

CR-10-00757-PHX-ROS, June 20, 2012

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

08:21:28

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4					
5	United States of America,)			
6)			
7	Plaintiff,)			
8	vs.)			
9)	CR10-00757-PHX-ROS		
10	James R. Parker,)			
11)			
12	Defendant.)			
13)	June 20, 2012		
14)	8:33 a.m.		
15)			

08:21:28

08:21:28

BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - Day 8

(Pages 1256 through 1317)

08:21:28

Official Court Reporter:
Elaine Cropper, RDR, CRR, CCP
 Sandra Day O'Connor U.S. Courthouse, Suite 312
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08:21:28

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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TESTIMONY

3	WITNESS	Direct	Cross	Redirect	VD
4	MARK KLAMRZYNSKI	1272	1289		

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A P P E A R A N C E S

08:21:28

For the Government:

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08:21:28

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P R O C E E D I N G S

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

(Proceedings begin at 8:33.)

THE COURT: Please be seated.

(Jury out.)

08:33:12

THE COURT: All right, sir. What have we got?

MR. PERKEL: Just housekeeping, Judge. Your clerk didn't catch the photos that we agreed to at sidebar on the Texas home so for the record --

THE COURT: Now, wait a minute. My clerk didn't catch.

08:33:26

COURTROOM DEPUTY: I missed it.

THE COURT: You know how much I protect my staff.

MR. PERKEL: I don't mean to demean anybody. She said she doesn't listen to the sidebar so she didn't pick it up. So I just wanted to put on the records that 403 through 407 and 411 through 412 were photos that were announced there as being stipulated to and the Court --

08:33:36

THE COURT: Yes, Ms. Arnett said that at the sidebar.

MR. PERKEL: She's a wonderful clerk, by the way. And then Exhibit 203 --

08:33:56

THE COURT: And so is the judge.

MR. PERKEL: Yes, I was going to get to that.

Exhibit 203, I just talked to counsel, it's a 902(11) certificate for ioVest that we failed to move in with the mass

08:34:10

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1 stuff yesterday so we would move that in as well. And I don't 08:34:13
2 think they have any objection to it.

3 MS. ARNETT: No objection, Your Honor.

4 MR. SEXTON: Otherwise, then we're ready to proceed.
5 Any other housekeeping things, I assume we can do it at the 08:34:20
6 back end of the Rule 29 as far as what's going to happen
7 tomorrow and such.

8 (Exhibit Numbers 403 through 407, 411, 412, and 203
9 were admitted into evidence.)

10 THE COURT: Okay. 08:34:27

11 Mr. Minns?

12 MR. MINNS: Yes. I had a motion and it's extremely
13 personal, potentially embarrassing. Even though there's a few
14 people in the courtroom, I ask that we be allowed to do it at
15 sidebar. It will be very brief. 08:34:37

16 (At sidebar.)

17 MR. MINNS: May I proceed, Your Honor?

18 THE COURT: Yes.

19 MR. MINNS: During the course of the trial, there
20 was -- I'm kind of referring to it and it has been bugging me 08:35:02
21 and it has been making me angrier and angrier. I should have
22 said something immediately. I apologize to the Court. I think
23 as an officer to the Court, I have a duty to say something
24 immediately, but I was thrown offguard. I thought maybe it was
25 different locally or something like that. 08:35:21

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1 There was an incident and I'm now referring to it as
2 a Simon Says incident. Basically, the Court was not in the
3 courtroom. Mr. Sexton was -- and I didn't hear everything, but
4 he was engaging with the jurors. And the next thing that I did
5 hear was, "I found that" -- the jurors were standing waiting
6 for the court to arrive. "I found that sometimes if we sit
7 down, it will get the Court to come out faster."

08:35:24

08:35:45

8 Mr. Sexton then sat down. Juror number 13 sat down
9 with him. I don't recall, thankfully, any other jurors taking
10 that bait. I thought, well, am I taking this wrong?

08:36:03

11 I went over to Mr. Sexton and attempted to engage him
12 because I was so uncomfortable. I didn't say anything.
13 Mr. Sexton made some personal jokes. I'm not going to repeat
14 them. I have got thick skin. It didn't bother me. And then I
15 came back.

08:36:22

16 The Court then came in. I've talked to several
17 people about this since. I should have immediately made an
18 objection. It was wrong not to do so. But everybody I've
19 talked to says there's no circumstances under which lawyers can
20 engage conversations with the jurors when the Court is not
21 sitting on the bench or lawyers can have banter with the jurors
22 when the Court is not sitting on the bench.

08:36:38

23 What's continued to happen, and it's continued to get
24 me, and I think at the end of the day, I was losing it, and I
25 apologize for that. But the -- I sometimes cannot hear my own

08:36:57

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1 questions because of the banter that is going on in the
2 government bench behind me, sometimes ridiculing my remarks,
3 sometimes not. I can't hear everything. My back is turned.
4 On a couple of occasions I have actually turned to wait until
5 they stopped. The Court once asked what I was doing. I said
6 that but I don't think I gave the Court a very good
7 explanation, and I am trying to do that now.

08:37:02

08:37:16

8 The communication with Miss Giovannelli and juror
9 number 13 has gotten to be a friendship-type thing. They are
10 making gestures back and forth, looking at each other, direct,
11 constant eye contact. They are communicating. This juror is
12 lost to the defense. She's not even going to listen when we
13 put on the defense. And her and Ms. Giovannelli are going to
14 be making eye contact back and forth throughout our closing.

08:37:36

15 I am disturbed by this. I am disturbed that I did
16 not immediately bring it up to the Court, but I have tried a
17 case in Tucson. I've never tried a case in Phoenix. I'm
18 thinking maybe there's more relaxation with everything and less
19 posturing in the hallways. I always avoid the jurors. I walk
20 to the opposite sides of the hallways.

08:37:58

08:38:24

21 The jurors are getting in the elevator so -- if I'm
22 in an elevator and jurors get in, I get out of the elevator. I
23 don't want -- I don't want the jurors to think I'm snitching
24 and I don't like -- I'm not trying to be a snitch. I'm
25 uncomfortable with this whole thing to begin with.

08:38:37

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1 But I would like not pointed instructions to this, if 08:38:41
2 this case is to continue, but some instructions that the Court
3 has told the lawyers that they are not to talk to the jurors
4 when the Court is not in the courtroom and that they are not to
5 talk to the jurors in the hallway. And if you feel the lawyers 08:38:58
6 are obeying my instructions if they avoid you and do things
7 like, that because I don't want the jurors to think I don't
8 care about them. I do. I am trying to engage them every
9 second that I can, but only when the Court is on the bench, not
10 when the Court is not in the courtroom. 08:39:14

11 I think I have no choice but to ask for a mistrial
12 here due to government misconduct. There's no question that
13 that engagement with the specific juror, the specific bait, it
14 was very charming, it was very well done. I thought what a
15 charming person he is but it was wrong. It was absolutely 08:39:35
16 wrong.

17 I'm asking for a mistrial against the government for
18 cause. In the event that the Court did not feel that it has
19 gone to this point, I am asking that juror number 13 be
20 stricken because of these tactics. In the event that the Court 08:39:50
21 does not agree with me, I ask that juror number 13 be stricken
22 and that the government be asked to try to keep their voices
23 down when I am at the podium asking questions and to try and at
24 the government table, to not try to make direct contact with
25 individual jurors unless they are at the podium where they are 08:40:09

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1 supposed to be making contact with the jurors. 08:40:13

2 THE COURT: What type of comments did you hear from
3 the government when you were speaking?

4 MR. MINNS: My back was turned to them. I could not
5 make out the exact comments. I could hear it. I could see 08:40:24

6 reactions from jurors laughing and looking at the government
7 table. So I am anticipating that they could hear it but I
8 could not. They could hear it at my counsel table, they could
9 hear them talking, but they could not make out the exact words.

10 So I can't -- 08:40:46

11 THE COURT: But you don't really, because without
12 knowing the content, you don't know that the government was
13 making adverse comments about you; right?

14 MR. MINNS: Well, I mean, Mr. Sexton made an adverse
15 comment which I did hear and -- 08:41:05

16 THE COURT: What was that?

17 MR. MINNS: He made a comment that I am too short and
18 have ADD or something like that. But I am not complaining

19 about that or anything like that, and I didn't make a comment
20 back because my background would have been an inappropriate 08:41:19

21 comment which I would have made back so I said nothing. I just
22 walked back to my table.

23 THE COURT: When did he say that?

24 MR. MINNS: I believe it was at the time that I
25 approached the table when -- I can't be certain. If I say the 08:41:35

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1 exact time, I would be mistaken. 08:41:42

2 THE COURT: Did he say that to you or did you just

3 hear it?

4 MR. MINNS: No. He said that directly to my face.

5 THE COURT: When you were -- this is -- 08:41:51

6 MR. MINNS: I walked over there to engage Mr. Sexton.

7 It could have either been at the time that he was playing Simon

8 Says with the juror. It could have been one of the many times

9 that the Court instructed us to get together and the

10 government, for one reason or another, didn't want to get 08:42:08

11 together. I'm not complaining about his personal references to

12 me personally, only if the jurors heard it.

13 THE COURT: And you say juror number 13 was talking

14 to Ms. Giovannelli?

15 MR. MINNS: No, I can't say that there was actual 08:42:33

16 speech. I can say that the eye contact has been nonstop with

17 movement at all times. When Ms. Giovannelli makes a remark, I

18 hear the laughter at the table and I can see juror 13 looking

19 over at her. One time I turned and saw her looking back at

20 her. I don't know what she said. I don't know if the juror 08:42:48

21 heard it, but I know that there was absolutely communication

22 between the two.

23 THE COURT: All right.

24 Response?

25 MR. SEXTON: Most of this is false. I don't believe 08:42:56

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1 our counsel table is doing anything. In fact, I am, obviously, 08:42:59
2 between the people you're talking about and the jurors. And
3 the Court, obviously, has the best vantage point. You are
4 looking directly at us and you are looking at the jurors, and
5 there is no comments being made about Mr. Minns. We are not 08:43:13
6 laughing. I am deadly seriously listening to everything he is
7 saying. I am leaning forward and I don't hear anything going
8 on between my party. Frankly, I'm not even engaging them to
9 look at exhibits. It's a quiet table and I think the Court can
10 see that from the point we have been doing this. 08:43:33

11 He talks about the one time that there was a time
12 where we were all standing, and this was almost like on day one
13 of the trial, Judge, we're talking about where you were
14 standing. And then to my own colleagues, I said, "I bet if I
15 sit down" -- not directly it to the jurors, "I bet if I sit 08:43:51
16 down, she'll come in." And your own staff was saying, you
17 know, we all kind of did a little bit of that, trying to see
18 when you were going to come in. That was it. It was not
19 engaging the jurors. It was engaging my own counsel table.

20 As far as what Ms. Giovannelli is -- obviously, you 08:44:01
21 are watching this entire trial, you have the best vantage
22 point. I don't believe any of that, what he said about
23 Ms. Giovannelli is true, and I dispute it 100 percent.

24 And the reference he's talking about was -- and the
25 final thing is, he wants to reference something that has 08:44:17

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1 nothing to do -- the jury is not in the room. He came over and 08:44:21
2 I said to him, because he kept coming over to me as I was
3 trying to do work. I said, "You are sort of a nervous little
4 guy. You keep coming over here," and then I sent him back.
5 Then he thinks I made fun of him. 08:44:32

6 I actually think I made fun of myself because I think
7 I might have said, "You're a short little nervous guy," and
8 when he sort of said, "I'm not short." I said, "Listen, I'm
9 hair-challenged, too. I'm going bald, so we all have issues,"
10 and that was it. It was nothing -- the jury is not even there. 08:44:48
11 It was actually kind of laughed at. So the notion that
12 today -- and that was almost, like, on day one of the jury --
13 that was, like, three weeks ago we're talking about. So I
14 didn't think he took offense to it. I made fun of myself at
15 the same time. Everybody was laughing at me and at my own 08:45:04
16 expense.

17 So to try to trump this up now three weeks later, I
18 think almost everything he said is 100 percent false. And I
19 did say something about sitting down, but I was saying it to my
20 own group and that is it. I was not in any way directed, 08:45:19
21 turned to, or looking at the jury when I said that.

22 MR. MINNS: It was -- at that time, there was direct
23 eye contact and it was direct eye contact and you sat down
24 simultaneously with juror number 13. And to try to say that
25 the staff was involved in this in any way, I disagree. The 08:45:36

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1 staff had nothing to do with it. There was no involvement at 08:45:39
2 all and did not encourage it or discourage it or anything.

3 THE COURT: All right. Well, I'm taking the motion
4 under advisement. I'll talk to the jury about no contact with
5 the lawyers during the trial or when we are adjourned outside 08:45:51
6 of the courtroom; and if necessary, I'll take this up with
7 juror number 13 and Ms. Giovannelli. And, Counsel, you're not
8 to mention anything to Ms. Giovannelli about this sidebar. If
9 necessary, I'll have a conversation with her.

10 MR. SEXTON: May we instruct our people to just be 08:46:15
11 not engaging the jury?

12 THE COURT: Well, I will do that.

13 MR. SEXTON: Okay.

14 MR. MINNS: Your Honor, I am concerned that
15 there's -- if juror number 13 is not taken off, then she will 08:46:22
16 hold this against me. And if -- she's already against us
17 because of this. But if she is questioned, she's going to know
18 that I brought it up and she's going to hold this against us
19 even greater. There are two jurors, two alternate jurors. If
20 she's taken off, it will have no problem whatsoever. And that 08:46:43
21 is the reason why I think the Court wisely had, for this long
22 trial, so many alternates.

23 THE COURT: I will decide how to take that up at the
24 appropriate time. It's under advisement.

25 MR. SEXTON: Thank you, Judge. 08:46:58

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1 (End sidebar.) 08:46:59

2 THE COURT: All right. There has been a conversation
3 with counsel about potential contact with the jurors.
4 Everybody knows whether in the courtroom or outside the
5 courtroom, there is no contact with the jurors, either eye 08:47:18
6 contact or any other contact of any sort that is any type of
7 communication. And I think everybody in the courtroom
8 understands that. Is that right?

9 MR. SEXTON: Yes, Judge.

10 MR. MINNS: Thank you, Your Honor. 08:47:37

11 MS. ARNETT: Thank you, Your Honor.

12 THE COURT: Okay. Let's bring the jury in.

13 (Jury enters.)

14 THE COURT: All right. Ladies and gentlemen. Please
15 be seated. We are ready to proceed. Good morning. 08:49:14

16 Let me just remind you, as I do occasionally during
17 the trial, particularly if we have a long trial, that whether
18 in the courtroom or outside the courtroom, there is to be no
19 contact with the lawyers or the parties in any way. That means
20 contact, eye contact. That means conversation. I think you 08:49:31
21 understand it and I just need to remind everybody of that.

22 And if you have any question about it or somebody
23 attempts to contact you, whether it be one of the parties or
24 the lawyers or anyone whatsoever, then please let me know.

25 All right. Let's go. 08:49:55

MARK KLAMRZYNSKI - Direct

1 MR. SEXTON: The next witness and final witness is 08:49:56
2 Mark Klamrzynski.

3 MARK KLAMRZYNSKI,
4 called as a witness herein by the Government, having been first
5 duly sworn or affirmed to testify to the truth, was examined 08:50:01
6 and testified as follows:

7 COURTROOM DEPUTY: State your name for the record,
8 spell your last name, please.

9 THE WITNESS: Mark Klamrzynski.
10 K-L-A-M-R-Z-Y-N-S-K-I. 08:50:18

11 **DIRECT EXAMINATION**

12 BY MR. SEXTON:

13 Q. Mr. Klamrzynski, where do you currently work?

14 A. At the United States Attorney's Office here in Phoenix.

15 Q. And how long have you worked there? 08:50:45

16 A. A little over a year, since February of 2011.

17 Q. And what's your position at the United States Attorney's
18 Office?

19 A. Auditor.

20 Q. And, sir, what's your current salary with the United 08:50:59
21 States Attorney's Office?

22 A. A little bit over \$86,000 per year.

23 Q. Let's go into your background. What -- when did you
24 graduate from college?

25 A. The University of Illinois at the Chicago campus in 08:51:12

MARK KLAMRZYNSKI - Direct

1 Chicago, Illinois. 08:51:15

2 Q. What year?

3 A. 1973.

4 Q. What did you major in?

5 A. Accounting. 08:51:21

6 Q. Now, sir, if you would, for the jury's benefit, would you

7 sort of summarize the highlights of your work experience

8 between graduating from college and your current job at the

9 United States Attorney's Office?

10 A. Right after graduation in 1973 I was hired by 08:51:36

11 Pricewaterhouse, one of the largest CPA firms in the country,

12 in the world. I worked there for about three years. I had

13 another position with James Kemper Insurance Agency. Moved to

14 Arizona in 1977 where I was hired by Phoenix Coca-cola Bottling

15 as their director of finance and budgeting, worked there for a 08:52:01

16 few years and then had several different financial accounting

17 positions here in the Valley with small- to medium-sized

18 companies that varied in their industries.

19 In July of 1970 I was hired by the Arizona

20 Corporation Commission in the Securities Division and performed 08:52:29

21 my duties as a forensic accountant.

22 Q. You said 1970. Is that when you were hired?

23 A. I'm sorry. 1990.

24 Q. And how long were you at the Arizona Corporation

25 Commission? 08:52:45

United States District Court

MARK KLAMRZYNSKI - Direct

- 1 A. A little over 17 years, until 2007. 08:52:48
- 2 Q. Did you retire from that position?
- 3 A. Yes, I did.
- 4 Q. And what did you do after that?
- 5 A. I went to work for a small CPA firm, James C. Sell, PC, 08:52:58
- 6 which specialized in receivership and forensic accounting work.
- 7 Q. And then ultimately made your way to the United States
- 8 Attorney's Office?
- 9 A. And then made my way, yes, in February of '11 to the
- 10 United States Attorney's Office. 08:53:19
- 11 Q. Are you currently an instructor or professor at the one of
- 12 the colleges in town?
- 13 A. Yes. Since 1984 for the last 28, 29 years I have been an
- 14 accounting instructor at Phoenix College in the Maricopa
- 15 Community College District. I have taught all levels of 08:53:37
- 16 introductory accounting. I teach fraud accounting and two
- 17 types of tax courses.
- 18 Q. And, sir, do you have any credentials in the State of
- 19 Arizona?
- 20 A. Yes. I'm a licensed certified public accountant in 08:53:54
- 21 Arizona and I'm also a certified fraud examiner.
- 22 Q. And how long have you had both of those affiliations?
- 23 A. I have been a CPA since 1983 and a certified fraud
- 24 examiner since 1997.
- 25 Q. Now, sir, let's begin -- 08:54:20

United States District Court

MARK KLAMRZYNSKI - Direct

1 MR. SEXTON: All of these exhibits that we're going 08:54:21
2 to go through, Judge, had already been admitted into evidence
3 per the stipulation yesterday.

4 THE COURT: Yes.

5 Ladies and gentlemen, there have been a number of 08:54:28
6 exhibits that both counsel have brought to my attention that
7 should be admitted. Both counsel agree that they should be
8 admitted. You will have those records in the jury room during
9 deliberations.

10 MR. SEXTON: Thank you, Judge. 08:54:43

11 BY MR. SEXTON:

12 Q. Let's start with Exhibit 606, sir, which is on the screen.
13 In fact, maybe just to make it a little easier on the eye, why
14 don't you highlight the top portion of that form just so they
15 can see what it is? 08:54:57

16 Sir, what is Exhibit 606?

17 A. Exhibit 606 is a list of the exhibits that I prepared and
18 the relating supporting exhibits that helped explain what each
19 one of the exhibits listed on 606 are?

20 Q. Is this a summary of your summary exhibits? 08:55:14

21 A. Yes, it is.

22 Q. Now, let's start with, from your summary exhibit list
23 here, let's start with Exhibit 399, page two. Would you
24 explain to the jury what you summarized in Exhibit 399, please?

25 A. In Exhibit 399 I summarized the entities that were 08:55:51

MARK KLAMRZYNSKI - Direct

1 discovered or that I uncovered in the investigation. In this 08:55:55
2 exhibit the headings read Entity Name, Tax ID Number,
3 Registered Agent or Owner, the date the entity started in
4 existence, and then other supporting exhibit numbers.
5 Q. And for which entities did you do that for? 08:56:15
6 A. As listed on the summary, the entities listed are Parker
7 Children Irrevocable Trust; Sunlight Financial, LLP; Cimarron
8 River Ranch, LLC; Resorts Consulting Quorum, LLP; and RSJ
9 Investments, LLC.
10 Q. Now, sir, if you would turn to Exhibit 400 and if we could 08:56:38
11 highlight the main body of that. What is Exhibit 400 that you
12 prepared?
13 A. Exhibit 400 is a summary of the related bank accounts that
14 were examined by myself in the investigation that relate to
15 Exhibit 399. The headings read the date that the bank account 08:57:10
16 was opened, the bank account name, the bank name and its
17 location, the related account number, the authorized check
18 signers, and the last column is the other supporting exhibit
19 numbers that were used to gather this information.
20 Q. Other than Cimarron River Ranch did each one of the 08:57:37
21 entities have just one bank account that you looked at.
22 A. Yes.
23 Q. How many bank accounts did Cimarron River Ranch have on
24 your chart here?
25 A. Three. 08:57:47

MARK KLAMRZYNSKI - Direct

1 Q. Now if we could please go to Exhibit 391. Explain to the 08:57:57
2 jury what you summarized in Exhibit 391.

3 A. Exhibit 391 is a summary of the funds wired to the Belize
4 Bank for the benefit of MacKinnon Belize Land and Development
5 Limited for the period June 2004 to August of 7. This lists, 08:58:24
6 again, the date, what was the nature of the transaction, the
7 bank account and the related bank account number, the amount of
8 money and other related exhibit numbers that I used to put this
9 exhibit together.

10 Q. And then looking at Exhibit 392, sir. I'm going to start 08:58:48
11 in the upper portion of the summary of bank deposits. Would
12 you explain what Exhibit 392 summarizes?

13 A. Exhibit 392 summarizes the funds that were wired from the
14 Belize bank account that was just mentioned in 391 for the
15 period of June of 2004 to January of 2008. 08:59:21

16 These transactions were the significant transactions.
17 I don't want to imply that it meant that it was all of the
18 transactions that were wired from the Belize Bank. But the top
19 portion indicates or is a summary of the bank account deposits
20 that were made. In other words, from the Belize Bank there 08:59:42
21 were three banks that moneys were wired to for the dates
22 indicated and the transaction to what bank it was being wired
23 to, the bank account number, the bank account and the bank
24 account number, the amount of funds that were wired to these
25 bank accounts, and then on the far right is the related exhibit 09:00:05

MARK KLAMRZYNSKI - Direct

1 numbers that are the supporting documentation for the summary. 09:00:09
2 Q. And the first two entries, do those relate to wires to
3 banks associated with Cimarron River Ranch?
4 A. Yes, they did. The first entry that has the date of June
5 15, 2004, to August 2007, this is a summary of all of the wire 09:00:25
6 transfers to Cimarron River Ranch, LLC, from Belize Bank
7 Limited and those moneys were wired into the First State Bank
8 account number 231142 totaling \$1,302000.
9 Q. And then the second line after that is to the First
10 National Bank of Tribune on behalf of Cimarron River Ranch? 09:00:49
11 A. Yes. For the period of January 27, 2005, to January 8 of
12 2008. These are wires to the account in the name of Roy Young,
13 dba, Cimarron River Ranch, LLC. And those amounts of the wires
14 totaled \$1,544,375.
15 Q. And then the final entry, is that to a different entity? 09:01:16
16 A. Yes, it is. During the period of September 28 of 2005 to
17 August 15 of 2006 wire transfers from Belize -- from the Belize
18 Bank to the Results Consulting Quorum, LLP, entity were made
19 into the Bank One, also known as JPMorgan Chase, account number
20 684215809 in the amount of \$223,500. 09:01:40
21 Q. You read Results and it says Results but that's a typo,
22 isn't it?
23 A. I'm sorry. Yep. That should be resorts.
24 Q. Now, the second half of this Exhibit 392, let's put that
25 on the screen. Now, the top half that we looked at is wire 09:02:02

United States District Court

MARK KLAMRZYNSKI - Direct

1 transfers from Belize to bank accounts in the United States? 09:02:12
2 A. That's correct.
3 Q. And what is the bottom half of Exhibit 392?
4 A. The bottom half of 392 indicates the summary of major
5 purchases that were made. Again, they are funded by wires from 09:02:22
6 the bank in Belize. The first item, dated July 16 of 2004, was
7 a wire transfer to Desert European Motorcars, Limited, in
8 Rancho Mirage, California, to purchase a 2004 Rolls Royce
9 Phantom four-door sedan. Those moneys were wired to Bank of
10 America, account number 16740005 -- 09:02:46
11 Q. You don't need to read the account.
12 A. Okay. And the amount was \$306,000.
13 Q. Okay. And then the next one was the Ford F250 truck?
14 A. Yes. On December 3, 2004, \$36,029 was wired to Fenton
15 Motors of Dumas, Texas, to purchase the truck. 09:03:09
16 Q. And what was the third entry down there?
17 A. The third entry dated September 2, 2005, was a wire
18 transfer to Chicago Title of Amarillo, Texas, to purchase a
19 Cody and Rachel Harris home at 103 Jynteewood Drive in Canyon,
20 Texas, in the amount of \$204,000. 09:03:33
21 Q. Then looking at 307, at the top, is this the \$204,000 wire
22 transfer from that Jynteewood Drive, Canyon, Texas, purchase?
23 A. Yes, it was.
24 Q. And it indicates the buyer above.
25 A. Yes. As that indicates, buyers Cody Harris and Rachel T. 09:04:06

United States District Court

MARK KLAMRZYNSKI - Direct

1 Harris for the property on Jynteewood Drive in Canyon, Texas. 09:04:11

2 Q. So, now, let's turn to Exhibit 393. Explain what 393 was

3 summarizing.

4 A. 393 summarizes all of the wire transfers that were made

5 from Belize to First State Bank in Boise City, Oklahoma, for 09:04:41

6 the period of June 15, 2004, through August 8 of 2007.

7 Q. And then let me sort of -- does the bottom total of

8 \$1,302,000 match up to the previous exhibit we just saw that

9 had \$1,302,000 going into that bank?

10 A. Yes. It does. That's the detail for what's on 09:05:07

11 Exhibit 392, page two.

12 Q. And then on this exhibit you subtotal for each year, 2004,

13 2005, 2006, and 2007 as shown?

14 A. Yes.

15 Q. And then let's go to Exhibit 394. Is that the same thing 09:05:19

16 for the other bank for Cimarron that all of the money went from

17 Belize?

18 A. Yes. In similar fashion, I summarized all of the

19 individual wire transfers for the moneys wireds from Belize to

20 First National Bank of Tribune in Elkhart, Kansas. 09:05:36

21 Q. And on page three of that Exhibit 394, that bottom total

22 there matches the total that you just showed the jury?

23 A. On Exhibit 392.

24 Q. Okay. And is it the same as it would apply to

25 Exhibit 395, what does that summarize? 09:05:58

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1 A. 395 summarizes the wire transfers from Belize to Bank One 09:06:13
2 in Phoenix, Arizona, for the period September 28, 2005, to
3 August 15 of 2008, in the amount of \$223,500.

4 Q. And that figure matches up to the earlier combined chart
5 in 392? 09:06:32

6 A. Yes, it does.

7 Q. Now, if you look at Exhibit 390. Is this sort of a boxed
8 form of what you just went over in 392?

9 A. Yes, it is.

10 Q. It shows the money coming in and the blue above. 09:06:56

11 A. The blue box at the top shows the \$6 million that was
12 wired to the Belize Bank and then the arrows pointing down are
13 the major disbursements from the Belize Bank into First State
14 Bank, First National Bank of Tribune, Bank One, the purchase of
15 the Rolls Royce, the purchase of the Ford truck, and the 09:07:21
16 purchase of the Canyon -- the Cody and Rachel Harris Canyon
17 home.

18 Q. And now if you would, sir, would you go to 396? If you
19 would highlight the upper portion. What is summarized in 396?

20 A. Exhibit 396 summarizes the Cimarron River Ranch, LLC, 09:07:55
21 cattle purchases for the period of February 2005 to April of
22 2006 and these total \$693,550.

23 Q. And this is from the Cimarron River Ranch First National
24 bank account?

25 A. Yes. It is. The First National Bank of Tribune. 09:08:21

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MARK KLAMRZYNSKI - Direct

1 Q. And then 397, if you would look at that and tell the jury 09:08:28
2 what that summarizes.

3 A. 397 summarizes the Oklahoma land lease payments made by
4 Cimarron River Ranch for the period January 2005 to December
5 2007 totaling \$592,941.54. 09:08:52

6 Q. Is the source of those funds from two separate bank
7 accounts?

8 A. Yes. \$557 -- approximately \$557,141 came from the First
9 State Bank and the balance of approximately 40-some thousand
10 dollars came out of M&I, Marshall & Isley, Bank. 09:09:21

11 Q. And then let's go to Exhibit 398, sir, and tell the jury
12 what that summarizes.

13 A. 398 summarizes the interest payments made to Stewart Title
14 for the period October of 2003 to December 2007 totaling
15 \$481,088.81. These interest payments came from three different 09:09:42
16 entities. Sunlight Financial LLP had paid \$70,298
17 approximately. Resorts Consulting Quorum, LLP, paid
18 approximately \$152,575. And Cimarron River Ranch paid
19 approximately \$258,215.

20 Q. So from the standpoint of -- first off, is this on the 09:10:14
21 \$1.5 million loan on the Carefree home?

22 A. Yes, it is.

23 Q. Okay. And so looking at the date column, did Sunlight
24 Financial sort of have the first period of time by which
25 payments were made on that loan? 09:10:38

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MARK KLAMRZYNSKI - Direct

1 A. Yes, the summary indicates from approximately October of 09:10:41
2 2003 to approximately July of 2005 Sunlight made the payments
3 on the interest to Stewart Title.
4 Q. And then Resorts seems to take over for three-quarters
5 there, four quarters? 09:10:58
6 A. Yes. From approximately September 2005 to June of 2006
7 Resorts -- Results Consulting Quorum, LLP, made payments.
8 Q. And then, finally, it, then, skips down to Cimarron River
9 Ranch taking over the payments at that point?
10 A. Yes. From approximately September 2006 to December of 09:11:17
11 2007.
12 Q. And starting with Exhibit 502, would you tell the jury
13 what is summarized in Exhibit 502?
14 A. Exhibit 502 is a summary of James and Jacqueline Parker's
15 personal expenses from the American Express card that were paid 09:11:48
16 by the entity bank accounts that are referred to in the other
17 exhibit for the period February 2005 through June of 2011.
18 This exhibit relates to the American Express account ending
19 1000 --
20 Q. You don't need to read it. They can see that. But this 09:12:14
21 is the American Express account?
22 A. Yes.
23 Q. Let's break this down to the sections you have on the
24 summary. The first one is for Harris Bank, payments off of the
25 Harris Bank Account. 09:12:30

United States District Court

MARK KLAMRZYNSKI - Direct

1 A. Yes. That bank account was the name of Omega 09:12:31
2 Construction, Inc.

3 Q. And I notice there's a little notation at the bottom. Do
4 you see where it says note: Also identified 18 additional
5 payments. Would you explain what that is to the jury? 09:12:43

6 A. The information we had received from the American Express,
7 they had provided monthly statements for some of the periods,
8 but they also provided records of payment for periods that were
9 outside the statement date periods.

10 So, in other words, they had more payments than 09:13:07
11 detail statements. So the additional note for most of these,
12 as an example on the Harris Bank, there was an additional
13 approximately \$23,602 of payments made to American Express from
14 the Harris Bank Account. That was all of the information we
15 had. We did not -- we weren't able to acquire the related 09:13:28
16 statements for those payments.

17 Q. And, therefore, the detail of what the actual charges are?

18 A. Yes.

19 Q. Now, just below this, let's pull out and maybe do sort of
20 the middle half of this, the two entries on that. 09:13:45

21 So after the Harris Bank, which is at the very top,
22 what other banks were found to have been used to pay the
23 American Express card?

24 A. The other banks used to pay the American Express account
25 were the Metcalf Bank, also known as American Sterling Bank, 09:14:06

MARK KLAMRZYNSKI - Direct

1 for the -- in the name of the Sunlight Financial, LLP. First 09:14:09
2 National Bank of New Mexico in the name of RSJ Investments,
3 Inc., and then the First State Bank in the name of Cimarron
4 River Ranch, LLC. And then at the bottom, the M&I, Marshall &
5 Isley Bank, in the name of Cimarron River Ranch, LLC. 09:14:28
6 Q. And then with some of these you have some detail and then
7 you have little notes as well?
8 A. In some cases, we had detailed statements and then in
9 addition, we had the additional payments.
10 Q. Now, if you would look at Exhibit 512, please. What does 09:14:51
11 this summarize?
12 A. 512 is a similar summary like 502, which is a summary of
13 the James and Jacqueline Parker's personal expenses per the
14 Bank of America credit card which was paid by various entity
15 bank accounts for the period of August 2005 through August of 09:15:20
16 2007.
17 Q. And which entity bank accounts were used to pay the Bank
18 of America credit card?
19 A. The Metcalf Bank, also known as the American Sterling
20 Bank. And the name of Sunlight, LLP. First National Bank of 09:15:38
21 New Mexico, which was in the name of RJS Investments, LLC; and
22 First State Bank, which was in the name of Cimarron River
23 Ranch, LLC.
24 Q. Now, if you would turn to Exhibit 513, please and tell the
25 jury what that summarizes. 09:16:02

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MARK KLAMRZYNSKI - Direct

1 A. Exhibit 513 is a similar exhibit to 502 and 512. This is 09:16:03
2 a summary of James and Jacqueline Parker's personal expenses
3 per the Capital One credit card, Capital One Services, paid by
4 various entity bank accounts for the period November 2003
5 through October 2006. 09:16:20

6 Q. And summarize, if you would, for the jury and the Court
7 the different accounts that this card was paid from.

8 A. The Harris Bank account in the name of Omega Construction,
9 Inc., was used to pay this card. The Metcalf Bank, also --

10 Q. Hold on. So we get the bottom half so the jury can be 09:16:43
11 seeing it. Now you can go ahead.

12 Also the Metcalf Bank, also known as American
13 Sterling Bank in the name of Sunlight Financial, LLP, was used.
14 First National Bank of New Mexico in the name of RSJ
15 Investments, LLC; and the First State Bank in the name of 09:16:57
16 Cimarron River Ranch, LLC, was also used.

17 Q. Okay. Now, would you turn to Exhibit 503, please.
18 Explain what this pie chart is supposed to illustrate?

19 A. This pie chart illustrates the source of funds for
20 Cimarron River Ranch, LLC. More particularly, the funds that 09:17:32
21 went into the First State Bank of Oklahoma for the period of
22 April 27, 2004, through November 30, 2007.

23 Q. Let me stop you there. In the lower left-hand corner, the
24 amount of \$1,813,503, does that represent the whole pie?

25 A. Pie. Yes. 09:18:04

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MARK KLAMRZYNSKI - Direct

- 1 Yes, it represents the whole pie for the period at 09:18:07
2 the top of the exhibit.
- 3 Q. And then the blue portion of the pie, is that what we have
4 talked about earlier in 393 where you summarized the amounts
5 coming in from Belize into this particular Cimarron River Ranch 09:18:21
6 bank account?
- 7 A. Yes, it does, and also it appears on Exhibit 390.
- 8 Q. So this is a breakdown, as best you could, with the
9 information you had, of what went into that account besides the
10 Belize bank account money? 09:18:41
- 11 A. Yes.
- 12 Q. Now, let's go to Exhibit 504. Are you with me? 504 is a
13 pie chart for the other Cimarron River bank account where the
14 Belize money was wired into?
- 15 A. Yes, it is. Very similar to 503 only it's for, as you 09:19:07
16 said, the First National Bank of Tribune, Kansas, for the
17 period of January 24, 2005, through March 13 of 2008.
- 18 Q. And in the lower left-hand corner, is that the entire pie
19 of \$1,664,000?
- 20 A. Yes, it is. 09:19:29
- 21 Q. And then is this 93 percent in the blue section, is that
22 the -- what we've already talked about and shown in the earlier
23 Exhibit, 394?
- 24 A. And also in 390.
- 25 Q. And Exhibit 505, is this another pie chart that shows the 09:19:47

United States District Court

MARK KLAMRZYNSKI - Direct

1 money for Resorts Consulting Quorum, the money that came in 09:20:03
2 from Belize to that bank account?
3 A. Yes, it is. For the period January 31, 2005, to September
4 29 of 2006.
5 Q. And in the lower left-hand corner, that the amount of the 09:20:16
6 total pie?
7 A. Yes, it is.
8 Q. And then looking at the final exhibit, 508, why don't you
9 explain to the jury what Exhibit 508 represents?
10 A. Exhibit 508 is the use of funds for the entity Resorts 09:20:53
11 Consulting Quorum, LLP. In other words, the disbursements made
12 out of the Bank One account for the period January 31, 2005,
13 through September 29, 2006. Where Exhibit 507 were the
14 sources, Exhibit -- exhibit of funds, Exhibit 508 are the uses
15 of the funds. 09:21:20
16 Q. And so when I look at the big green area for the payments
17 on the \$1.5 million loan, does that match Exhibit 398 as to the
18 total lease payments -- excuse me, the total interest payments
19 that you did on the earlier exhibit?
20 A. This would be a portion of them. 09:21:41
21 Q. But it would match to the amounts that you show for
22 Resorts Consulting Quorum as far as the lease payment --
23 interest payments?
24 A. Yes.
25

MARK KLAMRZYNSKI - Cross

1 MR. SEXTON: One moment, Judge. 09:22:03

2 That's it, Judge. Thank you.

3 THE COURT: All right.

4 Cross?

5 MR. MINNS: Yes, Your Honor. Thank you. 09:22:26

6 **CROSS - EXAMINATION**

7 BY MR. MINNS:

8 Q. Good morning, sir. I am -- I've apologized to you in the
9 past for mispronouncing your name and I'll just refer to you as
10 "sir" to make sure I don't do that. 09:22:58

11 A. Apology accepted and you weren't the first and won't be
12 the last.

13 Q. Thank you. You and I have had a chance to meet throughout
14 the course of the hearings and things like that. You have been
15 working with the government for several months on this case;
16 correct? 09:23:14

17 A. Yes.

18 Q. And in accounting, as a certified public accountant, when
19 you render a financial opinion, you are required, by the rules
20 of the general accounting profession, to disclose anything that
21 might relate to your financial opinions; correct? 09:23:35

22 MR. SEXTON: Objection. He's a summary witness.
23 He's asking an expert opinion.

24 THE COURT: Overruled.

25 THE WITNESS: Yeah. If you're going to express an 09:23:51

MARK KLAMRZYNSKI - Cross

1 opinion, an audit opinion, then you are subjected to the rules 09:23:53
2 and procedures of the American Institute of Certified Public
3 Accountants.

4 BY MR. MINNS:

5 Q. And part of that, if you are expressing an opinion in this 09:24:06
6 case, part of that you would disclose to the jurors, with your
7 financial opinion, that you yourself had filed bankruptcy?

8 A. No, I wouldn't.

9 Q. You would not disclose that?

10 A. No, I wouldn't. 09:24:24

11 Q. But, in fact, you have?

12 A. Yes.

13 Q. And I would assume that knowing the evidence that Rachel
14 Harris filed bankruptcy, you would not find that as a sign of
15 any type of dishonesty on her part? 09:24:41

16 MR. SEXTON: Objection to the form of the question
17 and the relevancy of the inquiry.

18 THE COURT: Overruled.

19 THE WITNESS: Could you are repeat your question?

20 BY MR. MINNS: 09:24:50

21 Q. Yes, sir. The evidence has shown that Rachel Harris filed
22 bankruptcy. You would not consider the filing of bankruptcy to
23 be an act of dishonesty; correct?

24 A. On that narrow question, I suppose not.

25 Q. Well, for the one government witness that was convicted of 09:25:10

MARK KLAMRZYNSKI - Cross

1 bankruptcy fraud, in that case you would consider it to be an 09:25:14
2 act of dishonesty?

3 A. Again, I would need to know the facts of the case. I
4 couldn't express an opinion on that.

5 Q. Now, all of these records are easily available to you and 09:25:29
6 the government. You haven't had any trouble getting ahold of
7 them. You haven't had any objections or side things in your
8 way. You've had complete cooperation in gathering these
9 records, have you not?

10 A. Yes. 09:25:47

11 Q. And you've read the letter from the attorney Greg Robinson
12 explaining that the parents' living was being subsidized by
13 their children. Do you not disagree that if children are the
14 beneficiaries of their parents' generosity in their good times,
15 then there's anything illegal, wrong, or immoral with the 09:26:13
16 parents later becoming the beneficiaries of the children's'
17 generosity?

18 MR. SEXTON: Objection to the form of the question.
19 He's asking this witness for a legal conclusions and it's
20 beyond -- he's a summary witness and that's all he's here for. 09:26:24

21 THE COURT: Sustained.

22 BY MR. MINNS:

23 Q. If these are gifts from the children, are you not --
24 you've testified to these amounts and in the summary
25 flowcharts. You're not indicating in any way, shape, or form, 09:26:45

MARK KLAMRZYNSKI - Cross

1 that there's anything wrong with them going to the parents? 09:26:48

2 MR. SEXTON: Objection. Assumes facts not in
3 evidence. I object to the form of the question and I object to
4 this witness being asked --

5 THE COURT: Well, he can answer that. He has put the 09:26:58
6 records together and he can certainly answer that.

7 THE WITNESS: Are you asking if these are gifts?

8 BY MR. MINNS:

9 Q. No, sir. I'm assuming they are. You can disagree with
10 me. But if these are gifts from the children that you've shown 09:27:15
11 the jury went to pay personal bills, for example, Mrs. Parker's
12 American Express bills, there's nothing wrong with that;
13 correct?

14 A. I disagree with you.

15 Q. You are aware that there is a \$3 million judgment by the 09:27:35
16 Belize company against Cimarron River Ranch?

17 MR. SEXTON: Objection. Hearsay. Foundation.

18 THE COURT: Sustained.

19 MR. MINNS: May I ask if he has seen it, Your Honor?

20 THE COURT: I'm sorry. I can't hear you. 09:27:57

21 MR. MINNS: May I ask if he has seen the judgment,
22 Your Honor?

23 THE COURT: You can ask that.

24 BY MR. MINNS:

25 Q. Have you seen the copy of the \$3 million judgment from the 09:28:02

MARK KLAMRZYNSKI - Cross

1 Belize company against Cimarron River Ranch? 09:28:04

2 A. No, I have not.

3 MR. MINNS: Your Honor, may I show the witness

4 Defense Exhibit 1076?

5 THE COURT: Yes. 09:28:27

6 BY MR. MINNS:

7 Q. You did, in fact, see Exhibit 1076 on the screen during

8 this trial?

9 A. Yes, I did.

10 Q. And you did take note or notice somewhere that that was 09:28:52

11 the last payment from anybody for rent for the home that the

12 Parkers had lived in?

13 A. No, I did not.

14 Q. Is there another rent payment after September 4, 2003?

15 A. I have no idea. 09:29:16

16 Q. But you do recognize from your own charts that after this

17 payment came in and after there are no payments that you can

18 remember, the children started helping out a great deal with

19 their parents?

20 A. No, I did not. 09:29:33

21 Q. You don't? You did notice that Mr. Parker, on his tax

22 return, reported income from Omega Construction Company?

23 A. For which year?

24 Q. Any year.

25 A. I believe I recall some income, yes. 09:30:04

MARK KLAMRZYNSKI - Cross

1 MR. MINNS: Your Honor, may I publish government 09:30:19
2 Exhibit 399?

3 THE COURT: Yes.

4 BY MR. MINNS:

5 Q. I've highlighted a portion of Government's Exhibit 399 09:30:27
6 which is a chart that you created; correct?

7 A. Yes.

8 Q. And on the far left-hand corner you have put down the name
9 Results Consulting Quorum, LLP; correct?

10 A. Yes. 09:30:52

11 Q. And in the middle you have written down the names of the
12 registered agents and who are those registered agents?

13 A. R.D. Robinson, who was a general partner, and Gila Shrimp,
14 LLP, who is a general partner.

15 Q. Now, is this the same R.D. Robinson known as David 09:31:12
16 Robinson, the law partner of his brother, Greg Robinson?

17 A. I am not quite sure. I think so.

18 Q. And is this the same Robinson who is sole checking
19 authority on that account, Results Consulting Quorum, LLP?

20 A. I don't recall. 09:31:39

21 Q. But do you recall he's partners with his brother. They
22 are both lawyers?

23 MR. SEXTON: Objection. Foundation.

24 THE COURT: Overruled.

25 THE WITNESS: I don't recall. 09:31:55

United States District Court

MARK KLAMRZYNSKI - Cross

1 BY MR. MINNS: 09:31:56

2 Q. Who is Gila Shrimp, LLP?

3 A. I don't recall exactly. I remember seeing some documents
4 about -- and it's Gila Shrimp, LLP.

5 Q. I apologize. I've never met him or her. Is he or she a 09:32:11
6 signatory on any of the checking accounts?

7 A. I don't recall.

8 MR. MINNS: If I could publish Exhibit 400, please,
9 Your Honor?

10 THE COURT: Yes. 09:32:37

11 BY MR. MINNS:

12 Q. I've highlighted by mistake two lines. I wanted to --
13 when I realized my mistake, I put a little red X by the one I
14 wanted to draw your attention to.

15 So if you can, ignore the second highlight. Just 09:32:56
16 look at the one -- this dated highlight, 1-31-2005. Is that
17 the date that -- you created this chart; correct?

18 A. Yes, I did.

19 Q. Okay. And you did that to reflect the fact that you had
20 pulled the banking records for Results -- Resorts Consulting 09:33:15
21 Quorum, LLP; correct?

22 A. Yes.

23 Q. And the banking records were at Bank One in Phoenix and
24 you typed out the account number; correct?

25 A. Yes. 09:33:34

MARK KLAMRZYNSKI - Cross

1 Q. And then you wrote at the side the name of the only person 09:33:34
2 authorized to sign on it. And could you tell the jurors the
3 name of the only person authorized to sign on the account,
4 Resorts Consulting Quorum, LLP?

5 A. Ralph Robinson, partner. 09:33:54

6 Q. Okay. Now, is this partner in the Resorts Consulting
7 Quorum or is this his partner in the law firm of Farley
8 Robinson or both or neither?

9 A. As partner, when he's designated himself on the bank
10 account would be partner for the Results Consulting Quorum,
11 LLP. 09:34:20

12 Q. I see. And how much of Results Consulting Quorum, LLP,
13 does Ralph Robinson own?

14 A. I don't recall.

15 MR. MINNS: Your Honor, if I could approach counsel 09:34:47
16 table, the government, to make sure that I'm doing the correct
17 exhibit. I don't have the exhibit number.

18 THE COURT: All right.

19 MR. MINNS: Thank you, Your Honor.

20 BY MR. MINNS: 09:35:38

21 Q. With the Court's permission, I'm going to post what we
22 have agreed is Exhibit 00480198, page 29, and I have several
23 documents on page 29.

24 MR. SEXTON: Hold on. I just want to make sure it's
25 in evidence. 09:35:58

MARK KLAMRZYNSKI - Cross

1 MR. MINNS: I have been asked to wait, Your Honor. 09:35:58
2 THE COURT: Okay.
3 MR. MINNS: May I approach government counsel table?
4 MR. SEXTON: Sorry about that. I just want to make
5 sure it's Exhibit 48. 09:36:06
6 That's fine. That's in evidence.
7 MR. MINNS: May I publish the first portion?
8 THE COURT: Yes.
9 BY MR. MINNS:
10 Q. This is one of the checks that the government has put into 09:36:27
11 evidence that is written out on Cimarron River Ranch account
12 signed -- it appears to be signed by their daughter, Rachel.
13 Do you agree with that?
14 A. Yes.
15 Q. And it appears to have the notation Samantha and Tabitha 09:36:51
16 dues. Would that be correct?
17 A. It appears to say Samantha and Tabitha Harris dues.
18 Q. And then GS Troop, that sounds like Girl Scout troop, do
19 you agree or disagree?
20 A. It appears to be. 09:37:17
21 Q. And this appears to be an expense of Miss Harris's family,
22 the grandchildren of the Parkers but not the Parkers
23 personally; correct?
24 A. I don't know who the grandchildren are.
25 Q. Are the Girl Scout troop payments tax deductible? 09:37:45

MARK KLAMRZYNSKI - Cross

1 A. I have no idea. 09:37:50

2 Q. If I could put the next portion of the exhibit on. This
3 appears to be another one exactly the same, for \$40. No, it is
4 the same. I apologize. It's not just exactly the same; it is
5 the same. 09:38:11

6 MR. MINNS: If I could double-check to make sure I'm
7 not -- to avoid confusing myself, may I put these back at
8 counsel table, Your Honor?

9 THE COURT: Yes.

10 MR. MINNS: May I approach the government counsel 09:38:55
11 table, Your Honor?

12 THE COURT: Yes.

13 MR. MINNS: May I publish page 10 of 31, Your Honor?

14 THE COURT: Yes.

15 BY MR. MINNS: 09:39:16

16 Q. Now, if you would join me in reviewing this. This also
17 appears to be Girl Scout troop, a larger check for just one of
18 the children, Samantha. Would you agree with me?

19 A. Yes.

20 Q. And would you agree with me that that seems to be an 09:39:36
21 expense for the Rachel Harris household and not the Jim Parker
22 household?

23 A. I have no idea.

24 THE COURT: Yes.

25 MR. MINNS: May I approach government counsel table 09:40:28

MARK KLAMRZYNSKI - Cross

1 again, Your Honor? 09:40:29

2 THE COURT: Yes.

3 MR. MINNS: May I publish page 26 of 29 of government

4 Exhibit 0048?

5 THE COURT: Yes. 09:40:41

6 BY MR. MINNS:

7 Q. Now, this check is substantially larger. Would you agree

8 with me?

9 A. Yes.

10 Q. And this check is for \$25,000 and it's for legal fees; 09:41:00

11 correct?

12 A. That's what the check says it's for.

13 Q. But you don't agree that that is what it was for?

14 A. I have no idea what it's for.

15 Q. Are you familiar with the law firm The MacPherson Group? 09:41:10

16 A. Very little but, again, without looking at detailed

17 records, without looking at supporting documentation of what

18 that check is for, I have no idea what that check is for.

19 Q. Well, the author of the check, Rachel, meant to say that

20 it was for legal fees. Whether that is accurate or not, that 09:41:37

21 is what it says on the check; correct?

22 A. Yes.

23 Q. And you are aware that there were legal matters going on

24 for all of the various members of the Parker family at the

25 time? 09:41:53

MARK KLAMRZYNSKI - Cross

1 A. I'm aware of some but not in any great detail, and this 09:41:55
2 check could be for anybody in the Parker family.

3 Q. Or I guess it could be a charitable donation to The
4 MacPherson Group?

5 A. It may be. 09:42:10

6 Q. In your practice, though, it's rare that people make large
7 charitable deductions to law firms; correct?

8 A. I don't recall.

9 Q. Well, particularly when they are having a great deal of
10 legal problems? 09:42:33

11 A. They could. It's a possibility.

12 Q. You've testified about the \$200,000 home that Rachel
13 Harris bought. You've investigated and you understand that she
14 and her husband and their children live in that home?

15 A. Well, your statement about Rachel Harris bought I disagree 09:43:00
16 with.

17 Q. Okay. It would be your opinion that her parents bought
18 that house. Is that what you're saying?

19 A. The funds from Belize were wired for the major portion of
20 the purchase price of that home and those funds from Belize 09:43:21
21 were earned by Mr. Parker.

22 Q. What percentage of the Belize company did Rachel Harris
23 own?

24 A. I have no idea.

25 Q. What percentage of the Belize company did the lawyer, 09:43:37

MARK KLAMRZYNSKI - Cross

1 Mr. Williams, own? 09:43:42

2 A. I have no idea.

3 Q. What percentage of the company was owned by the other
4 investors in the Belize company?

5 A. I have no idea. 09:43:49

6 Q. What percentage of the company was owned by Mrs. Parker?

7 A. I have no idea.

8 Q. What percentage of the company was owned by Mr. Parker,
9 Mr. Jim Parker?

10 A. I have no idea. 09:44:01

11 Q. As a certified public accountant for one of the formerly
12 largest accounting firms in the world, is it customary to give
13 dividends to people who do not own shares in a company?

14 A. As a certified public accountant for one of the largest
15 accounting firms in the world, which I don't know what the
16 relevance is, to dividends being paid to people who don't own
17 companies, no, the answer is no. 09:44:36

18 MR. MINNS: Objection to his opinion about relevance,
19 Your Honor. Move that it be stricken.

20 THE COURT: And it is. 09:44:57

21 Ladies and gentlemen, you are not to consider his
22 opinion as to whether or not it is relevant.

23 MR. MINNS: Your Honor, I pass the witness.

24 MR. SEXTON: No redirect.

25 THE COURT: All right. You may step down. 09:45:08

MARK KLAMRZYNSKI - Cross

1 And we're going to take a longer break, about 25 09:45:10
2 minutes.

3 (Jury departs.)

4 (Witness excused.)

5 THE COURT: Okay. You may step down. 09:45:47

6 All right. Counsel, I'm going to hear the Rule 29
7 motion but we're going to take a break first. I'll be
8 interested to hear what the government has to say on each of
9 the elements of it's required to prove on evasion to establish
10 particularly that the state of mind. So that will be of 09:46:04
11 interest to the Court and of course your response as to why the
12 government hasn't proven tax evasion.

13 You may want to point me to the documentation that
14 establishes for the government the other counts, that is false
15 statements. 09:46:26

16 All right. We're in recess for about ten minutes.
17 (Recess at 9:46; resumed at 10:02.)

18 THE COURT: Please be seated.

19 (Jury out.)

20 THE COURT: Okay. Let me hear from the government. 10:02:19
21 The first element is that you have to prove that the defendant
22 owed income tax for the years 1997, '98, 2001, 2002. Tell me
23 what income for 1997, what income for 1998, 2001, 2002 and how
24 did you get there?

25 MR. SEXTON: May I sit and talk to you from here? 10:02:56

United States District Court

MARK KLAMRZYNSKI - Cross

1 THE COURT: Yes. 10:02:59

2 MR. SEXTON: For 1997 and 1998, those were the

3 stipulated tax court judgments after the audits and that's

4 Exhibits 37 and were the stipulated tax court judgments.

5 THE COURT: How much money was that? 10:03:13

6 MR. SEXTON: Combined, before interest, was over a

7 million dollars for those two years. I think the first year

8 was roughly \$300,000. I think the other one was \$700,000 to

9 \$800,000.

10 THE COURT: When you say "stipulated tax court 10:03:31

11 judgments," so that means, as a matter of law, how are you

12 going to explain that to the jury. It's like you're telling me

13 that a tax court judgment means what?

14 MR. SEXTON: That the defendant in tax court agreed

15 that he owed the IRS taxes and penalties and ultimately 10:03:49

16 interest that was assessed.

17 THE COURT: Okay. He owed the IRS for income?

18 MR. SEXTON: For income that he agreed and he agreed

19 to the stipulated amount of tax on that unreported tax and the

20 penalties associated with that. 10:04:10

21 THE COURT: Okay. So the income for those years,

22 that's '97 and 1998 --

23 MR. SEXTON: Yes. And then --

24 THE COURT: -- was \$1 million, the income?

25 MR. SEXTON: No. The income was far greater than 10:04:31

MARK KLAMRZYNSKI - Cross

1 that but that is the -- that was the tax that was owed. 10:04:32

2 THE COURT: So what are you going to say the income
3 was?

4 MR. SEXTON: It was in the audit reports that -- I
5 don't have the income amounts. But it's really the tax that is 10:04:45
6 due and owing that he's agreeing to. That's what his element
7 goes to.

8 THE COURT: I see. Federal income tax?

9 MR. SEXTON: That he owed more tax.

10 THE COURT: So the amount of income tax -- so that's 10:04:56
11 a 1997, 1998, was about --

12 MR. SEXTON: It was over a million in taxes and
13 penalties for those two years. And those are Exhibits 37 and
14 38. And then for 2001 and 2002, Counts 3 and 4, those were
15 based on the tax returns that were filed -- 10:05:23

16 THE COURT: Let me stop you now. Let me take it
17 through '97, '98. So the next element is the defendant knew he
18 owed more income tax than was paid by him for any tax returns
19 filed for those years, retrospectively or at the time when he
20 filed it. 10:05:45

21 So the stipulated -- what year did he stipulate that
22 he owed this?

23 MR. SEXTON: This is in -- May of 2003.

24 THE COURT: Okay. So then how do you show that at
25 the time he filed the returns that he knew that he owed the 10:06:07

MARK KLAMRZYNSKI - Cross

1 income? 10:06:10

2 MR. SEXTON: We don't have to show at the time he
3 filed his returns because they were returns that he filed that
4 were false. They were audited and then the process became that
5 he eventually litigated the issue in tax court and agreed that 10:06:18
6 his file returns were in or -- and that the unreported income
7 was as the IRS determined, and then he agreed in tax court to
8 the new liabilities, the new tax liabilities associated with
9 the unreported income. So starting in 2003 --

10 THE COURT: Well, no, I'm talking about the second 10:06:44
11 element. The second element is the defendant knew he owed more
12 income tax than was paid by him for any tax returns filed.

13 So at the time when he filed those returns, he had to
14 have known. Otherwise we would have a civil case.

15 MR. SEXTON: No. Because it's the evasion of payment 10:07:03
16 after he is -- after he knows what he owes.

17 THE COURT: No. No. No. Wait. Oh. Okay. So
18 you're saying that the evasion didn't occur until after 2003?

19 MR. SEXTON: As far as the '97 and '98, he starting
20 to get notice in 2002, May of 2002 that he has a deficiency on 10:07:22
21 his tax. That is when he starts creating and moving various
22 funds and doing acts of evasion.

23 THE COURT: So let's go back.

24 So when you say the third element is that he made
25 affirmative attempts to evade? 10:07:41

MARK KLAMRZYNSKI - Cross

1 MR. SEXTON: That's correct. 10:07:44

2 THE COURT: So for '97 and '98, what were his

3 affirmative attempts to evade?

4 MR. SEXTON: There are many. Obviously, the offers

5 in compromise in themselves, filing false offers in 10:08:01

6 compromise --

7 THE COURT: When did they occur?

8 MR. SEXTON: They occurred on Exhibit 104 on 6-18 of

9 '04, in Exhibit 106 --

10 THE COURT: No, no. 1604. So that's prospective, 10:08:15

11 not retrospective?

12 MR. SEXTON: That's correct. He's evading --

13 THE COURT: So have you -- does your indictment say

14 as of 2004? I'm missing this. Because it says third, the

15 defendant made an affirmative attempt to evade or did an 10:08:31

16 affirmative act to defeat. So it has to be at the time. When

17 you say "on or about," what does your indictment say?

18 MR. SEXTON: Evasion of payment as opposed to

19 assessment is that now that you know that you owe tax, you then

20 do things in the future -- 10:08:54

21 THE COURT: Right, right, right. But now that you

22 know, what date? That is 2003. Unless you're going to say

23 that there's evidence that he knew at the time he filed these

24 returns. That's what I'm asking you.

25 MR. SEXTON: He knows when the IRS is auditing and 10:09:11

MARK KLAMRZYNSKI - Cross

1 giving him notices of deficiency. 10:09:13

2 THE COURT: Well, wait, wait, wait. Now you're

3 giving me evidence that you haven't pointed to. You haven't --

4 MR. SEXTON: I just did.

5 THE COURT: Wait. What evidence of deficiency, when 10:09:24

6 did that occur?

7 MR. SEXTON: His first notice of deficiency is on

8 5-29 of 2002.

9 THE COURT: So, okay. So that's the first element.

10 That's the first time that he knew and then he took an 10:09:39

11 affirmative act to defeat. What are you going to tell the jury

12 is what I'm asking, if you can't explain it to me, as to when

13 this evasion began and what act establishes the evasion?

14 MR. SEXTON: It begins differently for each tax year.

15 That's why there are separate counts -- 10:10:08

16 THE COURT: Wait. Start with the first year. 1997.

17 When did the evasion occur? What's the evidence of the

18 evasion?

19 MR. SEXTON: The first element for 1997 would occur

20 when he's getting a notice of deficiency on 5-29 of 2002 -- 10:10:21

21 THE COURT: Okay. So your indictment says 2002

22 forward?

23 MR. SEXTON: This is when the notices of

24 deficiency --

25 THE COURT: All right. So it says 2002. So we're 10:10:33

MARK KLAMRZYNSKI - Cross

1 talking about 2002 forward. 10:10:35

2 MR. SEXTON: Yes. Basically, for each year, once we
3 establish that he knows he has this tax liability, it's what he
4 does after that for each year. So for '97, he's getting a tax
5 deficiency on -- for 1997 on 5-29 of '02. 10:10:48

6 THE COURT: Okay. So that's when the evasion begins.

7 MR. SEXTON: That's when he has the first element
8 that knows he owes the tax.

9 THE COURT: I keep asking you. When did it begin?

10 MR. SEXTON: Yes. That's when the tax liability is 10:11:04
11 established by which he would then be able to evade it. That's
12 when it's established.

13 THE COURT: All right. So that's what I asked for.

14 MR. SEXTON: Okay. I'm sorry.

15 THE COURT: So the evasion, we're taking it through, 10:11:15
16 all of these. So, then, he owed more federal tax, the first
17 one in 1997, 1998, 2001, and 2002; right?

18 MR. SEXTON: That's correct.

19 THE COURT: He knew it?

20 MR. SEXTON: Right. 10:11:33

21 THE COURT: When did he know it?

22 MR. SEXTON: He knows it for '97.

23 THE COURT: The when is critical. When do you
24 establish that he knew that is so that he could go forward
25 willfully knew and what evidence you have of that and that he 10:11:44

MARK KLAMRZYNSKI - Cross

1 made affirmative attempts? 10:11:48

2 So you're going to tell the jury he knew it as of --

3 MR. SEXTON: The notice of deficiency.

4 THE COURT: So 2002. And then what did he do after
5 that? What are you going to tell the jury that he did to avoid 10:12:01
6 the '97, '98 tax liability of a million dollars?

7 MR. SEXTON: As we allege, that the four offers in
8 compromise that he filed in 2004 and 2005 in which he lied to
9 the IRS are acts of evasion.

10 THE COURT: Okay. 2004 -- 10:12:27

11 MR. SEXTON: 2004. There are two in 2004.

12 THE COURT: All right. So, then, it doesn't really
13 start until 2004 because that is when he begins evading.
14 That's what I'm asking you for, the acts. I'm taking you
15 through the elements. 10:12:42

16 MR. SEXTON: Each one of these is an act.

17 THE COURT: Mr. Sexton, each one of these. Let's
18 start with the third element, affirmative attempt to evade.
19 You said 2004 --

20 MR. SEXTON: Those are some of the abilities of 10:12:57
21 evasion --

22 THE COURT: Mr. Sexton, you're going to have to walk
23 the jury through this. If I don't understand it, hopefully,
24 I'm more sophisticated than they are. I'm asking you now the
25 third element, the affirmative attempt to evade or affirmative 10:13:10

MARK KLAMRZYNSKI - Cross

1 act to defeat the payment of the income tax. We're not going 10:13:16
2 to even talk about 2001 and 2002. Let's just take your
3 scenario. We have '97, '98. He owes a million dollars. The
4 tax court makes that determination in 2002; right? And he
5 receives the notice in 2003. There's a stipulated judgment 10:13:35
6 that he owes it, 2002.

7 MR. SEXTON: 2003.

8 THE COURT: Now, that is, of course, not a criminal
9 matter. It's a civil matter. It was contested. But he now
10 knows the IRS says you owe a million dollars. 10:13:52

11 So then in 2003 he agrees, right, that he owes it is?

12 MR. SEXTON: Yes. He stipulates in tax court.

13 THE COURT: All right. He agrees, that, "I owe \$1
14 million in taxes that I didn't pay for '97 and '98." He signs
15 a stipulation? 10:14:14

16 MR. SEXTON: That's correct.

17 THE COURT: Okay. So then you have evasion. You're
18 saying he refuses to make those payments and that act of
19 evasion first started in 2004. Am I right?

20 MR. SEXTON: I'll do a chronology now of when the -- 10:14:30

21 THE COURT: No. No. Just answer that question.
22 That's what you said --

23 MR. SEXTON: It begins in 2003. As soon as he gets
24 the notice of deficiency.

25 THE COURT: But what is his act. The notice of 10:14:42

MARK KLAMRZYNSKI - Cross

1 deficiency is not his act. What's his act? 10:14:44

2 MR. SEXTON: The first act after he gets the notice
3 of deficiency is to move his property, his Carefree home, into
4 Sunlight Financial --

5 THE COURT: Okay. I've got someone on the phone I'm 10:14:57
6 going to have to talk to. Because you've now changed. You're
7 telling me that he -- he's moving property as opposed to what
8 you told me before which was that he -- I can't remember the
9 name of what it is that -- the act which occurred, oh, yes, he
10 made a compromise. Okay, that's was told me before is 2004. 10:15:22

11 Now, you can just do this chart for me because I'm
12 not sure the jury knows and will ever know what acts you're
13 claiming that he did, and then of course the fourth one is
14 willfully.

15 So you're going to have to take the jury through this 10:15:46
16 entire chronology. And I do want to know whether the
17 indictment says 2004 because now you've basically told me that
18 was the first date of an affirmative act for the evasion.

19 (Recess at 10:16; resumed at 10:31.)

20 THE COURT: Okay. I'm going to let the jury go but 10:31:55
21 I'm going to discuss this only after I receive something in
22 writing from the government establishing each and every element
23 rather than you taking me through it as you have.

24 This is what I understand. You have alleged in the
25 indictment that the -- and fact that you didn't have it in 10:32:08

MARK KLAMRZYNSKI - Cross

1 front of you and know is of concern to me that this evasion 10:32:13
2 scheme started in 1997. So that means there has to be an act
3 in 1997.

4 Now, I can certainly make the argument for you as to
5 why there might be, but I am not really sure precisely what 10:32:28
6 you're saying. It is based upon the evidence that you have and
7 the arguments you're going to make.

8 So this is what I understand so far: '97, '98, \$1
9 million dollars, he stipulated in a civil tax court that he
10 owed that amount; right? 10:32:53

11 MR. SEXTON: Yes.

12 THE COURT: And stipulation occurred -- you mentioned
13 2002. I'm not sure what happened in 2002, but then there was
14 something in 2003. The stipulation in 2002?

15 MR. SEXTON: The two stipulations were on May 6 and 10:33:07
16 May 14 of 2003.

17 THE COURT: So what's this 2002 that I wrote down?

18 MR. SEXTON: That's the notice of deficiency on 1997.

19 THE COURT: So he gets a notice. This is what the
20 IRS thinks. And it's a civil notice, not a criminal one. 10:33:22

21 MR. SEXTON: That's correct.

22 THE COURT: Then in 2003 he admits by stipulation,
23 writes something down to the tax court, "I and my wife owed a
24 million dollars in tax for '97, '98"; right? That occurred in
25 2003? 10:33:45

MARK KLAMRZYNSKI - Cross

1 MR. SEXTON: Yes, May. 10:33:50

2 THE COURT: So, then in 2004, that's when you
3 mentioned to me that there was an offer in compromise was
4 false; right?

5 MR. SEXTON: Yes. If I may, Judge, I obviously 10:34:02
6 didn't give you chronological order.

7 THE COURT: Well, I'll tell you what, rather than
8 doing it orally, because counsel has to respond to it, they
9 need to know what the government's evidence is and what the
10 argument is. I need to know what it is before I can rule on 10:34:16
11 it. Put it in writing for each and every element for each and
12 every year.

13 MR. SEXTON: Yes. Could I point out something,
14 Judge? I have the indictment in front of us. We allege that
15 each evasion payment for Count 1 on page seven of our 10:34:33
16 indictment, we say beginning on or about August of 2002. So
17 that's when we say that he has sufficient clarity of his tax
18 for 1997.

19 THE COURT: So he begins the evasion in 2002?

20 MR. SEXTON: Yes. That is where we alleged it and 10:34:48
21 that's what the notice of deficiency and the first transcripts
22 occurred.

23 THE COURT: So then the act occurred in 2002 and I
24 don't know what act it was. All he got was the notice.

25 MR. SEXTON: The first act of evasion occurs in 2002 10:35:01

MARK KLAMRZYNSKI - Cross

1 and continues on for -- 10:35:05

2 THE COURT: And that act is the notice from the
3 United States government?

4 MR. SEXTON: No. The first act by the defendant is
5 the creation of Sunlight Financial. That's his first act of 10:35:12
6 evasion that we allege in --

7 THE COURT: In 2002?

8 MR. SEXTON: In 2002, that's correct.

9 THE COURT: Okay. Well, then, you can outline all of
10 this for me and for the defense as to what each and every 10:35:23
11 affirmative attempt to evade was and when and why it was
12 willful, what evidence do you have that it was willful; okay?
13 All right. And I'm going to tell the jury -- I need this by 2
14 o'clock, 2:30 today.

15 And you can place something in writing, Mr. Minns, by 10:35:52
16 the end of the day and then we'll argue this tomorrow starting
17 at 8:30.

18 Unfortunately, I'm going to have the jury come back
19 even if I grant the motion, and I haven't made that decision
20 yet, but I'm going to have them come back at 10:30 tomorrow. 10:36:09

21 Also I need the evidence on the other counts, the
22 false statements, what evidence is there that he made a false
23 statement, that he knew it was false.

24 As I understand it, I don't have the elements in
25 front of me, all it requires is that he knew it was false and 10:36:27

MARK KLAMRZYNSKI - Cross

1 in contrast to what's required for evasion, which is willful; 10:36:31
2 right? Knowing under false statements, willful under evasion.
3 Am I right?

4 MR. SEXTON: No. I believe he has to willfully -- I
5 have it as willful requirements as to both. 10:36:48

6 THE COURT: Okay.

7 So, now, Mr. Minns, any problem with my schedule?

8 MR. MINNS: None whatsoever, Your Honor. We'll do
9 our best to respond as promptly as we can.

10 The only question I have is our scheduling. We fly 10:37:00
11 witnesses in. If they are not needed, we are happy to send
12 them home; but I would ask that the government officially close
13 so that we know that whenever this is done, if we -- I mean, we
14 have to win all eight counts on the 29; otherwise, we have to
15 present. 10:37:21

16 THE COURT: And I don't know about the other counts.
17 Mr. Minns. I wish I could accommodate you and your witnesses
18 better but I can't do that. So they will have to come in and
19 if they have to go home, then everybody on your side of the
20 room will be happy whether or not they had to come out. 10:37:34

21 Okay.

22 MR. MINNS: Could we ask that the government close,
23 Your Honor.

24 THE COURT: Then you are closing; right?

25 MR. SEXTON: Yes. Do you want me to do it in front 10:37:45

MARK KLAMRZYNSKI - Cross

1 of the jury? 10:37:47

2 THE COURT: Yes. We'll have the jury come in, close
3 the case, and then I will tell them.

4 (Jury enters.)

5 THE COURT: All right. Please be seated. 10:38:41

6 Mr. Sexton?

7 MR. SEXTON: Yes, Judge. At this time, the
8 government rests.

9 THE COURT: Okay.

10 Ladies and gentlemen, the government is finished with 10:38:49
11 their case and so I'm going to send you home and ask you to
12 come back at 10:30 tomorrow. If anything changes, we'll give
13 you some notice before -- hopefully, before you come here. I
14 don't know what the answer will be and if I have to
15 inconvenience you, I am apologizing in advance. 10:39:08

16 So we will -- if there is going to be a defense case,
17 then that defense case will begin at 10:30 tomorrow.

18 All right. We are adjourned.

19 (Jury departs.)

20 (Whereupon, these proceedings recessed at 10:39 a.m.) 10:39:44

21 * * * * *

22

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MARK KLAMRZYNSKI - Cross

C E R T I F I C A T E

10:39:44

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.

10:39:44

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.

10:39:44

DATED at Phoenix, Arizona, this 9th day of July,
2012.

10:39:44

s/Elaine M. Cropper

10:39:44

Elaine M. Cropper, RDR, CRR, CCP

United States District Court