And I'd like to show this to the jury,
24 too.

25

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11:58:08 1 BY MR. KNAPP:
2 Q -- Government's Exhibit 151, page 243.
3 What are we looking at here?
4 A This is a check drawn on the -- yes, you can see it, the
11:58:26 5 Peace Pipe account in February of 2005 paid to the order of
6 Rakman Jewelers in the amount of \$10,500 signed by Sue Taylor.
7 Q Did you -- during the course of your investigation did you
8 find a jeweler under that name?
9 A Yes.
11:58:44 10 Q Again, this is written out of the Peace Pipe account,
11 correct?
12 A That's correct.
13 Q We were talking about -- we started out talking about some
14 commission checks deposited into Peace Pipe after we talked
11:58:58 15 about commission checks just negotiated at third-party banks.
16 I want to ask you about commission checks deposited at Burning
17 Bush Ministries. Did you see some of those?
18 A I did.
19 Q I'm showing you what has been marked and admitted as
11:59:16 20 Government's Exhibit 157, page 257.
21 MR. KNAPP: And I would like to publish this as well.
22 THE COURT: You may.
23 BY MR. KNAPP:
24 Q This is a check, correct?
11:59:43 25 A That's correct.

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11:59:44 1 Q Can you tell on the face of this whether it is a commission
2 check or not?

3 A I can't.

4 Q But nevertheless, this is a check to Sue Taylor, right?

11:59:51 5 A It is.

6 Q And this is a check that's been deposited into the Burning
7 Bush Ministries' account, correct?

8 A Yes.

9 Q Do you recognize the signatures on the back of that check?

12:00:04 10 A I do.

11 Q Whose signatures are those?

12 A Sue Taylor and Ron McBride. Ronald J. McBride.

13 Q I'm showing you Government's Exhibit 257, page 30. This is
14 in evidence.

12:00:21 15 MR. KNAPP: I'd like to publish.

16 THE COURT: You may.

17 BY MR. KNAPP:

18 Q What is this?

19 A This is a document that was found in one of the escrow
12:00:34 20 files I had received from a title company.

21 Q It says, "Please be advised to make the commission check on
22 escrow," and it lists the file number, "payable in the
23 following manner to Burning Bush Ministries," right?

24 A Yes.

12:00:48 25 Q Do you recognize that signature?

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12:00:50 1 A Yes.

2 Q That is consistent with the signature for Sue Taylor you
3 have seen during the course of the investigation?

4 A Yes, it is.

12:00:58 5 THE COURT: Mr. Knapp, we're at the noon hour. We're
6 going to take an hour break for lunch. We'll plan to start at
7 1 o'clock, members of the jury. We'll excuse you at this time.

8 (The jury exited the courtroom at 12:01.)

9 THE COURT: Please be seated.

12:01:30 10 Mr. Knapp, you were going to give me some cases to
11 look at over lunch.

12 MR. KNAPP: Yes, Your Honor, I'm sorry, I don't
13 have -- you mean for the 404(b) tax filing issue?

14 THE COURT: For the state tax, Ms. Lilly's testimony.

12:01:45 15 MR. KNAPP: Your Honor, I don't -- I'm not sure if I
16 have the 404(b) notice I filed with me in court here.

17 THE COURT: Do you know when you filed it?

18 MR. KNAPP: I'm sorry?

19 THE COURT: Do you know when you filed it?

12:01:58 20 MR. KNAPP: Yes. Yes.

21 THE COURT: If you can tell me when, I can pull it off
22 the docket.

23 MR. KNAPP: Your Honor, it was Docket Number 221 filed
24 March 31st.

12:02:14 25 THE COURT: All right. Okay. That's what I'll look

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12:02:16 1 at. All right. We'll see you at 1 o'clock. Thanks.

2 (Recess taken from 12:03 to 1:02. Proceedings resumed
3 in open court outside the presence of the jury.)

4 THE COURT: Please be seated.

13:02:58 5 Okay. Counsel and Ms. Taylor, let me give you a
6 couple of rulings, and then we'll deal with the jury issue.

7 With respect to the charts that we've been talking
8 about, I did some looking at the lunch hour, and it turns out
9 there's quite a few cases in the Ninth Circuit on the use of
13:03:24 10 charts in tax cases. They're old, they're 1980s and 1990s, but
11 there are a number of decisions and there are decisions
12 elsewhere.

13 Here is my conclusion after reading the Weinstein's on
14 Evidence section on charts and looking at a couple of those
13:03:45 15 cases. The purpose of Rule 1006 is to summarize the contents
16 of documents or other voluminous writings so it's
17 understandable by the jury. It is not to summarize other
18 evidence, evidence other than documents or writings.

19 And the commentary on Rule 1006 makes clear that if a
13:04:16 20 chart summarizes writings and the writings are available, then
21 the chart itself becomes evidence and the jury can have that as
22 an exhibit.

23 It seems to me that the first two pages of
24 Exhibit 148, if I'm remembering the number correctly, satisfy
13:04:37 25 that requirement because Agent Votaw testified that he

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13:04:42 1 accurately summarized in those two pages the commission
2 information in each of the transactions that is cited as an
3 exhibit in those first two pages.

4 The last four pages, however, summarizes more than
13:04:56 5 what is in the documents. It includes not only numbers in the
6 documents but it also includes Agent Votaw's conclusion after
7 speaking with Mr. Barney or after listening to the testimony of
8 Mr. Ricke that certain payments were commission statements.

9 So by characterizing those payments as commissions it
13:05:16 10 is summarizing not only the documents but it is summarizing the
11 testimony or statements of individuals like Ricke and Barney.
12 I don't think that is an appropriate use of Rule 1006.

13 The Ninth Circuit in cases -- in tax cases has said
14 that a court needs to be careful to distinguish between charts
13:05:40 15 used as summaries of evidence under Rule 1006 and charts used
16 as pedagogical devices to help the jury understand the
17 testimony. The latter category can be used during trial but
18 they're not marked as exhibits and they don't go to the jury
19 room.

13:05:58 20 It seems to me the last four pages of Exhibit 148 more
21 properly fall into that category since it is based on
22 statements by Mr. Ricke and Mr. Barney and not purely on
23 documents that are being summarized. So I'm going to allow the
24 last four pages of 148 to be used as a pedagogic- --
13:06:17 25 pedagogical device if the Government chooses to use it in that

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13:06:20 1 way.

2 Meaning, it can be shown to the jury during Agent
3 Votaw's testimony to illustrate the math he did and the
4 conclusion he reached as to income, and it could be used as
13:06:36 5 well during argument for that purpose, but it doesn't come into
6 evidence and it doesn't go into the jury room.

7 Any objections or comments from the Government on that
8 issue?

9 MR. KNAPP: Well, Your Honor, we'd obviously prefer to
13:06:49 10 have it in evidence but I understand your ruling. And I'll
11 note that we are updating -- we up -- over the lunch hour we
12 updated the second half of the chart to delete the transaction
13 where there's no exhibit listed. So that one would be taken
14 off. We do intend to show it to the jury.

13:07:09 15 I hope that that ruling still allows us to have the
16 chart inform our other summary witness Cheryl Bradley's
17 testimony about her calculation of tax liability.

18 THE COURT: Well, it seems to me what she would be
19 relying upon, if she chooses to do so, is the testimony of
13:07:27 20 Agent Votaw, which you can use the chart to help explain, but
21 it's his testimony that's the evidence, not the chart.

22 And, again, my conclusion is based on the fact that
23 putting some of the numbers in those last four pages into the
24 commission chart is not a summary of another document. It is
13:07:44 25 Agent Votaw's conclusion that it is a commission based on what

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13:07:47 1 Mr. Ricke said or based on what Mr. Barney said; and therefore,
2 it's really summarizing more than just documents, it is also
3 summarizing testimony, and the Ninth Circuit and other courts
4 have said that is not an appropriate use of a Rule 1006 chart.

13:08:07 5 MR. KNAPP: Again, I understand your ruling, Your
6 Honor. Just so the record is clear, I just want to make sure
7 the Court knows the idea behind it is that these are checks --
8 there is actually an exhibit behind it, a document that has
9 been deposited in the National Land Bank account. It is just
13:08:22 10 that the characterization of that deposit is informed by --

11 THE COURT: Well, but the chart doesn't say deposit.
12 The chart says commission payment. And the conclusion that it
13 is a commission payment is coming from more than the check. It
14 is also coming from Mr. Ricke or Mr. Barney, and it seems to me
13:08:41 15 in that respect it is purporting to summarize evidence other
16 than what is in the documents and that isn't what Rule 1006 is
17 for.

18 Now, again, I think it can be appropriately used as a
19 teaching device. I won't try to say pedagogical.
13:08:58 20 Pedagogical. I'm having trouble with that word as well. But
21 you know what I mean. It is for that purpose, and it doesn't
22 come into evidence itself.

23 MR. KNAPP: That's fine, Your Honor.

24 THE COURT: Pedagogical?

13:09:15 25 MR. KNAPP: Pedagogical.

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13:09:16 1 THE COURT: Pedagogical, is that it? Yeah, there's
2 two G's in there. I think that's it. Thank you.

3 Ms. Taylor.

4 MS. TAYLOR: I object, Your Honor, on the basis of
13:09:25 5 hearsay because Barney's dead. So -- and we did -- never did
6 verify anything.

7 THE COURT: Well, fair point. You were going to
8 confirm, I think, over the lunch hour, Counsel, that every
9 commission -- every conclusion that a payment was a commission
13:09:42 10 was based on Ricke testimony on the basis of checks that are in
11 evidence, not on hearsay from Mr. Barney. Were you able to do
12 that?

13 MR. KNAPP: Your Honor, I guess I may have -- no, I
14 think the situation is that a number of the transactions are
15 noted as private sale no escrow. Those are bank records.
16 Those are -- they're checks in there, and those have been
17 presented to Mr. Ricke, and he has testified that those were
18 for commission sales. There are other bank deposits in
19 addition to those that have other -- you know, other indicia
13:10:05 20 that they're commission checks.

21 THE COURT: Well, I guess -- and you're talking about
22 the last four pages of 148?

23 MR. KNAPP: Correct, Your Honor.

24 THE COURT: So the question I have is, are those
13:10:36 25 commission conclusions in any of those line items by Mr. Votaw

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13:10:39 1 based upon hearsay?

2 MR. KNAPP: May I have a moment, Your Honor?

3 THE COURT: Sure.

4 MR. KNAPP: Your Honor, I think the answer to your
13:11:12 5 question is, no, it's not based on hearsay. It is based on the
6 nature of the transaction, that it's issued by a title company
7 and deposited into the National Land Bank account.

8 THE COURT: Well, it seems to me what we ought to do
9 with respect to the last four pages of Exhibit 148 is this:
13:11:29 10 Without it being shown to the jury, you should question Agent
11 Votaw on each of the categories of commissions that are shown
12 in that chart. Categories meaning those that are based on
13 documents, those that are based on other evidence in the
14 transaction.

13:11:48 15 And lay the foundation that each one of those
16 entries -- I don't -- I think you can do it in groups. You
17 don't need to do it one at a time. But that every entry on
18 those four pages is based on some source that Agent Votaw
19 concludes reliable and have him say what that source is.
13:12:08 20 Whether it is other escrow documents.

21 MR. KNAPP: Okay, Your Honor.

22 THE COURT: And if I'm satisfied that there's a
23 reliable basis for the summaries that are in there, then I'm
24 going to let you use the chart at the conclusion to show the
13:12:27 25 jury what he has summarized.

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13:12:30 1 Now, I guess a question I have is whether you are
2 presenting Agent Votaw as an expert witness under Rule 702. I
3 had assumed not since he said he's not a revenue agent. So he
4 doesn't fall under Rule 703, that would allow him as an expert
13:12:46 5 to rely on hearsay. It seems to me since that doesn't apply
6 you need to establish a non-hearsay basis for his conclusions
7 that they are commissions.

8 MR. KNAPP: Certainly, Your Honor.

9 THE COURT: With that qualification and foundation,
10 I'm going to overrule the objection.

11 Now, let me address another matter before we bring the
12 jury in, briefly. The Government proffered Ms. Lilly who was
13 going to lay the foundation for, as I understand it, documents
14 that would show that Ms. Taylor did not -- that she did file
13:13:22 15 Arizona State tax returns in '97 and '98 but did not file them
16 in 2003 through 2006. Is that accurate?

17 MR. KNAPP: Yes, Your Honor.

18 THE COURT: I'm going to permit her to testify about
19 that. In the Ninth Circuit there is a four-part test for
13:13:41 20 deciding whether prior acts evidence can come in under
21 Rule 404(b). It is -- the four-part test is in a number of
22 cases, but it is summarized well in Duran, D-U-R-A-N, versus
23 City of Maywood, which is at 221 F.3d 1127 and specifically it
24 is at pages 1132 and 1133, which is a 2000 decision of the
13:14:07 25 Ninth Circuit.

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13:14:08 1 Those four elements are, number one, there must be
2 sufficient proof that the defendant committed the act that is
3 to be placed in evidence, and it seems to me testimony from a
4 custodian of records that Department of Revenue records either
13:14:22 5 show the filing of a tax return or that there was not one filed
6 is sufficient evidence to establish that fact.

7 Number two is that the events must not be too remote
8 in time. The filing of tax returns in '97 and '98 in my view
9 is not too remote in time when the years in issue here are 2003
13:14:43 10 through 2006 and, in fact, some of her evidence concerns 2003
11 through 2006.

12 The third requirement is that the evidence must be
13 admitted to prove a material issue. In this case it is
14 admitted to prove willfulness which is a material issue in the
13:15:01 15 case.

16 The fourth requirement is that if the evidence is
17 admitted on the question of intent, which I think it is because
18 it's relevant to willfulness here, then the prior-acts evidence
19 must be similar to the conduct that is at issue in the case.

13:15:20 20 And my view is that failing to file state tax returns or filing
21 state tax returns is sufficiently similar to the issues in this
22 case, filing federal tax returns, to satisfy the fourth
23 element.

24 So I think the four-part test is satisfied. Once it
13:15:37 25 is satisfied, the Ninth Circuit says I must evaluate the

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13:15:42 1 evidence under Rule 403, which Ms. Taylor mentioned at sidebar.
2 I do believe this state tax evidence is probative. I think it
3 is relevant on the issue of willfulness.

4 I do not believe that the risk of unfair prejudice
13:15:57 5 substantially outweighs its relevance, nor do I think the risk
6 of jury confusion substantially outweighs its probativeness.

7 And therefore, I'm going to overrule the objections on
8 404(b) and 403 and allow Ms. Lilly to testify on those exhibits
9 to be presented, assuming she can lay the appropriate
13:16:16 10 foundation.

11 I will note that other courts have reached the same
12 conclusion in federal tax prosecutions when it comes to state
13 tax returns. Specifically *United States versus Bok, B-O-K*,
14 which is at 156 F.3d page 157. It's a 1998 decision of the
15 Second Circuit, held that prior state tax filings were relevant
13:16:36 16 in a federal tax evasion case. So that's the basis for that
17 conclusion.

18 Now, I don't know if you're aware of this,
19 Ms. Taylor -- did you want to say something on what I've just
13:16:53 20 said?

21 MS. TAYLOR: Yes, sir.

22 THE COURT: Go ahead. Please do that.

23 MS. TAYLOR: I would object to that. Isn't there a
24 statute of limitations on the IRS where they can only go back
13:17:03 25 six years?

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13:17:04 1 THE COURT: Well, if there is a statute of
2 limitations, it applies to prosecution, not to evidence.

3 MS. TAYLOR: Wasn't this is a prosecution?

4 THE COURT: Well, the point is they couldn't -- if a
13:17:14 5 statute of limitations were to exist for six years, it would
6 mean they couldn't prosecute you for a crime any older than six
7 years.

8 Are you talking about a statute of limitations on the
9 charges in this case as opposed to the state tax returns?

13:17:27 10 MS. TAYLOR: I'm -- yeah. I'm talking about the
11 charges in this case. Isn't there a statute of limitations
12 that they can only go back six years?

13 THE COURT: I don't know. But that's an issue we
14 ought to take up when we're not keeping the jury waiting
13:17:39 15 because that goes to the overall action, not to an evidence
16 issue we're trying to address right now.

17 MS. TAYLOR: Wouldn't that prohibit her from
18 testifying or anything?

19 THE COURT: Well, if your argument is that she can't
13:17:51 20 testify because the state tax returns she will be testifying
21 about are older than the statute of limitations, then the
22 argument isn't correct because the statute of limitations isn't
23 an evidentiary rule as to what evidence can be presented. It's
24 a rule on how far the government can go back to charge somebody
13:18:08 25 with a crime. So that's not a basis for her not testifying, in

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13:18:14 1 my view.

2 If your argument is, Ms. Taylor, that this whole case
3 is too late because the years 2003 through 2006 that they're
4 prosecuting for were older than the statute of limitations,
13:18:29 5 then let's take that up at the end of the day after the jury is
6 done, and I'll leave it to you as to whether or not you want to
7 raise that.

8 MS. TAYLOR: All right.

9 THE COURT: Now, let me mention something else, and I
10 don't know if the prosecutors told you this, but during the
11 lunch hour Juror 14, I think it was, apparently came into the
12 courtroom and said, "How do I get in touch with Judge
13 Campbell?" And you said something to him, Mr. Galati?

14 MR. GALATI: Would you like me to say what it is?

13:18:54 15 THE COURT: Yeah. Please repeat what happened.

16 MR. GALATI: I was in here all by myself, pacing and
17 worrying, and in came juror -- the gentleman that sits right on
18 the end.

19 THE COURT: Juror 14.

13:19:04 20 MR. GALATI: He really looked concerned and worried
21 and upset. And he said, "How do I get in touch with Judge
22 Campbell right away?" Obviously I don't want to talk to a
23 juror but the look on his face, I thought I just can't say --
24 so I said to him, "Why don't you go into the jury room and try
13:19:18 25 to contact" -- I said, "the bailiff," I meant the courtroom

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13:19:22 1 deputy.

2 So he did go out. And then I went outside and he was
3 coming back out the door like there was nobody there and he
4 couldn't do it. So I walked down to the end of the hall,
13:19:31 5 pushed the button to your office, talked to one of your law
6 clerks, told him what the juror said. I came back in here and
7 he was -- the juror was on the phone. Then he came in, and I
8 said to him -- I told him, "Why don't you wait?" And then
9 that's all I know.

13:19:46 10 THE COURT: And that's the only exchange that occurred
11 between you and the juror?

12 MR. GALATI: Yes, sir. And --

13 THE COURT: Mr. Knapp.

14 MR. KNAPP: And, Your Honor, the same juror I believe,
13:19:54 15 when I was walking up, he said to me, "How you doing?" I just
16 kind of made a motion like this. I didn't respond. This
17 happened after Mr. Galati had the interaction.

18 And then apparently the same juror said to Agent
19 Votaw, "You got to eat lunch, right?" at some point and Agent
13:20:24 20 Votaw didn't respond.

21 THE COURT: Well, when our staff talked to Juror 14
22 after we got the message from Mr. Galati, he said there was
23 something he wanted to raise with us. So I think we ought to
24 have him come in and find out what that is.

13:20:35 25 So, Lisa, would you bring in Juror 14. Please ask the

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13:20:40 1 other jurors for their patience.

2 (Juror 14 enters the courtroom.)

3 THE COURT: Juror 14, have a seat on one of those
4 first chairs.

13:21:28 5 Go ahead and have a seat, everybody.

6 Juror 14, I was informed during the lunch hour you
7 indicated to Mr. Galati, when you came into the courtroom, you
8 wanted to try and get in touch with me and later told one of
9 our staff that there's something you felt you needed to raise;
10 is that right?

11 JUROR: Yes.

12 THE COURT: Would you explain what that is in a voice
13 so that everybody can hear your concern.

14 JUROR: I don't directly remember Sue, and I may be
13:21:55 15 mistaken, but I remember everybody else sitting back there. We
16 may have had an acquaintance.

17 THE COURT: You mean the people sitting behind
18 Ms. Taylor you remember?

19 JUROR: Pretty sure.

13:22:09 20 THE COURT: What is it you think was the acquaintance?

21 JUROR: There was a new church called The Manger on
22 Indian School and Central.

23 THE COURT: The Manger. Okay. And what do you
24 remember?

13:22:20 25 JUROR: I just remember seeing them.

DIRECT EXAMINATION - DAVID VOTAW

13:22:22 1 THE COURT: At the church?
2 JUROR: Yeah.
3 THE COURT: Did you interact with them?
4 JUROR: Not that I recall. It was when the church was
13:22:30 5 first starting so it was in -- we were in a building
6 renovation.
7 THE COURT: Okay. Do you have any other memory of any
8 interaction with anybody involved in the trial?
9 JUROR: No.
13:22:42 10 THE COURT: Do you remember ever talking with any of
11 them?
12 JUROR: No.
13 THE COURT: Do you feel that the memory you have of
14 them or the interaction you had would affect you in any way in
13:22:54 15 deliberating as a juror in this case?
16 JUROR: No.
17 THE COURT: You think you could set that aside
18 completely and not have it influence you at all?
19 JUROR: Yes.
13:23:03 20 THE COURT: Is there anything else you wanted to bring
21 up with us?
22 JUROR: No.
23 THE COURT: Have you mentioned this to any of the
24 other jurors?
13:23:08 25 JUROR: No.

DIRECT EXAMINATION - DAVID VOTAW

13:23:09 1 THE COURT: Counsel for the government, do either of
2 you have any questions for Juror 14?

3 MR. GALATI: No, Your Honor.

4 THE COURT: Ms. Taylor, do you have any?

13:23:14 5 MS. TAYLOR: No.

6 THE COURT: Okay. Why don't we have you step out for
7 a minute. Thanks for bringing that to our attention.

8 Oh, and Juror 14, could I mention one other thing
9 while you're here. When I was quizzing everybody on what you
13:23:27 10 had said, Mr. Knapp mentioned you made a friendly comment to
11 him in the hall, and he kind of went like this.

12 If you could just be rude to us and not comment to us
13 when you see us in the hall. I know that is probably not your
14 nature but we're trying to really eliminate all communications
13:23:44 15 between jurors and folks in the trial. So if you could just
16 kind of be as mum as they were when you said something to them,
17 that would be appreciated.

18 JUROR: Understood.

19 THE COURT: Okay. Thanks.

13:23:57 20 (Juror 14 exits the courtroom.)

21 THE COURT: All right. Counsel for the government,
22 your thoughts on the basis of what Juror 14 told us?

23 MR. GALATI: I'm just surprised that he looked as
24 worried and as concerned as he did in light of what the issue
13:24:16 25 is, but I don't have any basis to ask he be excused, Your

DIRECT EXAMINATION - DAVID VOTAW

13:24:20 1 Honor.

2 THE COURT: Okay.

3 UNKNOWN FEMALE: All my life, wherever I go, whatever
4 state I'm in, people come up to me and say that they know me.

13:24:39 5 I just have an average face. I finally started saying, "Well,
6 you probably recognize me because I used to do cereal

7 commercials on TV when I was kid," and they go, "That's it."

8 But it was never true.

9 MR. McBRIDE: I've never been to that church.

13:24:57 10 THE COURT: Ms. Taylor, do you have a problem with
11 Juror 14 remaining on the jury?

12 MS. TAYLOR: I think he has a problem. I don't have a
13 problem with it but I think he does have a problem. I don't
14 know if it's -- he's just wanting out or what but --

13:25:08 15 THE COURT: Why do you say that?

16 MS. TAYLOR: Well, that's a pretty flimsy excuse, I
17 think.

18 THE COURT: For what?

19 MS. TAYLOR: For somebody to come in and say, "I think
13:25:15 20 I know those people from some church or something." I mean, he
21 has never talked to them. He has never had any contact with
22 them. He admitted he hadn't talked to them and he has never --
23 you know, he just thought he had seen them. So it just sounds
24 like he's maybe not all there. I shouldn't say that, but --

13:25:37 25 THE COURT: All right. Well, my impression, listening

DIRECT EXAMINATION - DAVID VOTAW

13:25:39 1 to Juror 14, is that I can't conclude he's not all there. It
2 seems to me that he has the capability mentally to be a juror.
3 I've been watching the jury during the trial, and I haven't
4 observed or concluded that he was being inattentive. He did
13:25:58 5 indicate in response to questions he feels he can be fair and
6 impartial, so I think we should leave Juror 14 on the jury.

7 MS. TAYLOR: I would like to say one more thing.
8 Yesterday -- the other -- couple of days we've been here,
9 another friend up here -- was here, too, she's not here today,
13:26:13 10 and she told me that he eyeballed her constantly. Just
11 constantly eyeballed her. She said every time she looked over
12 that way he was eyeballing her. So I don't know --

13 THE COURT: Maybe he thought she looked familiar as
14 well.

13:26:27 15 MS. TAYLOR: Maybe.

16 THE COURT: On the basis of what I know about Juror 14
17 and what he said, I don't see a basis for excluding him from
18 the jury.

19 So we will bring the jury in and get started.

13:26:41 20 Mr. Knapp.

21 MR. KNAPP: Your Honor, if I may, would it be all
22 right to cut off Agent Votaw's testimony and briefly bring in
23 Ms. Lilly and get her out of here?

24 THE COURT: Yeah. That's fine.

13:26:51 25 MR. KNAPP: Thank you, Your Honor.

DIRECT EXAMINATION - DAVID VOTAW

13:26:51 1 THE COURT: I'll tell the jury that's what we're
2 doing.

3 (The jury entered the courtroom at 1:28 p.m.)

4 THE COURT: Thank you. Please be seated.

13:29:08 5 Thank you for your patience, ladies and gentlemen.
6 There were some legal issues and other things that I needed to
7 resolve with the parties and that's why you've been delayed,
8 and I apologize for that delay.

9 We are going to interrupt Agent Votaw's testimony for
13:29:25 10 a minute and allow Ms. Lilly to testify so she can get on and
11 off the stand and get back to her business.

12 So, Ms. Lilly, you're already under oath. If you
13 could just return to the witness stand, we would appreciate
14 that.

15 **KATHRYN LILLY,**

16 recalled as a witness herein, having been previously sworn or
17 affirmed, was examined and testified as follows:

18 D I R E C T E X A M I N A T I O N

19 BY MR. KNAPP:

13:30:10 20 Q Good afternoon, Ms. Lilly. How are you doing?

21 A Fine. Thank you.

22 THE COURT: Ma'am, could you pull that mike right in
23 front of you and we'll be able to hear you. Thank you.

24 BY MR. KNAPP:

13:30:11 25 Q Could you introduce yourself to the jury, please.

13:30:12 1 A Yes. My name is Kathryn A. Lilly.

2 Q Where do you work?

3 A I work for the Arizona Department of Revenue.

4 Q What do you do for the Arizona Department of Revenue?

13:30:19 5 A I'm the assistant to the disclosure officer.

6 Q As part of that job do you have to collect records or have
7 access to records as custodian of the Arizona Department of
8 Revenue?

9 A Yes.

13:30:34 10 Q Have you been asked to collect some records or check some
11 records for this case?

12 A Yes, I have.

13 Q Let me start off briefly with some questions about the
14 Arizona Department of Revenue. That is a state agency; is that
15 right?

16 A Yes, it is.

17 Q And it collects taxes due to the state?

18 A Yes.

19 Q So it's separate from the federal government, right?

13:30:57 20 A Yes, it is.

21 Q It's not a part of the IRS?

22 A No, it is not.

23 Q Okay. And the state taxes you collect are based on -- are
24 they based on the Internal Revenue Code or state taxes?

13:31:09 25 A It is based on the Internal Revenue Code and state law.

13:31:14 1 Q All right. Now, have you --

2 MR. KNAPP: May the witness be shown Exhibits 170
3 through 172.

4 BY MR. KNAPP:

13:31:47 5 Q Let's start with Government's Exhibit 171. Do you see
6 that?

7 A Yes, I do.

8 Q What is that?

9 A That's an Arizona Form 140 for the tax year 1997.

13:32:00 10 Q And is this a record that the Arizona Department of Revenue
11 would keep?

12 A Yes, it is.

13 Q Is it a true and accurate record --

14 A Yes.

13:32:08 15 Q -- from the Arizona Department of Revenue?

16 A Yes, it is.

17 Q Does the Department of Revenue have a duty to collect
18 Arizona state taxes?

19 A Yes, they do.

13:32:18 20 Q Do they also have a duty to maintain records of tax
21 returns?

22 A Yes, they do.

23 MR. KNAPP: Your Honor, we move for admission of
24 Government's Exhibit 171.

13:32:35 25 MS. TAYLOR: I object, Your Honor. The same earlier

13:32:38 1 objection at sidebar.

2 THE COURT: All right. That was a relevancy and
3 404(b) and 403 objection I think. I'm going to overrule those
4 objections. Exhibit 171 will be admitted.

09:25:03 5 (Exhibit 171 admitted.)

6 BY MR. KNAPP:

7 Q Ma'am, if you could take a look at Government's Exhibit
8 172.

9 A Yes.

13:33:03 10 Q Is that also an income tax return, a state income tax
11 return?

12 A Yes, it's an Arizona Form 140 for tax year 1998.

13 Q And is this a true and accurate copy of a record that the
14 Arizona Department of Records -- I'm sorry, Arizona Department
15 of Revenue maintains in its custody?

16 A Yes.

17 MR. KNAPP: All right. We move for admission of 172,
18 Your Honor.

19 MS. TAYLOR: Same objection, Your Honor.

13:33:29 20 THE COURT: Overruled for the same reason. 172 will
21 be admitted.

22 (Exhibit 172 admitted.)

23 BY MR. KNAPP:

24 Q All right. If you look at Government's Exhibits 171 and
13:33:40 25 172, let's start with Government's Exhibit 171.

13:33:46 1 MR. KNAPP: May I publish, Your Honor?

2 THE COURT: You may.

3 BY MR. KNAPP:

4 Q It's pretty difficult to read. How do you store these
13:33:55 5 things?

6 A Well, we used to store them on microfilm and microfiche. I
7 don't know exactly how this was stored, but --

8 Q If you look at the top, midway down, right-hand side, is
9 that where the -- generally speaking is that where income is
13:34:13 10 listed?

11 A Yes, it is.

12 Q So this is an income tax return for Sue Taylor, is that
13 what it says up on the top left corner?

14 A Yes, it does.

13:34:28 15 Q This is for 1997?

16 A Yes, it is.

17 Q And without getting into details there's some income
18 claimed on that form, correct?

19 A Correct.

13:34:36 20 Q If you look at Government's Exhibit 172.

21 MR. KNAPP: Which I also intend to publish to the
22 jury.

23 THE COURT: You may.

24 BY MR. KNAPP:

13:34:50 25 Q This is a little easier to read; is that right?

13:34:52 1 A Yes, much easier.

2 Q This, too, is an income tax return for Sue Taylor, correct?

3 A Yes, it is.

4 Q Notes 20 North Gilbert Road as her address?

13:35:03 5 A Correct.

6 Q This is for 1998. And it, too, has at least some claimed

7 income, correct?

8 A Correct.

9 Q Were you asked to check Arizona Department of Revenue

13:35:14 10 records for any filings from Ms. Taylor for the years 2003,

11 2004, 2005, and 2006?

12 A Yes, I was.

13 Q Did you personally do that check?

14 A Yes, I did.

13:35:26 15 Q Did you find any records?

16 A No, I did not.

17 Q No records?

18 A No records.

19 MR. KNAPP: No further questions, Your Honor. Thank

13:35:36 20 you.

21 THE COURT: Cross-examination, Ms. Taylor.

22 C R O S S - E X A M I N A T I O N

23 BY MS. TAYLOR:

24 Q Hello.

13:35:55 25 A Hello.

CROSS-EXAMINATION - KATHRYN LILLY

13:35:56 1 Q Isn't it true that Arizona gifts or revenue taxes and stuff
2 is based on the federal amount that's filed?

3 A I don't know that I understand. It is a portion. I don't
4 know that I understand the question.

13:36:27 5 Q The amount of tax that is -- that you're supposed to put on
6 your Arizona form when you fill an Arizona tax form out, isn't
7 that based on what you file on your federal return?

8 A Yes.

9 Q Okay. And if there is no tax due on the federal return,
13:36:51 10 would there be no tax due also on the state?

11 A In my position as the assistant to the disclosure officer,
12 I'm hesitant to answer -- I don't know the answer, the exact
13 answer to that question.

14 Q Who would know?

13:37:09 15 A The disclosure --

16 Q Oh. I'm sorry, you're just the custodian, right? You just
17 keep the records?

18 A Right.

19 Q All right. Who would know?

13:37:21 20 A My supervisor most likely would know.

21 Q And can you give me her name.

22 A Yes. Her name is Lisa Neuville.

23 Q Lisa?

24 A Neuville.

13:37:33 25 Q Would you spell that.

CROSS-EXAMINATION - KATHRYN LILLY

13:37:34 1 A N-E-U-V-I-L-L-E.
2 Q N-A-U --
3 A N-E-U --
4 Q Oh. N-E-U --
13:37:41 5 A -- V-I-L-L-E.
6 Q -- V-I-L-L-E.
7 MS. TAYLOR: Okay. That's all the questions I have.
8 Thank you.
9 THE WITNESS: All right.
13:37:51 10 THE COURT: Any redirect?
11 MR. KNAPP: No, Your Honor.
12 THE COURT: All right.
13 Thanks, Ms. Lilly. You can step down.
14 THE WITNESS: Thank you.
13:38:15 15 MR. KNAPP: And, Your Honor, may I recall Agent Votaw
16 to the stand.
17 THE COURT: You may.
18 MR. KNAPP: Your Honor, I have some updated charts I
19 mentioned over lunch. Can I deliver those to the court clerk
13:38:45 20 and to defense?
21 THE COURT: Yeah. Are these the last four pages of
22 Exhibit 148?
23 MR. KNAPP: Yes, Your Honor.
24 THE COURT: I think we should give them a different
13:38:53 25 exhibit number since we're going to be dealing with them

CROSS-EXAMINATION - KATHRYN LILLY

13:38:56 1 separately from the first two pages of 148. Let's just refer
2 to those first two pages as Exhibit 148 and give this chart a
3 new number.

4 MR. KNAPP: Can I call it 148A, Your Honor? Or should
13:39:07 5 I give it --

6 THE COURT: Yeah, 148A is fine.

7 MR. KNAPP: I'm going to deliver copies, if I may.

8 THE COURT: Yes, you may.

9 MR. KNAPP: All right. Agent Votaw, once I get
13:40:06 10 situated here.

11 **DAVID VOTAW,**

12 recalled as a witness herein, after having been previously duly
13 sworn or affirmed, was examined and testified as follows:

14 D I R E C T E X A M I N A T I O N (continued)

13:40:18 15 BY MR. KNAPP:

16 Q I believe when we left off, we had just talked about some
17 checks deposited into the Burning Bush Ministries' account; is
18 that right?

19 A Yes.

13:40:38 20 Q Now, let me -- I think you had testified that -- well, let
21 me just back up.

22 In the course of your investigation did you find money
23 was -- did you find money going to entities other than
24 Ms. Taylor's own personal account and the National Land Bank
13:40:56 25 account?

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:40:57 1 A Yes.

2 Q And one of those entities was Burning Bush Ministries,
3 right?

4 A That's correct.

13:41:04 5 Q And Exhibit 257 contains bank records from that account; is
6 that right?

7 I'm sorry. Did I say 257? I meant 157.

8 A I believe that's correct.

9 THE COURT: I noticed, Mr. Knapp, before lunch you
10 referred to an exhibit as 257 as well. Was that intended to be
11 157?

12 MR. KNAPP: No, Your Honor. That's an escrow account.
13 Start with that.

14 THE COURT: Okay.

13:41:33 15 MR. KNAPP: Thank you.

16 Let's start with Exhibit 257, page 30, and this is in
17 evidence so I would like to publish --

18 THE COURT: 257?

19 MR. KNAPP: 257, yes.

13:41:41 20 THE COURT: Okay.

21 BY MR. KNAPP:

22 Q I believe I showed you this. And you found this in an
23 escrow file; is that right?

24 A That's correct.

13:41:59 25 Q And then -- now I want to show you Exhibit 157, page 229.

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:42:10 1 Does that appear to be related to the exhibit I just showed
2 you, Exhibit 257, page 30?

3 A Yes.

4 Q This here is a check for \$72,000.

13:42:22 5 A That's correct.

6 Q All right. And, again, what was the -- based on your
7 review of the escrow file, what is that \$72,000 from?

8 A Well, after reviewing the escrow file and the escrow files
9 noted -- there on the check it noted that Sue Taylor had earned
13:42:43 10 \$72,000 in commission. The note indicated to the escrow

11 company to have the escrow company write -- instead of writing
12 her a check, to write a check payable to Burning Bush
13 Ministries.

14 Q And during the course of your investigation did you find
13:43:03 15 out whether Ms. Taylor had -- was a signer on the account for
16 Burning Bush Ministries?

17 A Yes. She was a signer in the name of Suzi McBride.

18 Q I'm showing you what's marked and admitted as Exhibit
19 157 --

13:43:23 20 MS. TAYLOR: Objection, Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. TAYLOR: There's no proof of that.

23 THE COURT: You can cross-examine on that. Objection
24 overruled.

25

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:43:29 1

BY MR. KNAPP:

2

Q What's been marked and admitted as Exhibit 157, page 1.

3

MR. KNAPP: I would like to publish this for the jury,
4 if I may?

13:43:35 5

THE COURT: You may.

6

BY MR. KNAPP:

7

Q Is this what you were talking about?

8

A Yes.

9

Q I'm going to zoom in on the middle. Do you see the names
10 there, one of them is Suzi McBride; is that right?

13:43:44

11

A That's correct.

12

Q And are you familiar with this kind of signature card from
13 banks?

14

A I am.

13:43:56 15

16

Q Does it basically mean someone has access to the funds in
16 the account?

17

A That's correct.

18

Q I believe you also testified that during the course of your
19 investigation you found that commissions have been diverted
20 from Ms. Taylor to a client's closing costs; is that right?

13:44:07

21

A That is correct.

22

Q Let me show you what's been admitted as Government's
23 Exhibit 222, page 11.

24

MR. KNAPP: And I would like to publish this.

13:44:23 25

THE COURT: You may.

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:44:24 1 BY MR. KNAPP:
2 Q Did you find this in an escrow file?
3 A I did.
4 Q And that says -- that's what you're talking about, right?
13:44:45 5 A Yes.
6 Q In the same file, Exhibit 222, page 10, it shows -- who is
7 the broker and who is the client?
8 A It says the buyer's broker is -- it looks like Sue Taylor's
9 signature, and it has a stamp of National Land Bank, LLC.
13:45:13 10 Q Same exhibit, page 1, who is the listed buyer on this
11 property?
12 A Herbal Research Institute.
13 Q And can you see on this page what the amount of the
14 commission would have been had it been directed to Ms. Taylor
13:45:29 15 rather than credited to Herbal Research Institute?
16 A Yes.
17 Q What is that?
18 A \$2,798.
19 Q Let's look in the same exhibit, page 8. What does that
13:45:54 20 tell you about the buyer? Do you have a name for the buyer and
21 trustee for the buyer?
22 A I do. It has the name of Herbal Research Institute and it
23 lists -- actually, it has two trustees as Desiree Saunders.
24 Q All right. Did you -- I'm going to show you Government's
13:46:23 25 Exhibit 153, page 3.

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:46:27 1 MR. KNAPP: This is also in evidence so I'd like to
2 publish.

3 THE COURT: You may.

4 BY MR. KNAPP:

13:46:31 5 Q Did you also find a bank account admitted as Government's
6 Exhibit 153 for Herbal Research Institute?

7 A I did.

8 Q I'm showing you page -- sorry. One moment.

9 I misspoke. It is supposed to be -- Exhibit 155 is
13:47:06 10 the Herbal Research Institute bank records.

11 Do you see it on your screen there?

12 A I do.

13 Q All right. Again, in the middle of the page do you see --
14 what name do you see as having signature authority on that
15 account?

16 A One Desiree Saunders and Suzi McBride.

17 Q We talked about some withdrawals and checks for cash that
18 referenced Ms. Taylor on the Peace Pipe account. Did you find
19 those for this account as well?

13:47:41 20 A Yes, I did.

21 Q I'm showing you Exhibit 155, page 528.

22 MS. TAYLOR: Objection, Your Honor. There's no
23 personal knowledge of this that has anything to do with me.

24 THE COURT: Overruled.

25

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:47:58 1 BY MR. KNAPP:
2 Q Agent Votaw, what do you see on the screen there?
3 A It's a check drawn on the account of Herbal Research
4 Institute paid to the order of cash signed by what appears to
13:48:10 5 be Suzi McBride.
6 Q Again, you've seen Ms. Taylor's signature how many times
7 during the course of this investigation?
8 A Many, many times.
9 Q You have reviewed a lot of escrow files and bank records?
13:48:24 10 A I have.
11 Q Does this look -- it says McBride rather than Taylor. Does
12 it look similar to the handwriting you've seen on Ms. Taylor's
13 signature?
14 A Based on my experience, yes.
13:48:42 15 MS. TAYLOR: Objection, Your Honor. That's still
16 hearsay.
17 THE COURT: Overruled.
18 BY MR. KNAPP:
19 Q I think we also talked about transfers between the National
13:48:49 20 Land Bank account and the Peace Pipe account. Did you find
21 those for Herbal Research Institute as well?
22 A Yes, I did.
23 Q I'm going to show you what's been marked as Government's
24 Exhibit 150, page 86.
13:49:05 25 MR. KNAPP: In evidence; I would like to publish, if I

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:49:07 1 may?

2 THE COURT: You may.

3 BY MR. KNAPP:

4 Q In your experience, what is this document?

13:49:27 5 A A checking debit memorandum. And this is drawn -- this
6 comes from the National Land Bank account, and it indicates
7 that cashier's checks were purchased and it says those
8 cashier's checks were to Herbal Research Institute. It
9 indicates a date of January '05 and the signature of Sue
13:49:52 10 Taylor. I'm sorry, the initials of Sue Taylor.

11 Q When you say it comes from the National Land Bank account,
12 is there an account number on there that tips you off?

13 A There is. This is Meridian Bank, and the middle number
14 ending in 0957 account number, that is a National Land Bank
15 bank account.

16 Q If I show you the same exhibit, pages -- 227, does that
17 appear to be one of the checks that is referenced in that debit
18 memorandum? It's a little hard to read.

19 A It is. It does say it is from National Land Bank. I'd
13:50:36 20 have to go back. You see the cashier's check ending in 2233?
21 I don't recall if that was on that previous display.

22 Q Let's go back and look.

23 A Yes. The first one that was -- the ending numbers are
24 50223.

13:51:06 25 Q Does this appear to be the second check?

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:51:08 1 A It does. All the numbers match.

2 Q Did you find in your investigation any situations where
3 Ms. Taylor didn't get a commission where she would, according
4 to the records, otherwise be due one?

13:51:27 5 A Yes.

6 Q Let me show you -- I'd like you actually -- I'd like you to
7 take a look at --

8 MR. KNAPP: May the witness be shown Government's
9 Exhibit 215, which is not yet in evidence.

13:51:47 10 BY MR. KNAPP:

11 Q Do you recognize that exhibit?

12 A I do.

13 Q What is it?

14 A This is an escrow file from Western National Title Agency,
15 Incorporated, involving a sale of property.

16 Q Did some of the pages in that exhibit -- I've got them as,
17 in part, 20 and 21. Do some of the pages in that exhibit list
18 Sue Taylor as the agent to National Land Bank and the broker of
19 the transaction?

13:52:42 20 A Yes.

21 MR. KNAPP: We move to admit Government's Exhibit 215.
22 This is one of the exhibits we spoke of pretrial but that had a
23 relevance objection.

24 MS. TAYLOR: Have you laid any foundation?

13:53:09 25 THE COURT: He's moving into evidence Exhibit 215. Do

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:53:13 1 you have an objection to that, Ms. Taylor?

2 MS. TAYLOR: Would you give me a minute, please.

3 THE COURT: Sure.

4 MS. TAYLOR: Your Honor, I object because it's
13:54:50 5 relevant -- irrelevant.

6 THE COURT: Objection is overruled. Exhibit 215 is
7 admitted.

8 (Exhibit 215 admitted.)

9 MR. KNAPP: May I publish, Your Honor?

13:55:09 10 THE COURT: Yes.

11 BY MR. KNAPP:

12 Q Agent Votaw, I'm showing you page 3 of that exhibit. At
13 the bottom right it says, "National Land Bank, LLC, Sue
14 Taylor"; is that right?

13:55:22 15 A That's correct.

16 Q What -- have you seen this kind of page before --

17 A Yes.

18 Q -- in the escrow file?

19 A Yes.

13:55:29 20 Q What is it generally?

21 A Just it gives -- in the top of the page it gives -- it
22 says, "Seller and buyer information." So it kind of gives the
23 list of the principals and lists of agents, brokers, you know,
24 people generally involved with this sale of this property.

13:55:48 25 Q And the same exhibit, page 20 and 21, those are some -- it

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:55:57 1 says Counteroffer on -- and then below that "National Land
2 Bank," correct?

3 A Yes.

4 Q Do you see -- on page 20 or 21 do you see a reference to
13:56:15 5 Ms. Taylor or National Land Bank? Other than what I just
6 pointed out to you? Specifically her as the broker?

7 A I can't read it on the screen.

8 Q Don't look at the screen. In your copies on pages 20 or 21
9 do you see that?

13:56:43 10 How about now it's on the screen.

11 A Yes. About midway through the middle of that page it says,
12 "Broker," under -- on top of the -- in parentheses, "Broker,"
13 it says, "National Land Bank, LLC."

14 Q All right. The same counteroffer lists -- can you decipher
13:57:02 15 that signature there under -- next to seller?

16 A Appears to say, "R.J. McBride, trustee."

17 Q And then below that what does it say?

18 A "260 Land Trust."

19 Actually, if you move to the right a little bit and
13:57:21 20 above, actually it says, "Sue Taylor, National Land Bank, LLC."
21 You passed it. Right there.

22 Q All right. Let me show you the same exhibit, page 23.

23 Sorry, let me show you -- is there a document in that exhibit
24 that purports to -- well, that explains whether Ms. Taylor got
13:58:21 25 any commission income from that transaction?

DIRECT EXAMINATION (continued) - DAVID VOTAW

13:58:23 1 A What was the question again?

2 Q Is there a document in that exhibit that explains whether

3 Ms. Taylor received any commission income in that transaction?

4 A It does. 10th or 11th page.

13:58:43 5 Q The page I'm showing up on the screen?

6 A That's correct.

7 Q In there it says Sue Taylor is not being paid any

8 commission on this transaction, right?

9 A Yes.

13:58:51 10 Q And the seller of the property is Highway 260 Land Trust;

11 is that right?

12 A That's correct.

13 Q Did you -- were you able to find anything, any sort of --

14 anything at all on Highway 260 Land Trust?

13:59:19 15 A No.

16 Q I'm showing you page 19 of this exhibit. This is -- in the

17 middle here it states that the Highway 260 Land Trust is the

18 transferor. Another word for seller I guess; is that right?

19 A That is correct.

13:59:44 20 Q And it lists a taxpayer identification number. Do you

21 recognize that taxpayer identification number?

22 A I do. I've seen it before.

23 Q Do you know what entity it is for?

24 A I don't recall exactly what entity, but --

14:00:00 25 Q Let me see if Exhibit 54, which is in evidence, refreshes

DIRECT EXAMINATION (continued) - DAVID VOTAW

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your recollection.

MR. KNAPP: If I may take it off the screen for a moment.

There we go. Don't -- actually -- I'm sorry. There we go.

BY MR. KNAPP:

Q Take a look at what I've put up on the screen as Government's Exhibit 55. Do you see that?

A I do.

Q All right. And go to another page. Does that refresh your recollection as to what that taxpayer identification number is for?

A Yeah, it does right there, that page.

Q Does that refresh your recollection?

A It does.

Q What is -- what -- the taxpayer identification number noted as Highway 260 Land Trust in the escrow documents, what does that correspond to?

A According to IRS records, that is associated with Burning Bush Ministries.

Q And if we go back to the escrow file itself.

MR. KNAPP: And this is in evidence, I'd like to publish to the jury.

THE COURT: You may.

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:02:13 1 BY MR. KNAPP:

2 Q Do you see any -- you see evidence in that exhibit of money

3 going to Burning Bush Ministries, correct?

4 A I do.

14:02:20 5 Q The seller and --

6 A Actually, this --

7 Q -- Highway 260 Land Trust is not one of the recipients at

8 least noted on this sheet; is that right?

9 A Right. Sorry to interrupt. This doesn't actually show --

14:02:31 10 it is not indicative of money going out. But this is a -- this

11 is instructions to the title company from R.J. McBride, trustee

12 of -- the trustee for Highway 260 Land Trust, directing the

13 escrow company on how to disburse the proceeds of the sale of

14 this property.

14:02:50 15 Q Quite correct. Thank you.

16 I was asking you some questions earlier about your

17 chart marked as Government's Exhibit 148, correct?

18 A That's correct.

19 Q And there's another -- that exhibit is now a two-page

14:03:13 20 chart. You have a four-page chart that you prepared as well;

21 is that right?

22 A I did.

23 Q Tell me about -- we've marked that as Government's Exhibit

24 148A. Tell me about that chart.

14:03:26 25 A This is a chart noting the commissions earned by Sue Taylor

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:03:31 1 from -- the years 2003 through 2006.

2 Q And you've added up totals for what you believe you found
3 to be commission income, correct?

4 A Yes, that's correct.

14:03:46 5 Q Some of those transactions are from -- some of those
6 transactions are the same ones listed in Government's Exhibit
7 148, correct?

8 A Yes.

9 Q What else is added to this one other than the ones that are
14:03:59 10 already contained in Government's Exhibit 148?

11 A There's other checks that were deposited into accounts
12 associated with Sue Taylor that did not have escrow files. I
13 couldn't find any escrow files. And so if I couldn't find the
14 escrow file, those amounts did not make it on the previous
14:04:22 15 chart or schedule.

16 Q All right. When you found these checks, were they found --
17 what bank records -- what bank account were they found in?

18 A From what I see, National Land Bank, LLC, at Meridian Bank.

19 Q And the payee on a number of these checks, some of them say
14:05:07 20 Sue Taylor but some of them also say National Land Bank; is
21 that right?

22 A The majority say a version of National Land Bank Home Land
23 and Sales or National Land Bank, just different derivations of
24 the same.

14:05:28 25 Q In your experience -- well, in your experience as a --

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:05:29 1 either accounting background or with -- or for working for the
2 Internal Revenue Service, what do you think a check written to
3 an entity like National Land Bank and deposited into an
4 entity's bank account would be?

14:05:48 5 A It would be a deposit somehow associated with that
6 business.

7 Q Probably some income generated by that business?

8 THE COURT: Excuse me. Ms. Taylor is standing.

9 Do you have an objection, Ms. Taylor?

14:06:01 10 MS. TAYLOR: Objection. Speculation.

11 THE COURT: Sustained.

12 BY MR. KNAPP:

13 Q All right. Like you said, you don't have the escrow files
14 for all of these checks in Government's Exhibit 148A, correct?

14:06:20 15 A That's correct.

16 Q But you've tallied up the totals of the checks, whether
17 they be from the transactions listed in Government's Exhibit
18 148 or the additional checks retrieved from the National Land
19 Bank account, correct?

14:06:30 20 A Yes, that's correct.

21 Q And you've put totals on each of the pages; is that right?

22 A I have.

23 Q Without characterizing it as commission income, what are
24 the total deposits that you have come up with for 2003?

14:06:48 25 A \$100,698.03 for 2003.

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:06:57 1 Q For 2004 what total did you come up with?

2 A For 2004 it's 268,504.93.

3 Q What about for 2005?

4 A \$163,966.12.

14:07:18 5 Q And tax year 2006?

6 A \$162,148.20.

7 Q And did you total it out for those four years?

8 A I did.

9 Q What's your total.

14:07:32 10 A \$695,317.28.

11 Q Now, as far as you know, do you have any reason to believe

12 any of those numbers capture proceeds from sales of real

13 estate, as opposed to some other income generated by the

14 business?

14:07:58 15 A I have no evidence of that.

16 Q Have you found evidence of proceeds of sales of real estate

17 in other accounts?

18 A Yes.

19 Q Okay. Are you familiar with C.G. Hilltop 40?

14:08:21 20 A I am.

21 Q What do you know about that?

22 A C.G. Hilltop 40 was the purchaser and seller of a piece of

23 property in Pinal County from 2004 to 2005.

24 Q And are we talking about Exhibit 160 being the purchase

14:08:41 25 file -- I'm sorry, Exhibit 160A?

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:08:48 1 A I believe that's correct.

2 Q Let me withdraw that for a moment.

3 Let me show you Government's Exhibit 160, page 6,
4 which is in evidence.

14:09:06 5 MR. KNAPP: And I'd like to publish it as well, if I
6 may?

7 THE COURT: You may.

8 BY MR. KNAPP:

9 Q Okay. What is this?

14:09:15 10 A This appears to be a cashier's check in the amount of
11 \$25,000, from March 2004, paid to the order of Fidelity Title
12 with the remitter noted as C.G.

13 Q Do you know where this cashier's check went?

14 A I do.

14:09:39 15 Q Where did it go?

16 A It went into an escrow account to purchase the 40 acres we
17 were just talking about.

18 Q The C.G. Hilltop 40?

19 A Correct.

14:09:47 20 Q I'm showing you the same exhibit, page 10. Do you know
21 what happened with that check?

22 A This cashier's check was also applied towards the title
23 escrow account of the same purchase of the property that we'll
24 call C.G. 40.

14:10:08 25 Q Okay. Now, I asked you before if you found any evidence

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:10:11 1 of -- when you were calculating your numbers earlier, when you
2 said the total deposits of 695,317.28, I asked you before if
3 that included anything that you suspected to be proceeds from
4 the sale of real estate, right?

14:10:32 5 A That's correct.

6 Q Did you find evidence of debits from the National Land Bank
7 account that appeared to be going to real estate?

8 A Yes, I did.

9 Q Did you find one for this C.G. Hilltop 40?

14:10:47 10 A I think we -- yes. I found two. At least.

11 Q Let me show you what has been marked and admitted --

12 MR. KNAPP: And I'd like to publish this as
13 Government's Exhibit 150, page 90.

14 THE COURT: You may.

14:11:07 15 BY MR. KNAPP:

16 Q That's a debit from the National Land Bank account; is that
17 right?

18 A That's correct.

19 Q What do you know about that cashier's check?

14:11:20 20 A Previously you showed me a cashier's check for \$25,000 that
21 noted the remitter was C.G. This is the source document of
22 that. This is the credit of the checking debit memo for that
23 cashier's check. So this is what we saw as what was given to
24 the title company. What we're looking at is bank records of
14:11:40 25 how that cashier's check was actually created or the funds of

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:11:43 1

that check.

2

Q So in general terms is there any connection between

3

National Land Bank and the purchase of C.G. Hilltop 40?

4

A Yes. Specifically that this cashier's check was purchased

14:11:52 5

from moneys from the National Land Bank account.

6

Q I'm showing you Government's Exhibit 257. This is an

7

escrow account relating to the ultimate sale of that C.G.

8

Hilltop 40, right?

9

A Yes.

14:12:14 10

Q And this, too, shows -- this is C.G. Hilltop 40 Trust, a

11

similar record as what we looked at before for Highway 260 Land

12

Trust, right?

13

A That's correct.

14

Q This also lists a trust identification number. Does that

14:12:33 15

number -- that string of numbers mean anything to you?

16

A It does in that it looks familiar, but I couldn't tell you

17

as to exactly which entity that goes to.

18

Q Well, first of all, were you able to find any records on

19

C.G. Hilltop 40 Trust?

14:12:46 20

A I was not.

21

Q Let me show you --

22

A Let me -- let me clarify. When you say was I able to find

23

any records. I was not able to find any records on the IRS

24

records. There were maybe public records pertaining to the --

14:13:00 25

this transaction in that county records would show that the

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:13:05 1 C.G. Hilltop 40 Trust recorded some documents. But other than
2 that, no.

3 Q Okay. Let me show you what's been admitted as Government's
4 Exhibit 49, page 3.

14:13:23 5 MR. KNAPP: And I'd like to publish this as well.

6 BY MR. KNAPP:

7 Q You see -- on the right-hand side of your screen do you see
8 that number up there?

9 A I do.

14:13:38 10 Q I'm going to go to the next page of that exhibit. Does
11 that refresh your recollection about what entity is assigned
12 that TIN?

13 A Yes, it does. On the left you see there's an excerpt taken
14 from the escrow file where the trust identification number is
14:14:06 15 noted as 68, dash, you know, et cetera. And that same number
16 is found on the right-hand side as -- what you're looking at is
17 IRS records that associate that same number with McBride
18 Musical Ministries.

19 Q But, again, were you able to find any actual tax filings
14:14:26 20 for the entity C.G. Hilltop 40 Trust?

21 A No, I was not.

22 Q Have you seen this kind of thing other times? I'll
23 withdraw that.

24 Going back to that same escrow file, do you recall
14:14:45 25 where the money on that transaction, on the sale, went? We

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:14:49 1 actually saw part of this earlier today. This is Government's
2 Exhibit 157 in evidence. This is the check we spoke about
3 earlier, right?

4 A Correct.

14:15:08 5 Q This is the commission check to Burning Bush Ministries?

6 A Yes, this is a check made to Burning Bush Ministries, the
7 source of which was the commission on the sale of this
8 property.

9 Q And what's this? This is -- I'm showing you Government's
14:15:31 10 Exhibit 157, page 226.

11 A It's a check written from Fidelity National Title Agency
12 bank account of Bank One noting the escrow number. It's a
13 check made payable to R.J. McBride, trustee of the C.G. Hilltop
14 40 Trust in the amount of \$700,000.

14:15:58 15 Q And this is deposited -- Exhibit 157 is the Burning Bush
16 Ministries account; is that right?

17 A Correct. This is from the records -- Bank of America --
18 yes, Bank of America account associated with Burning Bush
19 Ministries.

14:16:18 20 Q I'm now showing you page 225 of the same exhibit. This is
21 another check very similar, correct?

22 A Different checking -- I can tell the check number is
23 different. However, it does note the escrow account about the
24 top middle of the check, the same escrow; however, this check
14:16:36 25 is made in an amount -- made out to the amount of \$600,000.

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:16:40 1 Q So looking at these exhibits, can you say anything about
2 the proceeds of that sale by C.G. 40 Hilltop Trust?

3 A Well, this is with other documents in that escrow file, you
4 can see the disbursements go out. In the -- you know, they're
14:16:58 5 requested in this -- these amounts, and these are the actual
6 checks that get deposited into the bank account of Burning Bush
7 Ministries.

8 Q This is over \$1.3 million, correct?

9 A That's correct.

14:17:09 10 Q Between the two checks and the commission check?

11 A Correct.

12 Q Did you see anything in your investigation for the Tate
13 Road address that related to concealing the ownership interest
14 in the property?

14:17:27 15 Do you know what the Tate Road address is?

16 A I do.

17 Q What address is that? Well, I don't mean the actual street
18 address, but have you heard testimony during the course of this
19 trial about the Tate Road property?

14:17:40 20 A Yes.

21 Q Who spoke about that?

22 A I believe it was Azenith Larson.

23 Q What was her connection to Tate Road?

24 A She was the previous owner to the property, to the
14:17:50 25 residence.

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:17:50 1 Q She testified about the sale of the property; is that
2 right?

3 A She did.

4 Q And she talked about how the property is nominally
14:17:59 5 purchased by who? Do you recall?

6 A I believe it was the MMM Land Trust.

7 Q All right. Did you find records from the National Land
8 Bank account that were tied to the purchase of that property?

9 A I did.

14:18:17 10 Q I'm going to show you Government's Exhibit 150, page 116.

11 MR. KNAPP: I'd like to publish this as well.

12 BY MR. KNAPP:

13 Q Did you -- do you know what the name of Ms. Larson's
14 husband is?

14:18:34 15 A I do.

16 Q What is it?

17 A Raymond.

18 Q What is this document in front of you right now?

19 A This is another banking document showing the -- documenting
14:18:43 20 the purchase of a cashier's check and it's -- the funds -- the
21 source of the funds is from a National Land Bank account at
22 Meridian Bank, and it shows the source of the funds and then
23 the initials of the person authorizing it is S.T., who I know
24 to be Sue Taylor.

14:19:03 25 Q I'm going to show you -- note that -- CCK, is that

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:19:07 1 shorthand for cashier's check?

2 A It is.

3 Q If you could note that number, please, 4339, I'm going to
4 show you page 223 of the same exhibit. Do you see that number
14:19:19 5 up on the top right corner?

6 A I do.

7 Q So what is this -- what's this you're looking at?

8 A This is the actual cashier's check with the -- dated May
9 2004 with the remitter being MMM, paid to the order of Raymond
14:19:35 10 L. or Azenith Larson.

11 Q Now, the debit memorandum that we looked at a moment ago
12 only had I believe \$9,000 listed. Do you know what -- where
13 the rest of the \$90,000 came from?

14 A From the documents we've -- I've seen, no. I don't know.

14:19:57 15 Q In general terms, have you seen money going into -- money I
16 guess from escrow companies going in to the Peace Pipe or
17 Herbal Research Institute or Burning Bush Ministry accounts?

18 A Yes.

19 Q In general terms how much? Over 10,000? Over 100,000?

14:20:21 20 A Millions of dollars.

21 MS. TAYLOR: Objection, Your Honor. Speculation.

22 THE COURT: Overruled.

23 BY MR. KNAPP:

24 Q Based on your investigation, why do you think that some of
14:20:34 25 this is tied to Ms. Taylor rather than Mr. McBride or

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:20:42 1 Ms. Saunders?

2 A Well, as part of my investigation I tried to determine who
3 this would be attributed to, and although there was lots of
4 names associated with different entities, everything came back
14:20:54 5 to Ms. Taylor.

6 Q And did you find any evidence -- well, I mean, these are --
7 what was the nature of this income or the proceeds you were
8 seeing?

9 A It was real estate, either the commissions or sales of real
14:21:07 10 estate, and Sue Taylor had a background in real estate; whereas
11 Ron McBride and Desiree Saunders, to my knowledge, had no
12 background in either -- in the sale of real estate.

13 MS. TAYLOR: Objection, Your Honor.

14 THE COURT: Yes, ma'am.

14:21:26 15 MS. TAYLOR: That's not verified.

16 THE COURT: Well, you can cross-examine him on that.

17 BY MR. KNAPP:

18 Q There was testimony earlier that Ms. Taylor claimed to
19 represent a wealthy investor. Did you find in the course of
14:21:45 20 your investigation any evidence to indicate that Mr. McBride
21 was a wealthy investor?

22 A No, I didn't.

23 Q You were here earlier when Ms. Morgan testified?

24 A I was.

14:21:59 25 Q Did you hear about -- have you -- you also looked for tax

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:22:10 1 filings for Mr. McBride; is that right?

2 A That's correct.

3 Q You couldn't find any for the years in question?

4 A That's correct.

14:22:19 5 Q Ms. Saunders' tax returns are in evidence, right?

6 A They are.

7 Q And you've reviewed those, correct?

8 A I have.

9 Q What do you know about Ms. Saunders and her financial
14:22:30 10 situation?

11 A I know she's employed at Fry's Food and earns income from
12 working there.

13 Q And can you ballpark the amount of income that's noted on
14 her tax returns for these four years?

14:22:44 15 A For all the years in question it is between 30- and
16 \$40,000.

17 Q So, again, for Ms. Sanders, do you have any reason to
18 believe she's a wealthy investor?

19 A I didn't find any evidence of that during my investigation.

14:22:57 20 Q Did you try to get records from Ms. Saunders and
21 Mr. McBride?

22 A I did.

23 Q Well, first of all, how many entities do you suppose you
24 found in general terms that either listed Ron McBride or
14:23:10 25 Ms. Saunders or both as trustees?

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:23:15 1 A A lot.

2 Q Over five?

3 A Well over five.

4 Q Over ten?

14:23:18 5 A More than ten. I can safely say over thirty.

6 Q Between the two of them?

7 A Correct.

8 Q Did you try to get records from those trust entities?

9 A I did.

14:23:33 10 Q Did you do that before the charges in this case?

11 A I did during the investigative process.

12 Q Were you able to get any of those records before the --

13 during the investigative stage?

14 A I was not.

14:23:44 15 Q You were -- you've been the case agent on this case for

16 approximately five years, right?

17 A Yes.

18 Q Do you know when the case was charged? Do you know the

19 date of the indictment?

14:23:58 20 A I believe it was March 30th of 2010.

21 Q Okay. After the indictment in this case, did you make any

22 attempts to get records from Mr. McBride or Ms. Saunders?

23 A Yes.

24 Q And tell me about that. Did you have to personally seek

14:24:18 25 them out?

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:24:19 1 A Yes. On both of them I personally requested those
2 documents.

3 Q You personally served them with subpoenas?

4 A I did.

14:24:27 5 Q Trial subpoenas?

6 A Correct.

7 Q What happened? Were the records immediately turned over?

8 A They were not.

9 Q What did Mr. McBride and Ms. Saunders do in general terms?

14:24:41 10 A They refused to turn over the records.

11 MS. TAYLOR: Objection, Your Honor. Relevance.

12 Irrelevant.

13 THE COURT: Overruled.

14 BY MR. KNAPP:

14:24:54 15 Q You ultimately received two boxes of records; is that
16 right? One from each?

17 A Yes, that's correct.

18 Q After a number of months, is that fair to say?

19 A Yes.

14:25:05 20 Q Those have been marked but not admitted as Trial Exhibits
21 100 and 101, correct?

22 A I believe that's correct.

23 Q Have you reviewed those records?

24 A I have.

14:25:17 25 Q Do you have any reason to believe that those are -- even

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:25:18 1 after being turned over are incomplete?
2 A Yes, I do.
3 Q Tell me about that.
4 A I requested records for any entities that Ronald J. McBride
14:25:32 5 or Desiree Saunders were involved in as trustees, and I know
6 from -- during the course of my investigation I had identified
7 other entities that I didn't receive records to.
8 Q You heard the testimony of Mr. Jerry Carter; is that right?
9 A Yes.
14:25:52 10 Q He was an IRS revenue officer. He talked about trying to
11 collect some debts?
12 A That's correct.
13 Q He talked about a Higley -- Higley Road property or Higley
14 Way?
14:26:02 15 A He did.
16 Q Do you know if that -- what do you know about that property
17 today?
18 A That it's actually no longer Higley Way or Higley Road.
19 It's -- the name of the street now is Ariana Court, and the
14:26:17 20 address is 3341 Ariana Court.
21 Q And have you seen that mailing address on correspondence
22 related to this case?
23 A I have.
24 Q On what?
14:26:28 25 A On correspondence to Sue Taylor.

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:26:31 1 Q And from Sue Taylor?

2 A And from Sue Taylor.

3 Q We talked about cash and cashier's checks. I just want to
4 make sure I've covered this. How does that affect your ability
14:26:38 5 to -- to find that information?

6 A In general, people can use cashier's checks. However,
7 when -- for example, this is one of the times -- or there's
8 cashier's checks that I had identified that -- if we were to
9 create a cashier's check and the remitter is the person who
14:27:00 10 created the check, if you were to put a different entity or a
11 different name, it would be difficult to track that back
12 without going through and finding the source documents.

13 Oftentimes if there's not a bank account associated
14 with it, it is very difficult to jump back. You can always
14:27:17 15 follow it back but if you don't know the cashier's check
16 existed, then it becomes very difficult to track.

17 Q I'm going to show you Government's Exhibit 155, page 539,
18 and this is from the Herbal Research Institute account; is that
19 right? Government's Exhibit 155. Do you recall? If you don't
14:27:39 20 recall, don't worry.

21 A I don't recall.

22 Q It's in evidence.

23 What is -- what is this we're looking at?

24 A This is a check dated May of 2006 drawn on the account of
14:27:57 25 Herbal Research Institute, and it is paid to the order of Bank

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:28:00 1 of America. This account is actually in Bank of America and
2 signed by Suzi McBride to the amount of -- paid to the order in
3 the amount of 250,000.

4 Q Now, it doesn't actually say paid to the order of Bank of
14:28:16 5 America. It says B.O.A; is that right?

6 A I apologize. Yes, it says, B period, O period, A period.

7 Q But that --

8 MS. TAYLOR: Objection, Your Honor.

9 THE COURT: What's the objection?

14:28:31 10 MS. TAYLOR: No foundation, irrelevant, and
11 speculation.

12 THE COURT: Are you referring to his statement that
13 B.O.A. means Bank of America?

14 MS. TAYLOR: No. To the exhibit.

14:28:52 15 THE COURT: I think the exhibit is already admitted in
16 evidence, isn't it?

17 MR. KNAPP: Yes, Your Honor.

18 THE COURT: The exhibit is in evidence already,
19 Ms. Taylor.

14:29:03 20 MS. TAYLOR: It was a qualified admission.

21 THE COURT: Well, I don't know what you mean by that.

22 MS. TAYLOR: Can I approach?

23 THE COURT: Sure.

24 I'll tell you what. Since we're at 2:30, why don't we
14:29:24 25 go ahead and take our break, members of the jury. We will

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:29:26 1 resume at 2:45. See you then.

2 (The jury exited the courtroom at 2:30 p.m.)

3 THE COURT: Please be seated.

4 Ms. Taylor, what is it you're referring to as a
14:29:54 5 qualified admission?

6 MS. TAYLOR: Can you --

7 THE COURT: Yeah, we can do it in the courtroom now
8 that the jury is out.

9 MS. TAYLOR: It was admitted subject to linking it up,
14:30:09 10 and so far it hasn't been linked up as to no foundation laid.

11 THE COURT: Which exhibit are you referring to?

12 MS. TAYLOR: Relevance.

13 THE COURT: Which exhibit?

14 MS. TAYLOR: 155.

14:30:44 15 THE COURT: Give me just one moment.

16 Well, there have been a number of documents that have
17 been shown to witnesses I believe from Exhibit 155 besides this
18 page that I have viewed as relevant to the subject matter.

19 There hasn't been this linking up objection made at the time
14:31:49 20 but I think all of those references to portions of Exhibit 155
21 have established the relevancy of this account. This
22 Exhibit 155 is the Herbal Research Institute bank account; is
23 that right?

24 MR. KNAPP: Yes, Your Honor.

14:32:02 25 THE COURT: So objection is overruled. I do think

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:32:03 1 relevancy has been established.

2 All right. We will resume in 15 minutes.

3 (Recess taken from 2:32 to 2:46. Proceedings resumed
4 in open court with the jury present.)

14:48:24 5 THE COURT: You may continue, Mr. Knapp.

6 MR. KNAPP: Thank you, Your Honor.

7 BY MR. KNAPP:

8 Q Agent Votaw, we're almost done. I was asking you about use
9 of cashier's checks, right?

14:48:43 10 A Yes.

11 Q And I was about to show you -- this is in evidence.

12 I'd like to publish to the jury Government's Exhibit
13 155, page 539. This is -- has a Bates number, looks like 9308.

14 We started talking about this. It says it's paid to
15 the order of B.O.A. for \$250,000. Is there anything on this
16 exhibit that tells you what happened to this check?

17 A Yes.

18 Q Tell me.

19 A On the back or the bottom of this document, kind of where
14:49:16 20 the group -- right about there. It notes, "Official check
21 sale, \$250,000." And noticed that a cashier's check was
22 purchased with these funds in the amount of \$250,000.

23 Q That's what "Official check sale" means to you, in your
24 experience?

14:49:35 25 A That's correct.

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:49:36 1 Q And, again, the signature on this, do you recognize that?

2 A Yes.

3 Q Whose signature is that?

4 A Sue Taylor as Suzi McBride.

14:49:50 5 MS. TAYLOR: I object, Your Honor. That's hearsay and
6 irrelevant.

7 THE COURT: Overruled.

8 MR. KNAPP: Government's Exhibit 151, 257, I'd also
9 like to publish, same exhibit.

14:49:58 10 BY MR. KNAPP:

11 Q Checking debit memorandum, we've talked about this before.
12 What can you -- what's going on here with this transaction?

13 A Again, this is a checking debit memo. So this is the
14 top -- there's a list of quite a few cashier's checks that are
14:50:14 15 being purchased. Notice the funds are coming from Peace Pipe.
16 It's a Meridian Bank account ending 0510. The total amount of
17 all this transaction was \$508,000 roughly with the initials of
18 S.T., for Sue Taylor.

19 Q If you can look at the check numbers, try to see if you can
14:50:39 20 momentarily memorize them, I am going to show you -- I should
21 have noted this is Bates number 8271. I'm going to move to
22 page 318 of the same exhibit, which is Bates number 8332. Did
23 you happen to catch -- let me put them side by side. Do you
24 see a match there?

14:51:16 25 A Yes, I do.

DIRECT EXAMINATION (continued) - DAVID VOTAW

14:51:18 1 Q This is a -- over here on the right-hand side was the debit
2 memorandum from Peace Pipe, initial S.T. One of the checks is
3 over here on the left-hand side. I don't know if you can see
4 much for the "remitter" or the "paid to the order of" on the
14:51:35 5 screen.

6 A I can't see. Paid to the order is Fidelity Title. I know
7 that to be Fidelity Title Agency.

8 Q And it's a significant amount, right?

9 A \$130,000.

14:51:47 10 Q Now, just to sum it up, in your experience as an accountant
11 and as an IRS agent, does Ms. Taylor conduct her business
12 affairs or financial affairs in a normal way?

13 A No, she does not.

14 MR. KNAPP: No further questions, Your Honor.

14:52:09 15 THE COURT: Cross-examination, Ms. Taylor.

16 C R O S S - E X A M I N A T I O N

17 BY MS. TAYLOR:

18 Q Hi, Mr. Votaw.

19 A Hello.

14:52:59 20 Q You said, to start with, that there was a statute that you
21 had to work under. Would you mind telling me what that statute
22 was?

23 A One of the statutes in this case is from United States Code
24 Title 26, Section 7201.

14:53:35 25 Q And you were -- one of your jobs is to prove that I had

CROSS-EXAMINATION - DAVID VOTAW

14:53:40 1 income; is that correct?

2 A One of my jobs is to investigate potential -- potential
3 violations of Internal Revenue Code and relevant financial
4 crimes.

14:53:56 5 Q I didn't ask that question. I said, was it your job to
6 determine if I had income?

7 A Yes.

8 Q Okay. Can you define what the word "income" is?

9 A No, but I've seen it in a dictionary.

14:54:17 10 Q As by code can you define what "income" is?

11 A I don't know what you mean by that.

12 Q As you're working under Title 26 under the statutes, there
13 are statute codes that define what the word "income" means.
14 Can you define that?

14:54:36 15 A If you want us to -- there's sections of the United States
16 Code that talk about -- and, again, I'm not an attorney but
17 there's gross income and taxable income I believe are defined
18 in the United States Code.

19 Q The term "income," is that defined particularly, distinctly
14:55:03 20 in the Title 26?

21 MR. KNAPP: Objection. Relevance. And I also note
22 the witness has not testified about tax liability. That's
23 coming up next.

24 THE COURT: Objection sustained.

25

CROSS-EXAMINATION - DAVID VOTAW

14:55:23 1 BY MS. TAYLOR:

2 Q Can you answer that?

3 THE COURT: No. I sustained the objection,
4 Ms. Taylor.

14:55:30 5 MS. TAYLOR: Oh. Okay. Rephrase it. Okay.

6 BY MS. TAYLOR:

7 Q Is all money income?

8 A No, I have money in my pocket and it's not income.

9 Q So you would agree, then, that there are moneys that people
10 may acquire or have that is not income?

11 MR. KNAPP: Objection, Your Honor. Same objection.

12 THE COURT: Relevancy is your objection?

13 MR. KNAPP: Yes, Your Honor.

14 THE COURT: For purposes of cross-examination?

14:56:06 15 MR. KNAPP: Yes, Your Honor. I mean, the witness did
16 not testify about tax liability.

17 THE COURT: The objection is sustained.

18 You are going to have a witness on that issue, right,
19 Mr. Knapp?

14:56:22 20 MR. KNAPP: Yes, Your Honor.

21 THE COURT: All right. Sustained.

22 BY MS. TAYLOR:

23 Q Then you do agree that there is a difference between
24 taxable income and nontaxable income from just what you've said
14:56:36 25 about having money in your pocket that's not taxable?

CROSS-EXAMINATION - DAVID VOTAW

14:56:40 1 MR. KNAPP: Same objection, Your Honor.

2 THE COURT: I think that's the same question

3 rephrased. I'm going to sustain the objection.

4 BY MS. TAYLOR:

14:56:55 5 Q Is it a crime to earn income? Yes or no?

6 A No. It's my opinion that it's not.

7 Q Have you read any of the Supreme Court cases that give the
8 definition of income and also say that there's no tax on labor?

9 MR. KNAPP: Objection. Relevance.

14:57:26 10 THE COURT: Sustained.

11 BY MS. TAYLOR:

12 Q All right. You have talked in great detail about Burning
13 Bush Ministries and Herbal Research Institute. Do you know
14 what kind of corporations those are?

14:58:03 15 A Corporations?

16 Q Did you not know they were corporations?

17 A I did.

18 Q You did?

19 A (Witness nods.)

14:58:11 20 Q Do you know what kind they are?

21 A Corporations out of Nevada.

22 Q Do you know what the status of them are -- is?

23 A As of today? No, I don't.

24 Q So you weren't aware they were nonprofit corporations?

14:58:30 25 A I don't know the -- what status nonprofit -- as far as the

CROSS-EXAMINATION - DAVID VOTAW

14:58:34 1 tax consequences of what these corporations are? No.

2 Q Well, just taking into consideration the name of McBride
3 Musical Ministries or Burning Bush Ministries, would that give
4 you an indication that perhaps they had something to do with
14:59:03 5 religious organizations?

6 A On the veneer or the outside, by looking at it on paper,
7 yes, it would appear so.

8 Q Is it not true that a person can take a vow of poverty when
9 serving the Lord and give all of their worthy belongings to
14:59:28 10 the church?

11 MR. KNAPP: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: What was the question? Is it possible?

14 BY MS. TAYLOR:

14:59:38 15 Q Yes. Is it possible that a person could take a vow of
16 poverty and do nothing but to serve the Lord and give
17 everything they earn and make to the Lord?

18 A Sure. It's possible.

19 Q This is -- that's why these corporations were formed, in
15:00:12 20 case you didn't know.

21 THE COURT: Ms. Taylor, this isn't the time for you to
22 testify. It's for you to ask questions.

23 MS. TAYLOR: Yes, sir.

24 BY MS. TAYLOR:

15:00:29 25 Q You stated you thought -- in your opinion that you thought

CROSS-EXAMINATION - DAVID VOTAW

15:00:35 1 that Ron or Desiree, whom both have these nonprofit religious
2 organizations, didn't have the means to buy property or
3 purchase property, but yet you stated also that you found
4 moneys in their accounts. Was that just your opinion or is
15:00:58 5 that an actual evidential fact that these individuals would not
6 be able to purchase property on their own?

7 A It's based on my observations.

8 Q So it's just your opinion?

9 A I would say it's fact.

15:01:19 10 Q And what factual basis -- do you have evidential factual
11 basis to prove that that is so?

12 A The fact that neither of these people earned a substantial
13 income, that one didn't work at all, one was a scanner at night
14 for Fry's -- Fry's Food -- Fry's department store. Based on my
15:01:49 15 experience, if you had millions and millions of dollars going
16 in and out of accounts, people wouldn't -- people don't work as
17 a scanner at Fry's Food when you have millions of dollars.

18 Q Are you saying that everybody that may have a few bucks
19 never gets bored maybe and wants to go to work for one reason
15:02:10 20 or another?

21 A No. This was just based -- one of the -- some of the
22 evidence that I found that these were not the case of these
23 ministries.

24 Q So this is not really evidence, this is your opinion?

15:02:21 25 A I spoke to people closely related to you who told me this.

CROSS-EXAMINATION - DAVID VOTAW

15:02:26 1 Q So that's hearsay?

2 A That's --

3 Q Isn't that hearsay if you talk to somebody else and they
4 tell you how the -- what proof do they have?

15:02:38 5 A It just corroborated what I had already discovered.

6 Q What your opinion discovered?

7 A Yes.

8 Q All right. I know people that have -- I mean, for
9 instance, a man -- there's people that just go to work for
10 Wal-Mart or take just odd jobs, and it's not because they're
11 broke, you know. Wouldn't you agree that there's a lot of
12 people out there and -- that just take odd jobs and just work
13 for one reason or another. Some of them get caught up in it
14 when they're early but it doesn't mean they're broke. Wouldn't
15:03:19 15 you agree that a person doesn't have to be broke to work
16 somewhere at another job?

17 A Is that a question?

18 Q Yeah, I'm sorry, maybe I didn't say it too correctly.
19 There's a lot of -- a retired person might take a job
15:03:39 20 just -- and he has money. Wouldn't you agree that he would --
21 you know, that people do take jobs and they do have money? I
22 guess that's the question.

23 A Sure, it's possible.

24 Q In your -- I don't know if you have any experience in this
15:03:57 25 or not, but is it your belief that most pastors do not work,

CROSS-EXAMINATION - DAVID VOTAW

15:04:02 1 they just work for the church?

2 A That's not my experience, no.

3 Q Well, I -- I agree there probably are some pastors that

4 hold down jobs, too. But there are a lot of pastors that are

15:04:18 5 full time for their church?

6 A I imagine my -- my pastor is not. He holds a full-time job

7 so I don't know about other people's pastors.

8 Q So it could go either way, right? They could work or they

9 could not work?

15:04:31 10 A Sure.

11 Q Right?

12 A Yes.

13 Q Okay. Would you -- excuse me just a minute.

14 Are you saying the tax statutes in Title 26 that you

15:05:23 15 are -- that you mentioned earlier, are they -- in the United

16 States Code, are they obligatory on me? Am I -- are they

17 obligated -- am I obligated to them? Obligatory.

18 A These are United States Code, so anyone who lives in the

19 United States I believe that would be correct.

15:05:54 20 Q So is your answer, yes, they are obligatory on me?

21 A In my opinion.

22 Q In your opinion?

23 A I'm not a lawyer so I don't know.

24 Q In your opinion.

15:06:04 25 Do you know and understand how and why a legal

CROSS-EXAMINATION - DAVID VOTAW

15:06:08 1 obligation is created?

2 MR. KNAPP: Objection. Relevance and calls for an
3 opinion -- legal opinion.

4 THE COURT: Sustained.

15:06:21 5 BY MS. TAYLOR:

6 Q So is it your belief that I am liable to any statute in
7 Title 26?

8 MR. KNAPP: Objection. Same objection.

9 THE COURT: Sustained.

15:06:59 10 MS. TAYLOR: It's hard to get some laws in here to
11 figure this out, Judge. I think the jury should know these
12 laws.

13 THE COURT: Ms. Taylor, this isn't the time for you to
14 argue that. You and I have had extensive discussions about
15 this outside of the hearing of the jury. This time is the time
16 for you to cross-examine this witness on the facts relevant to
17 the case.

18 MS. TAYLOR: Yes, Your Honor.

19 BY MS. TAYLOR:

15:07:28 20 Q You mentioned something about me being in the United
21 States -- was my last question. Do you know for sure that I am
22 a United States citizen?

23 A I don't know your status right now, no.

24 Q Would the code -- 'pecifically doesn't it apply just to
15:08:01 25 United States citizens?

CROSS-EXAMINATION - DAVID VOTAW

15:08:07 1 A I don't believe that's correct. If someone was coming from
2 another country and committed a crime, they'd be subject to the
3 code as well.

4 Q I'm talking about the tax code.

15:08:16 5 A All codes. All United States codes.

6 Q So you think that all United States codes apply to the
7 citizens -- to every citizen that lives here? Every citizen
8 that is -- what is your definition of the United States?

9 MR. KNAPP: Objection. Relevance and calls for a
10 legal opinion.

11 THE COURT: Sustained.

12 BY MS. TAYLOR:

13 Q You mentioned that my mailing address was at the Higley
14 house, and you said you had seen documents there. Have you
15 also noticed on those documents that it says it is just a
16 mailing address only and not my residence?

17 A No.

18 Q Were you referring to court documents that have been
19 submitted back and forth? Was that not what you --

15:09:27 20 A Some of those documents were court documents.

21 Q And you've never seen that on any of my documents?

22 A What are you referring to?

23 Q Where my name and my address is, and it says 'pecifically
24 that it is a mailing address and not my residence or domicile.

15:09:44 25 A It may say that.

CROSS-EXAMINATION - DAVID VOTAW

15:09:46 1 Q Okay. So wouldn't that give you an indication that that's
2 a mailing address only and that is not my residence?

3 A I don't know what it is now, but I know at one time it was
4 your residence.

15:10:01 5 Q Correct. It was my residence at one time. But it's not my
6 residence today.

7 THE COURT: You need to ask questions, Ms. Taylor.

8 BY MS. TAYLOR:

9 Q Do you know if this income -- do you know if -- is it a --
15:10:27 10 is it a crime to donate money to churches?

11 A I hope not.

12 Q Is it a crime to give any earnings that a person might come
13 into with -- into contact with or any moneys that a person
14 might come into contact with, is it a crime to give that out to
15 anybody at any time if they would want to give it out to them?

16 A It depends.

17 Q Are we in a free society as Americans to where we can
18 purchase what we want, live where we want, earn what we want,
19 as Americans? Are we in a free society where that's
15:11:28 20 available -- where we're available to do that?

21 A I didn't quite get that. There's lots of questions. I
22 didn't quite --

23 Q I'm sorry, let me break it down.

24 As a free society of Americans, are we -- are we
15:11:44 25 allowed to go out and make a living for ourselves?

CROSS-EXAMINATION - DAVID VOTAW

15:11:51 1 A Yes, I believe so.

2 Q Okay. And are we a free American society which is not
3 considered -- let me rephrase that.

4 Is the income tax laws voluntary or mandatory?

15:12:17 5 MR. KNAPP: Objection. Relevance and calls for a
6 legal opinion.

7 THE COURT: Sustained.

8 BY MS. TAYLOR:

9 Q Well, don't you work for the IRS? Wouldn't you know --

15:12:29 10 THE COURT: I sustained the objection. That means you
11 can't ask the question.

12 MS. TAYLOR: Okay.

13 BY MS. TAYLOR:

14 Q Are we free to -- you've said we're free to go and earn a
15 living in this society. You said that, right?

16 A It's a very vague question and I agree --

17 Q Are we free to go out there and make a living and bring
18 earnings into our possession?

19 A I don't understand what you mean, bring earnings into your
15:13:10 20 possession.

21 Q Well, if we go and work, are we free, as an American
22 society, to pursue life and liberty and go out to make a living
23 for ourselves to support ourselves?

24 A Absolutely.

15:13:24 25 Q All right. And is there any law that says we can't do

CROSS-EXAMINATION - DAVID VOTAW

15:13:28 1 that?

2 A Not that I'm aware of.

3 Q Would it be slavery -- in your opinion, would it be

4 slavery -- you do know what the 13th Amendment is, right, of

15:13:43 5 the Constitution?

6 A I'm familiar with it.

7 Q Would it be considered slavery if someone told us that we

8 had to give them a portion of our earnings?

9 A I don't understand what you mean.

15:13:57 10 Q Could it be considered slavery if somebody told us that we

11 had to give -- we went out and worked, had a little bit of

12 money, and somebody come along and said, you know, "I'm glad

13 you made that much money, now give me -- give it to me." Could

14 that be considered slavery?

15:14:16 15 MR. KNAPP: Objection.

16 BY MS. TAYLOR:

17 Q "Give me a portion of it."

18 MR. KNAPP: Objection. Relevance. Calls for a legal

19 opinion.

15:14:22 20 THE COURT: Sustained.

21 BY MS. TAYLOR:

22 Q Is your job salary or commission?

23 A Salary.

24 Q Do you get paid weekly or monthly?

15:14:55 25 A Biweekly.

CROSS-EXAMINATION - DAVID VOTAW

15:14:58 1 Q Does it vary upon your ability to -- of clients, how many
2 clients you have?

3 A What do you mean by "clients"?

4 Q People you're examining or you're working with.

15:15:13 5 A I don't get paid any differently whether I get -- the
6 amount of my caseload or success rate or -- there's no link
7 between my salary and anything.

8 Q So if you had a -- if you had a bigger load of clientele,
9 you wouldn't get paid any more than your normal salary?

15:15:41 10 A When you say "clientele" --

11 Q I call them clientele.

12 A -- the cases? Okay, yeah, there's no effect.

13 Q Have you ever received any compensation over and above your
14 regular pay for any bonuses? Any --

15:15:58 15 MR. KNAPP: Objection. Relevance.

16 THE COURT: Sustained.

17 MS. TAYLOR: One moment, please.

18 BY MS. TAYLOR:

19 Q So if you had income coming in, it would have to be
15:17:00 20 determined whether or not it was taxable; is that correct?

21 A That's correct.

22 Q And what determines that taxability?

23 MR. KNAPP: Objection. Relevance and calls for expert
24 opinion.

25

CROSS-EXAMINATION - DAVID VOTAW

15:17:25 1 BY MS. TAYLOR:

2 Q Aren't you --

3 THE COURT: Hold on just a minute, Ms. Taylor.

4 I'm going to overrule that objection.

15:17:30 5 Go ahead.

6 THE WITNESS: What was the question again, I'm sorry?

7 BY MS. TAYLOR:

8 Q I was asking you if you -- if you had income and if it
9 would be determined -- it would be -- is income -- all income
15:17:56 10 taxable or not, and then you said it was -- not all income was
11 not taxable, and so I asked you what would make it taxable.

12 THE COURT: Well, why don't you just reask the
13 question.

14 MS. TAYLOR: Wasn't that what I asked?

15:18:15 15 THE COURT: That was confusing. Just ask the question
16 you'd like him to answer now.

17 MS. TAYLOR: Okay.

18 BY MS. TAYLOR:

19 Q What would make your income taxable?

15:18:24 20 MR. KNAPP: Same objection, Your Honor.

21 THE COURT: If he can answer, I'm going to allow him
22 to answer.

23 THE WITNESS: I guess all moneys would be
24 considered -- all income is taxable.

25

CROSS-EXAMINATION - DAVID VOTAW

15:18:40 1 BY MS. TAYLOR:

2 Q Do you have a 'pecific code or statute that says all -- did

3 you use the word "moneys" or "income"? Is taxable? Do you

4 have one you can point to?

15:18:58 5 A It's in the United States Code.

6 Q Well, that's 50 titles. Any 'pecific one?

7 A Title 26.

8 Q Any 'pecific section in Title 26?

9 A Again, I'm not an attorney, but I believe in Section 61 of

15:19:13 10 that code it talks about gross income, and then the government

11 allows you certain deductions so you would get all the -- your

12 income, all your moneys, anything you gained minus any

13 deductions you're allowed by the government, and then another

14 section, I believe it is Section 63 of the code, then defines

15:19:33 15 that as your taxable income.

16 MS. TAYLOR: Your Honor, can I read those sections? I

17 have them here.

18 THE COURT: No. That's not relevant. You're here to

19 ask questions, not to read sections of the code.

15:19:46 20 MS. TAYLOR: Well, his interpretation was not correct,

21 so --

22 THE COURT: Well --

23 MS. TAYLOR: -- can't I --

24 THE COURT: -- we can talk later.

15:19:56 25 MS. TAYLOR: -- read to the jury what it actually

CROSS-EXAMINATION - DAVID VOTAW

15:19:57 1 says?

2 THE COURT: No. As I told you, Ms. Taylor, this
3 portion of the trial is to present facts. We're not arguing to
4 the jury what the law is. The jury isn't going to decide what
15:20:06 5 the law is. The jury is going to decide what -- the facts, and
6 I'm going to instruct them on the law.

7 If you want to make legal arguments to me when the
8 jury is not here, we can do that again. But the purpose of
9 this cross-examination is for you to cross-examine him on the
15:20:21 10 facts that are relevant to this case and that he's testified to
11 or others, other facts, you think are relevant.

12 MS. TAYLOR: Well, he has brought forth these sections
13 and this code saying this is what makes them taxable.

14 THE COURT: Well, I let you --

15:20:38 15 MS. TAYLOR: And he's talking about my income.

16 THE COURT: I let you ask those questions generally.
17 But if the purpose of those is for you to start delving into
18 the law and having you read sections of the code to the jury or
19 have the jury decide what the code means, that is not the
15:20:53 20 proper role of the jury, as we've discussed at length.

21 You need to confine your questions to relevant facts.
22 So I'm not going to have you read the sections of the code and
23 start making statements or asking questions about the law.
24 Let's focus on the facts.

15:21:09 25 Your next question, please.

CROSS-EXAMINATION - DAVID VOTAW

15:21:13 1 BY MS. TAYLOR:

2 Q Well, wouldn't it be a fact that not all income is taxable?

3 A What do you mean by that?

4 Q Isn't it a fact that not all income is taxable?

15:21:37 5 A I would say all income is taxable.

6 Q And that's your opinion because you -- and is that your

7 opinion or is that -- or is that a fact?

8 A It's my opinion.

9 Q Okay. If the code were to say different, then that's only

15:21:56 10 just your opinion? Just so the jurors know that --

11 A Right. As I expressed before, I'm not an attorney. I've

12 looked into this and there's a section that talks about taxable

13 income, and I tried to recite what I knew that to be. That's

14 my opinion. Again, I'm not --

15:22:13 15 Q Wouldn't it -- wouldn't you be required in your job and

16 your job description, wouldn't -- doesn't some of your

17 supervisors explain to you what is taxable and what's not

18 taxable? When you're going out and looking for people's income

19 like you said you did?

15:22:38 20 A Right. And in general terms, like, for example, someone

21 who is to gift you some money, that could happen and that could

22 maybe be -- no, I guess that wouldn't even be considered

23 income. So I'm trying to think of a time that income wouldn't

24 be taxable. So I can't think of a time that -- if someone

15:22:53 25 earned income, you get that income minus any deductions, and

CROSS-EXAMINATION - DAVID VOTAW

15:22:58 1 that's what you're taxed on.

2 Q That's your opinion?

3 A That's my opinion.

4 Q And your supervisors have not explained to you any
15:23:09 5 difference of what is income and what isn't income?

6 A It's not been a --

7 Q Or is that just left up to you to find out on your own?

8 A No. Income is -- income is income. It's what you get for
9 any wages you earn, anything you do. We all earn wages. We
15:23:28 10 all, you know -- I have read it before, and it talks about
11 specifically commissions, you earned commissions so commissions
12 is stated in there. And so I think there are some exclusions,
13 but I'm -- again, I'm not familiar with any exclusions.

14 Q So basically what you're saying is there is a factual
15:24:32 15 difference between income and taxable income?

16 A I believe I said there is a difference between gross income
17 and taxable income.

18 Q Do you know what the definition of "gross income" is?

19 MR. KNAPP: Objection. Relevance and 403 and calls
15:24:45 20 for a legal opinion.

21 THE COURT: Sustained.

22 Ms. Taylor, we've spent about 20 minutes with you
23 asking different questions about what is or is not income and
24 what the law is. As I've indicated, the purpose of this
15:24:57 25 examination is not to address the law. It's to address the

CROSS-EXAMINATION - DAVID VOTAW

15:25:00 1 facts. I'm going to ask you to move on to another subject
2 beyond your questions about the legal meaning of income or
3 gross income or taxable income.

4 MS. TAYLOR: Well, geez, Your Honor, are you trying to
15:25:12 5 limit my defense here? I mean, I'm only trying --

6 THE COURT: Ms. Taylor, move on to a factual subject.

7 BY MS. TAYLOR:

8 Q Okay. Is it a fact that I'm a resident here?

9 A Where's "here"?

15:25:43 10 Q United States. Arizona.

11 A From what I've gathered, you resided here in Arizona, yes.

12 Q And you base that on what?

13 A The fact that you're earning income in Arizona all
14 throughout the years I was investigating you.

15:26:07 15 Q Okay. So that makes me a resident?

16 A A resident of Arizona?

17 Q Yes.

18 A Again, I don't know your legal residency of Arizona status.

19 Q Would I have an obligation to pay taxes on income if I were
15:27:01 20 not in this State of Arizona?

21 MR. KNAPP: Objection. Relevance and calls for a
22 legal opinion.

23 THE COURT: Sustained.

24 BY MS. TAYLOR:

15:27:15 25 Q Well, can a person earn income within or without the United

CROSS-EXAMINATION - DAVID VOTAW

15:27:29 1 States?

2 MR. KNAPP: Objection. Relevance and calls for a
3 legal opinion.

4 THE COURT: Sustained.

15:27:38 5 MS. TAYLOR: Well, I guess you jurors are just going
6 to have to ask the Judge questions --

7 THE COURT: Excuse me. Ms. Taylor, this is not the
8 time for you to argue to the jurors. Do you have any
9 additional questions for the witness?

15:27:48 10 MS. TAYLOR: No, not at this time.

11 THE COURT: All right. Any redirect?

12 MR. KNAPP: Briefly, Your Honor.

13 R E D I R E C T E X A M I N A T I O N

14 BY MR. KNAPP:

15:28:00 15 Q Agent Votaw, you're a criminal investigator, right?

16 A That's correct.

17 Q You know something about taxes because you work for the
18 IRS, right?

19 A That's true.

15:28:07 20 Q You also have an accounting background?

21 A I do.

22 Q Nevertheless, have you ever worked for the IRS as a revenue
23 agent?

24 A I have not.

15:28:14 25 Q Have you ever worked for the IRS in any capacity where

REDIRECT EXAMINATION - DAVID VOTAW

15:28:16 1 you're assigned to calculate someone's tax liability
2 accurately?

3 A No.

4 Q You were asked by Ms. Taylor whether you -- I believe you
15:28:24 5 were asked whether you knew whether she was a United States
6 citizen. Now, I'm going to show you what's been marked for
7 identification as Government's Exhibit 181. Do you recognize
8 that?

9 A I do.

15:28:57 10 Q What is that?

11 A It's a photocopy of a passport.

12 Q Do you -- where did you -- do you recognize this particular
13 exhibit?

14 A Yes, I do.

15:29:08 15 Q Where did you find this photocopy?

16 A In Sue Taylor's trash.

17 Q Where?

18 A At 1931 South Tate in Casa Grande.

19 Q That's the same property that we heard earlier was titled
15:29:18 20 to MMM Land Trust?

21 A Right. With Desiree Saunders as trustee.

22 MR. KNAPP: Okay. Move to admit Government's Exhibit
23 181.

24 THE COURT: Is there an objection, Ms. Taylor?

15:29:34 25 MS. TAYLOR: Yes, I object.

REDIRECT EXAMINATION - DAVID VOTAW

15:29:37 1 What were you trying to prove?

2 THE COURT: No. You need to tell me if there's an
3 objection to the exhibit.

4 MS. TAYLOR: Yes, I do object.

15:29:44 5 THE COURT: The basis for the objection?

6 MS. TAYLOR: Basis for the objection is, this is just
7 a passport. It has -- it's not no proof of my being a resident
8 in the United States. It's just a passport. Of America.

9 THE COURT: That's not a legal objection. Do you have
10 a rule of evidence basis for objecting?

11 MS. TAYLOR: Irrelevant and hearsay and lack of
12 foundation.

13 THE COURT: Sustained on lacking foundation.

14 MR. KNAPP: May the witness be shown the actual
15 Exhibit 181.

16 BY MR. KNAPP:

17 Q Do you recognize that as being -- is that a true and
18 accurate copy of the -- is that a true and accurate copy of the
19 copy of the passport you received -- sorry, let me back up.

15:30:49 20 What is that?

21 A This is a piece of paper I pulled out of the trash can at
22 1931 South Tate. It is a color photocopy of what appears to be
23 a United States of America passport.

24 Q Does it look the same as it did when you pulled it from
15:31:05 25 Ms. Taylor's property?

REDIRECT EXAMINATION - DAVID VOTAW

15:31:08 1 A Yes.

2 MR. KNAPP: Move to admit.

3 THE COURT: Ms. Taylor?

4 MS. TAYLOR: I object.

15:31:15 5 THE COURT: And the basis?

6 MS. TAYLOR: It lacks foundation, irrelevant, and
7 hearsay.

8 THE COURT: What's your response on hearsay,
9 Mr. Knapp?

15:31:28 10 MR. KNAPP: Your Honor, I guess at the very least it
11 does seem like it would be an admission, it is signed by
12 Ms. Taylor.

13 It also -- well, it also just by the mere existence of
14 it proves the fact rather than what's stated on the form,
15 although I do intend to ask what's stated on the form.

15:31:51 16 THE COURT: I think we ought to take this up outside
17 of the hearing of the jury, and I don't want to keep them
18 waiting for another sidebar. So let's talk about it at the end
19 of the day, and you can come back to it if I decide it's
20 admissible.

21 MR. KNAPP: Certainly, Your Honor.

22 THE COURT: Any further redirect?

23 MR. KNAPP: No, Your Honor. That's it.

24 THE COURT: All right.

15:32:12 25 You can step down.

REDIRECT EXAMINATION - DAVID VOTAW

15:32:34 1 Mr. Galati, your next witness.

2 MR. GALATI: Your Honor, we call Cheryl Bradley.

3 THE COURT: All right. Ms. Bradley, would you come to
4 the witness stand, please.

15:32:54 5 Yeah, you're already under oath so you can come back
6 directly to the witness stand.

7 **CHERYL BRADLEY,**

8 recalled as a witness herein, after having been previously duly
9 sworn or affirmed, was examined and testified as follows:

15:33:04 10 MR. GALATI: May I proceed, Your Honor?

11 THE COURT: You may.

12 MR. GALATI: Your Honor, before I do, we reconstituted
13 Exhibit 149. I believe I gave it to Ms. Richter with a copy
14 with a little sticky note on it saying "for the Judge" to
15 replace what you had previously.

16 THE COURT: I've got it.

17 MR. GALATI: Thank you, Your Honor.

18 THE COURT: Thank you.

19 D I R E C T E X A M I N A T I O N

11:19:00 20 BY MR. GALATI:

21 Q Ms. Bradley, you were here yesterday. I don't want to go
22 through all the foundational stuff with you once again, but
23 tell the ladies and gentlemen your name one more time, please.

24 A Cheryl Bradley.

15:33:33 25 Q And you work for the IRS?

DIRECT EXAMINATION - CHERYL BRADLEY

15:33:34 1 A Yes, I'm a revenue agent.

2 Q And how long have you worked there?

3 A 23 1/2 years.

4 Q Today we're going to talk about calculations of tax due and

15:33:44 5 owing.

6 A Okay.

7 Q You know what that means?

8 A Yes.

9 Q Tell the ladies and gentlemen what that means.

15:33:51 10 A It means that somebody had income, and I computed the tax

11 due and owing.

12 Q During your 20-plus years with the IRS how many times have

13 you done that?

14 A Thousands.

15:34:05 15 Q And under what circumstances are you called upon to do

16 that?

17 A Both for examinations of returns and for assisting criminal

18 investigation and in trial preparation.

19 Q And have you -- and with regard to assisting criminal

15:34:20 20 pros- -- investigations and trial preparation, have you done

21 that before?

22 A Yes.

23 Q How many times do you think you've done that?

24 A Six.

15:34:28 25 Q And have you testified in court all those times?

DIRECT EXAMINATION - CHERYL BRADLEY

15:34:31 1 A Yes.

2 Q And you've testified in court as to taxpayer -- the amount
3 that a taxpayer had due and owing to the Internal Revenue
4 Service --

15:34:42 5 A Yes.

6 Q -- pertinent to that case?

7 A Yes.

8 Q I want to ask you, have you had any sort of specialty with
9 regard to self-employed small businesses?

15:34:57 10 A Yes.

11 Q And, again, it may be self-evident but would you tell the
12 jury what that means.

13 A Self-employed, a person works for themselves, they don't work
14 for another company.

15:35:10 15 Q How small is a small business?

16 A As small as they go.

17 Q All right. For the record, you testified yesterday,
18 correct?

19 A Yes.

15:35:20 20 Q Up until the time you testified yesterday, you were outside
21 the courtroom; is that correct?

22 A Yes.

23 Q Then once you testified did you sit in the back and listen
24 to the rest of the testimony?

15:35:30 25 A Yes.

DIRECT EXAMINATION - CHERYL BRADLEY

15:35:30 1 Q Also, in preparation for your testimony today what else
2 have you looked at or examined?

3 A All the exhibits that were entered into evidence.

4 Q And have you looked at every single one of them?

15:35:46 5 A Yes. Several times.

6 Q And what was your purpose in doing that?

7 A I wanted to confirm for myself that it was income.

8 Q And when you determine -- when you set out to determine a
9 tax due and owing, is it your purpose in determining the
10 correct tax liability?

11 A Well, I'd like to think it was correct, but --

12 Q Is that your goal?

13 A That's my goal.

14 Q In this case, you're going to testify to some calculations,
15 correct?

16 A Yes.

17 Q When you did that, when you made these calculations, if we
18 call doing everything you can in favor of the taxpayer a
19 conservative estimate versus doing everything you can to jack
20 up the tax liability as high as you can a liberal estimate,
21 what did you do in this case?

22 A I did it as conservative as I could.

23 Q I want to ask if you have any specialized experience or
24 education with regard to the taxability or nontaxability of
15:37:08 25 trusts?

DIRECT EXAMINATION - CHERYL BRADLEY

15:37:10 1 A Yes, I do.

2 Q Can you explain what that might be, your experience and
3 your education and training.

4 A I was a fiduciary tax specialist for about four years when
15:37:22 5 I worked in Minnesota and all I worked was trust returns. As
6 part of that I also had to teach certain classes to help other
7 people understand how to audit trusts.

8 Q And when you say you did this when you worked in Minnesota,
9 were you working for the IRS when you worked in Minnesota?

15:37:40 10 A Yes.

11 Q Doing the same kind of work you are doing now?

12 A Yes.

13 Q And what can you tell us generally -- we don't want to get
14 into the weeds here but what can you tell us generally about
15:37:53 15 the applicability of the income tax laws to trusts?

16 A Trusts in themselves don't usually pay tax. It is the
17 beneficiaries who receive the income that pay tax.

18 Q And what is the purpose of a trust, the type of trust that
19 you've examined for income tax liability purposes?

15:38:16 20 A It's for the trustee to hold assets for a beneficiary.

21 Q There was some examination of Agent Votaw concerning
22 nonprofits. Perhaps you recall Ms. Taylor's questions
23 concerning Herbal Research Institute and Burning Bush, I
24 believe claiming they're nonprofits, Nevada corporations.

15:38:51 25 A Yes, I heard that.

DIRECT EXAMINATION - CHERYL BRADLEY

15:38:53 1 Q Are you familiar with what might be the tax consequences of
2 such an entity?

3 A Well, if they're not for profit, some of them still may
4 have unrelated business income that is taxable.

15:39:11 5 Q And if an entity is -- styles itself nonprofit, does that
6 in and of itself mean they're not required to file some sort of
7 income tax return?

8 A No, they still have to file.

9 Q Does -- is one of the requirements -- is one of the things
15:39:35 10 that requires a person to file a United States income tax
11 return that a person is a United States citizen?

12 A No.

13 Q Do noncitizens that earn income in the United States
14 file -- are required to file income tax returns?

15:39:50 15 A Yes.

16 Q Did you calculate a tax due and owing for Sue Taylor?

17 A Yes, I did.

18 Q For the years 2003, 2004, 2005, and 2006?

19 A Yes.

15:40:11 20 Q When you made those calculations, what -- I probably should
21 have asked you what the appropriate category is here but how
22 did you treat her? As a single person? As a married person?
23 As a --

24 A I treated her as single but under the head of household
15:40:30 25 status which would give her higher deductions.

DIRECT EXAMINATION - CHERYL BRADLEY

15:40:36 1 Q And what was the basis for treating her as single head of
2 household?

3 A A number of years ago when I interviewed her, I asked her
4 if I found taxable income, what her filing status would be, and
15:40:47 5 she had said head of household with her mother as a dependent.

6 Q And single?

7 A Yes.

8 Q You took her at her word --

9 A Yes.

15:40:57 10 Q Does that benefit her -- benefit the taxpayer to be treated
11 as single head of household rather than just single?

12 A Yes.

13 Q Did you prepare --

14 MR. GALATI: Might I ask Ms. Richter if she would hand
15 you Exhibit one forty- -- what's been marked for evidence as
16 Exhibit 149, please.

17 BY MR. GALATI:

18 Q Can you tell the jury what Exhibit 149 is?

19 A Yes. It's exhibits that I prepared.

15:41:38 20 Q Is it a summary -- is it a chart setting forth your
21 calculations as to tax due and owing for each of those four tax
22 years?

23 A Yes. The first page is a summary and then it is followed
24 up by the individual years.

15:41:55 25 Q And do the -- how many pages are in the exhibit?

DIRECT EXAMINATION - CHERYL BRADLEY

15:41:58 1 A 13.

2 Q And do those pages offer the supporting evidence that led
3 to the calculation?

4 A Yes.

15:42:04 5 Q Did you examine voluminous documents --

6 A Yes.

7 Q -- checks, bank statements, et cetera, in calculating this?

8 A Yes.

9 Q And did you rely in any manner upon the first two pages or
10 I think what is now solely Exhibit 148 that Agent Votaw
11 prepared?

12 A Yes.

13 Q And did you listen to his testimony in court concerning
14 what is on Exhibit 148?

15:42:32 15 A Yes.

16 Q And did you consider that?

17 A Yes.

18 Q I want to ask you this: Is there anything you've heard in
19 court since you've been sitting here after testifying yesterday
15:42:42 20 that has changed the calculations in the documents that are in
21 front of you?

22 A I don't know if it was from the testimony, but I did remove
23 one item in 2004 which was for \$40,950.

24 Q And that was over a land sale?

15:43:04 25 A Yes. There was a commission or a supposed commission.

DIRECT EXAMINATION - CHERYL BRADLEY

15:43:08 1 Q Right. Did you remove it for a particular reason?

2 A Can I --

3 Q Something that wasn't entered into evidence; is that
4 correct?

15:43:18 5 A Right. Right.

6 MR. GALATI: Your Honor, I would move to admit
7 Exhibit 149.

8 THE COURT: Under what rule of evidence?

9 MR. GALATI: I don't have it in front of me, the
15:43:27 10 summary rule. 201, Your Honor. I apologize. 1006, Your
11 Honor. I apologize.

12 THE COURT: This is not a -- I mean, as I understand
13 it, Mr. Galati, this is not simply a summary of what is in
14 voluminous documents. This is also her judgment and estimate
15:43:51 15 of certain items and her opinion about what the tax liability
16 would be.

17 MR. GALATI: Well, it certainly is her conclusion as
18 to what the tax liability is. The first page is, Your Honor,
19 the calculation.

15:44:02 20 THE COURT: But I mean, the actual -- when you get
21 into the following pages, there are things in there that she's
22 entered in that are not summarized from voluminous documents.
23 I mean, such as estimated business expenses, for example.
24 Where she's made an estimate in trying to do a calculation,
15:44:18 25 right?

DIRECT EXAMINATION - CHERYL BRADLEY

15:44:19 1 MR. GALATI: Right. The calculation is contained in
2 pages 7 through 13. It's not a summary. It's a listing of
3 things she considered in coming to the conclusion.

4 THE COURT: It seems to me that 1006 is limited, as we
15:44:32 5 talked about earlier, to summarizing voluminous documents. So
6 my view is that 149 can be used as a demonstrative exhibit to
7 help her explain what she's concluded but the exhibit itself
8 does not come into evidence under 1006.

9 MR. GALATI: Yes, Your Honor.

15:44:56 10 BY MR. GALATI:

11 Q Do you have the first page of your -- of Exhibit 149 in
12 front of you?

13 A Yes.

14 Q Can you tell the jury, based upon the calculations that
15:45:06 15 you've done, what you find the total tax due and owing for the
16 year 2003 for Sue Taylor is?

17 A The total tax due for 2003 is \$6,879.45.

18 Q And for 2004?

19 A The total tax due for 2004 is \$2,906.58.

15:45:28 20 Q And for 2005?

21 A The tax due and owing for 2005 is \$863,605.12.

22 Q And the tax due and owing for 2006?

23 A Okay. The tax due for 2006 is \$37,255.08.

24 Q Now, on --

15:45:48 25 MR. GALATI: May I display page 1 to the jury,

DIRECT EXAMINATION - CHERYL BRADLEY

15:45:52 1 Your Honor?

2 THE COURT: You may. This, again, is being displayed
3 for demonstrative purposes to help the witness testify and help
4 the jury follow her testimony.

15:46:03 5 MR. GALATI: Yes, Your Honor. Thank you.

6 THE COURT: I think what we've got on the screen is
7 not page 1.

8 Do you need to switch to the Elmo, Lisa?

9 THE COURTROOM DEPUTY: It is.

15:46:21 10 THE COURT: Is it? Okay. We need to push the button
11 on the Elmo.

12 MR. GALATI: Thank you.

13 THE COURT: All right. You can display it now.

14 BY MR. GALATI:

15:46:27 15 Q Is what is displayed right now, does that portray what you
16 just testified to?

17 A Yes.

18 Q Now, rather than go through each and every line of the
19 exhibit, I'd like to demonstrate, if we can, for the jury the
15:46:40 20 type of calculations you made for each of these.

21 We can take the year 2005 as an example. Under
22 Exhibit Number it says, "Exhibit 149, page 4." What does that
23 mean?

24 A Oh. You mean the bottom corner, the bottom right-hand
15:46:56 25 corner?

DIRECT EXAMINATION - CHERYL BRADLEY

15:46:56 1 Q Can you see what I'm pointing to?
2 A Oh. I'm sorry, you're on the first page still?
3 Q Yes.
4 A That just refers to the subsequent pages in the exhibit.
15:47:06 5 Q Does that explain where -- how the calculation of 863,605
6 for that year was made?
7 A Yes.
8 Q Is it found at page 4?
9 A Yes.
15:47:16 10 MR. GALATI: Can we go to page 4 and demonstrate that
11 to the jury.
12 BY MR. GALATI:
13 Q Is that page 4 on the top of the screen now?
14 A Yes.
15:47:33 15 Q Did you calculate that the commissions earned by Sue Taylor
16 in the year -- tax year 2005 was \$146,530.40?
17 A Yes.
18 Q And that number comes from where?
19 A Exhibit 148, page 1.
15:47:52 20 Q And that's already in evidence. That Agent Votaw testified
21 to, correct?
22 A Yes.
23 Q You showed real estate sales of \$2,249,888.95. Where does
24 that number come from?
15:48:11 25 A We have to go back to page 6 of this exhibit.

DIRECT EXAMINATION - CHERYL BRADLEY

15:48:24 1 Q We'll do that. Can you tell the jury what page 6 is?

2 First of all, is that it up on the screen?

3 A Yes, it is.

4 Q It says, "Computation of ordinary income on sale of
15:48:37 5 properties." Is that what this is?

6 A Yes.

7 Q And the properties that are at issue here are the sale of
8 C.G. 40 acres; is that correct?

9 A Yes.

15:48:46 10 Q And the sale of L.P. 20 acres; is that correct?

11 A Yes.

12 Q And with regard -- let's look at C.G. 40. With regard to
13 it, you make reference to Exhibit 257.

14 A Yes.

15:49:02 15 Q Do you know what that is?

16 A Exhibit 257 is a settlement statement.

17 THE COURT: Excuse me, Mr. Galati. Ms. Taylor stood
18 up.

19 MS. TAYLOR: I object, Your Honor. There is a lack of
15:49:14 20 foundation on these sales prices on the property. Lack of
21 foundation, lack of evidence that those properties were mine.

22 THE COURT: Well, you'll be able to cross-examine. I
23 think she's giving her calculation.

24 MS. TAYLOR: Okay. I wasn't sure about that.

15:49:28 25 THE COURT: Right. And this document, Ms. Taylor,

DIRECT EXAMINATION - CHERYL BRADLEY

15:49:30 1 isn't going to come into evidence. This is being used as an
2 aid to help explain her calculation.

3 MS. TAYLOR: All right.

4 BY MR. GALATI:

15:49:43 5 Q So does that sales price come from the settlement
6 documents, Exhibit 257?

7 A Yes.

8 Q What is "less settlement charges to seller"?

9 A There were settlement charges that appeared on there, so I
10 took that off.

11 Q Why did you do that?

12 A Because they were charges to the seller and included in
13 that were the commissions that were paid, and the commissions
14 were already considered in the other schedule. So I didn't
15 want to keep them in here.

16 Q You didn't want to double count them?

17 A Right.

18 Q With regard to "add back moneys going to McBride Musical
19 Ministries, \$50,000," explain that, if you would.

15:50:29 20 A You know, without that settlement statement, it's kind of
21 hard to explain.

22 Q I apologize.

23 MR. GALATI: May we hand the witness Exhibit 257,
24 please.

15:51:27 25 THE WITNESS: On page 2 of the settlement statement it

DIRECT EXAMINATION - CHERYL BRADLEY

15:51:30 1 shows there were three items that were released to McBride
2 Musical Ministries, two for 20,000 and one for 10,000; and that
3 is listed as additional settlement charges. And those charges
4 went to the seller, so they wouldn't have been included in her
15:51:57 5 sales price.

6 MR. GALATI: Thank you.

7 Your Honor, may I approach Ms. Richter, please?

8 THE COURT: You may.

9 MR. GALATI: Thank you.

15:52:17 10 BY MR. GALATI:

11 Q With regard to "purchase price \$500,000," why is that
12 there?

13 A Because the assumption is that if you sell something, you
14 had to buy it in the first place.

15:52:28 15 Q And you're trying to arrive at the basis for assessing the
16 tax?

17 A Yes.

18 Q And we had testimony -- did you hear the testimony
19 concerning the \$500,000 purchase price?

15:52:40 20 A Yes.

21 Q Is that reflected in Exhibit 214?

22 A Yes.

23 Q Plus settlement charges to buyer --

24 A Yes.

15:52:48 25 Q -- borrower, I'm sorry?

DIRECT EXAMINATION - CHERYL BRADLEY

15:52:50 1 A Yes.

2 Q Why is that there?

3 A Because she would have paid those expenses in addition to

4 the sales price.

15:52:55 5 Q So these items lower the basis in the real estate?

6 A Well, they add to the basis but they then would lower the

7 gain on the sale.

8 Q Yes. I apologize. Thank you.

9 And so you come out with a net ordinary income gain on

15:53:10 10 sale of \$1,823,150?

11 A Yes.

12 Q With regard to the sale price of L.P. 20 acres, do you

13 recall that sales price from Exhibit 245?

14 A Yes.

15:53:25 15 Q Of 579,875?

16 A Yes.

17 Q And do you recall -- again, do you explain why the

18 settlement charges are as they are here, the same reasoning

19 here?

15:53:36 20 A Yes.

21 Q And the net sales price being 561, and some additional

22 dollars?

23 A Yes.

24 Q And, again, did you use the same kind of calculation with

15:53:48 25 regard to the purchase price in order to result at the net

DIRECT EXAMINATION - CHERYL BRADLEY

15:53:52 1 ordinary income gain on sale?

2 A Yes.

3 Q And did you do that here?

4 A Yes.

15:53:57 5 Q And it come out to -- did it come out to 426,739?

6 A Yes.

7 Q So if you add those two together, you get the total
8 ordinary income from the sale of properties during the year
9 2005 at \$2,249,889?

15:54:13 10 A Yes.

11 Q And is that figure then reflected on page 4; is that
12 correct?

13 A Yes.

14 Q Then would you explain to the ladies and gentlemen what the
15 "estimated business expenses" item means.

15:54:43 16 A That is my estimate of her business expenses.

17 Q And let me ask this: Did you acquire any information at
18 all from Ms. Taylor, voluntarily or otherwise, concerning her
19 business expenses?

15:55:04 20 A No.

21 Q Does the inclusion of business expenses in your schedule
22 here, does it lower or raise her tax liability?

23 A It lowers her tax liability.

24 Q So if she didn't give you any information, how did you
15:55:20 25 acquire some information?

DIRECT EXAMINATION - CHERYL BRADLEY

15:55:25 1 A What I could glean from some accounts as to expenses that
2 appeared to be for business, and I just pulled those out and I
3 separated them into the categories of the person or the company
4 who was paid, and then I divided them into expenses that she
15:55:45 5 would have paid monthly, weekly, semiannual, and annual.

6 Q Let me ask if this is reflected as it says here on
7 Exhibit 149, page 13; is that correct?

8 A Yes.

9 MR. GALATI: And I'm going to display that to the
15:56:13 10 jury.

11 BY MR. GALATI:

12 Q Is Exhibits 7 through -- pages 7 through 13 is the
13 calculated expenses?

14 A Yes.

15:56:21 15 Q Can we show the jury one page at a time and just have you
16 comment on the nature of these expenses and how you came up
17 with them. The first category there on page 7 is Alltel.

18 A Yes.

19 Q For 2002. Why did you count that as a business expense?

15:56:37 20 A Alltel to me is a telephone so the bills come out monthly,
21 so I put it in the monthly category. And then when I computed
22 the estimated expenses, I did it based on 12 months so I
23 multiplied it by 12.

24 Q Where did you find information that Ms. Taylor had Alltel
15:56:53 25 service?

DIRECT EXAMINATION - CHERYL BRADLEY

15:56:53 1 A In some of the old information I had from the audit that I
2 did.

3 Q And what about American Family, why did you give her credit
4 for that as a business expense?

15:57:04 5 A Well, it could be business or personal but it's all I could
6 find so I used it for insurance. And insurance is paid
7 semiannual so I multiplied it by two to get the estimated
8 expense.

9 Q What about AOL online service?

15:57:21 10 A That is just the Internet service. Sometimes we treat it
11 as personal but I know she had a real estate business and would
12 have needed to have the Internet, so I gave it to her. And
13 it's a monthly expense, so I multiplied it by 12 to get the
14 estimated expense.

15:57:38 15 Q Again, where do those numbers come from, 23.90, for
16 example?

17 A Oh. That's the average of the items I have.

18 Q And, again --

19 A So -- you can't tell from AOL because they're all 23.90 but
15:57:53 20 if you go back up to Alltel, you look at the amount of 669.06.
21 I divided that by the number of items I had to come up with the
22 average.

23 Q And, again, this is based on information you had from a
24 previous audit?

15:58:07 25 A Yes.

DIRECT EXAMINATION - CHERYL BRADLEY

15:58:08 1 Q Giving her credit for years where she wouldn't give you any
2 information about it herself?

3 A Correct.

4 Q What about -- the same thing with APS?

15:58:16 5 A Yes.

6 Q And Arizona Capitol Times and the Arizona Republic, why did
7 you lump that in as a business expense?

8 A They're newspapers and I know that she would have put ads
9 in the paper for the sale of property. So I included those in
10 there.

15:58:32 11 Q And CNA, is that an insurance company?

12 A I thought that that was something having to do with her
13 real estate license.

14 Q Thank you.

15:58:47 15 And, again, knowing she was in the real estate
16 business you gave her credit for that as a business expense?

17 A Yes.

18 Q What about the B of A credit charges that are listed there?

19 A I did have some credit card statements and from there I
15:59:00 20 also took items that appeared to be business, and Discount Copy
21 looked like it could have been business so I used it in this
22 calculation.

23 Q The next item says MLS?

24 A Yes. That's the Multiple Listing Service. I took it as a
15:59:17 25 semiannual payment because I wasn't sure if it was semiannual

DIRECT EXAMINATION - CHERYL BRADLEY

15:59:22 1

or annual.

2

Q And Office Max, why did you give her credit for Office Max expenditures?

3

4

A Because it says office.

15:59:32 5

Q Professional Institute of RL Estate, do you know what that is?

6

7

A I assume that to be real estate, and again, I assumed it was something to do with a license that she had to have.

8

9

Q If we go to page 9, there's a number for Qwest, and you've got the reference to the banks there.

15:59:52 10

11

A Yes.

12

Q Would you explain that to the jury.

13

A The same thing. There is -- there were some checks written out of the Community Bank account, out of the Compass Bank

14

16:00:04 15

account, and out of the Meridian account to Qwest. I don't

16

know if it was -- what building it was for, but I just counted

17

it as an expense she had for real estate.

18

Q And if you would go to the final column there, where it

19

talks about audit file reference, explain to the jury what all

16:00:21 20

those numbers mean.

21

A I wanted people to know where I got the amounts from and so

22

I just referenced my work paper files.

23

Q And, again, realty sign?

24

A Well, you know, they stick their sign out in front of their

16:00:39 25

property. So I figured, well, all the realty signs were

DIRECT EXAMINATION - CHERYL BRADLEY

16:00:42 1 probably for business so I put that in there.

2 Q And the next group are service charges from banks?

3 A Yeah. Community Bank charged a service charge so I put

4 that in here.

16:00:54 5 Q What kind of account? Do you recall what account was at

6 Community Bank?

7 A A checking account.

8 Q And if we go to page 10. Again, Southeast Realtors?

9 A Again, I wasn't too sure but I know that different areas

16:01:18 10 also have their own -- with -- similar to an MLS, a Multiple

11 Listing Service, so I just assumed that is what that was so

12 that is why I included it in the annual.

13 Q And Southwest Gas?

14 A Well, it's a utility, and she did have a building that she

16:01:35 15 did business out of so I included that in here.

16 Q And SRP, the same?

17 A The same reason, yes.

18 Q And then we have on page 11 Staples?

19 A That is another office supply so I included it here.

16:01:57 20 Q Town of Gilbert?

21 A Well, her business building was in Gilbert, and I know that

22 items written to the Town of Gilbert they're -- the usual thing

23 is they're for water and sewer so I included it here.

24 Q The Tribune, is that the newspaper?

16:02:11 25 A It's additional newspaper so I included it assuming she was

DIRECT EXAMINATION - CHERYL BRADLEY

16:02:14 1 putting ads in there for real estate.

2 Q And looking at page 12. United States Postal Service,
3 there's a number of entries. Why did you give her credit as
4 business expenses for those things?

16:02:29 5 A Well, most businesses have to mail things so I included it.

6 Q And on page 13 we go to auto expenses. Why did you do
7 that?

8 A Well, a real estate person travels around so I know they
9 would incur some mileage but I had absolutely no idea how many
16:02:50 10 miles she incurred so I just used 30,000.

11 Q 30,000 business miles?

12 A Yes.

13 Q Why did you pick that number?

14 A Well, it seemed a little outrageous to me because I run all
16:03:06 15 over the place and I only do about half that many miles.

16 Q So you were liberal in giving her credit for business
17 expense for mileage?

18 A Yes.

19 Q Would you explain to the jury just briefly what standard
16:03:16 20 mileage rate, what that means and why it is changed there in
21 each year.

22 A The standard mileage rate is based on how much it costs to
23 operate a vehicle for the year, and they give us a different
24 amount every year for that. And it's an easy way to deduct
16:03:37 25 your expenses rather than trying to keep track of all of your

DIRECT EXAMINATION - CHERYL BRADLEY

16:03:40 1 actual expenses like gas and oil and things of that nature.

2 Q And then down at the bottom, the last four lines on page 13
3 are 2003 total expenditures, 2004, 2005, 2006. Would you
4 explain those to the jury.

16:03:55 5 A That is just adding the estimated expenses of the \$20,117
6 that's in the upper right-hand corner, and I added that to the
7 mileage and came up with the totals.

8 Q On the 2004 total expenditures, what's the one that's in
9 parentheses with a notation of, "27 percent of estimated
16:04:16 10 expenditures were computed for 2004"?

11 A Oh. The income we had -- or the items that we put into
12 income, there was such a dip in 2004 that I didn't think that
13 giving her expenses -- 100 percent of the expenses was
14 appropriate, so I just estimated it based on the first year
16:04:39 15 because it was one of the lower ones.

16 Q Thank you.

17 Can we go back to page 4. Would you explain to the
18 jury why there was "less self-employment tax adjustment" there
19 on that line.

16:05:10 20 A People who are self-employed get a deduction for one-half
21 of their self-employment tax, so I included that in here.

22 Q How do you determine what the self-employment tax is?

23 A It's based on the -- on net income or the net profit from
24 the business.

16:05:27 25 Q And how did you determine it here?

DIRECT EXAMINATION - CHERYL BRADLEY

16:05:31 1 A For this particular year, it's computed based on the
2 commissions and the real estate sales.

3 Q And so when the estimated business expenses and half of the
4 self-employment tax is subtracted from the commissions and the
16:05:51 5 real estate sales, you wind up with an adjusted gross income
6 for that year of 2,326,000-plus dollars?

7 A Yes.

8 Q Would you explain the \$7300 standard deduction.

9 A That is the standard deduction you get if you don't
16:06:07 10 itemize. We give you the standard deduction and that's the
11 amount for head of household status.

12 Q And so the taxable income for that year is the \$2,318,000
13 figure?

14 A Yes.

16:06:28 15 Q How did you calculate the amount of tax due and owing on
16 that amount of money?

17 A We have a report writing program that does that for us.

18 Q Does it apply the applicable rates for that tax year?

19 A Yes.

16:06:39 20 Q And did it do that in this case?

21 A Yes.

22 Q With regard to tax computation, would you explain that to
23 the ladies and gentlemen.

24 A That is just to divide out the income tax and the
16:06:50 25 self-employment tax, and then I total it to get the total tax,

DIRECT EXAMINATION - CHERYL BRADLEY

16:06:54 1 which I carried out to the other column.

2 Q Thank you.

3 What I want to ask you is this: What's the simple
4 explanation for why the tax you calculated is so high in 2005
16:07:19 5 and so low in the other years by comparison?

6 A Oh. We found two properties that were sold and because I
7 had the sales settlement statement and the purchase price
8 settlement statement, I included them as her income.

9 Q Did you hear Agent Votaw testify concerning the commissions
16:07:41 10 and the two ways that he recorded them in Exhibit 148 and 148A?

11 A Yes.

12 Q And I believe -- and I don't want to misstate the testimony
13 but I believe he said that the one that was two pages contained
14 only those commissions for which he had escrow files from which
16:08:01 15 he took the escrow payments to Sue Taylor; is that correct?

16 A Yes.

17 Q Are those what are reflected in these calculations?

18 A Yes.

19 Q And not any other commissions?

16:08:12 20 A No, no other commissions.

21 Q We just went through the exercise for 2005. Did you do the
22 same thing and does this document reflect the same thing for
23 2003, '4, '6?

24 A The same thing except for there were no properties in the
16:08:33 25 other years.

DIRECT EXAMINATION - CHERYL BRADLEY

16:08:34 1 Q The only two real estate sales that are counted in this
2 calculation are the two we mentioned in 2005?

3 A Yes.

4 Q I want to ask you if you -- so adding these all up, is the
16:08:46 5 total tax due and owing due to your calculations \$910,646.23?

6 A Yes.

7 Q Do you know for the tax year 2003 what the filing
8 requirement threshold was for a taxpayer?

9 A Yes.

16:09:07 10 Q What was it?

11 A \$10,050.

12 Q Do you know what it was for the year 2004?

13 A 10,250.

14 Q Do you know what it was for the year 2005?

16:09:19 15 A 10,500.

16 Q And for the year 2006?

17 A Ten thousand- -- was it 650? 850. 10,850.

18 Q In each of those tax years was a taxpayer's tax return due
19 on or about April 15th of the following year?

16:09:41 20 A Yes.

21 Q So on or about April 15 of 2004, for 2003, and et cetera?

22 A Yes.

23 MR. GALATI: May I have a second, Your Honor?

24 THE COURT: You may.

25

DIRECT EXAMINATION - CHERYL BRADLEY

16:10:14 1 BY MR. GALATI:

2 Q And the threshold amounts I just mentioned to you -- or you
3 just mentioned to me, 10,050, is that the amount of income one
4 has to have to report?

16:10:22 5 A No. That is the amount -- well, it's the threshold --

6 Q Yes.

7 A -- for reporting -- or for filing a return. So if you
8 don't make over that amount, you don't have to file a return.

9 Q Right. It's not the tax liability for the year --

16:10:37 10 A Yes.

11 Q -- it is the amount of income that one has?

12 A Right. But I need to qualify that. Because if you are
13 self-employed and you earn more than \$400, you still have to
14 file a return even though you don't meet these thresholds.

16:10:49 15 Q Was Sue Taylor self-employed?

16 A Yes.

17 Q Do you have any evidence to the contrary?

18 A No, I have overwhelming evidence that she is self-employed.

19 Q So and did -- you must file a return if you've had net
16:11:03 20 earnings from self-employment of at least \$400; is that
21 correct?

22 A Yes.

23 Q In each of those years?

24 A Yes.

16:11:11 25 MR. GALATI: I don't have anything further, Your

DIRECT EXAMINATION - CHERYL BRADLEY

16:11:13 1 Honor. Thank you.

2 THE COURT: Cross-examination.

3 C R O S S - E X A M I N A T I O N

4 BY MS. TAYLOR:

16:11:35 5 Q Hello again. I'd like to ask you, do you know the
6 structure of the IRS? Like, for instance, who is the head of
7 the IRS? Would it be the secretary, director? Do you know?
8 Since you work for him?

9 A Since I work for him. He's so far up that it's -- you
16:11:53 10 know, you just kind of don't pay attention to that. You focus
11 more on your level.

12 Q Correct. I can appreciate that.

13 But surely you have read that maybe the secretary --

14 A Well, yes, but I didn't refresh my memory and so I don't
16:12:11 15 recall his name.

16 Q Would there be, like, the secretary and the secretary
17 delegates the orders to the commissioner and the commissioner
18 orders them down to a director? Have you heard that before?

19 A Yeah, kind of. It falls down the row, yes.

16:12:25 20 Q Okay. Were you aware that the district directors have been
21 eliminated since 2000?

22 A Yeah, I believe that was the year.

23 Q Were you aware, also, that the district directors are
24 supposed to appoint assessment officers?

16:12:51 25 A I don't know the term "assessment officers."

CROSS-EXAMINATION - CHERYL BRADLEY

16:12:56 1 Q What are you? Are you an assessment officer?

2 A I'm a revenue agent.

3 Q All right. Is it -- is assessment officers the ones that
4 are authorized to assess people?

16:13:08 5 MR. GALATI: Your Honor, we went through this
6 yesterday, and the witness indicates she does not know the
7 term. I object.

8 THE COURT: Sustained. That's been asked and
9 answered, Ms. Taylor.

16:13:18 10 BY MS. TAYLOR:

11 Q Okay. So then are you taking the place of an assessment
12 officer? So are you now assessing people on taxes? Is that
13 correct? Or?

14 A I don't know the term "assessment officer."

16:13:37 15 Q So then is it your job to -- well, the code says that
16 assessment officers are the ones that are supposed to assess
17 people, in your IRM manual and also in the IRS code. So have
18 they replaced you to do this job? Are you the auditor now of
19 the -- I mean, since you prepared this document here, I'm kind
16:14:08 20 of at a loss, I don't know what -- is this an assessment on me?
21 Is this --

22 A No. This is not an assessment. This is a computation of
23 your tax due and owing.

24 Q Okay. And so these are just opinions that you have
16:14:28 25 gathered through you and your staff and come up with and put

CROSS-EXAMINATION - CHERYL BRADLEY

16:14:32 1 paper -- put it on paper?

2 A No, it's not an opinion. It is based on fact.

3 Q It is all based on fact. All right.

4 What kind of fact did you use that proved that I owned
16:14:44 5 these properties on 2'05? What were the deeds? What was the
6 names on the deeds?

7 A What is 205?

8 Q In the year 2'05 you have --

9 THE COURT: Do you mean 2005, Ms. Taylor?

16:14:59 10 MS. TAYLOR: Yes. Sorry. Sorry.

11 BY MS. TAYLOR:

12 Q In the year 2005 you have this enormous 863,605 and all of
13 the other ones are in -- relatively low in commissions but this
14 one here I believe you stated that you had included, was it two
16:15:19 15 properties?

16 A Yes.

17 Q On those properties, was my name on the deed?

18 A I don't recall.

19 Q Well, how can you assess somebody or how can you charge
16:15:34 20 somebody or debit them or credit them, or whatever, if their
21 name is not showing that they owned the property and they sold
22 it?

23 A I didn't say you didn't own it. I said I don't recall.

24 Q Wait a minute. You're the one that prepared this.

16:15:53 25 A Yes.

CROSS-EXAMINATION - CHERYL BRADLEY

16:15:54 1 Q So you had to prepare it off of facts you said.
2 A Yes.
3 Q Those facts, did they show I owned the property?
4 A I don't have them in front of me. I don't recall.
16:16:12 5 Q So these are just arbitrary figures that --
6 A No, they're not.
7 Q -- that you've used from somebody else?
8 A No, they're not arbitrary.
9 Q What authority do you have to do these audits? Who gives
16:16:36 10 you the authority to do up an audit? Or I guess you would call
11 this an audit; is that correct?
12 A This is not an audit, no.
13 Q What would you call it?
14 A This is just a computation of your tax due and owing.
16:16:53 15 Q So it is nothing legal or binding?
16 A It is just to compute whether or not you should have filed
17 a return. That's what it does.
18 Q So if it's just to compute whether I should have filed a
19 return or not, then who gave you the authority to compute
16:17:19 20 whether I owe a -- who gave you authority to prepare this?
21 MR. GALATI: Your Honor, I object. The witness was
22 called in to court as an expert witness. That's why she
23 prepared the computation. I object.
24 MS. TAYLOR: An expert witness should know that I
16:17:42 25 would think.

CROSS-EXAMINATION - CHERYL BRADLEY

16:17:44 1 THE COURT: Well, it seems to me if what you're
2 asking, Ms. Taylor, is what is her position within the IRS that
3 qualifies her to give testimony on that subject, that is
4 certainly a fair question. If that's what you're asking.

16:17:57 5 MS. TAYLOR: No, that wasn't what I was asking.

6 THE COURT: Well, if you're asking what authority this
7 Court has to hold this proceeding where evidence is presented
8 and the charges against you --

9 MS. TAYLOR: That wasn't what I was asking.

16:18:10 10 THE COURT: Okay. Why don't you clarify what it is
11 you are asking.

12 MS. TAYLOR: I was asking her what --

13 BY MS. TAYLOR:

14 Q Who your immediate supervisor is that designates you as an
15 assessment officer to -- or a -- since you don't know the word.
16 You're an expert -- you're an expert witness with the IRS and
17 you have never heard the word "assessment officer"?

18 A No, I have not.

19 Q Yet you've heard the word "director."

16:18:45 20 A Um-hmm.

21 Q You've heard the word "commissioner."

22 A Yes.

23 Q You've heard the word "secretary."

24 A Yes.

16:18:54 25 Q And you know the directors have been abolished?

CROSS-EXAMINATION - CHERYL BRADLEY

16:18:56 1 A Yes.

2 Q And you know that the directors appointed assessment
3 officers at one time?

4 A No, I don't --

16:19:05 5 MR. GALATI: Your Honor, this has all been asked and
6 answered.

7 THE COURT: Sustained. We've been over this ground
8 before, Ms. Taylor.

9 MS. TAYLOR: Well, I just find it very strange that
16:19:14 10 she doesn't know the word "assessment officers."

11 THE COURT: Please -- well, but that's not --

12 MS. TAYLOR: Okay. All right. All right.

13 THE COURT: -- it's not your opportunity to testify or
14 argue. You need to ask questions.

16:19:22 15 BY MS. TAYLOR:

16 Q Okay. On this year 2'05, going back to that, and I thank
17 you for all of the deductions you gave me, it was very nice of
18 your -- for your little presentation here, but I am still at a
19 loss of why you charged me with owning these properties.

16:19:48 20 A Is that a question?

21 Q Yeah.

22 THE COURT: What's the question, Ms. Taylor?

23 THE WITNESS: I don't know why you're at a loss.

24 BY MS. TAYLOR:

16:19:58 25 Q I don't understand how come you included these properties

CROSS-EXAMINATION - CHERYL BRADLEY

16:20:00 1 as me being the owner of them and selling them.

2 A Because during the investigation, the information that the
3 criminal investigator obtained, it demonstrates that you were
4 the one who bought, sold, and represented these properties.

16:20:22 5 Q So you took evidence from -- hearsay evidence from another
6 coworker of yours --

7 A No.

8 Q -- rather than look at the actual deeds?

9 I mean -- do deeds mean nothing that are recorded?

16:20:41 10 Can a person -- I don't know how to say this. If you have
11 property titled in your name, doesn't that make you the owner
12 of it?

13 A Yes.

14 Q And if you sell that property, isn't that person
16:21:01 15 responsible for it?

16 A What person?

17 Q Whoever has their name on the title. Aren't they
18 responsible for it?

19 A Well, you say that but there are instances where the person
16:21:12 20 who owns it doesn't have it in their name.

21 Q That may be -- I mean, I'm thinking maybe that could happen
22 at some times. But it still doesn't make that person any -- it
23 doesn't make anybody liable -- how do you -- how does that make
24 a person liable that doesn't have their name on the property?

16:21:38 25 Other than your -- just your opinion?

CROSS-EXAMINATION - CHERYL BRADLEY

16:21:42 1 MR. GALATI: Your Honor, it calls for a legal
2 conclusion. It's argumentative.

3 THE COURT: Overruled.

4 BY MS. TAYLOR:

16:21:47 5 Q Well, you're an expert witness, you're supposed to know
6 those kind of things.

7 A Okay. For instance, if you put your property in the name
8 of a trust and you don't give up control over that property,
9 that property is considered yours even though it is under the
16:22:02 10 name of a trust. And when you sell it, the gain on the sale is
11 yours and you are to pay tax on that gain.

12 Q I understand that concept and, yes, you are correct in
13 that. However, if the trust -- the trust has a name, the trust
14 has trustees, and the trust has a beneficiary, does it not?

16:22:23 15 A Yes.

16 Q Have you seen on any of those trust documents where I am
17 beneficiary? Where you could contribute this money to me?

18 A Of the trust documents I looked at, I could not find one
19 that created a proper trust.

16:22:43 20 Q Does not the Constitution give us the right to contract?

21 A Yes.

22 Q And does every trust have to be exactly done exactly to
23 specification of the IRS?

24 A There's certain things that a trust has to have in order to
16:22:57 25 be a trust.

CROSS-EXAMINATION - CHERYL BRADLEY

16:22:59 1 Q And what things does this -- these trusts that own this
2 property not have?

3 A I wouldn't be able to tell you unless I look at the trust
4 documents.

16:23:14 5 Q So then you arbitrarily went ahead and assigned them to
6 somebody without even looking at the trust documents?

7 A I looked at the trust documents.

8 Q I'm sorry, I thought you just said you didn't look at the
9 trust documents.

16:23:26 10 A No, I said I did look at them.

11 Q Who was the beneficiary of them?

12 A Which one?

13 Q Well, you said there was only two. Didn't you?

14 A I didn't say there was only two.

16:23:36 15 Q Did I misunderstand that?

16 A I think I listed -- at the time I did my examination I
17 might have listed maybe a dozen or more trusts that property
18 was held under.

19 Q Excuse me, I'm just talking for the year 2'05 here. And I
16:23:50 20 thought you said in 2'05 there was only two --

21 A There's two properties.

22 Q Two properties.

23 So those two properties, did you look at who the
24 beneficiary was of them?

16:24:01 25 A Yes.

CROSS-EXAMINATION - CHERYL BRADLEY

16:24:02 1 Q Who were they?
2 A I don't recall.
3 Q So if you don't recall who they were, then you can't say
4 they were me, right?
16:24:15 5 A At the time when I was doing my computation, I had the
6 trust documents and I knew who the beneficiary was. At this
7 moment I do not recall.
8 Q So you just arbitrarily gave these to -- accounted them to
9 me without actually having proof here today that -- before this
16:24:36 10 jury that they're -- that I'm actually the beneficiary? Is
11 that what you're saying?
12 A No. I said I had the documents in my hand. When I looked
13 at them, I knew who the beneficiary was. Sitting up here right
14 now, I do not recall who it was.
16:24:55 15 Q Are you able to get those documents?
16 A They're in evidence.
17 MS. TAYLOR: Could we have them brought forth so she
18 can look at them again, Your Honor?
19 THE COURT: We can certainly have her look at them,
16:25:09 20 Ms. Taylor. We've got about five minutes left today, and I
21 don't know that we've got time to find them in the exhibits and
22 have her look at them and have you ask questions. Are there
23 other -- we can do that when we reconvene, but are there other
24 items you want to try to cover in the five minutes that remain?
16:25:26 25 MS. TAYLOR: Sure. Let me just go on -- so we'll do

CROSS-EXAMINATION - CHERYL BRADLEY

16:25:29 1 this another day?

2 THE COURT: Well, yeah, but I'm going to leave it to
3 you to remind me that we need to have her look at those. If
4 you want her to look at them before we get back in front of the
16:25:37 5 jury so they don't have to wait while she looks at them, we can
6 do that.

7 MS. TAYLOR: Okay.

8 BY MS. TAYLOR:

9 Q I'm not picking on you either. I'm just trying to -- you
16:25:54 10 know, trying to get this straight so everybody can understand
11 this.

12 Okay. I believe that you said that you were familiar
13 with corp soles, nonprofit --

14 A I didn't say that.

16:26:18 15 Q Are you familiar with nonprofit corp soles?

16 A Yes.

17 Q And I believe you said nonprofits were required but --
18 under 6033 nonprofit corp sole, have you read that?

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

16:26:39 20 Q Section 6033 on noncorporate soles.

21 A No, not familiar with it.

22 Q So you don't know for sure if it says in there or not that
23 they're not liable to file income tax returns?

24 A Where you said "noncorporate soles," I don't know what that
16:26:56 25 term means.

CROSS-EXAMINATION - CHERYL BRADLEY

16:26:56 1 Q It's a corporate -- corporation sole. They're nonprofit
2 corporation soles. Sorry. I didn't explain it very clearly.

3 A There is no such thing as nonprofit corporation sole.
4 They're actually two separate items.

16:27:14 5 Q So Section 6033 does not mention noncorporate -- nonprofit
6 corporate soles?

7 A When you use it in those terms, it's confusing when you do
8 that because we segregate between those two things. We
9 segregate between a corporate sole and a not-for-profit.

16:27:35 10 Q Correct. And are you familiar with that Section 6033 which
11 'pecifically --

12 A I don't know if it's that section or not.

13 Q Okay. Well, I just want to clarify because you said that
14 nonprofit soles were required -- you said nonprofit

16:27:53 15 organizations were required to file, and I just wondered if you
16 had read Section 6033 about nonprofit corporation soles and
17 what their requirements were?

18 A I don't know if that code section pertains to what you're
19 saying.

16:28:13 20 Q Aren't you an expert on this?

21 A Yes.

22 Q Then why wouldn't you know?

23 A Because I don't have all the code sections memorized.

24 Q Well, I don't either but I'm not no expert but I do know
16:28:26 25 that.

CROSS-EXAMINATION - CHERYL BRADLEY

16:28:28 1 All right. Let's see, moving right along. Yesterday
2 we talked a little bit about the forms that were used, and I
3 brought -- I dug into the IRS Internal Revenue Manual form.
4 And we were talking about the forms that -- 1040, you're
16:28:52 5 required to file a 1040. And in filing -- in looking in the
6 IRS Internal Revenue Manual, it gives Form 940, which is an
7 employer's -- and these are -- the following returns may be
8 prepared, signed, and assessed under the authority --

9 THE COURT: Excuse me, Ms. Taylor. You need to ask a
16:29:09 10 question.

11 MS. TAYLOR: Okay.

12 THE COURT: It sounds like you're testifying.

13 MS. TAYLOR: I was just going to read these here and
14 then ask her. Because she had said yesterday that a 1040 -- I
16:29:21 15 better go back there again.

16 BY MS. TAYLOR:

17 Q The 1040 form, in your opinion, is the one that is supposed
18 to be filed for individuals or is -- is supposed to be filed
19 for individual income tax returns?

16:29:33 20 A For individuals, yes.

21 Q For individuals.

22 Okay. I find here a Form 940, 941, 943, 720, 2290, a
23 Form C 2 -- CT 1, and a Form 1065, which is a return of the
24 partnership. I find no mention at all of a 1040. Do you have
16:29:54 25 any idea where I would find that or why it's not mentioned?

CROSS-EXAMINATION - CHERYL BRADLEY

16:29:59 1 A Why it's not mentioned where?

2 Q Why it's not mentioned in the code, a 1040 tax form for
3 people to use to file.

4 A Because in the code it says you are to file a return of
16:30:09 5 income.

6 MR. GALATI: Your Honor, we went over this yesterday.
7 I object as asked and answered.

8 THE COURT: Well, that objection is sustained.

9 We're also at about 4:30. I'm going to ask counsel
16:30:21 10 and Ms. Taylor to approach for a minute.

11 If you could wait one minute, members of the jury, I
12 want to talk to them about the overall schedule so I can give
13 you some information on that.

14 (Bench conference as follows:)

16:30:46 15 THE COURT: Do you have witnesses after this?

16 MR. GALATI: One more. A 10- or 15-minute witness,
17 like most of our lay witnesses have been.

18 THE COURT: All right. Do you have any idea of how
19 long your cross-examination of this witness will take?

16:31:04 20 MS. TAYLOR: It shouldn't be too much longer if she
21 gets the trust documents with the beneficiaries.

22 THE COURT: All right.

23 MR. GALATI: I'll tell you which exhibits those are
24 when we get done here.

16:31:13 25 THE COURT: Yeah. And I think we'll have her look at

CROSS-EXAMINATION - CHERYL BRADLEY

16:31:15 1 them before we get back in front of the jury so we don't have
2 to have the jury waiting while she looks at them.

3 But if you've only got you think a relatively short
4 time, and we've got one 15-minute witness, I'm not sure we
16:31:26 5 should come back tomorrow to do that. Make the jurors come
6 here --

7 MS. TAYLOR: That would make everybody happy. Good
8 Friday.

9 THE COURT: -- because then we probably would be done
16:31:36 10 by 10. So you're still thinking you may have up to a day of
11 evidence in your defense; is that right?

12 MS. TAYLOR: With these -- these -- theirs?

13 THE COURT: No. Your witnesses.

14 MS. TAYLOR: It might be a day or two maybe. Probably
16:31:48 15 not longer than that.

16 THE COURT: And they are coming in Tuesday, right?

17 MS. TAYLOR: They're coming in Monday.

18 THE COURT: But they'll be here Tuesday morning?

19 MS. TAYLOR: Um-hmm.

16:31:58 20 THE COURT: Yes?

21 MS. TAYLOR: Yes.

22 THE COURT: What we need to do is make sure they're
23 here on Tuesday ready to go, so that when we finish with the
24 government's case we move right into your witnesses. Okay?

16:32:09 25 MS. TAYLOR: Um-hmm.

CROSS-EXAMINATION - CHERYL BRADLEY

16:32:09 1 THE COURT: And I think we ought to finish Ms. Bradley
2 and take your final witness on Tuesday rather than bring the
3 jury back tomorrow for what would be an hour of evidence.

4 MS. TAYLOR: I think everybody -- on Good Friday that
16:32:20 5 would be great.

6 THE COURT: Okay. I'll tell them that's going to be
7 the schedule.

8 MS. TAYLOR: Okay.

9 THE COURT: But I'm also going to tell them we think
16:32:26 10 we're going to be done by Wednesday. So that they know that
11 we're not going to expect them to be here next Thursday and
12 Friday, and they can adjust their lives. I mean, they'll
13 obviously be deliberating, and I'll even tell them we'll be
14 done with the case we think Wednesday. Are you all right with
16:32:41 15 that?

16 MS. TAYLOR: I'm pretty certain.

17 MR. GALATI: Yes, Your Honor.

18 THE COURT: Okay.

19 (Bench conference concludes.)

16:32:51 20 THE COURT: Members of the jury, in terms of the
21 overall schedule of the case we are ahead of schedule. We do
22 not think we're going to take through all of next week. In
23 fact, the Government is about done with its case. It's got one
24 more relatively short witness. Ms. Taylor needs to finish her
16:33:05 25 cross-examination of Ms. Bradley.

CROSS-EXAMINATION - CHERYL BRADLEY

16:33:07 1 And because of the way we had scheduled the case, the
2 Government thought they might take all week to get through this
3 evidence. Ms. Taylor's witnesses aren't scheduled to be here
4 until Tuesday of next week. It makes little sense to me to
16:33:20 5 have you come down tomorrow for what would be a half hour or
6 hour of evidence and then send you back.

7 So I think we're going to adjourn until next Tuesday,
8 and then when we come back, we'll finish the Government's case,
9 we'll put on the evidence that -- you understand that
16:33:36 10 Ms. Taylor doesn't have an obligation to present evidence, but
11 she's choosing to present some, so we'll put on her evidence.
12 The Government will have an opportunity for rebuttal. And we
13 think we will be finished with the evidence and arguments by
14 the end of the day Wednesday.

16:33:50 15 Now, you'll be deliberating, and I can't predict how
16 long that will be. But I want you to understand that it
17 doesn't look like we're going to be presenting evidence through
18 next Thursday or even into Friday. And I think we ought to not
19 come down tomorrow because you'd be here for an hour before we
16:34:06 20 would break.

21 That means we are going to break from now until
22 Tuesday morning. It will be very important for you to not talk
23 about this case during that time. If friends or family or
24 others say, "What were you doing downtown," tell them you're in
16:34:21 25 trial and you've been instructed not to talk about it.

CROSS-EXAMINATION - CHERYL BRADLEY

16:34:23 1 And please remember not to do any research on your
2 own. Don't get curious and decide you're going to go on the
3 Internet and start looking up some of these issues. You need
4 to base your views entirely on the evidence. If you can just
16:34:36 5 preserve your memory until next Tuesday morning, we'll plan to
6 get started then and have the evidence and arguments done by
7 the end of the day Wednesday.

8 Are there any additional matters we need to address
9 before we excuse the jury?

16:34:48 10 MR. GALATI: Did you say what time Tuesday, Your
11 Honor?

12 THE COURT: Oh. Thank you. 9 o'clock. Same time.
13 Anything from you, Ms. Taylor?

14 MS. TAYLOR: No, Your Honor.

16:34:56 15 THE COURT: Okay. Have a nice weekend. Nice holiday.
16 We'll plan to see you on Tuesday.

17 (The jury exited the courtroom at 4:35.)

18 THE COURT: Please be seated.

19 Counsel for the Government, you'll identify for
16:35:29 20 Ms. Taylor the documents she wants Ms. Bradley to review?

21 MR. GALATI: I will tell her the ones I think are the
22 ones she's referring to, yes, Your Honor.

23 THE COURT: All right.

24 In terms of the passport, I'll tell you my problem is
16:35:42 25 that it was found in the trash. And so I'm having trouble --

CROSS-EXAMINATION - CHERYL BRADLEY

16:35:45 1 it can't -- there's no business record, there's no official
2 government record evidence to get it in.

3 You suggested it was an admission, but in the
4 questions that led up to that, you confirmed that it was found
16:36:00 5 in the trash of a house held by a trust with her daughter as
6 trustee. We don't know who put the trash out. So I'm having
7 trouble concluding it can be treated as an admission. So it's
8 a hearsay issue I've got with that document because I'm
9 assuming you're putting it in for the truth of the matter
16:36:19 10 asserted; that is, the document accurately describes who
11 Ms. Taylor is.

12 MR. KNAPP: There are -- it's not a very important
13 exhibit, Your Honor, but there are a couple of things. One is,
14 for the admission, the copy -- actually, I think I just put it
16:36:33 15 away. If I could grab it.

16 I think the real exhibit is a little clearer but there
17 is a signature on the page, the copy. So that's what I meant
18 by "an admission" to the extent I was trying to bring in the
19 statements on the top of the page. I think the passport copy
16:36:56 20 itself, the mere existence of it is probative regardless of
21 whether the statements on it are admitted for the truth of the
22 matter asserted.

23 THE COURT: Well, but the point is, it's a passport.
24 It proclaims to be a passport. That is the relevancy of it.
16:37:20 25 That to me is the same essentially as the truth of what it's

CROSS-EXAMINATION - CHERYL BRADLEY

16:37:23 1 asserting. If you're suggesting that I should deem it an
2 admission under 801(d)(2) because Ms. Taylor's signature is on
3 it, I don't remember -- I might have missed it but I don't
4 remember you confirming that that was her signature.

16:37:39 5 MR. KNAPP: I don't believe I asked that question,
6 Your Honor.

7 THE COURT: So that's my issue. I mean, you can think
8 about that. If you think you've got a basis for suggesting
9 again it could be admitted, I'll be happy to hear you, but
10 that's why I sustained the objection.

11 MR. KNAPP: I understand.

12 THE COURT: The other thing I wanted to mention,
13 Ms. Taylor, a couple of things that I think you understand.
14 Please don't turn and argue to the jury like you did at the
15 close of the cross-examination. I understood you were
16 frustrated about my cutting you off on your questions about the
17 law. But when you turn to the jury and say, you know, "I hope
18 somebody lets you hear the law and you ought to ask," that is
19 not appropriate. I would hold a lawyer in contempt for doing
20 that in the middle of trial.

21 You are not a lawyer. You didn't understand that.
22 But when you're at this lectern for purposes of testimony, your
23 comments need to be directed to a witness in the form of the
24 question or to me in an objection or responding to an
16:38:29 25 objection. You are not at that point arguing to the jury.

CROSS-EXAMINATION - CHERYL BRADLEY

16:38:31 1 You'll have that chance at the end of the trial. But I just
2 wanted you to understand that sort of ground rule.

3 And I won't go through it all again, but let me just
4 reiterate what I said when we were here at the final pretrial
16:38:43 5 conference. You cannot ask this jury to decide if the law
6 requires that tax be paid or whether the tax laws were valid or
7 whether the prosecution is legal. The legal issues in this
8 trial need to be decided by me.

9 You absolutely can present to the jury evidence about,
16:39:11 10 for example, if you think that, you know -- the Government's
11 assertions about what is income or about who owned property or
12 any of those things, you can present any factual evidence on
13 that you choose to.

14 A key issue in this case is going to be willfulness.
16:39:28 15 The Government has to prove beyond a reasonable doubt that you
16 willfully violated the tax laws, meaning you knew you had an
17 obligation and you didn't adhere to it. And you can present
18 evidence that you didn't willfully violate it because you
19 didn't believe it applied to you and you can explain why. If
16:39:46 20 you relied on legal sources, you can explain what you relied
21 on. That is all fair game.

22 But what you can't do is present evidence or argument
23 to the jury that they should conclude that the tax laws are
24 invalid. Or that the tax laws don't apply in Arizona. Or that
16:40:03 25 the tax laws don't apply to a person in Arizona who doesn't

CROSS-EXAMINATION - CHERYL BRADLEY

16:40:07 1 consider herself a resident. All of those legal arguments that
2 we've been over are not for the jury to decide. They're for me
3 to decide.

4 So when we come back, if you do start venturing into
16:40:19 5 questions that I think are trying to establish the invalidity
6 of the tax laws or that the laws don't apply to you and that
7 the jury should conclude the laws don't apply to you, I'm going
8 to sustain the relevancy objection every time.

9 But if what you're doing is presenting evidence that
16:40:35 10 shows that you in your own good faith belief don't think they
11 apply to you and that's why you didn't file, I'm going to let
12 you do that because that goes to willfulness.

13 Just so you understand that distinction we've talked
14 about before. That is why I'm sustaining these relevancy
16:40:53 15 objections when I think you're getting into a suggestion that
16 the jury should decide as a matter of law you're not subject to
17 tax.

18 MS. TAYLOR: I'm not an attorney so it is hard for me
19 to draw the line because I'm used to reading what the book says
16:41:08 20 and --

21 THE COURT: I understand.

22 MS. TAYLOR: -- and explaining it according to what
23 the book says.

24 THE COURT: I understand.

16:41:15 25 MS. TAYLOR: It's -- I'm sorry, but that's --

CROSS-EXAMINATION - CHERYL BRADLEY

16:41:17 1 THE COURT: You don't need to apologize. I just want
2 to remind you of that law. I think you're doing a fine job for
3 a person who is not a lawyer. But I want to explain that line
4 that I'm trying to hold to and why I'm sustaining these
16:41:29 5 objections on what I think are questions going to the validity
6 of the tax laws. And why I'll continue to do that.

7 So Tuesday please be here at 8:30. We'll continue
8 with Ms. Bradley. Make sure you all talk about what you want
9 Ms. Bradley to review before she comes back on those trust
16:41:49 10 documents. We'll finish Ms. Bradley, take the Government's
11 final witness, and then we'll go directly into your witnesses,
12 and you need to have witnesses ready to go right through the
13 end of your defense.

14 Some judges in this courtroom say that if you don't
16:42:03 15 have a witness to call, you rest. Meaning, you got to have
16 them here ready to go even if they're waiting in the hall, so
17 we can get through all your witnesses. If you choose to
18 testify, obviously that is something you'll be able to do next
19 week as well.

16:42:16 20 MS. TAYLOR: Okay.

21 THE COURT: Let me make one final comment. When
22 somebody representing themselves testifies, it presents a problem
23 in the trial, and the problem is this: Normally when somebody
24 is testifying, a lawyer asks a question and before the witness
16:42:33 25 answers, if the lawyer on the other side thinks it is not

CROSS-EXAMINATION - CHERYL BRADLEY

16:42:38 1 appropriate under the rules of evidence, they can object before
2 the witness answers.

3 When a person is representing themselves, there is
4 nobody standing at that lecturn asking questions. And so if
16:42:50 5 the witness is just talking, they may talk about inadmissible
6 things before the other side has an opportunity to object.

7 So what I'm going to ask you to do, if you do testify,
8 Ms. Taylor, is not -- I'm not going to ask you to ask yourself
9 questions, that is far too awkward. But what I am going to ask
10 you to do is to identify topics that you're going to go into.

11 For example, say, "Now I want to address this subject," and
12 then you can give your testimony. And then say, "Now I want to
13 address this subject," and give your testimony.

14 At least that way the Government lawyers will have
15 some idea of what's coming. And if they think it is
16 inappropriate under the rules of evidence, they can make an
17 objection before you give your testimony on it. So as you
18 organize your testimony, think about how you can do that kind
19 of sign-posting as you go through your testimony.

16:43:39 20 MS. TAYLOR: Okay.

21 THE COURT: Let's be here 8:30 on Tuesday morning.

22 Mr. Knapp.

23 MR. KNAPP: May I take up two quick things, Your
24 Honor?

16:43:46 25 THE COURT: Yes.

CROSS-EXAMINATION - CHERYL BRADLEY

16:43:47 1 MR. KNAPP: The first is, just for clarification, it's
2 my understanding that Ms. Taylor's witnesses will be fact
3 witnesses and are not going to be expert witnesses in terms of
4 preparation.

16:43:56 5 THE COURT: We talked about that yesterday, and she
6 said they're going to be testifying about her. So I assume
7 that's right. I mean, she could bring in an expert witness to
8 rebut what Ms. Bradley is saying.

9 But if that's what you're doing, you're supposed to
16:44:09 10 give notice to the Government of an expert witness. So if
11 you're calling an expert, you need to give them notice of an
12 expert.

13 MS. TAYLOR: Okay.

14 MR. KNAPP: The second thing, Your Honor, is -- there
16:44:19 15 are -- I raised these -- I think it was on the first day of
16 trial, there are some additional public records we'd like to
17 move in based on certificates. At the time I wasn't sure -- I
18 think they're properly certified under 902(4).

19 THE COURT: Let's take that up at 8:30 on Tuesday --

16:44:36 20 MR. KNAPP: We can do that.

21 THE COURT: -- so we get it done before you rest.

22 MR. KNAPP: Certainly. Thanks, Your Honor.

23 THE COURT: Okay. Have a nice weekend. We'll see you
24 Tuesday.

16:44:45 25 (End of transcript.)

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CROSS-EXAMINATION - CHERYL BRADLEY

C E R T I F I C A T E

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3 I, PATRICIA LYONS, do hereby certify that I am duly
4 appointed and qualified to act as Official Court Reporter for
5 the United States District Court for the District of Arizona.

6
7 I FURTHER CERTIFY that the foregoing pages constitute
8 a full, true, and accurate transcript of all of that portion of
9 the proceedings contained herein, had in the above-entitled
10 cause on the date specified therein, and that said transcript
11 was prepared under my direction and control, and to the best of
12 my ability.

13
14 DATED at Phoenix, Arizona, this 23rd day of July,
15 2011.

16
17
18
19
20 s/ Patricia Lyons, RMR, CRR
21 Official Court Reporter
22
23
24
25