

CR-10-00757-PHX-ROS, May 29, 2012

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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| 5 | United States of America, |) | |
| 6 | |) | |
| 7 | Plaintiff, |) | |
| 8 | vs. |) | |
| 9 | |) | CR-10-00757-PHX-ROS |
| 10 | James R. Parker, |) | |
| 11 | |) | |
| 12 | Defendant. |) | |
| 13 | |) | May 29, 2012 |
| 14 | |) | 8:33 a.m. |
| 15 | |) | |

BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE
REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - Day 1

(Pages 1 through 179)

(Sealed juror questionnaire discussion not included)

Official Court Reporter:
Elaine Cropper, RDR, CRR, CCP
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, Spc. 35
Phoenix, Arizona 85003-2151
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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

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25I N D E XTESTIMONY

| WITNESS | Direct | Cross | Redirect | VD |
|---------------|--------|-------|----------|----|
| KRISTY MORGAN | 166 | | | |

MISCELLANEOUS NOTATIONS

| Item | Page |
|--|------|
| Jury Voir Dire | 14 |
| Jury selection | 80 |
| Proceedings outside the presence of the jury | 82 |
| Preliminary jury instructions | 94 |
| Government's opening statement | 104 |
| Defendant's opening statement | 131 |

RECESSES

| | Page | Line |
|--------------------------------------|------|------|
| (Recess at 8:48; resumed at 9:55.) | 9 | 3 |
| (Recess at 12:01; resumed at 12:28.) | 80 | 2 |
| (Recess at 12:35; resumed at 1:27.) | 82 | 12 |
| (Recess at 2:26; resumed at 2:39.) | 113 | 25 |
| (Recess at 4:06; resumed at 4:11.) | 164 | 8 |

CR-10-00757-PHX-ROS, May 29, 2012

A P P E A R A N C E S

1
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4 **WALTER PERKEL, ESQ.**

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9 For the Defendant:

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16 Also Present:

17 Robert Swafford, Esq., Jury Consultant

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19
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25
United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

P R O C E E D I N G S

1 (Court was called to order by the courtroom deputy.)

2 (Proceedings begin at 8:33.)

3 (Jury out.)

4 THE COURT: Please be seated.

08:33:51

5 COURTROOM DEPUTY: This is case number CR 10-757,
6 *United States of America v. James R. Parker*, on for jury trial.

7 MR. PERKEL: Good morning, Your Honor. Walter Perkel
8 and Pete Sexton on behalf of the United States.

9 THE COURT: Good morning.

08:34:02

10 MR. PERKEL: Thank you.

11 MR. MINNS: May it please -- I'm sorry. I'm
12 adjusting the speaker. I apologize, Your Honor.

13 May it please the Court, Michael Minns for Jim
14 Parker. Gail Prather, our expert witness that has been excused
15 from sequestration. Ashley Arnett, who is my young partner,
16 and Robert Swafford. He's an attorney from Austin. He's here
17 as a jury consultant for the first part of the trial.

08:34:15

18 We e-mailed to the Court a seating chart and there
19 was one issue that needed to be brought up before we proceeded.

08:34:45

20 Mrs. Parker is in the courtroom. Nothing has been
21 said today. She's on our witness list. I respect her lawyer's
22 decisions and I respect the government's decisions on this.
23 They are both correct and I am in a quandary. She has asked
24 permission to support her husband and be in the courtroom.

08:35:07

25 United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 I am not willing to release her from the list. Her 08:35:11
2 lawyer is not willing to let her testify. I feel if I don't
3 continue to observe the issues and talk with her lawyer -- and
4 I respect that. She's set for trial right after this, so I
5 probably wouldn't let her testify either. But I still have a 08:35:25
6 duty to try and talk to her lawyer if I think it will help my
7 client.

8 The government has said if I won't take her off my
9 list, they don't want Mrs. Parker excused from sequestration.
10 I respect, that too. 08:35:42

11 So Mrs. Parker is asking if she can be excused under
12 those circumstances from the sequestration.

13 THE COURT: Okay.

14 And the government, let me hear from you.

15 MR. SEXTON: We would oppose the allowing her to be 08:35:56
16 in the courtroom since she is on the witness list. She can
17 change her mind as to her decision about her Fifth Amendment
18 privilege and, therefore, she could be a potential witness and,
19 therefore, we would ask that she be excluded under Rule 615.

20 THE COURT: All right. 08:36:11

21 And, Mrs. Parker, you will have to be excused from
22 the trial, based upon the ruling of the Court.

23 Now, you mentioned something else and I'm not sure
24 what the government's position and that is there and your
25 ability to, and desire to, speak with her attorney and I 08:36:30

CR-10-00757-PHX-ROS, May 29, 2012

1 believe her attorney is Ms. Bertrand.

08:36:33

2 MR. MINNS: Yes, an excellent lawyer. We have good
3 communications with her. I am not complaining in any way. I
4 would probably make the same decision if I were representing
5 Mrs. Parker. I probably wouldn't take any chance, so that's
6 why two family members who love each other end up with two
7 separate lawyers. That is a conflict.

08:36:45

8 THE COURT: Okay. But when you said you were going
9 to talk with her attorney, what does that mean?

10 MR. MINNS: I am -- depending on how the evidence
11 comes up with the government, depending on my plan, I told the
12 government I would still like to use her as a witness.

08:37:05

13 THE COURT: Ms. Bertrand?

14 MR. MINNS: Use Ms. Parker.

15 THE COURT: I know. But you have Ms. Bertrand on the
16 list.

08:37:26

17 MR. MINNS: Oh, that's an entirely unrelated issue.

18 THE COURT: If she's not -- let me see if I can
19 handle the issue of sequestration. She's listed as a potential
20 witness. And so as a potential witness, then she would be
21 under the sequestration rule unless the government is going to
22 waive that. And then you mentioned something about having to
23 talk to her during the trial concerning issues that relate to
24 your trial so that you can adequately represent him.

08:37:39

25 MR. MINNS: That is true. You know, I never even

08:38:02

CR-10-00757-PHX-ROS, May 29, 2012

1 considered that dilemma. If I could explain to the Court 08:38:04
2 specifically what the issue is. We had an interview with
3 Mr. Robinson and there were a number of people in that room and
4 I can't speak for Mr. Robinson. The government has him on
5 their witness list. We had him on ours. Both sides don't know 08:38:25
6 whether they are going to call him. Mr. Robinson gets on the
7 stand. I put the name of every person, including myself, who
8 is in the meeting with Mr. Robinson. If he says the same
9 things he told us, then none of the witnesses are necessary.
10 If he changes his story, then I need to pick from one of those 08:38:48
11 witnesses to impeach him.

12 THE COURT: So, in other words, that is the
13 parameters of when and if you would have to talk to Bertrand.
14 Am I right?

15 MR. MINNS: On that issue, if Mr. Robinson testifies, 08:39:07
16 those are the limits of where she or any of the other people
17 who were in that room could potentially be witnesses.

18 THE COURT: Okay. I just want to make sure, in terms
19 of sequestration, that you are not going to talk to her about
20 issues concerning your client that -- such that it may affect 08:39:28
21 her testimony. Am I right? Other than that interview, and
22 that's fair I think.

23 MR. MINNS: Other than that interview -- the Court
24 has picked up something that went over my head. It's a very
25 valid concern. I understand what the Court is saying. We have 08:39:49

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 a joint defense agreement, Mr. and Mrs. Parker, trading
2 information. This is something that -- we all went down there
3 that day to interview this man. He charged us to be
4 interviewed. He refused to be interviewed for free and so I
5 don't know --

08:39:54

08:40:14

6 THE COURT: Okay. Let me stop you for a second.
7 Any objection?

8 MR. SEXTON: I just want to make sure. Are you
9 saying he's only going to consult with her as to possible
10 rebuttal or impeachment of Mr. Robinson if he says something
11 inconsistent? He, otherwise, is not going to consult with a
12 possible witness about what goes on in this trial or consult --
13 or have her consult with her client, who was just excused,
14 about anything that may transpire in this trial?

08:40:22

15 So both of them are potential witnesses? So neither
16 of them is entitled to know the goings-on of what goes on in
17 this trial during the time the trial is pending. So we would
18 object to anything other than the impeachment point.

08:40:42

19 THE COURT: All right. And that's what I intend to
20 rule.

08:41:08

21 (The following proceedings were designated under seal
22 until further order of the court; discussion of jury
23 questionnaires and are not included herein, 8:41 to 8:48.)
24
25

CR-10-00757-PHX-ROS, May 29, 2012

1 (This concludes the proceedings that were designated 08:48:10
2 under seal until further order of the Court.)

3 (Recess at 8:48; resumed at 9:55.)

4 (Whereupon the prospective jurors enter the
5 proceedings.) 09:55:10

6 (Court was called to order by the courtroom deputy.)

7 (Proceedings begin at 10:00.)

8 THE COURT: Please be seated.

9 COURTROOM DEPUTY: This is case number CR 10-757,
10 *United States of America v. James R. Parker*, on for jury trial. 10:00:48

11 THE COURT: Good morning, everyone. Thank you for
12 being here today and thank you for filling out the
13 questionnaires. That helped us quite a bit and I think it will
14 save us a lot of time here today.

15 I expect that about noon or shortly thereafter we'll 10:01:09
16 have the jury chosen and then we'll proceed from there.

17 As you probably know, but let me just repeat it, your
18 civic responsibilities include serving as jurors. I know it's
19 inconvenient. I know some of you have set aside your time and
20 made an effort to be here because you understand it. 10:01:35

21 It is the highest, in my view, and most important
22 service as a citizen; and I am sure you think that is because I
23 am the judge, and I am sure you think that is because all of
24 the lawyers are here. But it's also because of the parties.
25 And they want you here to ensure a fair and impartial verdict. 10:01:58

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 It has been said, and I do believe this, that as 10:02:07
2 citizens and as jurors, to give you a little background about
3 what you do and your functions, you know, you come from all
4 walks of life. We know that because we've read your
5 questionnaire and you are here to do three things and that is 10:02:23
6 find the truth and seek the truth and do justice and then you
7 go back into your lives.

8 We may well have the most independent judiciary in
9 the world and perhaps in the most independent -- I do believe
10 the most independent ever. The jury system hasn't been around 10:02:49
11 forever.

12 And this may not be clear to you, although some of
13 you have served as jurors before, but let me just tell you
14 something about jury service.

15 I am the judge of the law and so that's what I do up 10:03:05
16 here. Some people say, okay. I am somewhat of a traffic cop.
17 So I make the decisions on what the law is. I talk to the
18 lawyers. I read you the instructions, but you are judges and
19 that is what your constitution requires. You judge the facts.
20 No one interferes with that decision. And I make sure that no 10:03:32
21 one interferes with that decision.

22 And the lawyers want me to make sure of that, as do
23 the parties. So finally when you get together, all 12 of you
24 will be chosen, you make that final enormously important
25 decision. 10:03:57

CR-10-00757-PHX-ROS, May 29, 2012

1 As you know, this is a criminal action and it's a 10:03:59
2 long trial. I have been told by the attorneys, and I want to
3 tell you something about the attorneys. They are some of the
4 best attorneys that I have seen in my courtroom or I have
5 witnessed for the first time in my courtroom. And they have 10:04:19
6 done so far what I've told them to do.

7 So despite what you see as the lengthy trial, that is
8 the amount of time it's going to take to finish this trial,
9 they have all done their very best to -- I don't know how to
10 say it any other way but maybe shrink it down. And what they 10:04:41
11 have told me is that they expect that when they finish this
12 trial, it will be about the middle of July as opposed to the
13 end of July. Now, they may well -- after they finish the trial
14 with closing arguments and instructions, there may take some
15 time, particularly because this is a long trial, for 10:05:06
16 deliberations which is, again, your job.

17 Now, let me give you a little more reminders. A
18 little civics background and education, that the vital function
19 of the jury is to ensure a fair trial and that, as you can
20 already tell from some of the questions that have been asked of 10:05:28
21 you in the questionnaire, is that is to make sure that the
22 jurors who are chosen are free from any preconceived notions,
23 sympathies and prejudice that would prevent you from being fair
24 and impartial -- that is a fair and impartial verdict -- solely
25 on the evidence, or lack of evidence. 10:05:51

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 And so I have to have, as the parties do, as the
2 attorneys do, comfort that you can be fair and impartial in
3 this case. Now, everybody carries opinions, everybody in this
4 courtroom. I have opinions. I have feelings. And that is a
5 matter of human nature. It's perfectly understandable that you
6 would have such opinions. And this may not be the case where
7 you can be fair and impartial because of your background.

10:05:57

10:06:12

8 But what I am looking for, what the attorneys are
9 looking for, what the parties are looking for, is that we find
10 12 people that have no involvement, such involvement with this
11 case, any personal involvement with the case or opinions or any
12 kind of experience that would interfere with that, would
13 preclude you from being fair and impartial.

10:06:35

14 Some of you have already served on juries and I am
15 sure you've been asked the question, which is kind of a rogue
16 question, can you be fair and impartial.

10:06:53

17 Well, I consider that really a throw-away question,
18 because the natural reaction, and a fair reaction, is, of
19 course, I can be fair and impartial. But I want you to think
20 about it in this vein, that I like to call the golden rule.

10:07:12

21 Think about throughout the trial and particularly at
22 the end, would you be comfortable, satisfied with yourself in
23 your present frame of mind and with your experience, seated as
24 a juror in this case if you were one of the parties or lawyers?
25 And that is how you can think about it. If you can answer that

10:07:39

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 yes, then you can be fair and impartial. 10:07:42

2 Some of the questions may appear personal and may
3 already appear personal and you've had to answer those
4 questions. I am not trying to embarrass you or pry into your
5 personal affairs. And they are confidential. And I maintain 10:07:58
6 that confidentiality throughout this proceeding, too. But I
7 just have to develop enough information to see if you can be
8 fair in this case.

9 Also, there are no wrong and right answers. So don't
10 try to answer the questions wrong or right; just think about 10:08:17
11 your head and your heart. Can you answer this question one way
12 or the other?

13 I have to say in my experience, 18 years as a judge,
14 I have found I am so proud of the people who appear throughout
15 this process because I don't think I -- I can't remember a time 10:08:37
16 when I have seen and heard jurors who have conscientiously
17 tried to answer that golden rule question.

18 Now, some of you may be excused or for what we call
19 cause. That is because I find that you are not qualified, as a
20 matter of law, to sit in this trial in this particular jury. 10:09:01
21 But then after that, as a matter of our constitution, which you
22 may not know, that the lawyers, they have a right to ask that
23 you be excused and they don't have to give a reason. It just
24 has to be constitutional, of course, but they don't have to
25 give a reason as to why you can't serve on this jury. When I 10:09:23

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 say constitutional, it has to be fair, in accordance with the
2 constitution.

10:09:29

3 And of course that has nothing to do with what kind
4 of a person you are, a good person, or whether or not you have
5 the kind of character that I know you have as citizens of the
6 United States.

10:09:43

7 And so that will help you a little bit. You know, a
8 long time ago, I sat in the same place you are as a potential
9 juror and -- well, I'll say a couple of times and the jurors --
10 or the judges -- excuse me, the lawyers exercised their
11 challenge to have me struck and, you know, it didn't hurt my
12 feelings. I didn't get bothered about it. But those lawyers
13 better not appear in my courtroom. Just kidding.

10:10:09

14 We have to have a little humor. All of this was just
15 to kind of put you in the right mood here but you know what I
16 mean. No. In fact, I knew those lawyers and I certainly --
17 because I have a background and experience and I wasn't hurt by
18 it.

10:10:31

19 Okay. Would you all stand? You need to take the
20 oath.

10:10:49

21 COURTROOM DEPUTY: If you can please raise your right
22 hands.

23 (Whereupon the prospective jurors were severally
24 sworn.)

25 THE COURT: All right. A few more questions here.

10:11:09

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 The defendant is Mr. Parker and his name is James R. 10:11:11
2 Parker. He has been charged with tax evasion and making false
3 statements -- you may be seated -- false statements to the
4 Internal Revenue Service. The defendant has been charged in an
5 indictment but an indictment is not evidence. It just reflects 10:11:31
6 charges that have been brought against the defendant. The
7 defendant is presumed innocent. And I'll talk to you a little
8 bit more about that.

9 All right. Over here at the left is Mr. Parker.
10 Would you please stand. 10:11:58

11 I am going to ask you, ladies and gentlemen, whether
12 or not you know him or if you've had any experience with him.
13 And, again, his name is James R. Parker.

14 Does anybody know him?
15 Okay. And he's represented by a couple of attorneys. 10:12:17
16 His attorneys will now stand and that is Michael Minns and we
17 also have Ashley Arnett.

18 And they are not attorneys from the State of Arizona.
19 Correct?

20 MR. MINNS: Yes, Your Honor. I'm from Brookshire. 10:12:32
21 Ashley is from Houston. Both Texas.

22 THE COURT: Okay.
23 Do any of you know the lawyers? Or do you think your
24 family members know the lawyers?

25 MR. SWAFFORD: And, Judge, I'm from Austin. 10:12:49

CR-10-00757-PHX-ROS, May 29, 2012

1 THE COURT: All right. I'm going to have Mr. Minns 10:12:51
2 introduce the rest of the people sitting at his table and you
3 may stand for these. Thank you.
4 Mr. Minns?
5 MR. MINNS: Yes. Thank you, Your Honor. 10:12:59
6 Gail Prather. She owns her own CPA firm, has 25
7 people that work for her and has been practicing CPA and doing
8 audits pushing 30 years.
9 THE COURT: She doesn't look like she's pushing 30
10 years. 10:13:19
11 MS. PRATHER: Thank you, Judge.
12 THE COURT: And what is the name of her firm?
13 MR. MINNS: Prather Kalhman.
14 THE COURT: Would you spell that?
15 MR. MINNS: I'll try. P-R-A-T-H-E-R. And Kalhman, I 10:13:32
16 believe it's K-A-L-H-A-M.
17 MS. PRATHER: M-A-N.
18 MR. MINNS: M-A-N, Your Honor.
19 THE COURT: All right. Ladies and gentlemen, do any
20 of you know Ms. Prather? 10:13:42
21 Okay. And finally, yes, another lawyer over here.
22 MR. MINNS: Ashley Arnett.
23 THE COURT: Well, she's already been introduced.
24 MR. MINNS: Yes, Your Honor.
25 THE COURT: And then we have -- 10:13:53

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. SWAFFORD: My name is Robert Swafford and I'm a 10:13:54
2 lawyer out of Austin, Texas.

3 THE COURT: Okay. Anybody know Mr. Swafford or
4 Ashley? Okay.

5 Please be seated. 10:14:06

6 And over here are the attorneys that are representing
7 the United States of America and they are from the District of
8 Arizona and that is what you call the United States Attorneys
9 Office which is part of the Department of Justice so they are
10 the District of Arizona which means, essentially, the State of 10:14:28
11 Arizona.

12 The U.S. Attorney who has been -- who is the attorney
13 that is -- who is responsible and the chief of the office is
14 Ann Scheel. S-C-H-E-E-L. Do any of you know Ms. Scheel?

15 Okay. Now, the attorneys representing the United 10:14:47
16 States government are Mr. Peter Sexton and Mr. Walter Perkel.

17 Please stand.

18 Do any of you know these two gentlemen? And they are
19 going to introduce at their table who else is sitting with them
20 and assisting them. 10:15:10

21 Mr. Perkel?

22 MR. PERKEL: Thank you, Your Honor.

23 Ladies and gentlemen, to my left here is Special
24 Agent Lisa Giovannelli with the Internal Revenue Service and to
25 my left now is Mark Klamrzynski who is an auditor in the U.S. 10:15:20

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 Attorney's Office. 10:15:25

2 THE COURT: All right. Do any of you know these two
3 individuals? I take it by your silence, you do not.

4 Now I am going to list the number of potential
5 witnesses. When I say "potential witnesses," I asked the 10:15:41
6 lawyers to be as broad and generous about listing potential
7 witnesses.

8 Now, don't take it that they all will be called and I
9 am sure that you will be happy to hear that because it's going
10 to take me about five minutes to list all of the witnesses. 10:15:58

11 All right. But if you know them, if you would
12 continue doing what I have asked, if you would raise your hand
13 if you think you know this individual or you think a family
14 member knows the individual, please raise your hand.

15 First of all, Jeff Allen, IRS special agent. 10:16:18
16 Mrs. James Angelo.

17 Leon Apple; Michael Bain; Timothy Barnes of the First
18 State Bank; Thomas Bowman, Bowman & Associates Insurance
19 Agency, Inc.; Elizabeth Brooks, formerly Ms. Beth Marriaga;
20 Cheryl Brunner, IRS Investigative Assistant; Tina Buckler, U.S. 10:17:07
21 Tax Court; Jerry Carter, IRS revenue officer; Dawn Cash,
22 Oklahoma Tax Commission; Walter Cave, Universal Properties;
23 Deanne Chase, Controller, Fenton Motors of Duma, Inc.; Chris
24 Comet, Desert European Motorcars, Limited; Ralph Compton, State
25 Farm Insurance; Jose Contreras, IRS Investigative Assistant; 10:18:01

CR-10-00757-PHX-ROS, May 29, 2012

1 Coleen Crabtree, County of Cimarron, Boise City, Oklahoma, 10:18:13
2 County Clerk; Custodian of Records, Lufthanza German Airlines;
3 Prudential Ada Realtors; Ryan Cvancara, IRS Special Agent;
4 Tracy Daun, IRS Special Agent; Charles DeMore, Universal
5 Properties; Anne Durning, IRS Senior Counsel; Walter Gibbs, 10:19:07
6 American Express; Lisa Giovanelli, who you have already met;
7 Bill Graves, Universal Properties; Christopher Grecnik, Harris
8 Bank; W.D. Grimes, Keller Williams Realty; Becky Gross; Robert
9 Gross, and he is a doctor; Cody Harris; Cleatus Hunt, U.S.
10 Customs Border Patrol; David Hunt, IRS Revenue Agent; and Mark 10:20:09
11 Klamrzynski, whom you've already met; Keith Kuhlman, Oklahoma
12 Commissioner of the Land Office; Timothy Liggett, CPA; Linda
13 Littlejohn, Chicago Title Insurance Company; John Lotardo,
14 Senior Vice President, General Counsel, Stewart Title & Trust;
15 Chris Lyons, Lyons Realty; Jason Miller, IRS Document Analyst; 10:20:53
16 Bart Mizer, Stewart Title Company; Kristy Morgan, IRS Court
17 witness; Rachel Harris Parker; Samuel Parker; Monty Joe
18 Roberts; Vicki Roberts; Gregory Robinson; John Schumacher;
19 Diane Smith; L.G. Smith; Connie Taylor, Keller Williams Realty;
20 Cerita Walker; Eddie Walker; Paul Wedepohl, IRS Revenue 10:21:54
21 Officer; Gary Whitaker, Desert European Motorcars, Limited; Roy
22 Young; Pat Cantrell; Stan Manske; James Parker; James Parker,
23 Jr.; Gail Prather, who you've already been introduced to; Gary
24 Stuart; Joy Bertrand; Anjali Patel; Shannon Peters.
25 And I saw none of you raise your hands so I -- 10:23:06

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. PERKEL: I'm to interrupt you, Your Honor. I 10:23:13
2 thought the Court may have accidentally skipped over Paul
3 Goguen; so before you moved on -- I could be mistaken. Sorry
4 for the interruption.

5 THE COURT: Oh. I did. Thank you. Paul Goguen. 10:23:25
6 Thank you.

7 Okay.

8 All right.

9 Do any of have you any physical problems that would
10 interfere with your ability to serve as jurors in this case for 10:23:49
11 the dates and times?

12 PROSPECTIVE JUROR 32: I am Juror 32, John Pomeroy.
13 I don't have a physical problem. But since I filled out my
14 availability, after May 10, I have had a work committee that is
15 going to put me on travel for ten days in June and probably 14 10:24:19
16 days in July, so it's going to make it difficult for me to
17 support your schedule.

18 THE COURT: Okay. And what kind of work commitment?

19 PROSPECTIVE JUROR 32: I work at Orbital Sciences
20 Corporation in Chandler. What we do, we do launch vehicles for 10:24:36
21 spacecraft. And I'm a guidance and control engineer there and
22 we are getting ready to launch our competitive rocket for Space
23 X. If you all are familiar with Space X news this week, so we
24 have a program where we are competing with them against. And I
25 have been asked to go help get things done in Virginia for that 10:24:54

CR-10-00757-PHX-ROS, May 29, 2012

1 launch campaign. 10:24:58

2 THE COURT: And you are the controller?

3 PROSPECTIVE JUROR 32: Guidance navigation and

4 controls engineer. Basically, a flight controls engineer.

5 THE COURT: Okay. Controls engineer. Okay. 10:25:09

6 Any other physical problems?

7 PROSPECTIVE JUROR 32: No. That is my only issue.

8 THE COURT: Is there anyone else physical problems

9 perhaps?

10 PROSPECTIVE JUROR 48: I have doctor's note that I 10:25:39

11 had faxed.

12 THE COURT: And we may not have received it. Is it a

13 new note?

14 That's okay. And without getting into detail of what

15 the issues are, is it something where you have to go to see the 10:25:59

16 doctor?

17 JUROR 48: No. It's rheumatoid arthritis.

18 THE COURT: So, in other words, during the trial,

19 that particular ailment would affect your ability to --

20 PROSPECTIVE JUROR 48: Would undermine, yes. 10:26:16

21 THE COURT: Okay. Thank you.

22 I think we see a juror over here. Number 21.

23 PROSPECTIVE JUROR 21: Juror number one. Daisy

24 Hernandez, I have a family obligation July 6 through the 12th.

25 THE COURT: Okay. Is that in town? 10:26:44

CR-10-00757-PHX-ROS, May 29, 2012

1 PROSPECTIVE JUROR 21: No. It's out of town. 10:26:48

2 THE COURT: And let's say, let me ask you, do you
3 already have travel --

4 PROSPECTIVE JUROR 21: We do, yes.

5 THE COURT: Is this a nonrefundable, that type of 10:26:56
6 thing?

7 PROSPECTIVE JUROR 21: We have the reservation for
8 the car rental. We are actually going to be driving across
9 country.

10 THE COURT: Okay. Okay. 10:27:02

11 Anyone else?

12 PROSPECTIVE JUROR 42: Juror number 42, Justin Lund.
13 I tore my Achilles' tendon about six months ago and I need to
14 continue to get up and stretch and I might need to call on some
15 breaks to do that. That's my -- 10:27:26

16 THE COURT: Okay. Thank you.

17 I think over there, Christine, in the back there.

18 COURTROOM DEPUTY: We have one up here.

19 PROSPECTIVE JUROR 17: Juror number 17. This is a --
20 I keep hearing not physical and not physical so I just thought 10:27:48
21 I would try my luck. I have two small children and who usually
22 I can have day care for but just recently my day care provider
23 has -- is not available for the summer and so -- and I do have
24 a trip that I will be on the seventh of June. That would be
25 the only day. 10:28:12

CR-10-00757-PHX-ROS, May 29, 2012

1 THE COURT: So -- and you haven't secured other day 10:28:15
2 care?

3 PROSPECTIVE JUROR 17: I haven't. It's harder in the
4 summertime.

5 THE COURT: Okay. All right. Thank you. 10:28:21

6 PROSPECTIVE JUROR 19: I am juror number 19. Jody
7 Ford. I just lost my father-in-law Thursday, the 24th, and I
8 need to assist my husband in settling the estate.

9 THE COURT: And when you do that, I know I'm very
10 sorry to hear that, is that something that is going to take 10:28:43
11 your -- absorb you a lot?

12 PROSPECTIVE JUROR 19: I believe it will be mentally
13 and emotionally -- I wouldn't have 100 percent here where it
14 would need to be.

15 THE COURT: Anyone else? 10:29:11

16 PROSPECTIVE JUROR 33: Barbara Ankenbauer. I just
17 lost my job last week so I don't have any health insurance. I
18 am a sole supporter. I need to find a job and I am planning on
19 moving out of state, putting my house on the market and going
20 to Colorado to live with my daughter and find work there. 10:29:30

21 THE COURT: Okay.

22 PROSPECTIVE JUROR 36: I believe in the system very
23 much and I would like to be a part of it. I have a physical
24 problem where I fall asleep. I have had that since I was a
25 child. My wife said I should make sure I tell you that. 10:29:59

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 THE COURT: I try to keep it interesting enough but 10:30:09
2 that is not unusual.

3 Okay. Thank you, though.

4 PROSPECTIVE JUROR 55: I'm juror number 55. I'm an
5 insulin dependent diabetic. And also my wife works and we have 10:30:22
6 only one car and I do have -- I am taking Coumadin and I'm
7 supposed to get my level checked every week at present.

8 THE COURT: Okay.

9 Okay. Those are certainly difficult problems that
10 are burdensome for you. 10:30:46

11 In terms of the insulin dependent diabetic, is that
12 something where you can actually control it if we took breaks,
13 if you got, let's say dizzy, or something?

14 PROSPECTIVE JUROR 55: Yes. I do take insulin in the
15 morning and in the evening before supper. 10:31:04

16 THE COURT: And can your wife bring you here?

17 PROSPECTIVE JUROR 55: It would be a major problem.

18 PROSPECTIVE JUROR 54: Juror number 54. I am an
19 air-conditioning technician and missing more than 25 days would
20 affect financially, it being our busy season. 10:31:30

21 THE COURT: Okay.

22 PROSPECTIVE JUROR 39: I'm Juror 39. I work swing
23 shift so I am usually at work until 12 o'clock midnight, two in
24 the morning; and to be here on time at 8, 8:30 would require me
25 to leave my house at 6:30. It creates -- the way the policy is 10:31:58

CR-10-00757-PHX-ROS, May 29, 2012

1 written at my work, I cannot -- I would have to return back to 10:32:03
2 work to finish out my shift. So that makes it very difficult
3 to come here and perform jury service off of maybe four hours
4 of sleep.

5 PROSPECTIVE JUROR 58: I'm juror number 58 and I am 10:32:30
6 self-employed and I apologize. There was -- I was not aware of
7 how long the trial would be. I didn't receive the
8 questionnaire by mail. It was faxed to me. And no other
9 details of the case. But it would cause a great financial
10 hardship if I wasn't able to open and run my business all of 10:32:44
11 these days.

12 THE COURT: So there's no one there to help you?

13 PROSPECTIVE JUROR 58: I have an unlicensed part-time
14 assistant. I am an insurance agent and so there's many things
15 she can't do. 10:32:59

16 THE COURT: Okay.

17 PROSPECTIVE JUROR 58: Thank you.

18 PROSPECTIVE JUROR 59: I am juror 59. And the only
19 thing I need is on June 21 my daughter is graduating from
20 college at 4 o'clock and I would like to be excused at 3 10:33:21
21 o'clock to be able to attend her graduation.

22 THE COURT: All right.

23 PROSPECTIVE JUROR 13: I am juror number 13. I would
24 love to be here. I've told my family already I am going to
25 jury duty and postponed and canceled a big trip to go to my 10:33:56

CR-10-00757-PHX-ROS, May 29, 2012

1 granddaughter's wedding once already and rearranged it so that 10:34:01
2 I could leave out on 5-31. That was not a date that was on the
3 original list of dates. That is why I changed my flight once
4 already. So I am wanting if it meant that I couldn't be in
5 jury because of that one day, I will cancel my flight and go 10:34:27
6 the next day, meaning I won't be at the rehearsal dinner and
7 all of that but it's okay. And if that is what you would like,
8 that is what I will do. But if I can be excused from that one
9 day, then I will leave my flight the way it is.

10 THE COURT: Thank you for trying. 10:34:45

11 Okay. Anyone else on any kind of physical or
12 personal problems?

13 All right. Do any of you have difficulty with your
14 sight or hearing that might interfere?

15 The gentleman back there. 10:35:14

16 PROSPECTIVE JUROR 30: Juror number 30. I find that
17 I can understand you. I can hear you okay, Your Honor, but the
18 attorneys I am not so well. Perhaps it's the acoustics or I
19 don't know. But I have difficulty understanding.

20 THE COURT: Well, it's really important that you hear 10:35:35
21 me.

22 PROSPECTIVE JUROR 30: No problem there.

23 THE COURT: No. We actually have -- I think
24 Mr. Minns, sometimes I cannot hear him but we'll make sure that
25 he gets that microphone in front of him. And if you are chosen 10:35:47

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 for the jury, you are to raise your hand if you can not hear 10:35:51
2 something and I will make every effort to ensure you do hear;
3 okay?

4 PROSPECTIVE JUROR 30: Sounds good.

5 THE COURT: Anyone else? 10:36:04

6 Okay. Do any of you have difficulty understanding
7 the English language that might interfere?

8 All right. Let me just tell you a couple of
9 principles that are really important. I determine, as I
10 mentioned already, what the law is and then I instruct you as 10:36:20
11 to what the law is. And you are -- I spent some time on this.
12 And I talk to the lawyers about it to make sure that it's
13 accurate and your obligation as jurors is to follow that law,
14 whether you agree with it or not.

15 Would any of you have problems following that 10:36:40
16 principle of law?

17 So, in other words, what you would do, you would hear
18 from me as to what the law is and there would be some of that
19 at the very beginning, sometimes during the trial and then
20 certainly at the end of the trial. 10:36:54

21 So would any of you have a problem with following
22 what I tell you the law is?

23 All right. Okay. Here are some very important
24 principles concerning a criminal trial. The criminal defendant
25 has the right not to testify. If he does not testify, you are 10:37:13

CR-10-00757-PHX-ROS, May 29, 2012

1 not to draw any inference against him on the decision. The 10:37:19
2 fact that a defendant chooses not to testify, then, may not
3 enter into your decision. Will you be able to accept and
4 apply -- will you be able to accept and apply that rule of law?

5 Anyone who cannot accept that rule of law? 10:37:43

6 A defendant, as I mentioned before, is presumed
7 innocent and he can not be found guilty of the crimes charged
8 in the indictment unless the jury, after having heard all of
9 the evidence, unanimously decides that the evidence proves his
10 guilt beyond a reasonable doubt. 10:38:07

11 Would any of you have a problem following this rule
12 of law?

13 In this case, criminal case, the burden of proof is
14 always on the prosecution. In order for the jury to return a
15 verdict of guilty, the prosecution must, again, prove the case 10:38:29
16 beyond a reasonable doubt, that is, prove the defendant is
17 guilty beyond a reasonable doubt. A person charged with a
18 crime has absolutely no burden to prove that he is not guilty.

19 Would any of you have a problem accepting that rule
20 of law? 10:38:51

21 MR. MINNS: Your Honor, may I approach for one
22 second, please.

23 (At sidebar.)

24 MR. MINNS: Yes, Your Honor, I apologize.
25 Mr. Swafford and Ashley can handle this if I could have a 30 10:39:18

CR-10-00757-PHX-ROS, May 29, 2012

1 second break. I won't interrupt or slow the proceedings down. 10:39:22

2 I have an urgent need to use the restroom.

3 THE COURT: Okay. Go ahead.

4 MR. MINNS: I'll just walk out.

5 (End sidebar.) 10:39:31

6 THE COURT: Okay. Mr. Minns question had nothing to
7 do with that last principle of law. It was just a personal
8 issue.

9 It is required by law that your decision must solely
10 be based on the evidence or lack of evidence. As I mentioned, 10:39:55
11 it's important and not based upon conjecture, suspicion,
12 sympathy or prejudice that you might have and so far you would
13 have told me that. Does anybody have any problem with
14 following or following that principle?

15 Now, I want you to know that the next questions might 10:40:24
16 be the type of questions that you don't want to talk about in
17 front of everybody else and so you may want to talk to me -- so
18 you may want to talk to me in confidence. In answering this
19 question, if you would prefer to answer in confidence, just
20 tell me or if you feel okay about talking about it in the 10:40:43
21 courtroom, that is good, too.

22 Have you or a close relative ever been charged with a
23 crime other than a petty offense like speeding or something
24 like other traffic violations or say, for example, a parking
25 ticket? Any of you or a close relative? 10:41:04

CR-10-00757-PHX-ROS, May 29, 2012

1 Okay. 10:41:07

2 PROSPECTIVE JUROR 24: Good morning.

3 THE COURT: Good morning.

4 PROSPECTIVE JUROR 24: My brother has been charged

5 with many crimes. We're estranged so I'm not really sure what 10:41:24

6 he's charged with or -- but I do know that he just recently got

7 out of jail.

8 THE COURT: Okay. But you're not sure what they are?

9 PROSPECTIVE JUROR 24: No.

10 THE COURT: Would that affect your ability to be fair 10:41:39

11 here?

12 PROSPECTIVE JUROR 24: No.

13 THE COURT: Okay. All right.

14 PROSPECTIVE JUROR 22: Juror number 22. About 30

15 years ago my brother was arrested on a DUI charge. 10:41:48

16 THE COURT: Okay. Would that affect your ability to

17 be fair?

18 PROSPECTIVE JUROR 22: It would not.

19 PROSPECTIVE JUROR 39: Juror 39. My husband was

20 charged with possession but it was expunged from his record. 10:42:04

21 THE COURT: It was expunged?

22 PROSPECTIVE JUROR 39: Yes.

23 THE COURT: Okay.

24 Okay. Anyone else back there?

25 PROSPECTIVE JUROR 35: In 2007 -- oh, juror number 10:42:20

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

| | | |
|----|--|----------|
| 1 | 35. I was convicted of a DUI of the lowest denomination. | 10:42:22 |
| 2 | THE COURT: Okay. Would that affect your ability to | |
| 3 | be fair? | |
| 4 | PROSPECTIVE JUROR 35: No. | |
| 5 | THE COURT: Okay. Thanks. | 10:42:41 |
| 6 | PROSPECTIVE JUROR 53: Number 53. My sister was | |
| 7 | convicted of embezzling some money where she worked. | |
| 8 | THE COURT: Okay. Would that affect your ability to | |
| 9 | be fair? | |
| 10 | PROSPECTIVE JUROR 53: No. | 10:42:54 |
| 11 | THE COURT: Okay. | |
| 12 | PROSPECTIVE JUROR 56: Juror number 56. My wife's | |
| 13 | nephew was convicted of a marijuana offense about year and a | |
| 14 | half ago. | |
| 15 | THE COURT: Would that affect your ability? | 10:43:04 |
| 16 | PROSPECTIVE JUROR 56: No. | |
| 17 | PROSPECTIVE JUROR 25: Juror number 25. My husband | |
| 18 | was convicted of a DUI in 2004. | |
| 19 | THE COURT: And would that affect your ability to be | |
| 20 | fair? | 10:43:20 |
| 21 | PROSPECTIVE JUROR 25: No, Your Honor. | |
| 22 | THE COURT: Okay. | |
| 23 | PROSPECTIVE JUROR 44: Juror 44. My uncle has been | |
| 24 | in and out of prison my whole life, drug charges and stuff, | |
| 25 | theft, all kinds of things. And then my son's father is in | 10:43:39 |

CR-10-00757-PHX-ROS, May 29, 2012

| | | |
|----|---|----------|
| 1 | jail or out, I don't know. | 10:43:46 |
| 2 | THE COURT: Okay. Would that affect your ability to | |
| 3 | be fair? | |
| 4 | PROSPECTIVE JUROR 44: No, ma'am. | |
| 5 | THE COURT: All right. | 10:43:54 |
| 6 | PROSPECTIVE JUROR 29: Juror number 29. In the year | |
| 7 | 2000 I was convicted of a DUI. | |
| 8 | THE COURT: Would that affect your ability to be | |
| 9 | fair? | |
| 10 | PROSPECTIVE JUROR 29: No, ma'am. | 10:44:07 |
| 11 | THE COURT: Okay. | |
| 12 | PROSPECTIVE JUROR 46: Number 46. I was charged with | |
| 13 | a misdemeanor in '94. It was attempted burglary. | |
| 14 | THE COURT: Okay. Would that affect your ability to | |
| 15 | be fair? | 10:44:23 |
| 16 | PROSPECTIVE JUROR 46: No. | |
| 17 | THE COURT: | |
| 18 | All right. Anyone else back there? | |
| 19 | PROSPECTIVE JUROR 59: Juror number 59. My | |
| 20 | son-in-law was charged last year with DWI and 16 years ago my | 10:44:35 |
| 21 | son was charged with possession of stolen property. | |
| 22 | THE COURT: Would that affect your abilities to be | |
| 23 | fair? | |
| 24 | PROSPECTIVE JUROR 59: Absolutely not. | |
| 25 | THE COURT: Okay. | 10:44:49 |

CR-10-00757-PHX-ROS, May 29, 2012

1 PROSPECTIVE JUROR 58: Juror 58. A few years ago my 10:44:52
2 father was charged with a crime but the case was dropped.
3 THE COURT: All right.
4 Anyone else?
5 And would that affect your ability to be fair? 10:45:05
6 PROSPECTIVE JUROR 58: No.
7 PROSPECTIVE JUROR 57: Juror 57. Can I speak
8 privately?
9 THE COURT: Sure.
10 Anyone over here? 10:45:19
11 PROSPECTIVE JUROR 41: Number 41. About four years
12 ago my ex-son-in-law was charged with child abuse. Spent a few
13 days in jail. He is now my ex-son-in-law.
14 THE COURT: Okay. And would that affect your ability
15 to be fair? 10:45:39
16 PROSPECTIVE JUROR 41: No.
17 PROSPECTIVE JUROR 10: Juror number 10. About 10
18 years ago, I don't know for what charge, my daughter was in
19 jail in Texas and I don't know because I talked to her on the
20 phone then. I think it might have been a DWI. 10:46:07
21 THE COURT: Okay.
22 Would that affect your ability to be fair?
23 PROSPECTIVE JUROR 10: No.
24 THE COURT: Anyone else?
25 All right. Thank you. 10:46:19

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 Okay. Have any of you ever been a victim of a crime 10:46:29
2 or a family member a victim of a serious crime. Anyone?

3 All right. The summary question. Let me ask you
4 about the golden rule and would you feel satisfied with
5 yourself as a juror in this case? Can you be fair and 10:46:54
6 impartial? If you were one of the parties or one of attorneys?
7 Anybody who cannot? Okay. All right.

8 Counsel and I will speak at the sidebar for a moment
9 and sometimes we have to do this and I keep these to a limit;
10 but while you are waiting, we are working and we are going to 10:47:20
11 work as expeditiously as possible and I'll get back to you.
12 Let me talk to counsel at sidebar.

13 (At sidebar.)

14 THE COURT: Okay. Make sure you're in front of the
15 microphone here. Let's just talk, first of all, about those 10:47:51
16 who spoke who I do not think need to be excused and that's
17 number 42 who tore his Achilles'. We'll just make sure he's
18 got plenty of time to walk in and out when he needs it. Is
19 that okay?

20 MR. SWAFFORD: Yes, Your Honor. 10:48:10

21 MR. PERKEL: Yes.

22 THE COURT: The other one is the guy who may fall
23 asleep. I don't think that's a problem. Do you?

24 MR. SWAFFORD: Judge, we might want to question him
25 further but it sounds like it's narcolepsy. It sounded like 10:48:22

CR-10-00757-PHX-ROS, May 29, 2012

1 it's something more of a medical condition because it sounded
2 as though he was eager to serve but had a concern about it. I
3 may have been reading more into it than was actually there.

10:48:26

4 THE COURT: Okay. Well. I'll circle him and we may
5 talk to him.

10:48:38

6 MR. SWAFFORD: Judge, do you know what number that
7 was?

8 THE COURT: 36.

9 MR. SWAFFORD: Okay. I'll make sure circle him also.

10 THE COURT: And number 30, he said maybe he can't
11 hear occasionally. That's not a problem?

10:49:02

12 MR. SWAFFORD: Not a problem.

13 THE COURT: So let's go through those that we are
14 clear that we should probably excuse. How about number 32 who
15 is the control engineer being who has a work commitment?

10:49:22

16 MR. SWAFFORD: Yes, Your Honor.

17 MR. PERKEL: That's fine, Your Honor.

18 THE COURT: And then the woman with arthritis and
19 that's number 48. Any objection?

20 MR. SWAFFORD: No, Your Honor.

10:49:37

21 MR. PERKEL: No, Your Honor.

22 THE COURT: And then number 21, nonrefundable travel
23 between July 6 and 12?

24 MR. SWAFFORD: We have no problem with that, Your
25 Honor.

10:49:51

CR-10-00757-PHX-ROS, May 29, 2012

| | | |
|----|---|----------|
| 1 | MR. PERKEL: No, Your Honor. | 10:49:52 |
| 2 | THE COURT: And then number 17, the two small | |
| 3 | children, no day care. | |
| 4 | MR. SWAFFORD: I think that is almost a legal excuse | |
| 5 | but I certainly would have no problem with that. | 10:50:01 |
| 6 | MR. PERKEL: No objection. | |
| 7 | THE COURT: And then number 19, lost father-in-law? | |
| 8 | MR. PERKEL: No objection, Your Honor. | |
| 9 | MR. SWAFFORD: No objection. | |
| 10 | THE COURT: And number 31, she lost her job and is | 10:50:14 |
| 11 | trying to put her house on the market. Any objection? | |
| 12 | MR. SWAFFORD: Judge, was that 31 or 33? | |
| 13 | THE COURT: 33, okay. | |
| 14 | MR. SWAFFORD: No objection, Your Honor. | |
| 15 | THE COURT: Okay. | 10:50:29 |
| 16 | Any objection? | |
| 17 | MR. PERKEL: No, Your Honor. | |
| 18 | THE COURT: Let's go back to that one. 39, working | |
| 19 | swing shifts, only four hours of sleep. | |
| 20 | MR. SWAFFORD: No, Judge, no objection. | 10:50:54 |
| 21 | MR. PERKEL: No objection. | |
| 22 | THE COURT: And then number 52, insulin dependent, | |
| 23 | diabetic, one car. | |
| 24 | Any objection? | |
| 25 | COURTROOM DEPUTY: I think that's fair, Judge. | 10:51:10 |

CR-10-00757-PHX-ROS, May 29, 2012

1 THE COURT: Okay. 55. 10:51:12

2 MR. SWAFFORD: We don't have an objection on that.

3 MR. PERKEL: No objection.

4 THE COURT: And number 54, air-conditioning

5 technician, financially difficult. 10:51:24

6 MR. SWAFFORD: No objection.

7 MR. PERKEL: No objection.

8 THE COURT: Number 21. Should we keep her and just

9 excuse her early on June 21 for her -- for the -- I think

10 graduation. 10:51:50

11 MR. SWAFFORD: I didn't remember. So she needed to

12 be gone like at four I think?

13 THE COURT: And number 59. Okay.

14 MR. PERKEL: Keep her until 3 p.m.

15 THE COURT: Yes. We'll just have to be reminded. 10:52:05

16 Christine will help us out.

17 And then number 13, what a nice lady, huh.

18 MR. PERKEL: Is that this Thursday? Because we

19 have --

20 THE COURT: Yeah. The 31st. She said she would 10:52:17

21 cancel. She wants to serve so I don't know.

22 MR. PERKEL: Her flight might be after court is over

23 because on the Friday we don't have a trial date. So if her

24 flight is only in the evening.

25 THE COURT: I think she said she wouldn't go to the 10:52:39

CR-10-00757-PHX-ROS, May 29, 2012

1 rehearsal dinner. Let's just keep her. We'll talk to her. 10:52:41

2 Number 58, she's self-employed. She has a license
3 assistant. She's a real estate agent. Should we just keep her
4 for right now?

5 MR. PERKEL: We have no objection to letting her go, 10:53:10
6 Your Honor.

7 THE COURT: I just want to make sure that we have
8 enough.

9 MR. SWAFFORD: Why don't we keep her for now?

10 THE COURT: We have 48 now and -- 10:53:19

11 MR. SWAFFORD: We need 35 I think.

12 THE COURT: We need -- we need 32. 16. And that's
13 without the two. That's without 58? Let's keep those two for
14 right now so we'll keep 58 and we'll keep 36, Mr. Sleepy, and
15 58 is the real state agent. 10:54:06

16 So we need to speak to both of those. 58, we may not
17 get to her anyway.

18 THE COURT: Okay. And then we need to speak to
19 number 57 in private. Now, you can talk to in private six
20 more, you can pick six. Start with the government. Do you 10:54:38
21 have any to talk to in private? Six.

22 MR. PERKEL: Yes, Your Honor.

23 Number 5, 44, 57. I'm sorry, Your Honor. 38 and 22
24 maybe.

25 MR. SEXTON: 57 she was already calling back. 10:55:49

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. PERKEL: 45. Thank you, Your Honor. 10:56:03

2 THE COURT: And over here?

3 MR. SWAFFORD: Your Honor, before we do that, I have
4 a juror on number 18, Sharon Gay Felkey, I had an E next to her
5 name for economic. And there's something about her working for 10:56:14
6 the Bechtel Corporation and having a huge project that is
7 coming up.

8 THE COURT: Well, you can pick ones that you want to
9 talk to about it. Which one is that?

10 MR. SWAFFORD: That would be 18. 10:56:30

11 THE COURT: Okay. 18 and Juror Number 1, Juror
12 Number 4, Juror Number 8, Juror Number 12.

13 THE WITNESS: How many do I have so far, Judge?

14 THE COURT: Five.

15 MR. SWAFFORD: So I have one more. One second. I'm 10:57:05
16 sorry. Just one moment. Has anybody said 22 already?

17 THE COURT: Yes.

18 MR. SWAFFORD: Okay. And I would say juror number
19 34. No one has 34?

20 THE COURT: No. So then we have number 36 and we 10:57:35
21 already have number 57. Okay.

22 MR. SWAFFORD: And 58, too. You wanted to speak to
23 58.

24 THE COURT: Oh. Yes.

25 MR. PERKEL: I didn't have 58 because the judge 10:58:02

CR-10-00757-PHX-ROS, May 29, 2012

1 already picked 58. And did you want to speak to number 13 10:58:03
2 about the airline tickets, the one who is going to her
3 granddaughter's wedding?

4 THE COURT: Yeah. I think so. Yeah. We should talk
5 to her. 10:58:13

6 All right.

7 (End sidebar.)

8 THE COURT: Okay. The following individuals are
9 excused and you may go out of the courtroom through the two
10 doors and then go downstairs and check out with the jury 10:58:53
11 administrator. And that is number 32, number 48, number 21,
12 number 17, number 19, number 33, number 39, number 55, number
13 54.

14 All right. Then we will have some of you that we
15 want to talk to you in private and they are the following: 11:00:17
16 Number 1, Number 4, Number 8, Number 12, Number five, Number
17 13, Number 18, Number 22, Number 34, Number 38, Number 36,
18 Number 44, Number 45, Number 57 and Number 58.

19 Okay. So what we're going to do is take you in
20 chronological order. For those numbers I have called, then you 11:01:44
21 are to stand outside the jury room and Christine will bring you
22 in one by one and we will have a short conversation with you.

23 Afterwards, you may go down to the first floor or
24 down the street there is a little snack place called --

25 What's the name of it? 11:02:14

CR-10-00757-PHX-ROS, May 29, 2012

1 COURTROOM DEPUTY: Cafe Press? I don't know what 11:02:19
2 it's called.
3 MR. PERKEL: Sticklers, Your Honor.
4 THE COURT: Sticklers. Sticklers down the street a
5 little bit, but they also have great food on the second 11:02:26
6 floor -- I mean the first floor. And then as each of you are
7 excused, then you may go down to the first floor. And if you
8 would all -- the rest of you, be back here at 12:15, then I
9 expect we'll have the jury chosen at that time and then you can
10 take a lunch break. Okay. 11:02:49
11 So let's start with juror number one and the rest of
12 you are excused except for the numbers that I read and
13 Christine will help you out.
14 COURTROOM DEPUTY: The numbers called, if you can
15 wait right outside the door, I'll come grab you. 11:03:11
16 Number one, if I can have you sit down here. If the
17 rest of you could exit the courtroom, please.
18 (Whereupon all of the prospective jurors depart the
19 proceedings except for juror number one who remains.)
20 THE COURT: Hi. 11:04:08
21 PROSPECTIVE JUROR 1: Hello.
22 THE COURT: This is not tough. I don't have any
23 questions for you but sometimes the lawyers might have some
24 questions and it won't take much time.
25 Let me ask. Does the United States government have 11:04:26

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 any questions of juror number one? 11:04:28
2 MR. PERKEL: I don't, Your Honor.
3 THE COURT: You do?
4 MR. PERKEL: I do not, Your Honor.
5 THE COURT: You do not? Okay. 11:04:35
6 And how about the defense. Any questions?
7 MR. SWAFFORD: Your Honor, we do.
8 THE COURT: Go ahead.
9 MR. SWAFFORD: Let me see if I can get this adjusted
10 so that you she can hear me so that it doesn't ring. 11:04:47
11 Can you hear me okay?
12 My notes were indicating were you an accountant.
13 PROSPECTIVE JUROR 1: Yes. That's my official title
14 at my job but it's accounts receivables so I'm collecting
15 money. 11:05:01
16 MR. SWAFFORD: So you do -- you do collections; is
17 that right?
18 PROSPECTIVE JUROR 1: Yes.
19 MR. SWAFFORD: And so as a part of your job, you are
20 required to try to get money from people who don't want to pay 11:05:09
21 the money; is that right?
22 PROSPECTIVE JUROR 1: Well, it's business to business
23 so they want to pay.
24 MR. SWAFFORD: Oh, I got it. But, basically, your
25 job title or duties is to collect money? 11:05:23

CR-10-00757-PHX-ROS, May 29, 2012

1 PROSPECTIVE JUROR 1: Yes. 11:05:26

2 MR. SWAFFORD: And so I'm not going to go into the
3 facts of what this case is, but you've been told by the Court
4 that if it's a tax case, which would necessarily affect people
5 trying to collect money, namely, the United States government 11:05:40
6 trying to collect money.

7 So how would you think your experience in your work,
8 being someone who collects money, could affect how you would
9 judge a case as a juror in a case where one of the parties is
10 trying to collect money from someone else? 11:05:57

11 PROSPECTIVE JUROR 1: I mean I still think I would
12 have a fair opinion, definitely.

13 MR. SWAFFORD: Okay. At the beginning state, though,
14 would there be any leniency at all or would both sides be
15 starting out at the same point? Would there be any leaning at 11:06:14
16 all tending to favor someone who is trying to do what your job
17 is as opposed to someone who is not?

18 PROSPECTIVE JUROR 1: No. I think I would be right
19 in the middle.

20 MR. SWAFFORD: Okay. Do you actually have a 11:06:25
21 background in accounting?

22 PROSPECTIVE JUROR 1: Finance. I majored in finance
23 in college.

24 THE COURT: Okay. Thank you.

25 (Prospective Juror 1 departs the proceedings; 11:07:19

CR-10-00757-PHX-ROS, May 29, 2012

1 Prospective Juror 4 re-enters to the proceedings.) 11:07:23
2 THE COURT: All right. Mr. Perkel, any questions?
3 MR. PERKEL: No, Your Honor.
4 THE COURT: And questions over here?
5 MR. SWAFFORD: Yes, Your Honor. 11:07:36
6 THE COURT: All right. Go ahead.
7 MR. SWAFFORD: Ma'am, my name is Robert Swafford and
8 we were introduced earlier. You had indicated on your juror
9 card that you do -- that you're a business analyst; is that
10 correct? 11:07:51
11 PROSPECTIVE JUROR 4: That is correct.
12 THE COURT: And so can you just tell me just a little
13 bit about your job about what you do in terms of business
14 analyst?
15 PROSPECTIVE JUROR 4: Let me clarify. It's more of a 11:08:00
16 business systems analyst. What I do is I analyze programs, in
17 other words, applications, and look for defects, do the fixes,
18 things of that nature.
19 THE COURT: And so is it more in the world of
20 computer work? 11:08:26
21 PROSPECTIVE JUROR 4: Yes, sir. I apologize for not
22 being more specific. Let me try, without going into too much
23 proprietary information. My last position was with a major
24 company here in town and what I did is I would take their
25 travel program and I would analyze what is causing the defect, 11:08:41

CR-10-00757-PHX-ROS, May 29, 2012

1 why it's not user friendly, and a team would be put together to
2 come up with scripts, come up with fixes, look at the defects,
3 correct the defects so that we can make the application more
4 user friendly.

11:08:46

5 MR. SWAFFORD: All right. Thank you, that was very
6 clear.

11:09:02

7 Is there anything about your experience in your work
8 that would have any impact in how you would look at or judge a
9 case that is looking at businesses and how businesses move
10 money and that kind of thing?

11:09:17

11 PROSPECTIVE JUROR 4: No, sir. It would not affect
12 it in any way in that my -- mine was more in the line of the
13 application itself. In other words, like if you were looking
14 at Travelocity or Expedia, that is what I was analyzing
15 primarily.

11:09:36

16 MR. SWAFFORD: All right. Thank you very much.

17 PROSPECTIVE JUROR 4: You are very welcome.

18 THE COURT: Thank you.

19 (Prospective Juror 4 departs the proceedings;
20 Prospective Juror 5 re-enters the proceedings.)

11:09:45

21 THE COURT: Hello, juror number 8.

22 PROSPECTIVE JUROR 5: Hi.

23 COURTROOM DEPUTY: It's Number 5, Your Honor.

24 THE COURT: Oh, number 5. I'm sorry. I don't have
25 any questions of you.

11:10:39

CR-10-00757-PHX-ROS, May 29, 2012

1 But does the government? 11:10:41

2 MR. PERKEL: I do, Your Honor. Thank you.

3 Good morning, sir.

4 Just a few follow-up questions. Thanks for your
5 patience. I read through some of the questions in your -- some 11:10:51

6 of your answers in the questionnaire and one of the topics that
7 you addressed was that you were audited a few years ago because
8 of I think an accountant or a tax preparer that did something
9 unethical or not right. Can you tell us a little bit about
10 that? 11:11:11

11 PROSPECTIVE JUROR 5: Yeah. It was 2005 when it
12 happened. It was based on tax year 2003. I went to an
13 accountant based on a recommendation of a friend of mine. My
14 wife and I got married in 2004. That is when we actually went
15 but we were both stilling filing under our last single year in 11:11:27
16 2003.

17 What ended up happening is the accountant I guess
18 lied about the education credit for everybody and I was
19 actually going to school in 2003 so I didn't think much of it.
20 I went to school. He claimed it. This was in Dallas. We 11:11:47
21 moved back to Phoenix in late 2005. About two days before we
22 left town, we saw in the news on ABC the guy had been arrested
23 and there's a bunch of people that were going to get audited
24 and, sure enough, the next day or two we got, separately, both
25 got audited and fined and we have still been -- in fact, we got 11:12:06

CR-10-00757-PHX-ROS, May 29, 2012

1 it paid off last year and then when we filed this year, they 11:12:11
2 kept our refund again saying that hers, from when we were still
3 single, didn't get paid off. So it's been an ongoing -- going
4 on eight years now and still an issue.

5 MR. PERKEL: Well, thanks for sharing that. 11:12:27

6 As you know, this case involves a tax case, a
7 criminal evasion tax payment case, and that is really the focus
8 of this kind of case. It's not a gun case or a crime of
9 violence or something like that.

10 Is there anything about your past experiences that 11:12:47
11 might make you think that you -- this might not be the case for
12 you? Is there anything about your experiences with the IRS?

13 PROSPECTIVE JUROR 5: Well, I mean, I'm kind of
14 bitter but I think I could look past it and try to be
15 impartial. 11:13:02

16 MR. PERKEL: So one of the -- some of the witnesses
17 you might hear from are special agents with the Internal
18 Revenue Service. They are trained federal police officers so
19 to speak, quote unquote. They are not police officers but they
20 are law enforcement and they deal with the IRS. I know that 11:13:16
21 you said that you could try to be fair and impartial. Can you
22 give me any more assurance that you can be fair and impartial?

23 PROSPECTIVE JUROR 5: Well, yeah. I mean, I'll
24 follow the instructions. I don't think I'll have a problem
25 doing that. 11:13:33

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. PERKEL: Okay. And if sort of at the conclusion 11:13:34
2 of the case, you could, sort of, put aside some of the bad
3 experiences you had with the IRS and just evaluate the facts
4 that come before you.

5 PROSPECTIVE JUROR 5: Yes. 11:13:47

6 MR. PERKEL: Okay. Thank you. Thank you for your
7 time, sir.

8 PROSPECTIVE JUROR 55: Thank you.

9 THE COURT: Mr. Swafford, any questions?

10 MR. SWAFFORD: I just wanted to be clear. Your 11:13:57
11 bitterness was more towards the accountant.

12 PROSPECTIVE JUROR 5: Right. It's just a bad
13 situation. It's not anything I'm losing sleep over but it's
14 unfortunate.

15 MR. SWAFFORD: It's sort of the unique deal, not for 11:14:10
16 the IRS but more towards the accountant?

17 PROSPECTIVE JUROR 5: Yes.

18 THE COURT: All right. Thank you. You are excused.
19 (Whereupon Prospective Juror 5 was excused;
20 Prospective Juror 8 re-enters the proceedings.) 11:14:24

21 THE COURT: Hello.

22 PROSPECTIVE JUROR 8: Hi.

23 THE COURT: Just a couple of questions. I don't have
24 questions but maybe the United States government does.
25 Mr. Perkel, any questions? 11:15:09

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. PERKEL: No, Your Honor. Thank you. 11:15:11

2 THE COURT: All right. Mr. Swafford, any questions?

3 MR. SWAFFORD: Yes, Your Honor.

4 Sir, my name is Robert Swafford and I have just a
5 couple of questions. Just to preface it, to let you know, I 11:15:21
6 have access to the jury cards and so that is what I am
7 following up on, to let you know that the question is not
8 coming out of left field.

9 So the question I have is, some people have real
10 strong feelings about the United States government not pursuing 11:15:36
11 white collar crime strongly enough, things like tax fraud and
12 that kind of thing, and I was just curious as to what your
13 opinions are on that.

14 PROSPECTIVE JUROR 8: Whether or not I think they
15 pursue it strongly enough? 11:15:51

16 MR. SWAFFORD: Whether or not the United States
17 government pursues white collar crime or things such as tax
18 fraud or other types of white collar crime as aggressively as
19 they should?

20 PROSPECTIVE JUROR 8: I guess I don't have an 11:16:03
21 opinion. I don't think that they don't -- I don't think that
22 they don't so I guess I think they do.

23 MR. SWAFFORD: So you don't have any strong opinion
24 in one direction or the other about whether or not the United
25 States government appropriately pursues white collar crime? 11:16:16

CR-10-00757-PHX-ROS, May 29, 2012

1 PROSPECTIVE JUROR 8: Correct, I don't. 11:16:21

2 MR. SWAFFORD: Okay. And then the other question I

3 have is it indicates that you're a consultant. What type of

4 consulting do you do?

5 PROSPECTIVE JUROR 8: Software. Legal software. 11:16:28

6 MR. SWAFFORD: And what would be a representative

7 client?

8 PROSPECTIVE JUROR 8: Can you repeat the question?

9 MR. SWAFFORD: What would be a client that you would

10 do legal software for? 11:16:38

11 PROSPECTIVE JUROR 8: Fortune 500 companies.

12 MR. SWAFFORD: And is there anything about that

13 experience that you think would either create an opinion about

14 the law or prepare an opinion about business that could affect

15 in any way being a juror on a case in which tax fraud is an 11:16:56

16 issue?

17 PROSPECTIVE JUROR 8: No.

18 MR. SWAFFORD: Okay.

19 THE COURT: Thank you.

20 (Whereupon Prospective Juror 8 departs the 11:17:25

21 proceedings; Prospective Juror 12 re-enters the proceedings.)

22 THE COURT: Hello.

23 PROSPECTIVE JUROR 12: Hello.

24 THE COURT: How are you?

25 PROSPECTIVE JUROR 12: I'm just fine. Thank you. 11:17:51

CR-10-00757-PHX-ROS, May 29, 2012

1 THE COURT: Let me ask, does the United States 11:17:53
2 government have any questions?
3 PROSPECTIVE JUROR 12: I beg your pardon.
4 THE COURT: I'm sorry. I'm going to ask the United
5 States government if they have any questions. 11:17:59
6 MR. PERKEL: No questions. Thank you, Your Honor.
7 THE COURT: All right.
8 And how about Mr. Swafford?
9 MR. SWAFFORD: Yes, Your Honor.
10 My notes were indicating that your husband is an 11:18:06
11 accountant; is that right?
12 PROSPECTIVE JUROR 12: That is correct.
13 THE COURT: And do you have many conversations with
14 him about his work or anything like that?
15 PROSPECTIVE JUROR 12: Very few. I mean, I certainly 11:18:18
16 don't know the financial aspects of the company that he works
17 for or anything specific like that. Mainly he talks about his
18 day-to-day dealings with -- more than anything what he does is
19 he manages the payroll and the billing back and forth for the
20 company that he works for. 11:18:38
21 MR. SWAFFORD: Okay. Is there anything about your
22 experience that would have you favor accountants or give more
23 credibility to the testimony of an accountant than someone else
24 who is not an accountant? If there was a swearing match
25 between an accountant and somebody who was not an accountant, 11:18:55

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 is there anything about that experience where one side would 11:18:58
2 come out ahead?

3 PROSPECTIVE JUROR 12: Certainly not. In fact, he
4 has only been doing this job for 18 months. Prior to that, he
5 was in the restaurant business for 30 years so, no, it would 11:19:08
6 have no bearing.

7 MR. SWAFFORD: Okay. And then the other note is,
8 there was something about a forceable entry on your card. I
9 don't know if I made my notes correctly. But no, there's
10 nothing? 11:19:25

11 PROSPECTIVE JUROR 12: Forceable entry?

12 MR. SWAFFORD: I made a wrong note. I had a question
13 as to whether that note was correct anyway. Okay. And then
14 whenever I got your reaction, I realized I made a mistake.
15 Thank you. 11:19:33

16 THE COURT: All right. Thank you very much.

17 PROSPECTIVE JUROR 12: You are most welcome.

18 (Prospective Juror 12 departs the proceedings;
19 Prospective Juror 13 re-enters the proceedings.)

20 THE COURT: Hi. I don't know that I've ever had a 11:20:19
21 more civically responsible potential juror. Congratulations.

22 PROSPECTIVE JUROR 13: Thank you.

23 THE COURT: I can't give you an award.

24 You said the 31st; right?

25 PROSPECTIVE JUROR 13: That's the one day that I 11:20:37

CR-10-00757-PHX-ROS, May 29, 2012

1 can -- you know, I'm leaving out on the 31st and coming back on 11:20:39
2 the fourth.

3 THE COURT: Yeah. And that is supposedly the last
4 day of trial. So you would be leaving on the 31st and I think
5 you had said you would miss your rehearsal dinner and all of 11:20:56
6 that.

7 PROSPECTIVE JUROR 13: Well, yes. It is -- the 31st
8 is a Thursday and the rehearsal is Friday. So if I leave out
9 on Friday -- excuse me. I don't have a calendar in front of
10 me; okay? 11:21:16

11 THE COURT: Friday would be August 1 or Friday -- let
12 me see here.

13 MR. PERKEL: The 31st is the last trial date this
14 week?

15 THE COURT: Oh. I'm sorry. I had July. Okay. June 11:21:29
16 31 --

17 PROSPECTIVE JUROR 13: May. We're in May. May 31.

18 THE COURT: All right. So I'm -- so May 31 and if
19 you didn't leave on May 31, then on June 1 you would miss --

20 PROSPECTIVE JUROR 13: Well, I might be able to get 11:21:52
21 an early flight or even a red eye flight.

22 THE COURT: Would that bother you?

23 PROSPECTIVE JUROR 13: No, it doesn't bother me.

24 THE COURT: Okay. All right.

25 Any other questions? 11:22:01

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. PERKEL: Just one quick follow-up question. 11:22:03
2 Ma'am, my name is Walter Perkel. Just quick
3 question. I read through the questionnaire and the answers
4 that you submitted. And I noticed that one of the questions
5 said that you don't pay any more taxes. And just without 11:22:15
6 delving into your private financial life, is there anything
7 about that that you want to talk about?
8 PROSPECTIVE JUROR 13: Well, I have to put this one
9 on a credit card. Is that what you want to know. No. That's
10 all. Not really. I am good with that; okay? 11:22:30
11 MR. PERKEL: Okay. I have just wasn't sure if there
12 was anything -- is there anything about that that would affect
13 your ability to be fair and impartial in a tax case?
14 PROSPECTIVE JUROR 13: Oh. No. No.
15 THE COURT: All right. Thank you. 11:22:50
16 (Prospective Juror 13 departs the proceedings;
17 Prospective Juror 18 re-enters the proceedings.)
18 THE COURT: How are you?
19 PROSPECTIVE JUROR 18: Just fine.
20 THE COURT: Be seated. Make yourself comfortable. I 11:23:40
21 don't have any questions of you but perhaps somebody else does.
22 Let me ask. The United States government?
23 MR. PERKEL: No questions, Your Honor.
24 THE COURT: And does the defense have any questions?
25 MR. SWAFFORD: Yes, Your Honor. Is it Ms. Felkey. 11:23:57

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 Is that right? 11:24:01

2 PROSPECTIVE JUROR 18: Felkey.

3 MR. SWAFFORD: I had a note indicating you work for
4 the Bechtel Corporation.

5 PROSPECTIVE JUROR 18: I do. 11:24:10

6 MR. SWAFFORD: And that there was some kind of huge
7 project coming up for which you were responsible that was time
8 sensitive.

9 PROSPECTIVE JUROR 18: Yes. I'm working on a project
10 where we're moving our accounting -- our client billing process 11:24:19
11 from one system to another on the. I'm the project manager for
12 the move.

13 MR. SWAFFORD: All right. And so how would being on
14 a jury, given what you know about the schedule, affect your
15 ability to do that project? 11:24:38

16 PROSPECTIVE JUROR 18: It would be a large detriment
17 because I'll have to leave here and go down to work and work
18 until 10 or 11 and then come back in the morning here.

19 MR. SWAFFORD: Right. And so here's my only concern
20 about this is you're going to do the project whether you're a 11:24:56
21 juror or not a juror; right?

22 PROSPECTIVE JUROR 18: Absolutely.

23 MR. SWAFFORD: And so the question, or my concern,
24 is, do you have any concern about your ability to be able to
25 concentrate and listen to the evidence and focus on a 11:25:10

CR-10-00757-PHX-ROS, May 29, 2012

1 potentially very complex case all day and then go back and work 11:25:14
2 and do something for which I'm assuming is demanding at night?

3 PROSPECTIVE JUROR 18: It's going to be kind of a
4 difficult stretch but I'll do whatever you ask me to do.

5 MR. SWAFFORD: Right. Well I'm going to tell you, I 11:25:32
6 applaud your civic duty and your willingness because you didn't
7 raise your card on that. So do you have any concerns, though,
8 about your -- about being able to do both during the next
9 month?

10 PROSPECTIVE JUROR 18: It will be difficult. It's 11:25:48
11 quite a strenuous process and I'll be working nights and
12 weekends in order to get it done and probably every day that
13 we're not in session here.

14 MR. SWAFFORD: Okay.
15 You are willing to serve and do your best but it's 11:26:03
16 going to be difficult for you?

17 PROSPECTIVE JUROR 18: Yes.

18 MR. SWAFFORD: Okay. Thank you.

19 THE COURT: All right. Counsel, any objection to
20 excusing Juror Number 18? 11:26:12

21 MR. PERKEL: No objection.

22 MR. SWAFFORD: No objection, Your Honor.

23 THE COURT: All right. You're excused.

24 PROSPECTIVE JUROR 18: Thank you very much.

25 (Prospective Juror 18 departs the proceedings; 11:27:03

CR-10-00757-PHX-ROS, May 29, 2012

1 Prospective Juror 22 re-enters the proceedings.) 11:27:10

2 THE COURT: Hello, Juror Number 22. You can be
3 seated.

4 Let me ask, does the government have any questions of
5 Juror Number 22? 11:27:20

6 MR. PERKEL: Yes, Your Honor. Thank you.

7 Good morning, sir. My name is Walter Perkel. I have
8 just have a few follow-up questions. Thanks for your patience.

9 I know you mentioned that your brother was -- was he
10 convicted of a DUI; is that correct? 11:27:35

11 PROSPECTIVE JUROR 22: I believe he lost his license,
12 so I think he was. And it was back in the Chicago area.

13 MR. PERKEL: Okay. And I know you told the Court
14 earlier that there was nothing about that that would cause you
15 to be -- or you can assure us that you would be fair and 11:27:50
16 impartial despite that.

17 PROSPECTIVE JUROR 22: Yes, sir.

18 MR. PERKEL: I know it was a long time ago but did
19 you go and see the Court proceedings? Did you go to the trial
20 or anything like that? 11:28:00

21 PROSPECTIVE JUROR 22: You know, I wasn't even aware
22 of it until after the fact.

23 MR. PERKEL: Okay. And you served a number of times
24 on different juries?

25 PROSPECTIVE JUROR 22: Yes, sir. 11:28:09

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. PERKEL: And I notice one of your -- in one case 11:28:10
2 there was a not guilty verdict in a burglary case?
3 PROSPECTIVE JUROR 22: Yes.
4 MR. PERKEL: Can you tell you us about that?
5 PROSPECTIVE JUROR 22: That was back in Wheaton, 11:28:22
6 Illinois. I was on that jury. It was I think a state case and
7 a gentleman was accused of I think break-in and burglary and
8 the jury, we found him not guilty.
9 MR. PERKEL: This case is an entirely different set
10 of facts. This is a tax evasion case, not a burglary. 11:28:42
11 Anything about the fact that this involves tax
12 evasion that might cause you to think that you may not be fair
13 and impartial or might give you a little bit of pause?
14 PROSPECTIVE JUROR 22: Not at all.
15 MR. PERKEL: So you can assure us you can be fair and 11:28:57
16 impartial?
17 PROSPECTIVE JUROR 22: Yes, sir.
18 MR. PERKEL: Thank you, sir.
19 THE COURT: Any questions from the defense?
20 MR. SWAFFORD: Just briefly, Your Honor. 11:29:05
21 THE COURT: Go ahead.
22 MR. SWAFFORD: Juror number 22. My notes indicate
23 that you have an expertise in financial accounting. Is that
24 right?
25 PROSPECTIVE JUROR 22: That's what I do. I don't 11:29:19

CR-10-00757-PHX-ROS, May 29, 2012

1 know about an expertise but, yes, I do financial accounting and 11:29:21
2 analysis.

3 MR. SWAFFORD: And so is it likely -- I'm not talking
4 about the facts of this particular case; but in any case
5 involving tax evasion or an allegation of tax accounting, it's 11:29:34
6 likely that there will be testimony from accountants and people
7 that do financial analysis.

8 How would you think your background in doing that
9 would affect how you would hear the case?

10 PROSPECTIVE JUROR 22: I don't really have much of a 11:29:53
11 tax background so I would have to rely on, you know, the
12 people, the experts that are presenting but, no, I could be
13 objective.

14 MR. SWAFFORD: And is your educational background,
15 you have a CPA or -- 11:30:05

16 PROSPECTIVE JUROR 22: I do not. I have an M.B.A. I
17 do not have a CPA.

18 MR. SWAFFORD: But it's more accounting analysis?

19 PROSPECTIVE JUROR 22: Yes, we do budgeting,
20 forecasting for the TPC. 11:30:16

21 MR. SWAFFORD: And so there's nothing about that that
22 would have you give more credibility to an accountant or a
23 business analyst than anyone else?

24 PROSPECTIVE JUROR 22: No, sir.

25 THE COURT: Thank you. 11:30:28

CR-10-00757-PHX-ROS, May 29, 2012

1 (Prospective Juror 22 departs the proceedings; 11:30:44
2 Prospective Juror 34 re-enters the proceedings.)
3 THE COURT: Hello. How are you?
4 PROSPECTIVE JUROR 34: I'm fine. Thank you. How are
5 you? 11:31:23
6 THE COURT: I'm okay. I'm doing good.
7 Let me see if any of the attorneys have questions of
8 you.
9 What about the United States government?
10 MR. PERKEL: No questions, Your Honor. 11:31:32
11 THE COURT: And how about the defense?
12 MR. SWAFFORD: Yes, Your Honor.
13 Sir, I just have a couple of questions. My notes
14 indicate that you have an LLB; is that correct?
15 PROSPECTIVE JUROR 34: That's correct. 11:31:47
16 MR. SWAFFORD: Where did you study law?
17 PROSPECTIVE JUROR 34: I got my degree from the
18 LaSalle Extension University out of Chicago.
19 MR. SWAFFORD: And so you primarily used your legal
20 education in the insurance world; is that right? 11:31:58
21 PROSPECTIVE JUROR 34: That's correct.
22 MR. SWAFFORD: And so is there anything about your
23 legal training that you would think would affect you one way or
24 the other in being a juror on a case?
25 PROSPECTIVE JUROR 34: Not at all. I spent a lot of 11:32:12

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 my time in settlement conferences which gives me a lot of 11:32:13
2 understanding and faith in the system.

3 MR. SWAFFORD: Okay. Great. And then the final
4 thing I have is I have an indication that at some point you
5 were audited by the Internal Revenue Service; is that right? 11:32:29

6 PROSPECTIVE JUROR 34: I was and that is kind of an
7 interesting story because I told them that they had erred.
8 They said if you want to prove it, you have got to sue.

9 MR. SWAFFORD: Yes.

10 PROSPECTIVE JUROR 34: I realized the economics, 11:32:46
11 mitigated against that so I paid it and three years later they
12 sent me a check and told me I was correct in the first place.

13 MR. SWAFFORD: Okay. And so --

14 PROSPECTIVE JUROR 34: I have no bad feelings about
15 it, no. 11:33:03

16 MR. SWAFFORD: So ultimately the process was
17 satisfactory to you; you got a good result from the Internal
18 Revenue Service?

19 PROSPECTIVE JUROR 34: Oh. Yes, it was fine. If I
20 made a mistake, that was fine. If I didn't and they recognized 11:33:16
21 it, that was fine. That's their job.

22 MR. SWAFFORD: And so is there anything about that
23 experience that would have you either lean toward the Internal
24 Revenue Service or the United States government or lean toward
25 someone who has a dispute with the Internal Revenue Service one 11:33:35

CR-10-00757-PHX-ROS, May 29, 2012

1 way or the other? 11:33:38

2 PROSPECTIVE JUROR 34: Absolutely not.

3 MR. SWAFFORD: Thank you.

4 THE COURT: Thank you.

5 (Prospective Juror 34 departs the proceedings; 11:33:47

6 Prospective Juror 36 re-enters the proceedings.)

7 MR. MINNS: Your Honor, while they are getting the
8 next juror back, may I go out?

9 THE COURT: Sure.

10 Hello. How are you? You may be seated. I don't 11:34:28

11 have any questions of you but perhaps the United States
12 government does.

13 Do you?

14 MR. PERKEL: Just a quick follow-up question, sir. 11:34:51
15 My name is Walter Perkel. Thanks for your patience. I know

16 you mentioned in court that sometimes you have a problem
17 sleeping; is that right?

18 PROSPECTIVE JUROR 36: Yes.

19 MR. PERKEL: And so I imagine the Court is going to 11:35:06
20 take sufficient breaks to give people rests and a chance to

21 drink water and stuff and get a snack and stuff.

22 Do you feel like this case involves some financial
23 details and we're going to go for most of June and there's a
24 week break in June so we'll be off for a week. But anything
25 about your problem that you think that would affect your 11:35:23

CR-10-00757-PHX-ROS, May 29, 2012

1 ability to listen to the evidence? 11:35:27

2 PROSPECTIVE JUROR 36: The only thing I worry about
3 is that I have trouble. I do not know it when I go out. I
4 don't know if it's narcolepsy. They never really diagnosed
5 what it is but I can fall asleep standing up. I went -- I 11:35:43
6 became a mechanic just so I wouldn't be on the road but I felt
7 I was a hazard to anybody else. And so I wanted to be off the
8 road as much as possible.

9 And my wife fears for me coming here because driving
10 is a problem for me and I was in an accident back in '93 and my 11:36:03
11 reaction time has never come back to where it's safe. I drive
12 but I have to be very careful so I worry that I would miss -- I
13 would not be effective. Like I say, I believe in the system so
14 don't misunderstand me. I'm not trying to get out of it and
15 possibly we can work around this. 11:36:31

16 THE COURT: Okay.

17 Any questions from the defense or is that a
18 sufficient answer?

19 MR. SWAFFORD: That's sufficient, Your Honor.

20 THE COURT: All right. 11:36:40

21 Any objection to excusing Juror Number 36?

22 MR. PERKEL: No, Your Honor.

23 MR. SWAFFORD: No, Your Honor.

24 THE COURT: Okay. You may be excused. And thank you
25 so much for coming here and being so straightforward and candid 11:36:48

CR-10-00757-PHX-ROS, May 29, 2012

1 with us. 11:36:51

2 PROSPECTIVE JUROR 36: Well, thank you for

3 understanding.

4 THE COURT: Of course.

5 (Prospective Juror 36 departs the proceedings; 11:37:04

6 Prospective Juror 38 re-enters the proceedings.)

7 THE COURT: Hello, Juror Number 38.

8 PROSPECTIVE JUROR 38: Hello.

9 THE COURT: I don't have any questions of you but

10 perhaps the attorneys do. 11:37:39

11 How about the United States government?

12 MR. PERKEL: Thank you, Your Honor.

13 Sir, my name is Walter Perkel and thanks for your

14 patience. I have just a few follow-up questions.

15 This case involves evasion of payment. It's a tax 11:37:54

16 case, criminal tax case.

17 Anything about that that might cause you to think

18 whether -- consider whether you can be fair and impartial in

19 this case.

20 PROSPECTIVE JUROR 38: None whatsoever. 11:38:10

21 MR. PERKEL: And one of the things that the Court has

22 already discussed with the potential jurors is the importance

23 of looking at the facts of the case and not rendering a

24 judgment -- rendering a judgment based on the facts and not

25 letting sympathy or prejudice or bias or anything like that 11:38:29

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 interfere. Anything about your background that you want to 11:38:32
2 share? I hate to have to ask you these questions.

3 PROSPECTIVE JUROR 38: No. I have no problems with
4 judging this case fairly.

5 MR. PERKEL: So you can set aside any kind of 11:38:42
6 personal things that might come up and look at the facts?

7 PROSPECTIVE JUROR 38: Yes, absolutely.

8 MR. PERKEL: No further questions.

9 THE COURT: Okay. Thank you.

10 Any further questions? 11:38:51

11 MR. SWAFFORD: No, Your Honor.

12 THE COURT: Okay. Thank you.

13 (Prospective Juror 38 departs the proceedings;
14 Prospective Juror 44 re-enters the proceedings.)

15 THE COURT: Was there some reason? I can't see 11:39:09
16 anything from here that would indicate that he might be -- what
17 drew your attention?

18 MR. SEXTON: What his children did for an occupation
19 posed?

20 THE COURT: Oh. I see. 11:39:25

21 Juror 44. Does the United States government have any
22 questions? I don't have any questions.

23 MR. PERKEL: Thank you, Your Honor.

24 Good morning. My name is Walter Perkel and I just
25 have a few follow-up questions. Thanks for your patience. 11:39:49

CR-10-00757-PHX-ROS, May 29, 2012

1 I noticed during the general voir dire section or 11:39:52
2 when the Court had a chance to ask everybody a question you
3 said something about your uncle had been convicted. Is that
4 right or had been in and out of jail?

5 PROSPECTIVE JUROR 44: Yeah. He has been, like, my 11:40:06
6 whole life.

7 MR. PERKEL: Anything about that that might interfere
8 with your ability to be fair and impartial?

9 PROSPECTIVE JUROR 44: They live in California. I
10 don't really see them. My adult life -- I don't want to see 11:40:19
11 him.

12 MR. PERKEL: Sort of following up on that, I might --
13 this was going so fast so I apologize if I heard things wrong.
14 I notice that your son's father has been sort of in and out of
15 prison. During the times that he was kind of in and out or the 11:40:36
16 time he was in prison, I could be mistaken, mixing things up,
17 did you go to any of the court proceedings or anything like
18 that?

19 PROSPECTIVE JUROR 44: No. Actually, he's never been
20 around so the last time I heard anything, my son was two months 11:40:52
21 old and that is how I found out he was in prison. He could
22 still be there. He could be out. I have no idea but I know it
23 was, like, an armed robbery thing and then he attempted to
24 escape. And I only know because I looked it up online.

25 MR. PERKEL: Okay. So nothing about that incident or 11:41:21

CR-10-00757-PHX-ROS, May 29, 2012

1 that prior relationship that was never --

11:41:22

2 PROSPECTIVE JUROR 44: I was never involved in any of
3 that.

4 MR. PERKEL: Okay. One of the things in the jury
5 questionnaire that the Court saw -- you and I had a chance to
6 read it. I just want to say one of your answers -- and we
7 appreciate the fact that you are candid about your opinions
8 about things and so I just want to follow up -- was that --
9 that is the whole process. That's the whole point of this.
10 There's no wrong or right answer as long as it's truthful.

11:41:28

11:41:45

11 One of the answers that you said that too much help
12 is being given to those who are illegal and you think the taxes
13 are too high.

14 This case involves tax evasion. This is not a gun
15 case or a burglary case or a drug case. Some people come to
16 federal court and they think I'm going to be on a great murder
17 trial or I'm going to be on a great gun case. This is a
18 criminal evasion of a tax case. There's a lot of tax stuff
19 that is going to be thrown at you. Anything about that,
20 considering you have some political issues, that you might
21 think this might be a kind of case for me?

11:42:00

11:42:18

22 PROSPECTIVE JUROR 44: Like they said, everyone has
23 their opinions, so my personal life situation has nothing to do
24 with any other court case or anything like that. So, no, it
25 wouldn't affect my opinion or me to be fair and impartial.

11:42:35

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. PERKEL: Okay. 11:42:42

2 PROSPECTIVE JUROR 44: That's just my personal life
3 opinion.

4 MR. PERKEL: Fair enough. Thank you for that. And
5 that is why we ask is because some people can't set aside their 11:42:49
6 personal opinions and that's understandable, too, and some
7 people can, so we just have to follow up. So thank you very
8 much.

9 THE COURT: Any questions by the defense?

10 MR. SWAFFORD: No, Your Honor. 11:43:01

11 THE COURT: Thank you.

12 And you may be excused.

13 (Prospective Juror 44 departs the proceedings;
14 Prospective Juror 45 re-enters the proceedings.)

15 THE COURT: All right. Juror number 45, how are you? 11:43:56

16 PROSPECTIVE JUROR 45: Thank you, Your Honor.

17 THE COURT: Any questions from the government?

18 MR. PERKEL: Yes. Good morning. My name is Walter
19 Perkel. I just had a couple of questions. Thank you for your
20 patience this morning. 11:44:11

21 I got a chance to read the answers in the jury
22 questionnaire and we appreciate your honesty about everything.
23 That is the whole point of doing this is to give everybody a
24 chance to tell us what they feel and think about stuff.

25 One of the answers that you gave was that you 11:44:26

CR-10-00757-PHX-ROS, May 29, 2012

1 distrusted Joe Arpaio and the Maricopa County Sheriff's Office
2 and my question for you, I guess, first is, could you sort of
3 set -- this case doesn't involve the Maricopa County Sheriff,
4 it doesn't involve Joe Arpaio. It was an IRS criminal
5 investigation case, criminal evasion of payment case.

11:44:30

11:44:52

6 Can you set aside any kind of political opinions
7 about that law enforcement agency and be fair and impartial
8 here?

9 PROSPECTIVE JUROR 45: Yes, I can. I really am not
10 antigovernment or antipolitical. It's just what's going on in
11 the Sheriff's Department right now. I'm in favor of law and
12 order. I'm in favor of the government. I'm just disappointed
13 in what has taken place in that department.

11:45:05

14 MR. PERKEL: No. I understand that and thank you for
15 being so candid about that. I have just wanted to follow up.
16 That's all. Thank you very much.

11:45:18

17 THE COURT: Anything from the defense?

18 MR. SWAFFORD: No, Your Honor.

19 THE COURT: All right.

20 You may be excused.

11:45:26

21 (Prospective Juror 45 departs the proceedings;
22 Prospective Juror 57 re-enters the proceedings.)

23 THE COURT: Hello. How are you?

24 PROSPECTIVE JUROR 57: Hello.

25 THE COURT: You said you would like to talk to us in

11:46:15

CR-10-00757-PHX-ROS, May 29, 2012

1 confidence concerning the question being charged with crimes. 11:46:16

2 PROSPECTIVE JUROR 57: Yes. I was arrested for
3 pulling my then husband's hair so it was a domestic violence
4 charge, a misdemeanor.

5 THE COURT: And how long ago did that occur? 11:46:30

6 PROSPECTIVE JUROR 57: 2002.

7 THE COURT: Would that affect your ability to be fair
8 in this case?

9 PROSPECTIVE JUROR 57: No.

10 THE COURT: You said you were charged with it. Was 11:46:37
11 it dismissed or whatever?

12 PROSPECTIVE JUROR 57: After a year when I did the
13 domestic violence classes or anger management, it was then
14 dropped or dismissed or something.

15 THE COURT: Any questions? Follow-up? 11:46:50

16 MR. PERKEL: Thank you, Your Honor. Just a couple.

17 Thank you, ma'am. Again, my name is Walter Perkel
18 and we appreciate your patience. I have just a couple of
19 follow-up questions. This might be related to the incident
20 that you just described to the Court? 11:47:04

21 It sounds like after you got a divorce, I read
22 through the jury questionnaires and your answers, there was a
23 tax lien on your house; is that correct?

24 PROSPECTIVE JUROR 57: Actually, currently, there's a
25 tax lien on my house. My ex-husband, the same husband, did not 11:47:21

CR-10-00757-PHX-ROS, May 29, 2012

1 pay and has not paid child support since December of 2010, I'm 11:47:23
2 not positive. So child support, because we bought the house
3 together, I'm guessing, I don't know all of the ins and outs,
4 put the \$9,000 lien on the property. But I did get the
5 property as a quitclaim deed in the divorce so it's solely my 11:47:43
6 property. I did go to child support, asked them to take it off
7 and they said they would go to Court and do that.

8 MR. PERKEL: Okay. And when you -- it sounds like
9 this was a problem that you had for some time; right?

10 PROSPECTIVE JUROR 57: Well, I only found out because 11:48:02
11 I'm trying to modify my mortgage to be able to stay at my
12 property and that's when I found out about it.

13 MR. PERKEL: And during the time that you have this
14 issue, and I know you said you still have it going on, did you
15 have interactions with members of the Internal Revenue Service? 11:48:18

16 PROSPECTIVE JUROR 57: I have not.

17 MR. PERKEL: Did you ever try calling them up or
18 anything?

19 PROSPECTIVE JUROR 57: I have not.

20 MR. PERKEL: The reason I ask is because this case 11:48:27
21 involves a criminal evasion of payment case.

22 A colleague of mine just suggests that I ask this
23 question. Is the lien a federal tax lien or a state tax lien?

24 PROSPECTIVE JUROR 57: I have no idea. All I have is
25 what child support told me and Bank of America that does my 11:48:50

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 loan and all I know is the tax lien. I didn't really try to 11:48:53
2 find out any more information. I was hoping child support
3 would just be able to reverse what it started.

4 MR. PERKEL: And so just knowing that this case
5 involves tax evasion, anything about that experience that might 11:49:06
6 cause you to be -- sort of think in the back of your mind this
7 might not be the kind of case for me. I'm not sure if I can be
8 fair and impartial?

9 PROSPECTIVE JUROR 57: I feel like I can be fair and
10 impartial. I don't feel any, you know, pull in any direction 11:49:21
11 specifically.

12 MR. PERKEL: Thank you. Thanks for your time.

13 THE COURT: And how about from the defense, any
14 questions?

15 MR. SWAFFORD: No, Your Honor. 11:49:32

16 THE COURT: All right.

17 And you are excused.

18 PROSPECTIVE JUROR 57: Thank you.

19 (Prospective Juror 57 departs the proceedings;
20 Prospective Juror 58 re-enters the proceedings.) 11:50:09

21 THE COURT: Hi.

22 PROSPECTIVE JUROR 58: Hi.

23 THE COURT: Thanks for being so straightforward and
24 honest about what your situation is. I just want to follow up
25 a little bit about the potential burden for you. You are 11:50:23

CR-10-00757-PHX-ROS, May 29, 2012

1 self-employed and that is certainly very honorable and you're a
2 real estate agent. You said that the period of time and the
3 dates and times would present a burden for you. Can you be a
4 little more specific about that?

5 PROSPECTIVE JUROR 58: Well, I own an insurance
6 company and so I have an assistant. That's what I do Monday
7 through Friday. My real estate I do after hours and on
8 weekends which wouldn't interfere with this. But it's the
9 insurance. I am the only one licensed. I have been doing this
10 now for three years and about three months. And it's just a
11 small operation. I have, you know, a part-time assistant who I
12 was just on the phone with since I have been out there
13 answering questions and trying to help her, putting out fires.
14 And I apologize. I really would love to do this but I will
15 not -- she cannot generate income because she doesn't have a
16 license to do that. I bind coverage. I talk to clients. I
17 generate sales. And without that, I truly wouldn't be able to
18 afford my mortgage or any of my bills with the stipend that you
19 do give.

20 THE COURT: Okay.

21 Any questions?

22 MR. PERKEL: Good morning. My name is Walter Perkel.
23 Just a few follow-up questions. It sounds like based on what
24 you've just told the Court based on what the judge has asked
25 you, it sounds like this would be an extreme financial hardship

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 for you. 11:52:04

2 PROSPECTIVE JUROR 58: It would be.

3 MR. PERKEL: And then a couple of follow-up questions

4 from the jury questionnaire. I had a chance to read through

5 them and I thank you for filling it out so diligently and so 11:52:10

6 thoroughly.

7 One thing that popped into mind, I know that there

8 was an issue with your father.

9 PROSPECTIVE JUROR 58: Yes.

10 MR. PERKEL: And the district attorney. Which 11:52:21

11 district attorney was that?

12 PROSPECTIVE JUROR 58: You know, I don't know off the

13 top of my head. Someone local.

14 MR. PERKEL: So here in Arizona?

15 PROSPECTIVE JUROR 58: Yes. So that's now -- like 11:52:29

16 when I met you, so, it's different. So it was like, oh, that

17 won't really play a part.

18 MR. PERKEL: So even though were you disappointed in

19 that prosecutor, you could set aside --

20 PROSPECTIVE JUROR 58: I would think so, yes. 11:52:41

21 MR. PERKEL: So when you say you would think so, I

22 know that oftentimes that is how we speak, we say, "I believe

23 so," or, "I think so," or, "Yeah, I'll be there," but then

24 later we think to ourselves maybe that wasn't 100 percent. Can

25 you assure us that you could really set that aside or do you 11:52:59

CR-10-00757-PHX-ROS, May 29, 2012

1 think that it would be too difficult? 11:53:01

2 PROSPECTIVE JUROR 58: You know what, I think might
3 be more of an issue is the gentleman who is being charged or up
4 for it. I mean, that could bring up some issues. I don't know
5 how he -- I think children's names being mentioned. I mean, I 11:53:13
6 don't know if that's going to pull on my strings, like if he's
7 a great dad, I might be more sympathetic. You know, things
8 that really shouldn't even come into play.

9 MR. PERKEL: Well, thanks for sharing that with us.
10 That is why we have this process and it happens all the time 11:53:32
11 that jurors will express and say, "Look, even though I know I'm
12 not supposed to be sympathetic or bias or prejudice," and I
13 know you are saying sympathy in this case. So it would be fair
14 to say you probably wouldn't be able to set aside that sense of
15 sympathy? 11:53:49

16 PROSPECTIVE JUROR 58: I may not. It's still kind of
17 raw so I don't think that I would be able to be objective in
18 something where -- and that plays no part in what he's being
19 charged with but it's just my emotions for that.

20 MR. PERKEL: And one last follow-up question. This 11:54:06
21 kind of touches on. I know one of the other things that you
22 mentioned in the questionnaire has to do with tax evasion being
23 a crime, criminal tax evasion. You checked off both yes and no
24 and you explained that you think jail time is more appropriate
25 for people who are -- who get arrested for violent crimes? 11:54:22

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 PROSPECTIVE JUROR 58: Sure. Well, it's -- my 11:54:27
2 feeling would be, like, if someone is guilty, like, of a
3 financial crime, and I don't know the specifics or anything but
4 it's kind of like how do you hurt those people more or make a
5 lesson for someone? Do you throw them in jail and then they 11:54:40
6 get out and then they get to have all of their money? Or do
7 you fine them intensely and make them really suffer and, you
8 know, don't do this again?

9 I mean, that's sort of my feeling where jails are so
10 overrun. Let's put the real violent criminals, people who 11:54:56
11 actually hurt people and not -- I'm not saying that that
12 doesn't hurt people. It hurts everyone but I don't see it as
13 being the same as someone who raped someone or murdered
14 someone.

15 MR. PERKEL: And the judge is going to instruct you 11:55:15
16 that any consideration of punishment is up to the judge not the
17 jury. I think, having said that -- this kind of plays in to
18 some of the sympathy you were feeling -- can you set aside your
19 belief or would you let that kind of sympathetic feelings and
20 views on, sort of, the social dynamics of punishment may creep 11:55:30
21 into your thought? Process because this is a tax case. This
22 is not a violent crime case.

23 PROSPECTIVE JUROR 58: Right. It may. It may,
24 depending on what -- on what the details are and the way it's
25 going and what you are going for. It could. 11:55:46

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 You know, the same thing, the whole thing with, like, 11:55:51
2 the dad, you know, like that piece popping up. Is he a nice --
3 is he good to his kids? Does he love his kids? Could that
4 make me feel sympathetic because my father was a jerk or a
5 lie -- actually lied my whole life. So, you know, something 11:56:06
6 like that might make me -- I think it could just stir up those
7 emotions that I try to keep at bay.

8 MR. PERKEL: Well, thanks so much for sharing your
9 thoughts with us. We appreciate it.

10 THE COURT: All right. 11:56:25

11 Any questions?

12 MR. SWAFFORD: No, Your Honor. No objection.

13 THE COURT: And thank you very much.

14 (Prospective Juror 58 departs the proceedings.)

15 THE COURT: Okay. From the government, any requests 11:56:50
16 to recuse for cause?

17 MR. PERKEL: Yes, Your Honor. The juror number is
18 58, the juror we just heard from. My for-cause challenges are
19 the following, Your Honor. I think she will have an extreme
20 financial hardship. She's a small business owner. Has an 11:57:15
21 insurance agency. It sounds like she has a part-time person
22 who is not licensed to sell or engage in the business. This
23 trial is going to last a long time.

24 And, second, there is concern from the government
25 that she can't be fair and impartial here. I think her 11:57:29

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 previous experiences and thoughts on punishment with regards to 11:57:33
2 the financial crimes, I think it's going to creep in, as she
3 said; and I also think, as she brought it up herself, that she
4 might not be able to set aside any natural sense of sympathy
5 she might feel for the defendant. She said that she's going to 11:57:47
6 hear that he might have kids or he might be a good guy outside
7 of some of the criminal conduct that we've charged him with.
8 So I think that for those reasons, the government moves for --
9 moves to exclude her from jury service.

10 THE COURT: Any objection? 11:58:04

11 MR. SWAFFORD: Your Honor, we don't think that they
12 have established a strike for cause, but I think what primarily
13 is driving her answers is the disparate economic hardship. So
14 we'll allow -- we don't have an objection to her being released
15 but we don't believe it's for cause. 11:58:20

16 THE COURT: All right. She is excused.

17 Okay. Christine, how many total jurors do we have
18 remaining?

19 COURTROOM DEPUTY: 45, Your Honor.

20 THE COURT: And do you have any excuses for cause? 11:58:49

21 MR. SWAFFORD: Your Honor, none that we've already --
22 that we haven't already established.

23 THE COURT: Okay. 45. We need 36.

24 Now -- and that's in order to have the 12 and the
25 16 -- excuse me, the 12 and the four additional and then the 10 11:59:07

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 and the six equals 32 -- I'm sorry, 32 total. 11:59:13

2 Now, we have 45 and because we have alternates, I
3 will allow you, if you both agree, additional strikes based
4 upon those alternates. But both sides have to agree. So, in
5 other words, you would each have another four strikes and that 11:59:40
6 would bring the number up to 40. Of course there are going to
7 be some cross-strikes because you do it independently.

8 What is the government's position?

9 MR. PERKEL: The government opposes that, Your Honor.

10 THE COURT: Okay. All right. So, then, you may make 12:00:00
11 your strikes and that will be 10 for the defense and six for
12 the government.

13 Remember, the jury is chosen from the top.

14 So that leaves, Christine, how far back to do we go?

15 COURTROOM DEPUTY: Anything after juror 42 won't be 12:00:24
16 used.

17 THE COURT: Anything after 42. All right. And we
18 are in recess. And I said I would call the jury back at 12:15.
19 I would like to do that. So you have 15 minutes.

20 MR. SWAFFORD: Your Honor, real quick, can we just 12:00:41
21 take a minute to make sure that we're consistent with our lists
22 in terms of who is gone, who is here?

23 THE COURT: Yes. And Christine will do that for you.

24 MR. SWAFFORD: Thank you, Your Honor.

25 THE COURT: And I am -- and this is adjourned and I 12:00:53

CR-10-00757-PHX-ROS, May 29, 2012

1 am out here. 12:00:57
2 (Recess at 12:01; resumed at 12:28.)
3 (All of the prospective jurors are in the courtroom.)
4 (Court was called to order by the courtroom deputy.)
5 THE COURT: Please be seated. 12:28:55
6 Ladies and gentlemen, we have the jury chosen and we
7 have 12 jurors and four alternates. So that's a total of 16.
8 As you are called, please come up and sit in the back
9 row first. All of the seats will be filled and then to, of
10 course, your right and then we'll go to the front row. 12:29:14
11 All right. Christine.
12 COURTROOM DEPUTY: Juror Number 2, Juror Number 3,
13 Juror Number 6, Juror Number 7, Juror Number 9, Juror Number
14 10, Juror Number 11, Juror Number 14, Juror Number 20, Juror
15 Number 23. Are we missing number 23? 12:30:30
16 PROSPECTIVE JUROR 23: I'm sorry.
17 COURTROOM DEPUTY: Juror Number 24, Juror Number 25,
18 Juror Number 26, Juror Number 28, Juror Number 30, Juror Number
19 41.
20 THE COURT: Okay. 12:31:44
21 Ladies and gentlemen, all of you who have
22 participated, once again, I thank you. You are here as
23 citizens of the United States of America. I appreciate your
24 participation in this process, as do the parties and the
25 attorneys, and you are excused to go downstairs and see if 12:32:06

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 there are any other directions for you or you are excused for 12:32:09
2 the day. Thank you very much.

3 (Whereupon all of the remaining prospective jurors
4 depart the proceedings.)

5 THE COURT: Okay. Ladies and gentlemen, thank you. 12:32:54
6 Thank you for participating in this long trial but I think
7 you'll find it interesting. I think all criminal trials in
8 federal court are very interesting. I hope you'll enjoy the
9 experience. I think most of the jurors who have served
10 federally in my court have enjoyed the experience. 12:33:18

11 I'm going to have the oath read to you at this time
12 so if you'll please stand.

13 (Whereupon all of the jurors were severally sworn.)

14 THE COURT: All right. Please be seated.

15 And we are going to take another break. Now you get 12:33:48
16 to go for lunch. Maybe you've already had lunch but you can
17 have two lunches and we'll see you back here in about -- at,
18 say, at 1:35, to give you an hour so you can actually go out of
19 the building.

20 And then what we'll do is I will bring you to the 12:34:08
21 beginning of the case by reading what's called preliminary
22 instructions and those give you the guidance for you throughout
23 the trial. I will tell you some principles of law, some of
24 which you have heard, some of which you have not heard.

25 So we are going to excuse you now. We'll see you 12:34:30

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 back here and we'll begin the trial, hopefully, unless there is 12:34:33
2 some type of issue that I have to deal with which is
3 unanticipated.

4 So we'll start again at 1:35. All right. You're
5 excused. 12:34:52

6 COURTROOM DEPUTY: I'm actually going to take you
7 back to the jury room and show you where you'll be reporting.

8 THE COURT: Yes. You will have your own room.

9 All right. Counsel?

10 All right. Thanks. We are adjourned. 12:35:10

11 (Jury departs.)

12 (Recess at 12:35; resumed at 1:27.)

13 THE COURT: Please be seated.

14 (Ms. Bertrand is in the courtroom.)

15 (Jury out.) 01:27:36

16 THE COURT: Ms. Bertrand, you have a request?

17 MS. BERTRAND: Your Honor, I do have a request that I
18 hope we can quickly resolve before -- I note that there's a
19 sequestration order. My client is in the courtroom. If you
20 would like her to step out of the courtroom, I'm happy to -- 01:27:47

21 THE COURT: If you are in any way going to discuss
22 the evidence or something that going to be presented in this
23 case, then she needs to step out.

24 MS. BERTRAND: I would rather not take my chances so
25 why don't I ask her to step out? 01:28:06

CR-10-00757-PHX-ROS, May 29, 2012

1 Mrs. Parker -- she's gone. 01:28:08

2 THE COURT: If she's here, she's hiding.

3 MS. BERTRAND: She doesn't do that. Judge, I didn't

4 know that the sequestration of me as Mrs. Parker's counsel

5 would be an issue. I was dealing with some post-morally 01:28:18

6 criminal defense matters this morning.

7 I came to court, met up with Mrs. Parker and she told

8 me I wasn't allowed in the courtroom. I did not want to take

9 any chances so I have been waiting in the hallway to request

10 some clarification about that. 01:28:34

11 This morning I looked at Rule 615, which is the

12 exclusion rule, and it seems to pertain to testimony versus

13 other matters such as opening arguments, that kind of thing.

14 And I know that I have been listed as a possible rebuttal

15 witness for the defense. Anything I am called to testify to I 01:28:57

16 think would be limited, but I understand why they would need

17 me, and it wouldn't go to most of the witnesses who I already

18 know about because I already represent Mrs. Parker.

19 So I was asking -- I wanted to ask the Court if it

20 would be acceptable to the Court, given its concerns about 01:29:21

21 information bleed here, to allow me to be present for the

22 opening statements. We have some very gifted trial lawyers in

23 the courtroom and the arguments affect my client. I would not

24 share with her what I hear in the arguments, but I would look

25 to see some of my colleagues talk about this case with the 01:29:40

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 jury.

01:29:42

2 There are some witnesses named by the government for
3 this week who apparently, based on the government's submission
4 to the Court, will be testifying about Mrs. Parker such as the
5 revenue agent reviewing the offers in compromise that
6 Mrs. Parker, I believe, signed two of and the order agent who
7 is going to talk about Mrs. Parker -- not only Mr. Parker but
8 Mrs. Parker's entry into the United States and the handwriting
9 analyst who is going to talk about Mrs. Parker's signing of
10 some documents and then the people, the witnesses 26 through 28
11 I believe, who are witnesses regarding the purchase of the
12 Texas property that I think Mrs. Parker is involved in.

01:29:55

01:30:21

13 I don't have any personal knowledge about any of that
14 information. I only know what's in the discovery and yet these
15 people likely are going to be seen again if Mrs. Parker is
16 tried, and I would like to be able to observe them testify. I
17 would not share with Mrs. Parker what I see or hear in the
18 testimony until the trial was over and I think here there's a
19 couple of considerations to weigh in considering my request.

01:30:37

20 The first is that it is the government's burden here
21 to show that there is a specific prejudice to having me in the
22 courtroom. And I don't know, with the items that I am
23 mentioning here, that it creates any prejudice to the
24 government, particularly given my assurance as an officer of
25 the court that I'm not going to share this with my client.

01:31:04

01:31:18

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 Second, I am her attorney. I am essential to her
2 interest. And if I agree that I'm not going to share with my
3 client that information, I think that that balances my need to
4 represent her, especially where we have an issue of her
5 testifying where we've asserted the Fifth Amendment and the
6 government's concern, rightfully so, that we don't want any
7 information bleeding while witnesses are being -- the witnesses
8 go before her.

01:31:26

01:31:44

9 The authority for this is *United States v. Brown*, 547
10 F.2d. 36, that's a Third Circuit case. I couldn't find
11 anything on Ninth Circuit with a quick review. And that is
12 where the defense tried to have witnesses excluded and it was
13 found not to be error to not exclude them because they didn't
14 make a specific showing of prejudice.

01:32:07

15 The second case that I would ask the Court to
16 consider is the Windsor, W-I-N-D-S-O-R, *Shirt Company vs. New*
17 *Jersey National Bank*, 793 F. Supp. 589. That's a 1992 case out
18 of the Eastern District of Pennsylvania where they discuss what
19 constitutes an essential interest of the party.

01:32:25

20 So given those limitations, I would ask the Court to
21 perhaps clarify or reconsider the sequestration of
22 Mrs. Parker's attorney from the entirety of the proceedings.
23 And as the government files additional anticipated witness
24 lists, I would be happy to submit to the Court for what
25 witnesses I would like to be present and which I don't mind

01:32:50

01:33:11

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 stepping out.

01:33:15

2 THE COURT: Okay. Well, let me just say a couple of
3 comments. This better not be opening statement, it's opening
4 statement. An opening statement is where the government and
5 the defense will set forth what they believe the evidence will
6 show so they can only talk about the evidence. So in that
7 respect, it is potentially problematic.

01:33:29

8 Secondly, I'm interested in the possibility I will
9 hear from the government in terms of prejudice because of
10 the -- it looks like limited nature of what your testimony
11 would be, but also your client is going to be called as a
12 witness.

01:33:52

13 I am at a loss as to how you can adequately represent
14 your client and not disclose information that you have learned
15 during the trial. So that seems to me to be -- I'm at a loss
16 as to how that constitutes effective representation to not
17 disclose information to your client and adequately represent
18 her.

01:34:16

19 The other thing is, in contrast to the way this case
20 was indicted, your client received a substantial advantage by
21 having the case severed.

01:34:36

22 This is not a classified under seal trial. You will
23 have the transcripts available to you when your client
24 testifies -- not testifies, excuse me, but when her trial takes
25 place. Should you need additional time, and it's fair, to

01:35:06

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 prepare for trial, you'll have it. 01:35:07

2 So I am at a loss as to how this is going to
3 prejudice you and how this issue about effective representation
4 of your client surfaces and how you can basically say, "I'm not
5 going to tell you anything," when you have an obligation to 01:35:31
6 communicate with your client all information which is relevant.

7 And if you're going to say, "Well, I'm not going to
8 tell her," anything because I can do my own investigation
9 without disclosing what I've learned and so that doesn't affect
10 my representation of her. You have that same advantage at the 01:35:54
11 end of the trial because you're going to have all of those
12 transcripts available to you.

13 I don't think that, in my experience as a judge, that
14 I have ever allowed a potential witness to testify. This is a
15 little different because you are only potential. But -- so if 01:36:15
16 it was just you, it would be different. But your client, even
17 though she may be taking the Fifth when she takes the stand,
18 and she has a right to take the Fifth whenever she considers it
19 relevant to her Fifth Amendment privilege, she's a solid
20 witness, potential witness in this case. So at that point, if 01:36:46
21 you have been in court and she is to testify, how can you
22 adequately represent your client by not disclosing information
23 that has been disclosed to you during this trial?

24 So that is the dilemma I see right now. But if the
25 government has no objection or I haven't read the case law, 01:37:09

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 maybe it is that you have to show that sequestration has to be 01:37:14
2 prejudicial to the government.

3 MS. BERTRAND: Or known sequestration has to be
4 prejudicial. Me being present has to be what's prejudicial to
5 them and that's why I need to be out of the room. The Court 01:37:28
6 said --

7 THE COURT: Well, if sequestration, which means
8 you're out of the room, is prejudicial or your being present is
9 prejudicial, then that is what they have to prove.

10 So Mr. Perkel or Mr. Sexton? 01:37:47

11 MR. SEXTON: May I address you from here?

12 THE COURT: As long as I can hear you.

13 MS. BERTRAND: Should I step back?

14 MR. SEXTON: No. You're fine. Obviously, I haven't
15 read the two cases. Frankly, the Court made the two arguments 01:38:02

16 that I would make and I would just reiterate that what we
17 talked about this morning is the two reasons for -- obviously,
18 there's two potential witnesses here and since the transcripts
19 and other means are available post trial from which she can
20 glean the information she is seeking, there is no showing of 01:38:20

21 need for her to be present at any part. And the potential for
22 her and/or her preparation of her client being colored by what
23 she has learned in Court, those are two real potential problems
24 here. And it seems to me that far outweighs whatever
25 inconvenience she might have to wait for transcripts after this 01:38:49

CR-10-00757-PHX-ROS, May 29, 2012

1 trial is concluded.

01:38:52

2 So we would reurge that the sequestration order
3 remain in effect that you ordered this morning as to both
4 counsel and as to her client.

5 MS. BERTRAND: I wasn't sure if the Court wanted me
6 or expected me to respond to the motions.

01:39:06

7 THE COURT: Yes. It's your motion.

8 MS. BERTRAND: As to the sharing of the information
9 with Mrs. Parker, that is a concern of mine as well. How would
10 I maintain that balance?

01:39:20

11 And I think that the sequestration and the Court's
12 order of last week that I looked at regarding sequestration is
13 about specific statements, evidence, put on in Court. I would
14 not communicate anything to my client that, "So-and-so got up
15 and said this. What do you think? How are we going to respond
16 to that?" I think that would be inappropriate and I would not
17 do it, just as there are times I can't communicate sealed
18 matters or confidential things.

01:39:42

19 THE COURT: Yes. But it's not sealed.

20 MS. BERTRAND: It's not sealed, exactly, but there's
21 a court order barring her receiving the information.

01:39:59

22 THE COURT: What if it's something, however, that
23 puts you in a conflict where you have to withdraw?

24 MS. BERTRAND: That is a consideration I've had, too,
25 and particularly in talking with the Court about that, and I

01:40:14

CR-10-00757-PHX-ROS, May 29, 2012

1 don't want that. I don't want to create that for Mrs. Parker. 01:40:16
2 I care very much about her.

3 THE COURT: So I'm sure you've been at this for a
4 long time. Are you sure you want to get yourself in a
5 situation like that, Ms. Bertrand, where something occurs in 01:40:27
6 this courtroom. You can't tell her and that creates a conflict
7 for you in representing her?

8 MS. BERTRAND: It's a -- my concerns -- I'm just
9 going to list my concerns.

10 THE COURT: That's a decision you have to make. I've 01:40:49
11 raised it for you.

12 MS. BERTRAND: Sure.

13 THE COURT: But I will tell you that if she raises a
14 conflict and then -- and you have the obligation to say so and
15 if there's something that occurs, I don't know what all of the 01:41:03
16 evidence is going to be, it puts you in a conflict situation,
17 then, because you can't disclose it to her. "I have learned
18 the following now. I need to investigate this. I need to do
19 it now," and you can't talk to her about it, it's going to put
20 you in a conflict situation because it's by an order that you 01:41:28
21 can't talk to her about what was said. So you are under the
22 auspices of a Court order.

23 MS. BERTRAND: Right. I think it's compounded by the
24 fact that -- and I think we told the Court about this before,
25 that there's a joint defense agreement. So we have been 01:41:45

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 sharing information for close to two years on this case and
2 meeting in groups and preparing in groups.

01:41:48

3 So --

4 THE COURT: I'm not sure how that affects it. I
5 mean, I think that is an issue. I don't know -- the government
6 hasn't dealt with that. A joint defense agreement means they
7 can share information. So there's no attorney-client privilege
8 with respect to that information that is shared between
9 counsel.

01:41:59

10 However, that is different, I think, than what occurs
11 in the courtroom. You know, I don't really know how to deal
12 with that. But all I'm going to do right now, the jury is
13 waiting, this issue was -- I don't know -- did you just learn
14 just recently that you were going to be a witness?

01:42:18

15 MS. BERTRAND: I learned over the weekend.

01:42:40

16 THE COURT: And that was the first notice that you
17 had?

18 MS. BERTRAND: Yes, ma'am.

19 THE COURT: Okay. Well, I am going to preclude you
20 from appearing for the opening statement, because it is an
21 opening statement, and after this matter is fully briefed, then
22 you may decide one way or the other whether or not you really
23 want to participate based upon whatever obligations you have
24 and present it as a motion. As I said, I don't know how to
25 deal with the joint defense agreement, if it's still

01:42:49

01:43:15

CR-10-00757-PHX-ROS, May 29, 2012

1 applicable -- assuming after you have been severed. Most of
2 the time joint defense agreements mean that counsel are going
3 to be -- or the defendants are going to be tried together. But
4 maybe not.

01:43:18

5 So file your motion and the government will respond
6 and then I'll deal with it then.

01:43:32

7 MS. BERTRAND: Okay. And I also think I should talk
8 to my client. Do you mind if I share with her, given your
9 order, the concerns that the Court has raised with me about
10 these choices?

01:43:48

11 THE COURT: Absolutely not, no.

12 MS. BERTRAND: Okay.

13 THE COURT: That's appropriate.

14 MS. BERTRAND: Okay.

15 THE COURT: And as I said, I just raised issues. The
16 only thing that I've said, it's absolutely true, is that this
17 is an opening statement, not an opening argument.

01:43:53

18 MS. BERTRAND: And I agree with the Court.

19 THE COURT: So that means the evidence is going to be
20 offered.

01:44:12

21 MS. BERTRAND: All right. Thank you, ma'am.

22 THE COURT: So I have for defendant's opening, I have
23 all of these -- it looks like timeline and pictures.

24 Any objection?

25 MR. PERKEL: No, Your Honor. The only sole objection

01:44:26

CR-10-00757-PHX-ROS, May 29, 2012

1 we've raised was resolved with Mr. Minns. I'm sorry to provide
2 you with courtesy copies of my presentation. I didn't think
3 about it, so I'm sorry.

4 THE COURT: But you've given them to counsel and so
5 there will be no surprise.

6 MR. PERKEL: That's true. It's a PowerPoint
7 presentation and then there's a chart that is essentially the
8 same image of the PowerPoint. Those are the two things.

9 MR. MINNS: There's one difference in yours.

10 THE COURT: You're going to have to speak up,
11 Mr. Minns, in front of the microphone.

12 MR. MINNS: It's a life-long problem and I apologize.

13 There's one difference. Rather than argue it and
14 have a ruling, the government did not want the judgment itself,
15 said I could put judgment and they didn't want a picture of the
16 judgment. So the copy that the Court has the picture of the
17 judgment on it. The copy on my bulletin board is in
18 conformance with the government's request. We put a little
19 notecard on it at this time. We are going to ask, for closing,
20 that we be allowed to take it off and we'll bring that up to
21 the Court. Thank you.

22 THE COURT: All right. Anything else or we can bring
23 the jury in and begin?

24 So I'm going to do the preliminary instructions and
25 then the United States government will do their opening

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 statement. 01:45:46
2 And will that be you, Mr. Perkel?
3 MR. PERKEL: Yes, Your Honor.
4 THE COURT: And, Mr. Minns, that will be you?
5 MR. MINNS: Yes, Your Honor. 01:45:51
6 THE COURT: And how long is your opening?
7 MR. PERKEL: Your Honor, I estimate about 40 to 45
8 minutes.
9 THE COURT: And what do you think, Mr. Minns?
10 MR. MINNS: I would estimate an hour, Your Honor. 01:45:58
11 THE COURT: Okay. Well, we'll do the best we can.
12 All right. Let's bring the jury in.
13 I forgot, Counsel. Questions or no questions?
14 MR. MINNS: No questions, Your Honor.
15 THE COURT: Okay. 01:46:26
16 (Jury enters.)
17 THE COURT: Okay. Ladies and gentlemen, we're ready
18 to get going here. I hope you had a nice lunch.
19 And I'm going to take a few minutes to tell you
20 something about what your duties are as jurors throughout the 01:47:47
21 trial. At the end of the trial, I'm going to give you more
22 detailed instructions. Those are going to be the legal
23 instructions that you will apply to this case.
24 When you deliberate, it will be your duty to weigh
25 and evaluate all of the evidence received in the case; and in 01:48:06

CR-10-00757-PHX-ROS, May 29, 2012

1 that process, to decide the facts. To the facts, as you find
2 them, will you apply the law as I give it to you. And that is
3 whether you agree with the law or not.

4 You must decide the case solely on the evidence and
5 the law before you and must not be influenced by any personal
6 likes or dislikes, opinions, prejudices, or sympathy.

7 Please do not take anything I may say or do during
8 the trial as indicating what I think the evidence -- think of
9 the evidence and what your verdict should be.

10 That, as I mentioned before, is entirely up to you.
11 You are the judges.

12 I forgot to mention something to you and that is
13 that, you know, there's 16 of you but only 12 of you will
14 actually deliberate.

15 We don't know who the alternates are so I tell you
16 this at the outside so you don't think, "Gee, maybe I might be
17 an alternate." At the very end, what we do is, by random, we
18 pull the names of those who are then the alternates. That is
19 after the closing argument, after the instructions are given.

20 And as you know, this is a criminal case and it's
21 brought by the United States of America, Department of Justice,
22 U.S. Attorney's Office.

23 The government charges defendant, James R. Parker,
24 with four counts of tax evasion in violation of Title 26,
25 United States Code, Section 7201 and Title 18, United States

United States District Court

01:48:11

01:48:23

01:48:44

01:49:06

01:49:30

01:49:47

CR-10-00757-PHX-ROS, May 29, 2012

1 Code, Section 2. The government further charges defendant,
2 James R. Parker, with four counts of making false statements in
3 violation of Title 26, United States Code, Section 7201 --
4 7206(1) and Title 18, United States Code, Section 2.

01:49:52

5 The charges against the defendant are contained in an
6 indictment. The indictment is simply the description of the
7 charges made by the government against the defendant.

01:50:14

8 The indictment is not evidence and does not prove
9 anything. The defendant has pleaded not guilty to the charges
10 and is presumed innocent unless and until the government proves
11 the defendant guilty beyond a reasonable doubt.

01:50:34

12 In addition, the defendant has the right to remain
13 silent and never have to prove innocence or present any
14 evidence.

15 In order to help you follow the evidence, I will give
16 you a brief summary of the elements of the crimes which the
17 government must prove to make its case.

01:50:56

18 Defendant, James R. Parker, is charged in Counts 1
19 through 4 of the indictment with attempting to evade and defeat
20 the payment of income tax, interest and penalties for calendar
21 years 1997, 1998, 2001, and 2002 in violation of Section 720 of
22 Title 26 of the United States Code.

01:51:17

23 In order for the defendant to be found guilty of
24 these charges, the government must prove each of the following
25 elements beyond a reasonable doubt with respect to each count.

01:51:48

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 First, the defendant owed more federal income tax for 01:51:53
2 the calendar years 1997, 1998, 2001, and 2002 than was paid by
3 him for any income tax returns filed for those years.

4 Second, the defendant knew he owed more in federal
5 income tax than was paid by him for any tax returns defendant 01:52:18
6 filed for those years.

7 Third, the defendant made an affirmative attempt to
8 evade or did an affirmative act to defeat the payment of income
9 tax for any of those years.

10 And, fourth, in attempting to evade or defeat the 01:52:42
11 payment of this income tax, the defendant acted willfully.

12 Defendant, James R. Parker, in Counts 5 through 8 of
13 the indictment, is charged with a crime of false statement in
14 violation of Title 26, United States Code, Section 7206(1) and
15 Title 18, United States Code, Section 2. In order for the 01:53:08
16 defendant to be found guilty of that charge, the government
17 must prove each of the following elements beyond a reasonable
18 doubt:

19 First, the defendant made and signed tax documents
20 that the defendant knew contained false information as to a 01:53:29
21 material matter; second, the tax documents contained a written
22 declaration that it was being signed subject to the penalties
23 of perjury; and, third, in submitting the tax documents, the
24 defendant acted willfully.

25 A matter is material if it had a natural tendency to 01:53:54

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 influence or was capable of influencing the decisions or
2 activities of the Internal Revenue Service.

01:53:58

3 The evidence you are to consider in deciding what the
4 facts are consist of: The sworn testimony of any witness; the
5 exhibits which are received in evidence; and any facts to which
6 the parties agree.

01:54:20

7 The following things are not evidence and you must
8 not consider them as evidence in deciding the facts of this
9 case: Statements and arguments of counsel, questions and
10 objections of counsel, testimony that I instruct you to
11 disregard, anything you may see or hear when the Court is noted
12 in session even if what you see or hear or -- is done or said
13 by one of the parties or one of the witnesses.

01:54:42

14 Evidence may be direct or circumstantial. Direct
15 evidence is direct proof of a fact, such as testimony by a
16 witness about what the witness personally saw or heard or did.
17 Circumstantial evidence is indirect evidence, that proof of one
18 or more facts from which you can find another fact.

01:55:09

19 You are to consider both direct and circumstantial
20 evidence. Either can be used to prove any fact.

01:55:35

21 The law makes no distinction between the weight to be
22 given to either direct or circumstantial evidence. It is for
23 you to decide how much weight to give to the evidence. These
24 are Rules of Evidence that control what can be received into
25 evidence.

01:56:01

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 When a lawyer asks a question or offers an exhibit in 01:56:02
2 evidence and a lawyer on the other side thinks it is not
3 permitted by the Rules of Evidence, the lawyer may object.

4 If I rule -- overrule the objection, the question may
5 be answered or the exhibit received. 01:56:22

6 Whenever I sustain an objection to a question, you
7 may -- you must ignore the question and must not guess what the
8 answer would have been.

9 Sometimes I may order that evidence be stricken from
10 the record and that you are to disregard or ignore the 01:56:41
11 evidence. That means that when you are deciding the case, you
12 must not consider the evidence that I told you to disregard.

13 In deciding the facts of the case, you may have to
14 decide which testimony to believe and which testimony not to
15 believe. You may believe everything a witness says or part of 01:57:08
16 it or none of it.

17 In considering the testimony of any witness, you may
18 take into account the witness's opportunity and ability to see
19 or hear or know the things testified to; the witness's memory;
20 the witness's manner while testifying; the witness's interest 01:57:30
21 in the outcome of the case, if any; the witness's bias or
22 prejudice, if any; whether other evidence contradicted the
23 witness's testimony; the reasonableness of the witness's
24 testimony in light of all of the evidence; and any other
25 factors that you believe bear on believability. 01:57:54

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 The weight of the evidence as to a fact does not
2 necessarily depend on the number of witnesses who testify about
3 it.

01:57:59

4 Okay. Now I'm going to talk a little more
5 specifically about your conduct as a juror.

01:58:13

6 First, keep an open mind throughout the trial and do
7 not decide what the verdict should be until you and the other
8 jurors have completed your deliberations at the end of the
9 case.

10 Second, because you must decide this case based only
11 on the evidence received in the case and my instructions as to
12 what the law is, you must not be exposed to any other
13 information about the case or to the issues it involves during
14 the course of your jury duty.

01:58:30

15 Thus until the end of the case or unless I tell you
16 otherwise, do not communicate with anyone in any way and do not
17 let anyone else communicate with you in any way about the
18 merits of the case or anything to do with it.

01:58:51

19 This includes discussing the case in person, in
20 writing, by phone or electronic means via e-mail, text
21 messaging or any Internet chat room, blog, website or other
22 feature. This applies to communicating with the other jurors,
23 until I give you the case for deliberations.

01:59:13

24 And it applies to communicating with everyone else,
25 including your family members, your employer, the media, or

01:59:37

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 press and people involved in the trial.

01:59:43

2 Although you may notify your family and your employer
3 that you have been seated as a juror in the case. But if you
4 are asked or approached in any way about your jury service or
5 anything about the case, you must respond that you have been
6 ordered not to discuss the matter and to report any contact to
7 the Court.

02:00:01

8 Because you will receive all of the evidence and
9 legal instruction you properly may consider to return a
10 verdict, do not read, watch, or listen to any news, media
11 counts or commentary about the case or anything to do with it.
12 Do not do any research such as consulting dictionaries,
13 searching the Internet or using other reference materials, and
14 do not make any investigation or in any other way try to learn
15 about the case on your own. The law requires these
16 restrictions to ensure the parties have a fair trial based on
17 the same evidence that each party has had an opportunity to
18 address.

02:00:22

02:00:49

19 A juror who violates these restrictions jeopardizes
20 the fairness of the proceedings. If any juror is exposed to
21 outside information, please notify the Court immediately.

02:01:13

22 At the end of the trial, you will be -- you have to
23 make your decision based on what you recall the evidence. You
24 will not have a written transcript of the trial. You should
25 know that I have two screens over here. And I have what's

02:01:37

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 called real-time recording. That means as I speak, I can see 02:01:42
2 my words. Isn't that wonderful? You won't have that, however.

3 Now, the other one I have is the one you have and
4 that's the ones in front of you. You will see the exhibits and
5 I will see the exhibits. Sometimes I will be turning over 02:02:03
6 here. However, and you should know that I am not texting or
7 doing e-mail communications. Sometimes I am taking notes of
8 what I see and also taking notes of the transcript.

9 So -- but you do not have and will not have a
10 transcript. 02:02:28

11 But if you wish to do so, you may take notes and you
12 have notepads. If you do take notes, please keep them to
13 yourself until you and the other jurors go to the jury room to
14 decide the case. Do not let anyone -- do not let any -- do not
15 let note-taking distract you from being very attentive to what 02:02:48
16 the witnesses are saying.

17 When you leave the Court for recesses, your notes
18 should be left in the jury room. No one will read your notes.
19 Not only should they be left in the jury room, they have must
20 be left in the jury room. 02:03:10

21 Now, whether you take notes, you should rely on your
22 own memory of the evidence. Notes are only to assist your
23 memory. You should not be overly influenced by your notes or
24 the notes of other jurors.

25 All right. The next phase of the trial is going to 02:03:32

CR-10-00757-PHX-ROS, May 29, 2012

1 begin. First each side will do an opening statement. The
2 opening statement is not evidence. It is simply an outline to
3 help you understand what the party expects the evidence will
4 show. A party is not required to make an opening statement.

02:03:36

5 The government will then present evidence and counsel for the
6 defendant may decide to cross-examine. Counsel for the
7 defendant has no obligation. But if he does or they do
8 cross-examine, then the government may do redirect examination.

02:03:58

9 After the evidence has been presented, I'm going to
10 instruct you on what the law is and then the counsel will make
11 their closing arguments. After that you go to the jury room
12 and you deliberate to render a verdict.

02:04:27

13 I think you know my staff although you don't know
14 Elaine Cropper. She's my court reporter and you'll see her
15 working away here throughout the trial. As I said, she's doing
16 a transcript for me. How they do it, I don't know but they do
17 it. In the olden days, we didn't have these -- this real time
18 reporting which is terrific now.

02:05:05

19 So this is a high-tech courtroom. It's one of the
20 first high-tech courtrooms so I hope you will enjoy it. But if
21 for some reason you can't see the -- Christine handles all of
22 this. She's a high-tech person, in contrast to me, so she pops
23 up on the screen the exhibits as they are admitted.

02:05:26

24 Sometimes I only see them because they are not
25 admitted yet but then it will pop up on the screen. And if you

02:05:49

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 don't see the exhibit and you know you're supposed to, then 02:05:54
2 lets us know; and, of course, if you can't hear something, let
3 us know. We have very good audio in here. It's actually just
4 recently been improved. But sometimes it's hard to hear
5 counsel. 02:06:12

6 And I just want to mention something else in passing
7 and that is that our defense attorney, Mr. Minns, occasionally
8 has to leave the courtroom for personal reasons and I have said
9 certainly that that is what he should do.

10 So don't think that he is being rude or discourteous. 02:06:32
11 I have allowed him to do that and of course he may do that.

12 All right. Let's go ahead with opening statements.

13 All right. Mr. Perkel?

14 (The following portion was previously separately
15 transcribed and is incorporated herein.) 02:06:59

16 MR. PERKEL: Thank you, Your Honor.

17 Good afternoon, ladies and gentlemen. This case is
18 about tax evasion. It's about how the defendant, knowing that
19 he had a tax liability, knowing that he owed money to the
20 Internal Revenue Service, willfully chose to evade the payment 02:07:36
21 of that tax by hiding his assets and concealing his sources of
22 income.

23 In other words, ladies and gentlemen, the defendant,
24 as you will learn, wanted the IRS to believe that he didn't owe
25 anything and he wasn't earning anything. He didn't own any 02:08:01

CR-10-00757-PHX-ROS, May 29, 2012

1 land. He didn't own any homes. He had no business
2 investments. And he wasn't earning anything.

02:08:05

3 Now, this case is also about making a false
4 statement. You will learn the defendant lied to the IRS about
5 what he owned and what he was earning.

02:08:23

6 In simple terms, this case is about how the defendant
7 hid his assets, concealed his sources of income, and lied to
8 the Internal Revenue Service to make it look like he couldn't
9 pay a tax liability that he had agreed he owed.

10 This is not a case about whether or not it was
11 appropriate to take out a deduction or whether or not a
12 business credit was okay or whether or not depreciation
13 expenses on a large piece of machinery were appropriately done
14 or appropriately calculated. This is not a case about whether
15 or not the defendant should be in one income bracket or another
16 income bracket. This is not a case about whether or not his
17 income should be taxed as income or as capital gains.

02:08:52

02:09:12

18 This is a criminal evasion of payment case. Evasion
19 of payment means not just not paying but taking an affirmative
20 act beyond the payment, taking an affirmative act to hide one's
21 assets, conceal one's sources of income and lie.

02:09:35

22 In simple terms, ladies and gentlemen, this case is
23 about how the defendant hid his assets and lied to conceal and
24 prevent the IRS from collecting a \$1.6 million tax liability.
25 There are eight counts in the indictment.

02:10:03

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 Counts 1 through 4 charge the defendant with evasion
2 of payment, meaning the defendant, knowing that he had a tax
3 liability, knowing that he owed the IRS, willfully chose to
4 evade that payment by hiding his assets and his sources of
5 income. And Counts 5 through 8 of the indictment charge the
6 defendant with making a false statement, meaning that the
7 defendant willfully lied to the IRS about what he owned and
8 what he earned.

9 This case begins, ladies and gentlemen, because the
10 defendant lied about what he earned in 1997 and 1998. This
11 case begins because the defendant underreported his tax
12 liability for 1997 and 1998. This case begins because the
13 defendant didn't give his true picture of what he owed the IRS
14 in 1997 and 1998.

15 And in May of 2003, the defendant was in U.S. Tax
16 Court because he had underreported his taxes and his income.
17 You will learn that in May of 2003 the defendant, through an
18 attorney, signs two stipulation agreements. Now, a stipulation
19 is really just a fancy word for saying an agreement. In May of
20 2003, the defendant agreed, through his attorney, that the
21 information in his 1997 and 1998 tax returns that he had filed
22 was false. He agreed that the numbers were wrong in May of
23 2003. In simple terms, the defendant said, "You got me,"
24 because he agreed that for his 1997 tax year he didn't owe the
25 \$2,089 he reported. He agreed with the IRS calculation which

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 was that he owed approximately \$320,000. Not the \$2,089 they
2 put in his tax return but the \$320,000.

02:12:16

3 In the same month, in May of 2003, the defendant
4 signed a second stipulation and a second agreement as to the
5 1998 tax year. Again, he agrees the \$7900 that I put in my tax
6 return, that's wrong. That is false. I agree I didn't owe
7 \$7900. I agree with what the IRS is saying. I owe
8 approximately \$715,000, not the \$7900, \$715,000. You see, the
9 defendant in May of 2003, was telling the IRS, "You got me.
10 You're correct. Your calculations are correct. My numbers
11 were wrong. My numbers were false."

02:12:32

02:13:10

12 You see, after filing his 1997 and 1998 tax returns,
13 the defendant was audited, which means that his income, his
14 cash flows, they were examined. And that \$320,000 the
15 defendant agreed that he owed in addition to the \$2000 that he
16 had reported, that number just doesn't come from nowhere. You
17 will learn that instead of the 13,000 or \$14,000 that the
18 defendant reported as his taxable income for 1997. So you'll
19 learn that he reported taxable income of about \$13,000 or
20 \$14,000, approximately. You'll learn that, in fact, his
21 correct taxable income was \$800,000, approximately, which led
22 to the \$320,000 tax liability that he agreed with. He agreed
23 with the \$320,000 tax liability which comes from taxable income
24 of approximately \$800,000, not the \$13,000 or \$14,000 that he
25 reported he owed in 1997.

02:13:36

02:14:02

02:14:25

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 And you'll learn that for 1998, instead of the \$8,000 02:14:30
2 that he reported as taxable income for 1998, he actually earned
3 \$1.75 million. You see, the additional \$715,000 that he agreed
4 he owed, that number doesn't come from nowhere as well. That
5 number comes from what your taxable income is. And he agreed 02:14:54
6 with the IRS. He agreed that the \$715,000 additional amount in
7 taxes, that is what I owe and that number, ladies and
8 gentlemen, you'll learn comes from \$1.75 million in taxable
9 income.

10 In simple terms, ladies and gentlemen, the defendant 02:15:12
11 agreed the IRS got it right in May of 2003. He agreed with the
12 total tax liability of about \$1.6 million. That includes the
13 liability, the tax liability. That includes penalties, and
14 that also includes interest.

15 So after May of 2003, in U.S. Tax Court, where he 02:15:37
16 agrees that he got it wrong and his numbers were false and he
17 had lied, does he pay the IRS? Does he pay the amount that he
18 should pay? No, ladies and gentlemen, he doesn't. He chooses
19 to willfully evade the payment of taxes by hiding his assets
20 and income and he does show primarily by this way: He tries to 02:16:02
21 distance himself on paper from the stuff he owns and his ways
22 of earning money. He tries to make it look like he doesn't own
23 anything; that he has no real estate. He has no property. He
24 has no business investments, no other assets, and he isn't
25 earning anything. He tries to do that by distancing himself on 02:16:21

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 paper.

02:16:25

2 And the way he distances himself on paper is he
3 creates these companies called nominee entities. They are
4 limited liability partnerships. They are limited liability
5 corporations. But you'll learn that nominee entities means in
6 name only. You can call them whatever you want. You can call
7 them shell companies, straw companies, fictional companies.
8 What they are are just alter egos of the defendant himself. It
9 doesn't mean that they are not legally formed companies. What
10 it means is that they are not separate and distinct from the
11 defendant.

02:16:37

02:17:05

12 And you'll learn that every nominee company needs a
13 nominee manager. Nominee manager is a straw manager, someone
14 who is going to sign some checks, open up some bank accounts,
15 maybe sign some other documents but, in reality, exists as an
16 extension and a puppet of the defendant himself.

02:17:20

17 He uses his own kids. He uses his 25-year-old
18 daughter, his 21-, 22-year-old son by the name of Samuel
19 Parker. He used his 25-year-old daughter. As I said, her name
20 is Rachel Harris. He uses a cattle ranchman in Oklahoma and
21 even an attorney. And while these individuals may have
22 endorsed a few checks and signed some documents it's the
23 defendant and the defendant's money that is behind each of
24 these shell companies.

02:17:41

25 Now, in order to understand this case, you have to

02:18:07

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 really look at three things. You have to look at how the
2 defendant generated cash, how he earned money after the May of
3 2003 court decision where he agreed that he owed \$1.6 million.
4 So you have to look at how he generated cash. You have to look
5 at how he spent that cash, what he bought. And, third, you
6 have to look at what he said to the Internal Revenue Service
7 while he's generating cash and buying assets.

02:18:10

02:18:24

8 If you look at the screen in front of you, you'll see
9 a time chart and there are a number of screens around the
10 courtroom as well but it should be right in front of everybody
11 in the jury box. And you'll see at the top of the time chart
12 May of 2003. You'll see the two tax court stipulations.

02:18:48

13 You'll see on May 6 in 2003 in U.S. Tax Court he agreed to the
14 \$715,000 tax liabilities. There's \$143,000 in penalties and he
15 also agreed to pay interest.

02:19:18

16 And then the May 14, 2003, tax court speculation, he
17 agreed to a \$320,000 tax liability and \$64,000 in penalties.
18 He agreed that those were the amounts that were correct for his
19 1997 and 1998 tax returns. That is what he owed.

20 So if you look at the time chart starting in August
21 of 2002, going down to 2010, it should be on the left-hand side
22 of your screen. You'll see August of 2002 and you'll see the
23 dates that sort of flow from there, starting going down to July
24 of '03, April of 2004. That is the timeline. It's on the
25 left-hand side of the screen and you'll see that in August of

02:19:36

02:19:54

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 2005, on August 16, 2005, the defendant gets a \$1.5 million
2 interest-only loan against his residence in Carefree, Arizona.
3 In other words, he gets a loan for \$1.5 million and he uses his
4 approximately 6,000 square foot \$1.5 million house in Carefree,
5 Arizona, as collateral to secure the loan. He nets out with
6 \$1.1 million in cash in August of 2005, and you'll learn that
7 he takes that \$1.1 million in cash and he takes it puts it into
8 a company called RSJ Investments, LLC.

9 All right. So in August of 2005 he nets out 1.1
10 million in cash.

11 Now, you might be asking why only 1.1 million if you
12 have a 1.5 million loan? You see, that is not the first loan
13 that he gets against that property.

14 Now, approximately two years earlier, on July 31,
15 2003, approximately two months after he signs the May 2003 tax
16 court stipulation, he gets a first loan with the same group of
17 investors for \$355,000 against his Carefree residence, against
18 the same home. And so that in 2005 when he gets another loan,
19 he actually just rolls that first loan into the second loan and
20 that's why he nets 1.1 million in cash.

21 But you're also going to learn, ladies and gentlemen,
22 that on August 9, 2002, the defendant transferred that 1.5
23 million residence into a company called Sunlight Financial,
24 LLP. Sunlight Financial Limited Liability Partnership is made
25 up of two partners, his daughter and a trust in the name of his

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 two sons.

02:21:57

2 So in 2002 he takes his home and, for no
3 consideration, meaning no exchange of benefits, meaning no
4 money, he puts that -- he gives that house to a company called
5 Sunlight Financial, LLP.

02:22:09

6 Now, despite having transferred that home to Sunlight
7 Financial, LLP, you will learn that it's the defendant who
8 negotiates both the 2003 and the 2005 loans. It's the
9 defendant who negotiates those loans. It's the defendant that
10 continues to use that residence as his own, and it's the
11 defendant who benefits from the refinancing of that home which
12 results in the \$1.1 million cash flow despite having
13 transferred that home to another company. It's the defendant
14 who is doing the negotiation and who is getting the benefit of
15 that residence.

02:22:29

02:22:47

16 So that's the first way the defendant generates cash
17 in August of 2005.

18 PANEL MEMBER: Excuse me. I need to use the
19 restroom.

20 THE COURT: Okay. Let's just take a break. About 10
21 minutes? All right. All rise for the jury.

02:23:08

22 (Jury departs.)

23 THE COURT: Okay. Please be seated. You can have a
24 10-minute recess if you like. Otherwise, you can stay in the
25 courtroom.

02:23:58

CR-10-00757-PHX-ROS, May 29, 2012

| | | |
|----|---|----------|
| 1 | MR. MINNS: Your Honor, on the -- | 02:24:04 |
| 2 | THE COURT: You're going to have to get in front of | |
| 3 | the microphone. | |
| 4 | MR. MINNS: I apologize. I apologize, Your Honor, | |
| 5 | for that. It was my understanding that the jurors would be in | 02:24:19 |
| 6 | the order that the Court would ask us if we wanted to shuffle | |
| 7 | them later before making the decision. My jury consultant | |
| 8 | advises us not to. | |
| 9 | THE COURT: Shuffle them? | |
| 10 | MR. MINNS: Not shuffle. My understanding is these | 02:24:40 |
| 11 | four seats here are the alternates. | |
| 12 | THE COURT: No. Is there a problem with that? | |
| 13 | MR. MINNS: The jury consultant told me we would be | |
| 14 | better off leaving them as alternates, so I did not agree to | |
| 15 | all of them being one. I don't think it makes any difference | 02:25:00 |
| 16 | at this point. | |
| 17 | May I have a moment, Your Honor? | |
| 18 | THE COURT: Yes. | |
| 19 | (Discussion off the record.) | |
| 20 | MR. MINNS: Your Honor, the consultant said not to | 02:25:48 |
| 21 | worry about it. | |
| 22 | THE COURT: Okay. All right. So we will worry less | |
| 23 | about it. | |
| 24 | (Recess at 2:26; resumed at 2:39.) | |
| 25 | (Jury enters.) | 02:39:31 |

CR-10-00757-PHX-ROS, May 29, 2012

1 THE COURT: All right. Please be seated. 02:39:44
2 Okay. Mr. Perkel?
3 MR. PERKEL: Thank you, Your Honor.
4 Ladies and gentlemen, before we took our break, we
5 were looking at the first way the defendant generated cash. 02:40:00
6 And in August of 2005 he takes out this loan we discussed and
7 that loan results in a \$1.1 million cash flow. Now, again,
8 just as a reminder, you're going to learn that that loan, the
9 \$1.5 million interest-only loan, the collateral on that loan is
10 secured by his residence. So he takes out this \$1.5 million 02:40:28
11 dollar loan which nets 1.1 million in cash.
12 Now, that's not the only way the defendant generates
13 in cash post the May 2003 tax court decisions, post May 2003
14 where he agrees that he actually owes more for 1997 and 1998
15 than he had previously paid. And that is in June of 2004 the 02:40:49
16 defendant sells \$6 million worth of land in Belize. June of
17 2004 he negotiates the sale of \$6 million in land in Belize
18 that he owns. And then starting in June of 2004, going all the
19 way to January of 2008, approximately \$3 million comes back
20 into the United States because originally the \$6 million land 02:41:15
21 sale, 6 million goes from the United States to Belize. And
22 then you're going to learn that approximately -- a little more
23 than \$3 million comes back into the United States starting in
24 June of 2004 and then ending in January of 2008. And that on
25 the screen is the light blue column and you'll see starting in 02:41:34

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 June of 2004 more than \$3 million comes back into the United
2 States ending in January of 2008.

3 So, ladies and gentlemen, these are the two cash
4 flows post-May of 2003. So the obvious question is, does the
5 defendant pay the IRS? Does he pay his \$1.6 million tax
6 liability? No, ladies and gentlemen, he doesn't and you're
7 going to learn how he spent that money.

8 Starting in April of 2004 and ending in 2007, the
9 defendant starts a company called Cimarron River Ranch. This
10 is another one of the nominee entities we call it CRR, Cimarron
11 River Ranch LLC. It's, essentially, a pet project of his, a
12 cattle ranch and hunting lodge operation. And you recall the
13 \$3 million that comes back into the United States from the sale
14 of Belize land. Well, he takes 2.8 million of that \$3 million
15 and puts it into bank accounts associated with Cimarron River
16 Ranch so that \$3 million that comes right back into the United
17 States from Belize, he takes that money and he puts that money
18 into bank accounts. It's wired into bank accounts associated
19 with that nominee entity called Cimarron River Ranch. And he
20 takes about \$1.2 million of it and he invests that money in a
21 cattle operation hunting lodge in Cimarron River County,
22 Oklahoma, in the small town of Kenton, Oklahoma. And he takes
23 \$1.2 million and he buys a couple hundred thousand dollars
24 worth of cattle and he also purchases the right to lease land
25 public land in Cimarron River County to let the cattle graze.

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 You're also going to learn that not only does he
2 spend \$1.2 million on his cattle operation, he actually buys
3 \$500,000 worth of land, approximately, in Cimarron River and he
4 builds a cabin for the business and for his family and he also
5 builds a facade to a western town, a western town that he wants
6 to convert into a hunting lodge. And so between the two
7 operations, both the cattle ranching operation and the hunting
8 lodge and tractors and paying the cattle hand somebody that
9 manages cattle, he spends over \$2 million starting in 2004 to
10 2007 on this pet project of his, this cattle ranch and hunting
11 lodge operation you see. That's not all he spends money on,
12 though.

13 You're going to learn that on July 16, 2004, he
14 purchases a \$306,000 Rolls Royce. Now, that's approximately a
15 month after he sells the \$6 million worth of Belizean
16 beachfront property in the country of Belize, which is in
17 Central America, after he sells \$6 million worth of land,
18 approximately 590 acres of land, he buys a \$306,000 Rolls Royce
19 and puts that Rolls Royce in the name of Cimarron River Ranch.

20 Now, although the car is titled in the name of yet
21 another nominee entity, the cattle ranching operation, you're
22 going to learn that he purchases the car and that the money
23 that is used to purchase the car comes directly from Belize,
24 wired directly to a bank account associated with that
25 dealership.

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 You're going to learn that the insurance for the car,
2 for the Rolls Royce, the insurance records reflect that the
3 defendant is the primary driver of that car.

02:45:23

4 And then just about six months later, in December of
5 2004, he purchases another vehicle, a \$36,000 Ford truck and,
6 again, money used to purchase that truck, where does it come
7 from? Money wired directly from Belize. And this, again, is
8 only six months after he sells that \$6 million worth of land in
9 Belize for \$6 million.

02:45:34

10 And now you're going to learn that in August of 2005
11 he purchases yet another asset, he purchases another million
12 dollar home in Amarillo, Texas.

02:45:59

13 Now, you're going to learn that Amarillo, Texas, is
14 about three hours south of Kenton, Oklahoma where he has his
15 cattle ranching operation and you're going to learn that he
16 purchases that house in August of 2005.

02:46:16

17 Now, do you remember the \$1.5 million interest only
18 loan on his Carefree residence? Do you remember how he netted
19 out 1.1 million in cash from that 1.5 million refinance? Well,
20 he takes the 1.1 million and he puts it into a company called
21 RSJ Investments. We discussed it earlier. It's another
22 nominee entity. And then money from RSJ Investments, he takes
23 that money and he purchases the million dollar residence in
24 Amarillo, Texas. At the same time that he's purchasing this
25 house, he buys \$72,000 worth of furniture from the owners of

02:46:34

02:46:53

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 that residence and then one month later, September of 2005, he 02:46:57
2 purchases yet another residence. You're going to learn this is
3 perhaps his fourth residence, so you have the home in Carefree,
4 Arizona, 1.5 million residence that he actually refinances; you
5 have the log cabin or the cabin in Kenton, Oklahoma, that 02:47:15
6 you'll learn about that he builds for the business and his
7 family; and then he buys the third home in Amarillo, Texas, for
8 \$1 million. And in September of 2005 he purchases another home
9 for \$204,000 and, guess again, where the money comes for that
10 home. The money from that home comes directly from Belize, 02:47:38
11 money wired from Belize.

12 Now, the bottom line is, ladies and gentlemen, is
13 that the defendant had the cash and had the assets to pay a tax
14 liability that he agreed with. He had the money to pay it
15 back. 02:48:00

16 Does he pay it back, ladies and gentlemen? No. He
17 chooses to evade the payment of his taxes and he chooses to lie
18 and the brings us to the next section of the time chart.

19 Well, let me just back up. Before we talk about his
20 lies to the IRS, you should also know and you'll learn, ladies 02:48:20
21 and gentlemen, that in order to support that \$1.5 million
22 interest only loan on the Carefree residence, he has to spend
23 hundreds of thousands of dollars because you're going to learn
24 that that loan was a loan at 9 percent compounding monthly
25 interest only, meaning no principal. Interest only loan on 02:48:40

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 \$1.5 million is about \$150,000 a year. And so starting in 02:48:44
2 September of 2005, very shortly after he refinances that home,
3 he spends hundreds of thousands of dollars making interest
4 payments on that loan.

5 He does that really in two ways. He uses both. He 02:49:02
6 uses two different nominee businesses. He uses the Cimarron
7 River Ranch business. He takes money from Belize, flows it
8 into a bank account with Cimarron River Ranch and then takes
9 money from that account and pays the interest on that loan.

10 He now sets up a fourth nominee entity, a fourth 02:49:21
11 shell company called RCQ, Resorts Consulting Quorum, and money
12 from Belize flows into Resorts Consulting Quorum and he
13 continues to pay the interest on that \$1.5 million interest
14 only loan.

15 Now, jumping back to where we were a few minutes ago 02:49:44
16 and that is what does he tell the IRS? How does he represent
17 his assets and income to the IRS? You're going to learn,
18 ladies and gentlemen, is that he lies. These are his different
19 representations to the IRS.

20 And with the Court's permission, may I put the time 02:50:01
21 chart up on the board there?

22 THE COURT: Yes, you may.

23 MR. PERKEL: Thank you.

24 So the time chart before you is identical to the one
25 on the screen in front of you. For those of you that prefer to 02:50:24

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 use the screen or look here, it's fine. 02:50:27

2 Where we are is that post-May of 2003 the defendant
3 has agreed to this \$1.6 million tax liability. Post-May 2003
4 the IRS tries to collect the \$1.6 million from the defendant.
5 Remember how we talked a little bit about Counts 5 through 8 of 02:50:47
6 the indictment that deal with false statements to the IRS? So
7 these false statements to the IRS are in a series of offers in
8 compromise.

9 If you look at the screen and look at the yellow,
10 you'll see that June 18, 2004, the defendant makes his first 02:51:01
11 offer in compromise. October 3, 2004, he makes this second
12 offer in compromise. And by the way, ladies and gentlemen,
13 those are Counts 5 and 6 of the indictment. April 4, 2005,
14 Count 3, he makes his third offer in compromise; and then
15 August 3, 2005, there's a request for installment agreement. 02:51:23
16 And those are the dates that correspond to Counts 5 through 8
17 of the indictment.

18 Now, you're going to learn what an offer in
19 compromise is and what it is, is really what it says it is. In
20 sort of a normal collection period the IRS goes to taxpayers 02:51:43
21 who are liabilities and the taxpayer may decide to file an
22 offer in compromise, which is essentially, "IRS, let me
23 compromise my tax liabilities. I can't afford the whole amount
24 so I'm going to pay a certain percentage in the hope that
25 you'll settle it and then I won't have any more liability and 02:51:59

CR-10-00757-PHX-ROS, May 29, 2012

1 you'll have a percentage of what I owe." So that's what's
2 going on here.

02:52:03

3 What you're going to learn is that the defendant
4 files three offers of compromises and an installment agreement.
5 So the whole idea behind an offer in compromise is you're going
6 to learn is that it's pretty easy to fill out. It's not like a
7 regular tax return or a 1040 or some crazy schedule.

02:52:15

8 Essentially, the IRS is asking you for what is your income,
9 what are your assets, how much money do you have in the bank?

10 What's your real estate situation like? Do you have any
11 property? How many homes do you have? How many assets,
12 personal property? The whole idea is to get a true and honest,
13 accurate feel of what an individual has; and then based on
14 that, the IRS could determine whether or not the offer is
15 reasonable, whether it's credible.

02:52:35

02:52:53

16 And so in June of 2004, that is what the defendant
17 does. But instead of honestly and accurately reporting what he
18 owes and what he earns, he continues to lie. He chooses to
19 lie.

20 On June 18, 2004, and if you look at the time chart,
21 that is really about 11 days after he sells \$6 million worth of
22 land in Belize; and you're going to learn, ladies and
23 gentlemen, that at the time of the sale of the Belizean land,
24 the defendant represented himself as the president and chairman
25 of a company called MacKinnon Belize Land Development.

02:53:14

02:53:32

CR-10-00757-PHX-ROS, May 29, 2012

1 In simple terms, you're going to learn the defendant
2 negotiated this deal with a company in the United States and
3 the defendant represented himself. I'm the president and I'm
4 the chairman of Mackinnon Belize Land Development.

02:53:36

5 So on June 18, 2004, not one, two, three, 11 days
6 after the sale of that land, he files his first offer in
7 compromise. And he compromises, or offers, \$130,000 cash to
8 erase the remaining portion of his tax liability. That is less
9 than 10 cents on the dollar. The first lie is he tells the IRS
10 I'm going to get that \$130,000 not from the sale of Belizean
11 land that I just did. I'm going to get that \$130,000 from
12 friends and family.

02:53:50

02:54:17

13 He then says to the IRS, I'm president of Omega
14 Construction, a construction business. Nowhere in that offer
15 in compromise that June 18, 2004, offer in compromise does he
16 mention anything about MacKinnon Belize development, does he
17 mention that he's on employee of them or that he's the
18 president of them or does he mention any kind of sale. Not
19 once in that offer in compromise that he mention that he just
20 sold \$6 million worth of land or even that, at a minimum, that
21 he's associated with the company. His company is Omega
22 Construction, a company that you'll learn and a company you'll
23 learn he reports, he lies, has zero assets, no pieces of
24 machinery, \$3400 approximately in the bank and no real state.

02:54:37

02:54:54

25 He else tells the IRS and lies that he personally

02:55:18

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 doesn't have any bank accounts, that his assets include a \$600
2 watch or \$700 watch, a \$600 gun, a \$2400 or \$2500 wedding ring
3 and no real estate. He doesn't mention in his June 18, 2004,
4 offer in compromise that he has any real estate, despite the
5 fact that he just refinanced his home for \$355,000 about a year
6 before.

02:55:23

02:55:48

7 Going to the October 3, 2004, offer in compromise,
8 again, much of it is the same. In October of 2004 the
9 defendant tells the IRS, "I want to compromise my tax liability
10 away for \$130,000." It's almost an identical offer in
11 compromise. Again, lying about where he's going to get the
12 money, friends and family.

02:56:10

13 And you'll notice, ladies and gentlemen, that the
14 October 3, 2004 compromise, that is filed about four to five
15 months after he buys a \$306,000 Rolls Royce. Is there any
16 mention of the Rolls Royce in the October 3, 2004, offer in
17 compromise? No, ladies and gentlemen. He lists his single car
18 as a 1999 Cadillac Seville with approximately 91,000 miles on
19 it worth \$5500. That is the car he uses, not the \$306,000
20 Rolls Royce that he had just bought.

02:56:34

02:57:01

21 And if you go to the April 4, 2005, offer in
22 compromise, so we're about six months after October 3, 2004,
23 the defendant files a third offer in compromise. This time
24 he's attempting to compromise his tax liability with a payment
25 of \$450,000. Again, that offer is rejected by the IRS. This

02:57:22

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 time that offer in compromise contains much of the same 02:57:30
2 information as the two previous ones, but this time he has his
3 attorney write a cover letter and his attorney says his
4 construction company, Omega Construction, is doing better so
5 even though I offered \$130,000 five months ago, we can now 02:57:44
6 offer \$450,000. Despite the fact that the numbers, as you will
7 learn, in the offer in compromise don't really reflect any
8 difference from the two previous ones. In fact, you'll learn
9 that in his April 4, 2005, offer in compromise, his business
10 was running at a loss. You're going to learn, too, that the 02:58:08
11 attorney writes on behalf of the defendant that the defendant
12 has cut his expenses to the bone, is living without paying any
13 rent.

14 His attorney writes to the IRS that the defendant
15 used to have a business involved -- a business in which he was 02:58:25
16 involved with the sale of Belizean land. His attorney writes
17 to the IRS that the defendant's business now all dried up
18 because of September 11, 2011, and because of Hurricane Mitch.

19 The defendant's attorney tells the IRS he doesn't
20 have any more Belizean land business because it's all dried up. 02:58:50
21 It was destroyed with the hurricane and after September 11 his
22 business dried up. Despite the fact that this is less than a
23 year after he sold \$6 million worth of land and hundreds of
24 thousands of dollars are coming back into the United States
25 from that sale, he tells the IRS no business in Belize. 02:59:07

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 And if you go to the last count, Count 8, which is
2 the request for an installment agreement, this is a little
3 different than an offer in compromise. The installment
4 agreement the defendant asks that he be able to pay off his tax
5 liability in installments. On August 3, 2005, he files a
6 request for installment agreement. He's asking the IRS if he
7 could pay his tax liability at about \$2000 a month, his \$1.6
8 million tax liability.

9 Well, if you take that over 12 months, that's \$24,000
10 a year. That is roughly \$100,000 every four years. Well,
11 ladies and gentlemen, you do the math. He's asking the IRS if
12 he can pay back his liability over 60 years. 60 years he wants
13 to pay back his tax liability, despite the fact that in August
14 of 2005, in that very same month, if you look the timeline,
15 that very same month he's negotiating the refinance of a \$1.5
16 million residence where he nets out \$1.1 million. Rather than
17 take that \$1.1 million and pay back a liability that he agreed
18 upon, that he agreed with, he tells the IRS, "Can I pay you
19 back in 60 years?" Well, again, that offer is rejected by the
20 IRS.

21 The other things you should consider with the
22 representations to the IRS is that in August of 2003 and
23 September of 2003 you'll see at the top of the green he
24 actually files his 2002 and 2003 tax returns, and those are
25 Counts 3 and 4 of the indictment.

United States District Court

02:59:15

02:59:28

02:59:46

03:00:12

03:00:37

03:00:59

CR-10-00757-PHX-ROS, May 29, 2012

1 You're also going to learn that after filing those
2 returns, he does file his 2005 return, his 2006 return, his
3 2007 return, and his 2008 return. Those are in the same column
4 of representations to the IRS and you're going to learn that in
5 none of those tax returns does the defendant mention anything
6 about the sale of Belizean land. Not one of those returns
7 accounts for any income, any commission, any royalties, any
8 interest from the sale of Belizean land.

03:01:04

03:01:17

9 And remember how we discussed the different nominee
10 entities, the shell companies? We have Sunlight Financial that
11 supposedly owns his Carefree residence. RSJ Investments that
12 allegedly owns his home in Amarillo, Texas. RCQ, the nominee
13 entity that is just shuffling money to pay off his interest.
14 And Cimarron River Ranch, his pet project. None of those
15 limited liability partnerships which are, in reality, shell
16 companies and alter egos of the defendant, none of them ever
17 file a tax return with the IRS, not one of them.

03:01:41

03:02:02

18 The timeline shows that at the same time the
19 defendant is earning income and spending it, he's lying to the
20 IRS. At the same time that he's selling his land in Belize,
21 he's starting a cattle ranch and hunting operation in Oklahoma,
22 buying a Rolls Royce and telling the IRS that he doesn't have
23 any assets except for a \$5500 car, a watch, a wedding ring and
24 a gun.

03:02:28

25 At the same time that he files the April 4, 2005

03:02:46

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 offer in compromise money is streaming into the United States
2 that he has access to. And at the same time that he files that
3 installment request he buys a second million dollar home for
4 cash. You'll learn that he pays cash for that home, one
5 million dollars.

03:02:49

03:03:11

6 You're also going to learn that behind every nominee
7 entity is the defendant and his money. Sunlight Financial
8 allegedly owns his home in Arizona, the Carefree residence.
9 You're going to learn that it's the defendant who is
10 negotiating the \$1.5 million loan; it's the defendant on the
11 phone with the investors negotiating the deal; it's the
12 defendant who is arguing about specifics of the deal.

03:03:30

13 You're going to learn about Cimarron River Ranch and
14 how the defendant started his project in Cimarron County and
15 you're going to learn about how he told all of the residents
16 being -- told residents in Cimarron County about how he wanted
17 to start his hunting lodge and cattle operation. You're going
18 to learn that it was the defendant who was at the auctions to
19 lease public land in Oklahoma. You're going to learn that it's
20 the defendant zooming around in the Rolls Royce all under the
21 name of Cimarron River Ranch but yet part of the defendant.

03:03:53

03:04:13

22 And with regards to RSJ Investments, the company that
23 allegedly owns his Texas home, you're going to learn that it's
24 the defendant who calls up the realtor and tells the realtor
25 that he saw the home on line. Loves the home and wants to pay

03:04:37

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 \$1 million for the home subject to inspection. You're going
2 learn a couple weeks later he goes out to that residence,
3 inspects the home, meets its then current owners of the home
4 and says, "I want some of the furniture," and pays \$70,000 for
5 the furniture.

03:04:42

03:04:59

6 You're going to learn that it's the defendant behind
7 these businesses, these nominee entities. It's not his
8 21-year-old son who was recently claimed as a dependent on his
9 own tax returns. It's not his 25- or 26-year-old daughter;
10 it's the defendant who is negotiating these deals.

03:05:21

11 Well, now I've told you a was little bit about how --
12 told you a little bit about this case. Let me tell you how we
13 intend to prove this case. I've given you a preview of only
14 the big-ticket items in this case. Let me tell you how we
15 intend to prove this case.

03:05:40

16 The first chunk of evidence, ladies and gentlemen, is
17 going to come in the form of records and documents from the
18 Internal Revenue Service. You're going to learn about notices
19 of deficiency and notices of deficiency that was sent to the
20 defendant. You're going to learn that the defendant, post-May
21 of 2003, post the time that he agreed to the tax liability, was
22 given ample opportunity to pay and was given notice repeatedly.
23 He was given repeated notice as to his tax liability.

03:05:54

24 You're going to learn that he knew about the tax
25 liability. He was told many times.

03:06:13

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 You're going to learn about offers in compromise as 03:06:17
2 we discussed and what constitutes them. You're going to have a
3 chance to look at them and see the answers to the questions and
4 how at the same time the defendant was lying about what he
5 owned and what he earned he was out generating cash and 03:06:29
6 spending it.

7 You're also going to have a chance to hear from Paul
8 Goguen who represents a company called ioVest. That's a
9 company that bought the \$6 million worth of land in Belize and
10 how Mr. Goguen negotiated the deal with the defendant. The 03:06:46
11 defendant represented himself as the chairman and president of
12 MacKinnon Belize Development. You're going to have a chance to
13 learn how, in August of 2005, the defendant refinances his home
14 with a company called Universal Properties and you're going to
15 hear from the investors of Universal and you're going to hear 03:07:09
16 from representatives from Universal that it was the defendant
17 was negotiating that loan. Despite the fact Sunlight Financial
18 may have signed the final document, it was the defendant who
19 was negotiating that \$1.5 million loan.

20 And you're going to learn a little bit about Cimarron 03:07:26
21 River Ranch. You're going to learn that it wasn't his
22 21-year-old son who was in charge of Cimarron River Ranch. It
23 was the defendant and how he told residents that he was going
24 to build a cattle operation, a hunting lodge. He had dreams of
25 building a hotel, an airport, a restaurant; that he wanted to 03:07:42

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 use the cattle to create some sort of high-priced steak
2 restaurant. You're going to learn that he was at these
3 auctions in Cimarron County, auctions where residents can bid
4 on the right to use public lands for grazing for their cattle
5 and how it was the defendant at those auctions who was calling
6 the shots. And you're going to learn how it was the defendant
7 that was driving that Rolls Royce, how he is the primary driver
8 on that car. You're going to have a chance to look at records
9 from the dealership, wire transfers to the dealership and also
10 to the Ford truck dealership.

03:07:45

03:08:03

03:08:25

11 You're going to have a chance to hear from the owners
12 of that Amarillo, Texas, property, the property that was bought
13 by the defendant for one million dollars cash and how the
14 defendant wants \$70,000 of their furniture at the time and paid
15 for it. You're going to have a chance to hear from the realtor
16 who sold that property and how the defendant called her one
17 evening soon after he signed the paperwork for the sale of the
18 home and said, "I have to drop off the \$990,000 cashier's check
19 for the remaining portion of the home," and how he gave that
20 check to the realtor.

03:08:42

03:09:01

21 Ladies and gentlemen, the devil in this case is in
22 the details. The dates are important. The wire transfers are
23 important. Where money flows is important. Statements the
24 defendant made to others is important.

25 At the conclusion of this case, I'm going to have an

03:09:22

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 opportunity to speak with you again and I'm going to ask you to 03:09:26
2 convict the defendant on all eight counts. Thank you very much
3 for your patience and attention.

4 THE COURT: Thank you.

5 Mr. Minns? 03:09:36

6 MR. MINNS: May it please the Court, Your Honor,
7 sometimes people can't hear me. If you don't, raise your hand.

8 THE COURT: Well, you know, I can't hear you. Sorry.

9 MR. MINNS: I'll raise my voice, Your Honor.

10 THE COURT: I don't think that's going to work. Move 03:10:55
11 that microphone very close to you. Let's see. And if you have
12 to get behind the podium, I'm sorry, you're going to have to do
13 that.

14 MR. MINNS: Can I move it so that I can --

15 THE COURT: Yes. I think we can move it. 03:11:11

16 MR. MINNS: For part of it, Your Honor, I won't be
17 able to use it.

18 THE COURT: Well, just speak loudly enough so that we
19 can all hear you.

20 MR. MINNS: I will, Your Honor. I apologize. 03:11:21

21 Thank you for telling us so much about you all so we
22 could learn, so the Court could learn, so that we could learn,
23 the defense could make decisions.

24 You know, you don't get to know much about us. My
25 name is Michael Minns. I'm an ex-boxer, ex-high school English 03:11:36

CR-10-00757-PHX-ROS, May 29, 2012

1 teacher. Grandfather of six. That's probably enough. 03:11:41

2 I have been doing this for 35 years. I am defending
3 an innocent man today and I'm going to show you a timeline that
4 I hope won't be as confusing as what we just heard. The
5 timeline is kind of what you heard about. I've also heard the 03:11:59
6 government put something down that I thought might be of
7 interest. I tried to write it down on my timeline so that I
8 could go through it and explain where it was wrong.

9 The first thing this, General Eisenhower said this
10 about the time I was born: There's just so many times you can 03:12:20
11 call a good man a liar; and after that, you are lucky if you
12 are in Court rather than you are out behind a barn.

13 Jim Parker is an honest man. He was born on the
14 reservation. That's Jim Parker in 1954. His dad is Cherokee.
15 He was born on that reservation and if you go into his 03:12:48
16 apartment house, he's not living in the -- when someone says
17 8,000 square foot home, I'm assuming they mean that to make you
18 jealous because there's no other logic or reason to say that.
19 But I'm assuming at this point in time in his life he was
20 living -- the government didn't say this -- he was living in a 03:13:09
21 place with no plumbing on a reservation --

22 MR. PERKEL: Objection, Your Honor.

23 THE COURT: And --

24 MR. PERKEL: Relevancy.

25 THE COURT: -- I'm going to allow it at this point. 03:13:20

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 It's in the nature of background.

03:13:23

2 MR. MINNS: Mr. Parker was a successful man and he
3 did what any successful and honest man would do. He worked his
4 way out of that place in Seattle, Washington, where the
5 reservation was. He ended up being a very successful
6 restaurateur. This is in 1984. The government doesn't have
7 any complaints about that because he had good bookkeepers. He
8 had a good attorney and everything was done -- they are not
9 saying he owes taxes for the years in his restaurants.

03:13:44

10 In 1994 -- and here's the impossibility of it all.
11 You got those offers in compromise which they claim he lied on
12 every one of them and put fake companies on every one of them.
13 And I'm going to talk about the offers in compromise in a
14 minute, each charge, so that you can kind of figure it out
15 rather than lump it in together. I'm going to going into that
16 in a minute.

03:14:03

03:14:34

17 But the government says that he created a fake
18 nominee, that's the word they are using for it, a better word
19 would be fake. None of these are fake. They are all
20 legitimate companies set up to provide for his family. They
21 say that he created a fake -- and it was his home, a fake
22 company here and they say it is his home. He owns it. He can
23 do anything he wants with it.

03:14:49

24 Well, this was the basis of something he lied about;
25 that this is on -- that he left this off and I guess they are

03:15:12

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 not saying it outright but if Greg Robinson, his attorney, left
2 it off of the offers in compromise, they are also saying the
3 attorney did something wrong because the attorney created.

03:15:16

4 What they are really saying -- and here's what
5 happens: Mr. Parker was very successful and Mr. Parker made a
6 lot of money and Mr. Parker lost a lot of money. But
7 Mr. Parker thought he was going to be more successful than he
8 was and in 1994, with experts, we'll go through this chart of
9 all of the lawyers and all of the CPAs, and there's several of
10 them missing. I'm not on here for one. But the Central

03:15:34

11 Business Services' CPAs created this company called Cornerstone
12 in 1994. In 1994 and they put that money -- they borrowed
13 money and put that house into that for him and his wife to live
14 in. But on the day they died, his kids would own it. But it
15 doesn't work that way. They gave it to the kids immediately.
16 So the kids now own it. It's called a trust. It's nothing
17 surprising or unusual. It's called an estate plan.

03:16:01

03:16:29

18 If the government's case is true, then they are
19 saying Mr. Parker knew that he was going to get in trouble with
20 the government on all of these counts. And leave the
21 Cornerstone trust off in 1994. He was going to do that knowing
22 that he was going to sell property in Belize 12 -- no, 20 years
23 later and leave it off of his August 5, 2005, offer in
24 compromise. That's impossible. He would have to time travel
25 and he would have to be able to see his future.

03:16:51

03:17:16

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 For them to say that this was not an honest gift to 03:17:19
2 his children, I don't want to use the word "lie" over and over
3 again as I have been hearing. I'm just going to say the
4 government made a mistake because you would have to have time
5 travel to know 20 years in advance that you were going to come 03:17:33
6 up with selling a piece of property in Belize 20 years later.
7 It's not even possible. If you wanted to think that Mr. Parker
8 was a bad man, which he not, you could not give the government
9 that point.

10 The foundation of the government's case is this 03:17:51
11 Cornerstone home. The home was put in Cornerstone.

12 I also remember hearing when the government talks
13 about this \$1.5 million later, many years later, and they say
14 there's some extra money in there. Aha. What happens to the
15 extra money? Well, they are just kind of ignoring that they 03:18:13
16 borrowed money to build the house so that there wasn't any
17 extra money. There was 1.1 million. But it's kind of
18 indicative that you paint something with an evil brush, you're
19 going to find an evil ending to it if you want, if you are
20 looking for that. If you are not presuming innocence, if 03:18:32
21 you've decided your case before you heard any of the evidence.

22 This is the same piece of property. This is the same
23 piece of property.

24 Now, what happened is that the government audited the
25 Cornerstone Trust and they did not like it and so lawyers told 03:18:49

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 him the government has changed their meaning of the tax laws. 03:18:56
2 They don't like trusts. You're going to get audited for the
3 rest of your life. Everybody is unhappy. You're going to have
4 to move the Cornerstone property into something the government
5 likes and the government now likes LLPs. They don't like 03:19:11
6 trusts any more. They like LLPs. Several of the attorneys on
7 this chart had that advice, including the lawyer that took it
8 out of Cornerstone and put it in the LLP. And guess who signed
9 the papers? Mr. Parker would have if he could have but he
10 didn't own it any more. The kids owned the trust so the kids 03:19:35
11 have to sign it.

12 Now, Mr. Parker is the creator of the family wealth.
13 Jim Parker, the man you see there. And he is the creator of
14 wealth that he wanted his children to have and his
15 grandchildren to have so that there would never be poverty in 03:19:55
16 his family again. But -- and he had influence at all times.
17 Influence and respect is not ownership. And as a matter of
18 fact, the government's witnesses are going to be telling you
19 that, that Mr. Parker was very involved in the stuff he gave to
20 his kids and constantly was told, "Sorry, Mr. Parker, this 03:20:22
21 isn't yours any more. You have to get your kids to agree to
22 sign the papers. You don't own it."

23 Now, often it works fine when you give stuff to your
24 kids; but then if your kids get married, it may not work as
25 well because the son's wife or the wife's husband may say, 03:20:42

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 "Whoa, we're not going to loan you money; that you gave us, 03:20:46
2 we're not going to loan it back to you now that you're in
3 trouble with the IRS. We don't agree with that."

4 In 1999 you have Jim Parker coming back from this
5 home -- to his home where he lives, but he doesn't own it. The 03:21:03
6 kids' trust owns it but, yes, he lives there. Yes, it's his
7 residence. And he's driving home in his car with his family
8 and he doesn't know that his life is about to go to -- I'll use
9 the term that Mr. Perkel used. His life is going to go to the
10 devil for a while. But he gets home. He finds the audit for 03:21:34
11 the Internal Revenue Service letter and what does he do? At
12 this point in time he's still got money in the bank. He's
13 still relatively successful. He hands it over to his lawyer.
14 He's told that this guy is the best lawyer in Phoenix, Arizona.
15 He's a specialist in tax. He says, "Do what I have to do, fix 03:22:00
16 it."

17 And this lawyer -- ah, this is Greg Robinson. But
18 there's another lawyer. Greg Robinson sends it to Henry Tom
19 because they sit down and Greg Robinson and Henry Tom tell him
20 the government is claiming for these two years, for the years 03:22:27
21 '97 and '98, about \$1.7 million and they are saying your taxes
22 were -- are wrong. The CPA made some mistakes and, by golly,
23 you owe almost 10 percent of that, almost \$170,000. And he
24 says, "Well, take care of it. Do whatever has to be done."

25 They negotiate for a long time. They deal for a long 03:23:00

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 time and then Mr. Henry Tom tells him, "Look, you're in really
2 big trouble because you've drawn the worst IRS guy in the
3 field, and if you don't make him happy, he's going to put you
4 in jail for the rest of your life."

03:23:01

5 And Mr. Parker says, "Well, what is the law, what
6 does the law say I'm supposed to do? Do whatever the law
7 says."

03:23:19

8 And Mr. Tom tells him, "Here's the way it happens.
9 In order to defend you in tax court and get it so you'll pay
10 only what you owe, \$170,000, you're going to have to pay me
11 \$400,000. And then you still might go to jail." So that isn't
12 a very appealing options. So what other options are there?
13 You can make this IRS happy. You can agree to his figures but
14 agree to pay. You can make offers in compromise. You'll be
15 out.

03:23:35

03:24:03

16 Mr. Parker says, "Well, what about the tax Court?"

17 Now, this is something else that the government is
18 talking to you about these two different court systems, but I
19 don't think they have explained it very well. One side is
20 civil that has to do only with money. And that starts with
21 this audit letter. And you can talk to the person and you
22 either make a deal or you don't. If you don't, then you go to
23 civil appeals. If you don't, then you go to civil examination.
24 If you don't, then you go to tax court where there is no jury
25 because there is no jail.

03:24:16

03:24:36

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 After tax court, you can go to the offer in 03:24:39
2 compromise administrative remedies and there are lots of stuff
3 in the civil side, the money side, and now we're on the
4 criminal side.

5 And as Mr. Tom told Mr. Parker, we're on the go to 03:24:58
6 jail side. So how does a man that hires more lawyers than you
7 need to start a couple of law firms, that hires more CPA's end
8 up in criminal courtroom when he's trying to pay?

9 Now, we won't agree on everything but I wrote this
10 down where the government was saying Mr. Perkel says he wants 03:25:27
11 to pay and I added up all of the numbers that Mr. Perkel said
12 he wanted to pay and they came out to more than the tax did.

13 But you can't just pay because you want to pay. You
14 have to have the money.

15 The Cornerstone house, right now it's in foreclosure. 03:25:50
16 But it's -- it was worth, at the most, somewhere around a
17 million and a half dollars. There was a loan -- it wasn't for
18 a million and a half dollars. But, you know what, crooks,
19 especially if they have a biz in Belize, they don't come to
20 criminal court and face the court and the jury. They just 03:26:12
21 skedaddle. Mr. Parker has always appeared, always hired people
22 to come in when he had the money, always came to face whatever
23 medicine there was to face because he's an honest man.

24 Now, let's talk about these eight counts but also
25 let's talk about the stuff that the government has said and I'm 03:26:37

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 going to kind of click them off. If I thought they were
2 interesting -- I don't think the size of a man's home is
3 interesting. The value might be interesting but the size of
4 home is not terribly interesting unless this is about jealousy
5 for a man that became successful.

03:26:42

03:26:56

6 The government says it is not about deductions but
7 that is the first thing that the case was about.

8 In Belize, and these are pictures of the company in
9 Belize that Mr. Parker went out. He and his family lived in
10 Belize. They got dysentery. They got malaria. He spent every
11 penny that he had and he sold everything that he owned and it
12 became successful.

03:27:15

13 In Belize, though, he doesn't own it all. And what
14 this case kind of is about is the government is saying, well,
15 first of all, in '97 and '98, how did Mr. Tom get to \$170,000
16 and Mr. Robinson and the government get to a \$1,700,000? How
17 did that happen? Well, it happened in '97 and '98 because the
18 government said you have to pay taxes on this money but you
19 don't get any deductions for the pavement, the labor, the cost
20 of construction, nothing, and that is how it happened. And
21 Mr. Parker still hasn't figured that out and I doubt -- well,
22 they are going to have to if they want to prove their positions
23 beyond a reasonable doubt before the trial is over. Why a man
24 can build something, spend \$1.5 million building it and if it
25 gets sold for \$1.7 he's supposed to have a \$1.7 million in

03:27:34

03:28:07

03:28:35

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 profit. Any business that ran that way would be broke
2 tomorrow. It's an impossibility in performance. It's an
3 impossibility. And his lawyers told him -- I didn't think that
4 was going to make it.

03:28:40

5 His lawyers told him -- you see we're not engineers
6 over here. His lawyers told him eventually the discounted, the
7 expenses, revenue is not income. Income is what happens after
8 you make your profit and it's not yours if you work for the
9 company. That's another problem with the government case.

03:28:56

10 So the government is charging him with eight
11 felonies. The first one in '97 and '98 they are not saying
12 that he didn't tell the truth, or maybe they are because they
13 called him a liar 37 times in opening.

03:29:24

14 But he didn't do that in tax court. They said you've
15 agreed with us and we get a judgment. So they are not saying
16 the returns were false in tax court. They were saying they
17 were wrong. And I take exception with that if every time a
18 taxpayer made an agreement with the IRS and signed the
19 paperwork that it was false, no one -- there would never be
20 another settlement in the history of the United States because
21 they would all be marched into criminal court.

03:29:44

03:30:03

22 These two years weren't paid. And he did not have
23 the money. 2001 and 2002, those taxes have already been paid.
24 Counts 5, 6, 7, 8, those are four times, it's the same thing
25 and, basically, you have an IRS agent saying, "Come on. Make

03:30:30

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 me another offer. Come on." And they know he's going to put 03:30:34
2 the same thing down on it. Come on. Cornerstone is not on
3 offer number one. Sunlight is not on offer number one because
4 he doesn't own it.

5 Why don't they just tell him? No. "Come on. Give 03:30:53
6 us another one." Every time they give him one, they indict
7 him. He can't make all of the children make all of the loans
8 against that property that they want.

9 And one of the things the kids -- when he puts down
10 on there his family will borrow it from them, he's basically 03:31:14
11 telling them -- and they know it and Mr. Robinson knows it.
12 Mr. Robinson and the IRS agent know about the Cornerstone house
13 in 1998. They know about it. They are not hiding it.

14 This whole case, all eight counts, starts off with
15 this, with a false premise, and that is in 1994 they set this 03:31:35
16 thing up, which he transferred, with Mr. Robinson for the
17 purpose of cheating and lying on four forms over and over and
18 over again. Each time the IRS knows about it. You'll see
19 notices where the IRS is talking about the home. The IRS is
20 talking about mortgaging it. Mr. Parker is talking about 03:32:01
21 having his kids mortgage the home.

22 The maximum that could have been obtained out of that
23 home at any time was \$1.1 million, not the 1.5 that included
24 financing.

25 And that money would have been available but the IRS 03:32:20

CR-10-00757-PHX-ROS, May 29, 2012

1 kept saying no. They didn't ever make an offer that he could 03:32:23
2 make that was within 100 percent of what was in that house.
3 They want to call Reports Consulting Quorum a fiction. That is
4 set up by Mr. Robinson's brother and law partner, Dave
5 Robinson, who, unfortunately, is dead now. Another advisor, 03:32:43
6 David Robinson, who has a business relationship, convinces
7 Mr. Parker -- and the government is showing this in its
8 evidence. He convinces Mr. Parker to borrow money from Belize.
9 He tells Mr. Parker it's completely legal. He convinces him to
10 put it in Results Consulting Quorum which the government calls 03:33:11
11 a fiction. And you don't see the Robinson brothers -- one of
12 them is dead so you can't see him here. But you don't see
13 either of them here indicted. If something is wrong, the
14 lawyers who he relied on are all fine. The CPAs that he relied
15 on, they are all fine. None of them are here. You don't see 03:33:33
16 their lawyers and team and everything sitting at the table
17 because the government isn't doing anything except the
18 government agent filed a professional report against him with
19 the IRS saying he was unethical, but they didn't tell
20 Mr. Parker that. He didn't learn that until this case got 03:33:51
21 started.

22 So Mr. Robinson has a partnership with Jim Parker
23 where he is the only one that can sign on the checking account.
24 That is unethical. An ethical attorney is not allowed to do
25 that in this state. Mr. Robinson says he just doesn't know 03:34:12

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 what his partner and brother lawyer is doing. He tries to stay 03:34:17
2 out of his partner lawyer and he doesn't know about Belize even
3 though his partner, who is also a lawyer, is doing business in
4 Belize with Mr. Parker and he says he knows nothing about it.
5 He's partners with his brother lawyer and he's partners with 03:34:33
6 Mr. Parker telling him what to do and taking money from Belize
7 that only Mr. Robinson can sign on in the account.

8 This which Mr. Perkel says is a pet project and he
9 said there was \$2 million put in it and if I were not going to
10 be honest with you, I would agree with him. There's \$3 million 03:35:00
11 put into that, not 2 million. It's no pet project, though.
12 It's a matter of life and death. It's the most important
13 project that the family is involved in. It's a huge, huge
14 project.

15 Mr. Parker has shut down the Belize company, is 03:35:17
16 having some troubles, as it is true, and Mr. Parker is doing
17 something that no dishonest tax avoider has ever done in the
18 history of the United States. He's bringing money into the
19 United States where there's full transparency, where everybody
20 can see it, where these gentlemen have been following 03:35:36
21 everything he has been doing for 10 years. You have to believe
22 he's the biggest idiot on the planet if you believe he's hiding
23 the money in the United States.

24 What the government didn't say is this: Yes, there's
25 a \$6 million sale in Belize. Mr. Parker doesn't own all the 03:35:52

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 property. He has a small interest in it and if he succeeds in
2 finishing it, he will own a portion. He didn't put up all of
3 the money. He didn't put up most of the money. \$3 million
4 went immediately to investors so the government throws out
5 these things that are supposed to matter to us. One, they
6 throw out this \$6 million figure and they say -- I guess this
7 is supposed to make you all think Mr. Parker is richer than
8 Warren Buffet when he says that he has a pet project. This is
9 not a pet project. This is a project really intended to save
10 the life of his son.

03:35:58

03:36:14

03:36:35

11 Now, one thing about the Parkers is that they are
12 scrupulously honest about what they say. But Sam Parker is in
13 trouble all the time. That is Jim Parker's son. He's in
14 trouble all the time, not trouble like this, not trouble for
15 lying or being dishonest. Sam Parker is a professional boxer.
16 He has gotten into a lot of fights and he had gotten into drugs
17 and so his dad is trying to save his life and probably did save
18 his life.

03:36:57

19 His dad has the Belize investors have \$3 million that
20 they are holding to do the second part of the project. When it
21 goes off, the Belize project will make them all rich but
22 there's \$3 million sitting there. And, see, Mr. Parker says
23 I've got an ideas. If you will allow that money to come back
24 and be used in the United States, we will build a huge project,
25 not a pet project. We'll build a huge project in Oklahoma and

03:37:21

03:37:42

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 we'll make a lot of money. 03:37:48

2 We'll sell cattle to wealthy people. We'll build up
3 the seed better than it's been done before. His foreman, who
4 is a professional ranchman who has handled cowboys and cattle
5 and everything else from the beginning of the day he was born, 03:38:09
6 and he's like a cowboy from central casting. He's hired by
7 Sam. Sam is put in charge of the project and they build it up.
8 And Sam lives there. First outside before they build it up and
9 then inside when they build it up. And the purpose is to
10 create a new and expensive cattle breed and they succeed but 03:38:29
11 they end up with litigation. They end up with economy problems
12 and the project ultimately fails.

13 Sam, though, he stays away from drugs. He doesn't
14 get into any criminal problems any more and Jim Parker says,
15 you know, he did what he had to do. Was it smarter funding \$3 03:38:53
16 million project with a young man primarily in charge of it?
17 Well, it doesn't look smart right now because the project
18 failed. The Belize company sued and got a judgment for the \$3
19 million.

20 Here's the problem with the whole government's 03:39:12
21 position. The government didn't say that he was a liar when
22 they threatened his lawyer and him and got them to agree with
23 their figures. They said, "Well, these are truthful figures."
24 They have never said that the figures for 2001 and 2002 are not
25 truthful. They have never said that. This is the first time 03:39:35

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 that I've heard that ever. So they are saying he finally gave 03:39:38
2 what they wanted, 100 cents on the dollar. He just didn't give
3 them the money. And then they are saying four times we tried
4 to make a deal and all four times he left off the home he did
5 didn't own and could not legally put on that; that the lawyers 03:40:04
6 have helped him with the forms, told him to leave it off and he
7 left off the Oklahoma. Saying pet project is such an insult
8 when you put a bunch of investors' life savings, your life
9 savings, everything else into it. It's an insult.

10 And then when they say zooming around in their 03:40:28
11 expensive car, well, when you have -- the car was not in his
12 name. The car has been sold to pay taxes and legal fees, so
13 they don't own the car anymore. But when you take one of those
14 kind of cars, if you are going to zoom, I think you would zoom
15 in a Corvette or something. You don't zoom in a Rolls Royce. 03:40:48
16 And that was the term that the government used. I think he
17 meant to say zoom as in, like, show off or mean wasting money
18 or something.

19 When you have people coming in, flying into your pet
20 project -- no, major, major project, and in Oklahoma who fly in 03:41:02
21 on their own jet plane, you can't pick them up in my Jeep.
22 They won't come to you. When you are trying to sell them a
23 cattle -- a bull for a quarter of a million dollars, you have
24 to have an expensive car. And that was the reasoning of the
25 ranch man and that was the reasoning of Sam. They couldn't 03:41:26

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 leave that expensive car sitting in Oklahoma before they built 03:41:30
2 up the place for it.

3 When they say this is a fake name and a fake company,
4 RSJ, you don't put a fake company in the name Rachel -- RSJ
5 stands for Rachel which is his adopted daughter. They raised 03:41:49
6 her since she was two weeks old. Sam is their son that was
7 born a few years later. And James is their other son. You
8 don't name it RSJ, after your three children, put it in your
9 three children's names if you are trying to hide it from the
10 government. 03:42:08

11 If your goal is to hide it from the government, you
12 don't bring into the United States of where everybody sees it
13 where you have been living under a large, many people following
14 you for 10 years microscope where they see everything you do.

15 I'll tell you this: I thought they were going to say 03:42:28
16 we're talking about personal expenses because there are
17 personal expenses that come out of these businesses that just
18 come out and shouldn't, 10,000, \$20,000? The Parkers were
19 broke. Their kids paid for personal things for them out of
20 these accounts and they shouldn't do that. But that is what 03:42:47
21 you have -- and that is not a criminal offense. That should be
22 dealt with in the civil with the money thing. But that's what
23 you have all of these lawyers and CPAs and everybody for. Can
24 you imagine?

25 I do want to know, as the government develops its 03:43:03

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 case, are they saying all of these people are innocent or all
2 of these people are guilty or all of these people are
3 deceived --

03:43:08

4 MR. PERKEL: Objection, Your Honor. Argument.

5 THE COURT: Sustained.

03:43:16

6 MR. MINNS: One of the lawyers, Mr. Williams, he's
7 one of the top lawyers in Belize and he has been advising him.
8 His name is Gallant, the CPA, is advising him. One man, who we
9 will vouch for, who is an honest attorney, Stan Manske, is
10 part-time assistant prosecutor --

03:43:41

11 MR. PERKEL: Objection, Your Honor, to the voucher.

12 MR. MINNS: Oh, I apologize, Your Honor.

13 We will put him on the stand, Stan Manske. It's our
14 position that he is an honest man --

15 MR. PERKEL: Objection, Your Honor.

03:43:58

16 THE COURT: Sustained.

17 Ladies and gentlemen, you are to ignore that last
18 sentence.

19 MR. MINNS: Stan Manske set up these last two
20 entities that the government says is fake. Stan Manske is a
21 part-time district attorney prosecutor in the small county and
22 he will -- the evidence will show, and he will testify and tell
23 you that Mr. Parker does not own them, that he set them up that
24 way.

03:44:05

25 Now, what the government really says Mr. Parker

03:44:23

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 should have done is not consult the children when he borrowed
2 against the large home. They should have forged their names to
3 the documents.

03:44:27

4 MR. PERKEL: Objection, Your Honor. Argument.

5 THE COURT: Sustained.

03:44:41

6 MR. MINNS: The government says that this is his
7 home, that he owns it even though it's not in his name. The
8 evidence will not show any evidence of that at all.

9 Now, typically, if you have something where you call
10 all of these nasty names straw, that they were saying to use
11 fake, dishonest, typically, what happens is the person -- when
12 it happens, the person has another deed secretly giving it back
13 anytime.

03:44:59

14 I guess it's permitted and we don't claim anything
15 wrong with it but often people are required to resign in
16 writing at the same time that they get their job so that
17 there's a fallback. And then maybe you really do own the
18 position. Maybe you really do own the job.

03:45:19

19 But the paperwork to show ownership in Sunlight and
20 Mr. Parker does not exist. No one is going to show up with it
21 showing the secret paperwork. The paperwork to show ownership
22 and Mr. Parker, as the government is complaining, real
23 ownership, doesn't exist and it will not be shown.

03:45:40

24 The government does not like the fact that this money
25 is not Jim Parker's. The government, its opening, Mr. Perkel

03:46:09

CR-10-00757-PHX-ROS, May 29, 2012

1 says why didn't he use that \$3 million that was borrowed from
2 the Belize company to pay his taxes?

03:46:15

3 Well, that's just a no-brainer. What investors are
4 going to loan you money to pay your taxes? They are going to
5 put money into a project because you have been successful and
6 they expect the project back and if the money doesn't come
7 back, sometimes there will be a lawsuit.

03:46:30

8 I don't know if any of this paperwork is perfect and
9 I certainly wouldn't, even if I was allowed to, vouch for any
10 of these accountants or CPAs. It's our position that they were
11 all incompetent.

03:47:06

12 But the two big things that the government claims
13 that Mr. Parker should be convicted for four felonies at the
14 age of 64, the two big things are leaving those two big pieces
15 of property off. One, the house. They claim he had to put it
16 on there. And, two, the \$3 million which they have dealt with
17 the 6 million because that's what was paid for the property
18 even though the Belize company -- not even the Belize company
19 made \$6 million. The investors got half of it.

03:47:31

20 You know, they might as well say that --

03:47:52

21 MR. PERKEL: Objection, Your Honor. Arguing.

22 THE COURT: Well, I don't know what he's going to say
23 yet.

24 As long as you refer to the evidence.

25 MR. MINNS: Thank you, Your Honor.

03:48:11

CR-10-00757-PHX-ROS, May 29, 2012

1 THE COURT: It's allowed as opposed to speculation as 03:48:12
2 to what the government will say.

3 MR. MINNS: At this point, I don't remember what I
4 was going to say.

5 Stan Manske, Assistant District Attorney and 03:48:33
6 prosecutor, who you will decide whether he's an honest man or
7 not, draws up the last entity the government says is fake.
8 When he's here, they can ask him if he's hiding papers that
9 would normally give everything over to Mr. Parker and not his
10 children. 03:48:53

11 And the Robinson brothers are responsible for the
12 second company that took the property from Cornerstone Resource
13 Trust. Every one of these people -- you can add me to the
14 list, too. Michael Minns, Ashley Arnett. There's a couple of
15 other lawyers that they consulted with. Every one of these 03:49:16
16 lawyers.

17 The horrible tragedy is there's a man that sits here
18 who has been successful spending his last few pennies in a
19 courtroom after hiring all of these experts.

20 MR. PERKEL: Objection. 03:49:35

21 THE COURT: Yes.

22 MR. PERKEL: Arguing, Your Honor.

23 THE COURT: Sustained.

24 Mr. Minns, refer to the evidence as you anticipate it
25 will be shown. 03:49:48

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. MINNS: Thank you, Your Honor. 03:49:49

2 I anticipate that it will be shown that the kids

3 owned this property and I anticipate one of the children will

4 say that they would like to give the money back or borrow

5 against it to save their dad and that they offered many, many 03:50:09

6 times to borrow the money against the property to save their

7 dad.

8 And I anticipate that the evidence will show

9 unequivocally that Mr. Parker wants to pay what he owes. He

10 now wants to pay more than he owes because he wants to live the 03:50:25

11 next few years of his life in peace.

12 And I anticipate control, respect, belief, management

13 does not equal ownership. I anticipate there will be some

14 instructions -- the Court decides that at the end what the

15 instructions are. There will be some instructions on ethics. 03:50:53

16 MR. PERKEL: Objection, Your Honor.

17 THE COURT: Well, ladies and gentlemen, we don't know

18 yet whether that will be the case. You anticipate -- I think

19 you hope.

20 MR. MINNS: Yes, Your Honor. 03:51:08

21 THE COURT: That hasn't been decided.

22 MR. MINNS: May I speak on the ethics, Your Honor?

23 THE COURT: Not really.

24 MR. MINNS: May I approach the bench, Your Honor?

25 THE COURT: Well, on that issue, no. 03:51:21

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. MINNS: Just on the issue of the Robinsons. 03:51:23

2 THE COURT: You can discuss what the evidence is
3 concerning the Robinsons and of course what the Robinsons as
4 long as it doesn't constitute hearsay. In other words, it's
5 admissible as not hearsay. 03:51:48

6 MR. MINNS: Thank you, Your Honor.
7 What the evidence will show is that the Robinsons
8 were partners in the law firm together, that one of the
9 Robinsons was partners in the enterprise he set up, Dave
10 Robinson; that Dave Robinson received funds from Belize; that 03:52:10
11 Dave Robinson was also partners with his brother Greg Robinson.
12 Whether or not that is appropriate, there may or may not be
13 instructions on that.

14 The IRS this afternoon has claimed \$6 million in
15 income in opening argument or statement. 03:52:39

16 Mr. Parker has never been charged with this \$6
17 million. I suspect that it's because they know it's not income
18 but perhaps the -- they will have evidence.

19 MR. PERKEL: Objection, Your Honor. Arguing.

20 MR. MINNS: Well, Your Honor, on that -- 03:52:57

21 THE COURT: You say perhaps they will, perhaps they
22 won't. Why don't you talk about what you expect the evidence
23 will show, not what you are speculating it will show?

24 MR. MINNS: On this, Your Honor, it was in
25 distributing rebuttal to the exact statement by Mr. Perkel on 03:53:07

CR-10-00757-PHX-ROS, May 29, 2012

1 opening and I did want permission to disagree with his 03:53:10
2 statement on opening.

3 THE COURT: Well, did he say the evidence would show?
4 I don't recall that.

5 MR. MINNS: I don't recall him using the words. The 03:53:20
6 words I recall him using was that Mr. Parker made \$6 million in
7 income. I assume he meant he would be putting on some evidence
8 of that.

9 THE COURT: Okay. Then your response can be what you
10 anticipate the evidence will show. 03:53:32

11 MR. MINNS: There will be no evidence that Mr. Parker
12 made \$6 million in income, none. There will be evidence that
13 the company that he had an interest in, that he was a manager
14 of, made a \$6 million sale and that there was less than \$3
15 million profit on it. 03:53:50

16 I apologize for my voice problems and everything
17 else. If I say something wrong, I will try to correct it
18 immediately. We will put to you only what we believe to be the
19 truth. I give you my word on that.

20 And I thank you for listening to me. 03:54:10

21 (End of excerpted portion.)

22 THE COURT: Do you have your first witness?

23 MR. PERKEL: Yes, we do.

24 THE COURT: All right. We're going to take a
25 10-minute break. 15-minute break. 10 minutes after four we'll 03:54:29

CR-10-00757-PHX-ROS, May 29, 2012

1 begin with the first witness. 03:54:31

2 We are in recess.

3 COURTROOM DEPUTY: All rise.

4 THE COURT: And, Counsel, let me see you at the
5 sidebar. 03:54:37

6 (Jury departs.)

7 (At sidebar.)

8 THE COURT: I have not decided whether or not ethics
9 is really an issue of law.

10 As I mentioned in Court, I suppose it could be and I 03:55:07
11 presume, from the way you're going, that you intend, through
12 someone, to testify to what Mr. Parker was told by lawyers and
13 then perhaps it is not hearsay if you are offering it -- not
14 for the truth of what was asserted.

15 And your position apparently is that that is 03:55:39
16 unethical, what he told him. Assuming that he did tell him
17 that, which is the jury's decision.

18 I don't know whether or not I will give an
19 instruction about whether or not those statements are
20 unethical. And that depends upon a lot of things, such as what 03:55:56
21 you would offer as the law on ethics.

22 Now, it is the law. There's no question it's the law
23 for lawyers. There are ethical rules in Arizona and those
24 rules are comprised in the rules of the Supreme Court and they
25 are also the rules of the federal court. 03:56:24

CR-10-00757-PHX-ROS, May 29, 2012

1 I don't know what ethical rules would apply. I am 03:56:27
2 not sure where these attorneys are from and what the ethical --
3 the impropriety is that you intend to offer concerning those
4 statements. But all of that has to be briefed. So I'm going
5 to tell you in advance before you go anywhere, Mr. Minns, that 03:56:45
6 that has to be clear. We discussed that at the final pretrial
7 conference.

8 As I said, I was not going to offer -- or allow you
9 to have an expert witness and whether or not it was unethical
10 and, frankly, I don't think I would anyway because an expert 03:57:02
11 witness would be -- the particular expert witness who is an
12 expert on ethics, that is Gary Stuart, would be testifying to
13 something that his opinion on ethics which likely would not be
14 helpful to the jury because it is something that, although
15 irrelevant, is the law. 03:57:33

16 So that's where I ended up at the final pretrial
17 conference and where I am today is, before you go that course,
18 let's make sure that this course is admissible or allowable
19 according to the law.

20 MR. MINNS: I obviously misunderstood the Court. I 03:57:51
21 thought that the Court was -- I thought the Court was going to
22 give instructions and that is what -- and that is why we
23 weren't allowed to use the expert.

24 THE COURT: And, you know, I had decided over the
25 weekend and, unfortunately, I don't have the order in front of 03:58:09

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 you. I'm here telling you now. If I had it in front of you,
2 you would know what my ruling is. I will not allow you to call
3 the expert and I wouldn't even if you had given notice.

03:58:14

4 Likely, I wouldn't allow it anyway because for an expert to
5 opine on whether or not it's ethical is not something that
6 belongs in this Court and it's not expert testimony.

03:58:25

7 Of course I don't know what the opinions would be so
8 that's a bit of a speculation. But I did, as I was thinking
9 about it, think that it might be law. And my order to you will
10 be that I'm not sure about that. So that has to be briefed
11 before you go that direction.

03:58:54

12 And what's more, as I said, I don't know if --
13 certainly these people who are not alive are not going to
14 testify to what they said. The ones who are alive may testify
15 and say he didn't tell him that.

03:59:13

16 And so I'm not sure about the admissibility of that
17 concerning hearsay. So I'm opening this issue now so that we
18 can save a lot of time at the sidebar about this.

19 So it needs to be briefed expeditiously if that's the
20 direction you intend to go.

03:59:31

21 Okay.

22 MR. SWAFFORD: Your Honor, just one more matter
23 before we leave. I don't think that there's any problem about
24 having opening statement prior to us identifying who the jurors
25 are and the alternates are. But there's a case, and I just

03:59:44

CR-10-00757-PHX-ROS, May 29, 2012

1 pulled it out of the book here, and it's *U.S. v. Mendoza* and it 03:59:48
2 indicates that Rule contemplates that the jurors are seated
3 sequentially and that alternates are seated sequentially in the
4 order in which the alternates are chosen.

5 THE COURT: And I think that is correct. There has 04:00:06
6 only been one time -- let's see here. I have to look at Rule
7 24 again. But most of the time that rule, whatever it is -- I
8 have to look at this.

9 MR. SWAFFORD: I can show it to you.

10 THE COURT: That's okay. I'll look at it but thank 04:00:32
11 you. Most of the time the lawyers don't want the alternates
12 specified. They don't want the alternates to be told who they
13 are.

14 MR. SWAFFORD: That part I am happy about. I am 04:00:48
15 happy that the alternates are paying attention and that they
16 feel like they are fully engaged in the process and they may be
17 a real juror, but I want to know who the actual jurors and
18 alternates are as the rule contemplates.

19 THE COURT: And if that's what the rule says and if, 04:01:03
20 in fact, that is the way you wish to go, that I will go by the
21 letter of the rule. So you can take a look at this. This is
22 the first time I have ever seen it, but that's the rule and you
23 can certainly -- I will certainly abide by the rule.

24 MR. SWAFFORD: Thank you, Your Honor. It just seems 04:01:21
25 that it's prior to evidence. It's not error now. And that's

CR-10-00757-PHX-ROS, May 29, 2012

1 the reason I was saying we don't have to deal with it now but 04:01:25
2 prior to -- it says prior to the introduction of evidence it's
3 error. It's not identified who the jurors are and alternates
4 are.

5 THE COURT: To you, Counsel. 04:01:37

6 MR. SWAFFORD: I think that's so.

7 THE COURT: And you want them randomly drawn?

8 MR. SWAFFORD: No. The rule says sequential.

9 MR. MINNS: If I may speak on that. Maybe I'm just
10 goofy and the only lawyer in America that feels this way. But 04:01:47
11 I am looking for somebody that is a friend on that jury and if
12 I find that they are sick that day and they don't show up, I
13 get sick that night. But -- and it happens and that is why the
14 Court has wisely had alternates, because you don't want to
15 start over again. But if I don't know any -- if I can't be 04:02:08
16 sure of any of who to --

17 THE COURT: What if one of the alternates get sick?

18 MR. MINNS: Well, then, it doesn't matter. If an
19 alternate gets sick, they are not going to be on the jury
20 anyway. 04:02:20

21 But what I'm saying is, if we have just a random
22 selection, I don't have any clue who is going to be on the
23 jury.

24 THE COURT: But what I'm saying, at the end, one of
25 the alternates gets sick, so we have 15. 04:02:28

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. MINNS: Right. 04:02:32

2 THE COURT: So, then, what you're saying is that we

3 just drop the other three. Is that right?

4 MR. MINNS: If I understand what the Court is saying,

5 I mean, the alternates is irrelevant unless he becomes one of 04:02:42

6 the panelists. If the alternate --

7 THE COURT: Let's say it the other way. What is a

8 better way to put it? One of the jurors who is not an

9 alternate international gets sick, so how do you choose which

10 one of the alternates? 04:03:00

11 MR. MINNS: It would be the next random one up there.

12 It's the next one sequential one.

13 THE COURT: Do you agree, counsel?

14 MR. PERKEL: Your Honor --

15 MR. SEXTON: Yes. That is the rule is that they are 04:03:16

16 sequentially selected and placed into the box and then as a

17 member of the 12 members of the jury, if any one of them has to

18 be dismissed, you go in the sequence of which the alternates

19 were seated to be the first alternate will be the first person

20 seated as an alternate would then take the place of whatever 04:03:35

21 person --

22 THE COURT: Okay. Well, when you say "sequentially,"

23 does that mean the last four is what I'm asking. So the last

24 four are alternates and that's what you want?

25 MR. SWAFFORD: Yes. 04:03:50

CR-10-00757-PHX-ROS, May 29, 2012

1 MR. SEXTON: That is what they are asking for. 04:03:51
2 MR. SWAFFORD: And then they would replace other
3 jurors in the order in which they were seated.
4 THE COURT: I gotcha. So the last four are
5 alternates. We won't let them know. 04:03:58
6 MR. SWAFFORD: I think that's the best way to do it.
7 THE COURT: Otherwise, you're in trouble.
8 MR. MINNS: No. I agree with the Court on that
9 completely.
10 MR. SWAFFORD: And then they are disappointed at the 04:04:07
11 end but they should have figured it out because they are
12 farther back. So --
13 THE COURT: Well, it's a bit inconsistent, which is
14 what I told them, which is that we don't know who the
15 alternates are. But I can explain that at the end and should 04:04:21
16 you choose to go that way, and I presume you have studied
17 carefully those four as to whether or not you want them to be
18 alternates. I mean, you studied their questionnaires so that's
19 up to you and that is what you are taking, though. You
20 recognize those four are alternates and none of those four 04:04:46
21 could have been helpful to you and that's fine. That's it's
22 rule.
23 MR. SWAFFORD: It's art, not science, Judge.
24 THE COURT: Well, if it's science --
25 MR. SWAFFORD: It's not science. No. No. This is 04:05:03

United States District Court

CR-10-00757-PHX-ROS, May 29, 2012

1 the rule. 04:05:05

2 THE COURT: If it wasn't science, you wouldn't be
3 here.

4 MR. MINNS: Your Honor, I had a U.S. marshal on a
5 jury panel in Arkansas and so I struck him and then as he was 04:05:16
6 leaving, he grabbed me in the hallway and he grabbed me and
7 says, "I'm so sorry. I tried to stay on for you but they know
8 I hate the IRS," and I thought . . .

9 THE COURT: Well, whatever you do, it's a great
10 story. That's going to be in your autobiographic novel that 04:05:35
11 you're going to write at the end of your career.

12 MR. SEXTON: We'll start at 4:10 and go to about
13 4:30?

14 MR. SWAFFORD: And then, Your Honor, it was wonderful
15 being in your courtroom. I don't know that I'll ever be back 04:05:52
16 here.

17 THE COURT: You're gone now?

18 MR. SWAFFORD: Yes. This is the story of my life. I
19 am here the first day and then I'm gone. Hopefully, the
20 lawyers call me and tell me how it was. It was just a pleasure 04:06:01
21 meeting you.

22 THE COURT: Thank you. It's nice to have you. Are
23 you going back?

24 MR. SWAFFORD: Yes. I am on a flight at 6 a.m.
25 tomorrow, back to Austin. But that is 8 a.m. Texas time so 04:06:12

CR-10-00757-PHX-ROS, May 29, 2012

1 it's not that bad. 04:06:16

2 THE COURT: Okay.

3 MR. SWAFFORD: I have to get back for my son's boy
4 scout award of honor tomorrow.

5 THE COURT: Okay. Well, have fun. Thank you. 04:06:26

6 (End sidebar.)

7 (Recess at 4:06; resumed at 4:11.)

8 THE COURT: One of the jurors who is now an alternate
9 who was one that was called -- please be seated -- who was --
10 sent in a questionnaire at the end. Let me show you what his 04:12:03
11 answer is and it may be that this is not a concern to anyone,
12 although I believe the United States government brought up this
13 issue before so I am now letting you know about it.

14 But now that he's an alternate, it may not be an
15 issue. And this is Mr. Westerfield. He did answered the 04:12:31
16 question about jury nullification, that's number 30, which
17 reads do you or a family member belong to or support an
18 organization or group that advocates that a jury can ignore the
19 instructions of law given to the jury by the Court or hold or
20 holds an opinion that the federal income tax system is 04:13:02

21 voluntary and need not be complied with for any reason
22 whatsoever? He didn't answer yes or no but he did give a
23 statement. If yes, please explain: In a criminal case, it
24 looks like I would vote not guilty unless I believed the
25 defendant guilty beyond a reasonable doubt regardless of the 04:13:20

CR-10-00757-PHX-ROS, May 29, 2012

1 instructions. 04:13:24

2 So it's unclear whether or not he would follow the
3 instructions. Now, he was not struck. So I am presuming that
4 no one has an objection and particularly an objection -- he's
5 now an alternate. So if there was a problem concerning him, 04:13:41
6 likely it's not going to be a problem because he's an
7 alternate.

8 So I'm bringing that to your attention.

9 MR. SEXTON: Thank you, Judge. We were aware of that
10 statement and didn't make any objection about that. 04:13:57

11 THE COURT: Okay. So, in other words, you felt that
12 that was not jury nullification whatsoever. He's, essentially,
13 on the jury, then he's not a problem?

14 MR. SEXTON: From our perspective, that's correct.

15 THE COURT: All right. Fine. Thank you. 04:14:13

16 MR. MINNS: Thank you, Your Honor.

17 THE COURT: You agree.

18 MR. MINNS: I don't recall the juror, Your Honor. I
19 mean --

20 THE COURT: He's number 15 now and so as number 15, 04:14:23
21 he's an alternate now instead of one of the regular jurors. So
22 if he meant jury nullification apparently is not a problem for
23 any of you and if it's not a problem for counsel, it's not a
24 problem for the Court.

25 MR. MINNS: Thank you, Your Honor. 04:14:53

KRISTY MORGAN - Direct

1 THE COURT: All right. 04:14:53

2 (Jury enters.)

3 THE COURT: All right. Please be seated.

4 And, Mr. Sexton, your first witness?

5 MR. SEXTON: Our first witness is Kristy Morgan from 04:15:55

6 the IRS.

7 KRISTY MORGAN,

8 called as a witness herein by the Government, having been first

9 duly sworn or affirmed to testify to the truth, was examined

10 and testified as follows: 04:16:12

11 COURTROOM DEPUTY: If you can state your name for the

12 record and spell your last name for the record, please.

13 THE WITNESS: Kristy. K-R-I-S-T-Y, M-O-R-G-A-N.

14 THE COURT: All right. You may proceed.

15 **DIRECT EXAMINATION** 04:16:49

16 BY MR. SEXTON:

17 Q. Would you reintroduce yourself to the jury, please.

18 A. My name is Kristy Morgan. I'm from Ogden, Utah.

19 Q. Where do you work?

20 A. I work for the Internal Revenue Service in Ogden, Utah. 04:16:58

21 Q. And how long have you been with the Internal Revenue
22 Service?

23 A. For almost 28 years.

24 Q. Before we get into your current position, let's work

25 backwards. What year did you start at the IRS? 04:17:13

United States District Court

KRISTY MORGAN - Direct

1 A. In 1984. 04:17:15

2 Q. Why don't you sort of break it down into chunks and then
3 we'll ask questions as we go along there, but what was the
4 first place you worked in the IRS when you first started?

5 A. I started my career in an area called error resolution. I 04:17:28
6 reviewed it for tax errors, usually addition or subtraction,
7 and I would correct the error and then send a letter to the
8 taxpayer explaining the error and given them a phone number or
9 address so that they can write if they had questions regarding
10 the error that was made on the tax return. 04:17:44

11 That same year I moved over to an area called
12 underreporting where, again, I reviewed tax returns and sent
13 letters but this was on underreported wages, income. For
14 instance, an employer recorded some information that you had
15 wages and it was on the tax return and then, again, I would 04:18:02
16 send a letter and explain what the difference in the taxes was,
17 give a phone number for people to call, an address that they
18 could write.

19 Q. So in both of those first two positions, how long were you
20 doing those? 04:18:17

21 A. Just for what was called the season, maybe three or four
22 months, just a short amount of time.

23 Q. And in that process, how is it that you would come to
24 determine that a particular tax return or taxpayer needed to
25 address some issues with the IRS? 04:18:30

United States District Court

KRISTY MORGAN - Direct

1 A. Basically, the information is input into the computer and 04:18:33
2 then certain tax returns are pulled out of the system for
3 review and then the returns would be reviewed based on what the
4 computer would see.

5 Q. Were you part of that selection process or the second 04:18:46
6 phase of that process?

7 A. The second phase.

8 Q. And then after those were selected, what did you do in the
9 sense of how did you communicate the information to a taxpayer
10 to know -- to let them know that there was some issue? 04:18:56

11 A. This was all correspondence. It was done with a letter
12 that was mailed to the taxpayer.

13 Q. And then after the taxpayer was notified, would this be a
14 cooperative process by which you were trying to get to the
15 bottom line between the two of you? 04:19:13

16 A. Yes. Usually, we resolved the situation. In some
17 instances there was the additional refund, so they were getting
18 more of a refund because of the error.

19 Q. So after you did that for, you said, a season, what
20 else -- what was the next task or the next job that you had in 04:19:28
21 the IRS?

22 A. I was then promoted to a tax examiner in the examination
23 function. I worked in an area called tax shelter. And what I
24 was responsible for was reviewing the mail, the letters the
25 individuals sent in that completed an audit and still had 04:19:45

United States District Court

KRISTY MORGAN - Direct

1 questions regarding how the audit was -- the determination had 04:19:48
2 come into play and maybe how to pay. So on each situation I
3 would read that and then research the account.
4 Q. And when did you do that? From when to when?
5 A. Basically, for the first about four years, from about 04:20:02
6 1986, just shortly after I hired, until about 1988.
7 Q. And in that position as a tax examiner, did you interface
8 with taxpayers directly either through correspondence or
9 through telephone communications?
10 A. I did. I talked to the individuals on the phone. A lot 04:20:28
11 of times they would have a letter to the center and ask for a
12 phone call explanation or I personally wrote them letters just
13 to explain what was going on.
14 Q. After being a tax examiner, what was the next job you had
15 in the IRS? 04:20:45
16 A. In the same examination function, I was promoted to a
17 report-writing technician. This was where I was more involved
18 with the actual audit procedure, actually sending the letter
19 informing the taxpayer they were going to be audited, what
20 books and records they needed and then a proposed amount of tax 04:21:01
21 was the first letter that went out saying this is how much you
22 could owe based on this information. If you have additional
23 information, you can send it to us. Again, an address and a
24 phone number was included in the letter.
25 Q. Were you part of the audit or just simply alerting them to 04:21:17

United States District Court

KRISTY MORGAN - Direct

1 the audit process? 04:21:19

2 A. I was actually doing correspondence audit so just simple
3 audits, not anything face-to-face.

4 Q. And when you use correspondence audit, why don't you
5 explain that a little more fully to the members of the jury as 04:21:30
6 to the lack of sort of a face-to-face that is associated with a
7 correspondence audit?

8 A. The correspondence audit is totally done through the mail
9 or over the telephone. Everything is mailed to the individual
10 for review and, in turn, the taxpayer can mail back records or 04:21:44
11 questions through the mail. We never meet face-to-face in a
12 correspondence audit.

13 Q. And then as to the records and other things that you were
14 requesting, would you be the person reviewing those records to
15 see whether or not the taxpayer has addressed the issues that 04:21:59
16 you thought were important in that particular audit?

17 A. At that point, yes, I would make the determination of tax
18 and send that on for processing.

19 Q. Processing with whom?

20 A. With the clerical part of the IRS and exam. Once the 04:22:15
21 determination is made, the taxpayer can agree and sign and say
22 that I agree to this amount of tax. And we can send it for
23 processing. If the taxpayer doesn't agree, then they would
24 send a second letter and that outlines the steps as far as if
25 they wanted to talk to someone else, an appeals process, or if 04:22:32

KRISTY MORGAN - Direct

1 they wanted to petition the tax court. We tell them their 04:22:38
2 options and how to do that in the letter.
3 Q. And when did you do -- and I wrote this down right --
4 report writing technician examination.
5 A. That is the position, yes, was in 1988 to 1992? 04:22:49
6 Q. And then after that position, did you remain in the
7 examination branch or go on to another area?
8 A. In 1992 I was selected as the civil penalty coordinator
9 still in exam and that position was in the Frivolous Filer
10 Department. And I reviewed tax returns that could possibly be 04:23:12
11 subject to penalties. I worked with area counsel as far as
12 determinations on whether or not these returns should be
13 accepted and also talked personally to the individuals that had
14 questions regarding their taxes on the telephone.
15 Q. Let me break it down. You used the word "frivolous 04:23:32
16 filings." Why don't you give the jury a sense of what you're
17 talking about?
18 A. That's the type of tax return where individuals don't want
19 to file or pay. They think that the tax laws are not correct.
20 They will state frivolous arguments on the tax return. They 04:23:46
21 will cross out the jurat. They will add statements saying that
22 the 16th Amendment was never ratified or that there's no law
23 that states that they need to file income tax return, and that
24 is the type of returns that I reviewed.
25 Q. You used the word "jurat." Would you define that for the 04:24:04

United States District Court

KRISTY MORGAN - Direct

1 jury?

04:24:08

2 A. In the tax return, where you sign your name and date it,
3 when you mail that in, that is referred to as the jurat and
4 it's signing under penalties of perjury that you reviewed the
5 tax return. It's correct. You've looked at all the schedules
6 and it is, to your knowledge, true and correct with the amounts
7 that are on the tax return.

04:24:18

8 Q. Now, when returns that were determined to be frivolous in
9 nature were sent to the Internal Revenue Service, these were
10 culled in some fashion and part of your task was to, in
11 essence, deal with these frivolous filers at this point?

04:24:35

12 A. Yes. It's a specialty group that looks at these types of
13 returns and we train different people that work throughout the
14 center on what to look for in pulling the returns out so they
15 can be reviewed.

04:24:54

16 Q. And then the next phase, if I understood you, involves,
17 again, then communicating directly with the taxpayer and trying
18 to educate or convince them or negotiate some sort of a
19 resolution of the differences?

20 A. Yeah. We sent a letter out --

04:25:12

21 MR. MINNS: Pardon me. Your Honor. I haven't
22 objected to the beginning of this but I don't think the
23 government is contending that there were any frivolous returns
24 filed. Plus the government's last question was leading.

25 THE COURT: Well, they are leading and I will sustain

04:25:29

KRISTY MORGAN - Direct

1 it on that basis.

04:25:31

2 BY MR. SEXTON:

3 Q. Would you explain how you would process with the taxpayer
4 when you have determined somebody has done something in the way
5 of a frivolous filing?

04:25:44

6 A. The taxpayer would receive a letter stating that the
7 return was frivolous. They had 30 days to respond and file a
8 corrected return or they would be subject to a frivolous return
9 penalty.

10 Also I included a phone number where they could call
11 in. I could explain the process, the steps of what was going
12 to happen; and then, in turn, they had the choice, either file
13 a corrected return or be audited and receive the penalty for
14 filing a frivolous document.

04:25:58

15 Q. And how long were you as a civil penalty coordinator?

04:26:14

16 A. I was there for ten years.

17 Q. From when to when?

18 A. From 1992 to 2002.

19 Q. And you used the term "examination branch," that you were
20 in the examination branch for these years that we talked about.
21 Would you explain to them would you mean by examination branch
22 versus perhaps other branches within the Internal Revenue
23 Service?

04:26:30

24 A. The examination branch is, basically, conducting audits.
25 For instance, the collections area is called the collections

04:26:46

KRISTY MORGAN - Direct

1 branch. They are collecting tax. The processing area 04:26:48
2 processes tax returns, so I was in the examination branch.
3 Q. What's the next task or job that you had after 2002?
4 A. I was selected an investigative aide in criminal
5 investigations. 04:27:05
6 Q. Is that a different section from the examination branch or
7 a subset of it?
8 A. That is a different section. That is actually in the
9 criminal excessing division.
10 Q. Explain what you did as an investigative aide in the fraud 04:27:16
11 detection center?
12 A. I was responsible for gathering information on returns
13 that had already been processed in the center, had been sent to
14 the center and filed, would gather that information and create
15 a packet and send out to a special agent for review in case 04:27:31
16 there was batches of fraud there and where they could continue
17 an investigation on an individual or a group.
18 Q. And how would you determine batches of fraud generally?
19 A. That was shown to us in training. A lot of times there
20 was different things that -- on the tax return that were the 04:27:50
21 same. Multiple returns would be filed that looked the same,
22 took the same deductions. We looked for different types of
23 things like that.
24 Q. Are these things that you eyeballed as a participant in
25 this program or are these things that the computer generates 04:28:06

KRISTY MORGAN - Direct

1 because of some special software programs that the IRS employs? 04:28:08

2 A. The software program is what we look at on the
3 electronically filed returns. On paper filed returns, we would
4 look at them personally.

5 Q. And from when to when were you an investigative aide in 04:28:22
6 that fraud detection center?

7 A. I was an investigative aide from 2002 until I was selected
8 in 2010 as the court witness coordinator.

9 THE COURT: All right. Let's stop here. Ladies and
10 gentlemen, we'll see you tomorrow and we will start at 8:30. 04:28:37

11 And you may step down. And have a nice evening. Be
12 sure to be here early enough so that we can start at 8:30.

13 COURTROOM DEPUTY: If you could leave your books in
14 the jury room, please.

15 MR. SEXTON: May I approach your clerk? 04:29:02

16 (Jury departs.)

17 THE COURT: And you may step down.

18 Okay. Counsel, just so you know, make sure you are
19 here early enough so that we can start at 8:30 and I am sure I
20 have your e-mail addresses so I can get you my order on the 04:29:26

21 instructions. And if there are any questions about them, what
22 I propose as the instructions, and I don't expect there will be
23 any questions. I think we dealt with the one. At this point,
24 I'm the only one that I think is perhaps critical for going
25 forward, which is the ethics issue, and that needs to be 04:29:54

United States District Court

KRISTY MORGAN - Direct

1 briefed and we'll start with Mr. Minns. 04:29:57

2 You need to -- once you see my order, you need to
3 make your argument that the instruction -- an instruction
4 should be given on ethics. You need to propose that
5 instruction also as to what you're proposing that I will give 04:30:11
6 and why does it constitute law and then why is it relevant in
7 this case.

8 So, you know, ordinarily, the defense doesn't have a
9 defense in this case but already it seems that you do. So it's
10 not as if you are exposing something that you have kept secret. 04:30:38

11 So I would encourage you, on that basis, to do this
12 now. I am not ordering you to, but if you intend to venture
13 into that area on cross-examination or offer any witnesses
14 based upon that defense, you are going -- you do not want to
15 receive an objection sustained by the government that that 04:31:04
16 hasn't been decided yet.

17 So should you choose to go that course, as I
18 mentioned at the sidebar, let's get it briefed and resolved.

19 And just to back up a bit, you are going to have to
20 set forth why it's relevant in this respect. You are going to 04:31:20
21 have to propose what you expect the testimony will show
22 concerning what your client was told and why what your client
23 was told was admissible, meaning it's not hearsay, and then why
24 would there be an instruction that the Court would give
25 concerning the ethics of what he -- I guess it's only he with 04:31:50

KRISTY MORGAN - Direct

1 respect to the lawyers told.

04:31:55

2 You also mentioned something and we had a number of
3 objections, some of which were sustained. I'm not sure there
4 was on this issue but I think you mentioned that you were one
5 of the lawyers for your client. Well, you know you can't
6 testify.

04:32:12

7 MR. MINNS: No. No. What I was -- what I intended
8 to show is that he hired a lot of lawyers and we are lawyers
9 he's hired. He's not.

10 THE COURT: I want to make sure that we don't go
11 there and you've got plenty of experience, so you know not to
12 go in that direction, to offer yourself as a witness, because
13 then we've got a problem.

04:32:31

14 All right. We're in recess. Counsel --

15 MR. PERKEL: Your Honor, I'm sorry to interrupt you.
16 Just on the note, I know we didn't finish discussing this
17 today. Because the defense attorney opened on advice his
18 client received from counsel a number of times, he mentioned
19 Henry Tom, Greg Robertson, the deceased brother Greg Robertson
20 this advice. It seems to me that he's now waived his
21 attorney-client privilege implicitly.

04:32:47

04:33:04

22 THE COURT: Well, let's wait to see and that is a
23 very good point. Let's wait to see what he intends to offer.
24 You're going to have to proffer that if you wish for me to give
25 an instruction on the unethical statements made by the

04:33:23

United States District Court

KRISTY MORGAN - Direct

1 attorneys. Then you know you are risking the possibility that
2 that -- certainly those statements are not protected and then
3 anything within the context of those may not be protected.

04:33:28

4 All right. See you at 8:30 tomorrow.

5 (Whereupon, these proceedings recessed at 4:33 p.m.)

04:33:47

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KRISTY MORGAN - Direct

C E R T I F I C A T E

04:33:47

I, ELAINE M. CROPPER, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

04:33:47

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control, and to the best of
my ability.

04:33:47

DATED at Phoenix, Arizona, this 5th day of August,
2012.

04:33:47

s/Elaine M. Cropper

04:33:47

Elaine M. Cropper, RDR, CRR, CCP

04:33:47

United States District Court