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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 18-cr-00359-REB

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAWRENCE MARTIN BIRK,

Defendant.

REPORTER'S TRANSCRIPT
TRIAL TO JURY - DAY 3
TESTIMONY OF LAWRENCE MARTIN BIRK ONLY

Proceedings before the HONORABLE ROBERT E. BLACKBURN,
Senior Judge, United States District Court for the District of
Colorado, continuing at 8:36 a.m., on the 24th day of July,
2019, in Courtroom A1001, United States Courthouse, Denver,
Colorado.

A P P E A R A N C E S

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P R O C E E D I N G S

(The following excerpt contains the testimony of Lawrence Martin Birk only.)

* * * * *

MR. HARRIS: Thank you, Your Honor.

The defense would call Mr. Birk.

THE COURT: Very well.

Mr. Birk, good afternoon.

THE DEFENDANT: Good afternoon, sir.

THE COURT: If you'll approach my bench, please. That's fine.

And if you'll raise your right hand to be sworn. Thank you.

May I have your attention in the courtroom.

(LAWRENCE MARTIN BIRK, DEFENDANT'S WITNESS, SWORN)

THE COURT: Thank you. Please be seated in that witness stand.

Mr. Harris, you may inquire.

MR. HARRIS: Thank you, Your Honor.

THE COURT: You're welcome.

DIRECT EXAMINATION

BY MR. HARRIS:

Q. Please state your name and spell your last name.

A. Lawrence Martin Birk, B-I-R-K.

Q. Mr. Birk, tell the jury a little bit about yourself, just a

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1 little bit about your background, by way of introduction.

2 A. Very well. I'm 65 years old. I'm married. My wife's name
3 is Jean. We've been married for 27 years. I have two adult
4 children, Jason and Erica, from a previous marriage. They live
5 in Charlottesville, Virginia. My daughter works for the
6 University of Virginia campus police, so this has been an
7 interesting experience for her. My son is a chef.

8 My educational background, I have an undergraduate
9 degree from Oregon Tech in industrial management. I have two
10 graduate degrees, both from Colorado Tech, one in management
11 science and one in business administration.

12 I served in the military. I spent three years in the
13 Army in the early '70s, including a short tour in Vietnam, at
14 the tail end of that. I then joined the Marine Corps Reserve
15 with intent to become a pilot. Unfortunately, that did not
16 work out; so I left the military and began a career in the
17 defense industry. I spent 22 years traveling around the
18 country, working for many brand-name defense contractors. A
19 lot of interesting programs.

20 I am an ordained minister and an elder in the
21 Evangelical Protestant Church. And I like to hike the
22 mountains and camp and fish. And that's pretty much it.

23 Q. Okay. You mentioned your educational background. What
24 about currently, are you employed or self-employed? What's
25 your work status?

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1 A. Currently, I am retired. I retired last December and
2 closed my log home business.

3 Q. And was that Tarryall?

4 A. Tarryall River Log Homes; correct.

5 Q. When did you start Tarryall?

6 A. I initially began in summer of '98. I became an
7 independent dealer for Honest Abe Log Homes, and I -- when I
8 retired from the defense business in 2000, I became a general
9 contractor and a custom log home builder.

10 Q. And what was, like, the average sales price of a log home
11 that you would be selling?

12 A. Well, the kit price that I would purchase from Honest Abe
13 Log Homes usually ran around \$40,000 delivered; and then the
14 finished product on the owner's land would typically be a
15 \$200,000 project.

16 Q. And so what was your net?

17 A. I usually ran about 8 to 10 percent, typically, between the
18 sale of the package and the construction project.

19 Q. And you mentioned you're retired. Does that mean that you
20 are no longer running Tarryall?

21 A. I am no longer running Tarryall.

22 Q. Why?

23 A. Well, I have a full dance card right now. My wife and I
24 like to travel. We -- my mother lives in Virginia, and she's
25 quite elderly and got some medical issues, so I try to spend as

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1 much time as I can back there. I have a sister in Texas. I
2 already mentioned that my kids were in Charlottesville,
3 Virginia.

4 Q. Okay.

5 A. That's pretty much what we're doing with our time now.

6 Q. Now, in your list of educational accomplishments, I don't
7 think you mentioned a law degree. Are you a lawyer?

8 A. No, sir. I am not.

9 Q. Are you an accountant?

10 A. I am not.

11 Q. Do you have any formal training in tax law?

12 A. No, sir. I do not.

13 Q. Have you ever paid income taxes to the federal government?

14 A. I have.

15 Q. When?

16 A. That would have started with my military service in 1973
17 through the first quarter of 2000.

18 Q. In that long period of time, why were you paying taxes?

19 A. Well, I, like a lot of Americans, believed that we were
20 required to do so. I had never even looked at the tax code.

21 Q. And at some point did you stop paying taxes?

22 A. Yes, I did.

23 Q. Why?

24 A. The journey began when I was in graduate school in 1998 --
25 '97, actually, is when I started my MBA program. And I was in

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1 a business law class, and there was a discussion one night
2 between the professor and one of the students about the tax
3 code, which got my interest. And there was some follow-on
4 discussions before that class ended, and I started doing my own
5 research.

6 Q. And we'll talk a little bit more about that in a moment.
7 But just to sort of close the loop on that chronology, you paid
8 taxes, you stopped paying taxes. Do you intend at any point to
9 pay any taxes again?

10 A. I believe that may become necessary.

11 Q. And are you against paying the federal income taxes under
12 any and all circumstances?

13 A. No, I am not.

14 Q. Do you believe that taxes serve any valid purpose?

15 A. Oh, yes. Absolutely.

16 Q. Elaborate.

17 A. Well, the government is very large. And it has large
18 revenue requirements, our military, our social programs, the
19 day-to-day operation of the government, this courthouse, for
20 example, and everybody who is in it.

21 Q. And anything else as to that?

22 A. We obviously have a lot of expenses. We have foreign
23 programs that we support; we have a lot of issues on our border
24 right now that require attention. There is a lot of revenue
25 requirements, and I fully appreciate that.

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1 MR. HARRIS: Ms. Roberson, could you activate us if we
2 aren't?

3 COURTROOM DEPUTY: You are. I just have the jury
4 blanked.

5 MR. HARRIS: Great.

6 Mr. Cohen, could you pull up Government Exhibit 20.

7 BY MR. HARRIS:

8 Q. Mr. Birk, taking a look at what's already admitted,
9 Government Exhibit 20, just reacquaint us with what that
10 appears to be.

11 And, by the way, if it's easier for you to look on the
12 screen or in the notebook, either one is fine.

13 A. I can see the screen just fine.

14 That's much better. I don't need my glasses for that.
15 Okay. Okay.

16 Q. So walk us through, what is that?

17 A. It's a letter in response to correspondence that I sent to
18 the IRS telling me that the federal tax laws are passed by
19 Congress, signed by the President, the role of the Internal
20 Revenue Service for administering those tax laws.

21 Q. Okay. I'm going to ask you some specific questions about
22 it.

23 Mr. Cohen, if you could zoom in on the second full
24 paragraph -- I'm sorry. The other -- that. Yeah.

25 So federal tax laws are passed by Congress and signed

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1 by the President. Do you agree?

2 A. I agree.

3 *MR. HARRIS:* And -- we can take that -- zoom it down.

4 There is a sentence there, "while tax collection is
5 not a popular function," if you could find and zoom in on that.
6 It's the second paragraph, the last sentence. Right around
7 there.

8 *BY MR. HARRIS:*

9 Q. So they tell you that tax collection is not a popular
10 function. Let's just stop there. Fair statement?

11 A. Fair statement.

12 Q. It isn't -- it is clearly a necessary one. Do you agree?

13 A. I agree.

14 Q. Okay. The government had --

15 You can take that down.

16 The government alleges that you did not pay taxes from
17 roughly 1998 to 2018, or 2000 to 2018; is that, generally
18 speaking, true?

19 A. That is correct.

20 Q. Now, what exactly is your understanding of the law with
21 respect to your duty to pay the taxes that the government says
22 you have not paid?

23 A. My research and my beliefs involve what I call
24 constitutional boundaries that exist that describe the two
25 basic categories of tax, direct taxes and indirect taxes. And

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1 the Supreme Court ruled often and consistently that any tax
2 levied by the Congress must fall into one of those two
3 categories. There is not a third.

4 Q. And to be clear, when you say something like "the Supreme
5 Court ruled" or when you state these things that you believe to
6 be propositions of law, you're stating what you understand the
7 law to be; correct?

8 A. Absolutely.

9 Q. Continue, if I interrupted.

10 A. Okay. If you look at some of those early Supreme Court
11 decisions, like the *Brushaber* decision, you will see that the
12 Court said that the income tax must be an indirect tax,
13 otherwise it would be an apportioned and direct tax to the
14 states based on their census or population. And I believe that
15 the current tax that is imposed upon our incomes is, in fact,
16 an unapportioned direct tax.

17 MR. MAGNANI: Excuse me. I would just rise, not to
18 object, but to ask the Court for a 105 instruction as to
19 specific cases and propositions of law as explained by the
20 defendant.

21 THE COURT: At this time?

22 MR. MAGNANI: Whenever the Court thinks it's
23 appropriate. I'll defer.

24 THE COURT: Well, counsel, I look to you to guide the
25 Court either by individual or joint request.

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1 MR. MAGNANI: It would be the --

2 THE COURT: I will grant that request eventually.

3 MR. MAGNANI: All right.

4 MR. HARRIS: With respect to that very brief -- I will
5 not be making that request, but I will not oppose it when made.

6 BY MR. HARRIS:

7 Q. Continuing, then. So what's the -- what's the upshot of
8 all of this? What's the impact in terms of your payment of
9 taxes?

10 A. I was obviously engaged by the IRS shortly after I ceased
11 filing. And I was still -- through the first quarter of 2000,
12 still had some corporate income with a W-2 that was being
13 filed. So what I did was I quit filing, and I quit paying, and
14 the IRS engaged me, and I engaged them back. We began to
15 correspond.

16 Q. Did you view it as -- give me one moment.

17 Did you view it, as Ms. Trabold characterized it, as a
18 collaborative process?

19 A. I believe it has to be. Yes.

20 Q. And do you believe there are any categories of income that
21 are subject to federal taxation?

22 A. Absolutely. I believe that if you have income from the
23 exercise of a federal privilege of any kind -- and a good
24 example of that would be social security income. It's not
25 disability. Certainly federal salaries, including our

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1 military, would fall into that category. It's a privilege to
2 have a government job. If they pay it, they can tax it.

3 Q. So to summarize some of what you're saying -- I just want
4 to know -- correct me if I'm wrong -- are you saying that this
5 is a constitutional problem -- it's of a constitutional
6 dimension? Or are you saying that some taxes apply to some
7 kinds of income and some don't?

8 A. I don't believe it's a constitutional problem. I think
9 it's a misapplication of our tax laws problem within the
10 boundaries that I discussed earlier, that the Constitution as
11 amended and a handful of early-on Supreme Court decisions set
12 those boundaries. I think that most -- as a result of those
13 boundaries, including this unapportioned direct tax issue, most
14 public sector -- or private sector receipts are not taxable
15 income.

16 Q. Do you believe -- or put somewhat differently, is it your
17 understanding of the law that you have a duty to pay taxes on
18 income from Tarryall Log?

19 A. No. Those would be private sector receipts.

20 Q. Do you believe, or is it your understanding of the law,
21 that there was an obligation to pay tax on moneys flowing
22 through Tarryall Asset Management, Inc.?

23 A. No. Those were private funds that were being transferred
24 from one entity to another and eventually used for business
25 purposes.

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1 Q. And we'll talk a little more about that later. But while
2 we're on it. You heard Ms. Trabold characterize TAMI -- as she
3 puts it -- as a sham. Did you view it as a sham?

4 A. No, sir. I view it as a conduit.

5 Q. What's that distinction you draw between conduit and sham?

6 A. Well, a sham certainly feels like something inappropriate,
7 something bad.

8 Q. Okay. So let's return, then, to the beginning. How did it
9 come to pass that you stopped paying taxes? In other words,
10 what first draw your attention?

11 A. Well, I talked about the business law class. That got me
12 started in doing some research on my own. And by that time,
13 the internet was still somewhat in its early phases, but it was
14 up and running. I had access through the college. And the
15 other thing that was going on during at the time were the IRS
16 abuse Congressional hearings at the tail end of the Clinton
17 administration. And I believe that was discussed earlier by
18 the government witness, including the restructure and reform
19 act.

20 So I went from there -- I became aware that there was
21 a tax honesty movement, I'll call it, that existed across this
22 country in different forms, some good and some bad. And I
23 eventually found my way to the We the People Foundation for
24 Constitutional Education.

25 Q. And with respect to what your professor told you, did you

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1 simply rely on what he said, or did you look further --

2 A. Oh, I absolutely looked further.

3 Q. And you have no attorney-client relation with that
4 individual; correct?

5 A. No. No. He was just a professor at the school.

6 Q. You've mentioned We the People. Were your views influenced
7 to any degree by the teaching of any particular folk?

8 A. Oh, absolutely.

9 Q. For example?

10 A. Just a brief background on that organization. It was
11 originally set up before I was associated with it as a
12 nonprofit corporation. Mr. Bob Schulz was the chairman, a
13 rather accomplished *pro se* litigant in his own right. But the
14 centerpiece of that organization were ex-IRS agents. Joe
15 Banister, who was a former Special Agent, CID, forensic CPA;
16 John Turner, a former revenue officer; Sherry Jackson, a former
17 revenue agent. Those folks traveled far and wide addressing
18 groups in seminars and also at meetings in Washington, D.C.

19 Q. And you, at least -- well, how did you come into contact
20 either with them or their work?

21 A. Well, they had a website up; and I began to follow some of
22 their information. And in 1998, they had a meeting in
23 Washington, D.C. at the National Press Club that I attended.

24 Q. And based on all of that, did you form any impressions
25 about whether they seemed to know what they were talking about,

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1 at least to you?

2 A. Well, I believed that the testimony that was being given by
3 Joe Banister, in particular, at that meeting was compelling and
4 credible. But I did look into some of the things he said. He
5 did publish an investigative report that he -- before he went
6 public with it, he ran it up the chain of command at the IRS,
7 which resulted in his resignation -- they were not going to
8 respond to it -- that is now available. That was probably --
9 if I was going to form a belief, that was probably a pretty
10 good start right there.

11 Q. And, again, as to Mr. Banister specifically, did you simply
12 take his word as gospel --

13 A. Oh, no.

14 Q. -- so to speak?

15 A. No, I don't do that. I've got two graduate degrees. I
16 learned how to do research and to form a hypothesis and to
17 collect my data and score it.

18 Q. How much time would you estimate, looking back, that you
19 spent researching these things?

20 A. I think early on, it was maybe an hour, five days a week or
21 so, I would spend -- take time to get on the internet and see
22 what was going on and do a little research.

23 Q. And later?

24 A. As I got more involved with the We the People Foundation,
25 probably going to maybe a couple of hours a day, seven days a

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1 week.

2 Q. Speaking of We the People, do you -- are you still
3 affiliated in any way with them?

4 A. I am not currently. I would categorize that organization
5 as currently dormant. They still have a website up, but it has
6 not been touched since I think 2012 or something. But it's an
7 archive. It's a good research tool.

8 Q. At various times over the course of your interaction with
9 or relationship with We the People, did you find yourself
10 always in agreement with everything they espoused?

11 A. Oh, no. Definitely not. There were things like zero
12 returns and things that I knew were wrong. I --

13 Q. And how much money would you say you've spent over time in
14 all of these endeavors?

15 A. Well, initially, I became a \$50-a-month contributor to the
16 organization. But surrounding the preparation for given
17 meetings, the need to publish materials and travel and set
18 things up, that started to add up. Maybe 4 or \$500 a month on
19 the average.

20 Q. And in the course of the research that you did, how common
21 was it for you to come across views contrary to your own?

22 A. Oh, using the internet as a search tool, you can find lots
23 of contrary opinions on almost anything, including tax matters.

24 Q. Typically, if you saw a link debunking or claiming that an
25 argument that you believed to be accurate was wrong or

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1 frivolous, what would be your reaction?

2 A. There -- as I gained experience in the tax honesty
3 movement, we'll call it, I began to generate a short list of
4 people and sites that I felt were not credible. They were
5 usually trying to sell you something, some kind of silver
6 bullet to try to quit paying taxes. And that's kind of a
7 glaring example of things that I would avoid.

8 Other sites, particularly academic or law sites, very
9 intriguing reading. Especially case law. I hate to admit it,
10 but I enjoy reading case law.

11 Q. So if you come across a -- well, in the course of your
12 research, did you come across links to government sites or
13 publications such as those that were sent to you claiming that
14 different anti-tax arguments were frivolous?

15 A. Oh, absolutely. I spent quite a bit of time on the IRS
16 website. I still do.

17 Q. And is it fair to say that some of the interpretations of
18 law on that website differ significantly from your own?

19 A. Absolutely.

20 Q. So when that happens, what, if anything, do you do?

21 A. Well, it's back to trying to form a hypothesis of what the
22 issue is. And then you go research it, and you try to find
23 out, what are they -- what are the courts saying about it, what
24 is academia saying about it? There is a plethora of published
25 researchers out there -- once again, some are better than

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1 others, but it's worthwhile reading.

2 Q. Let me ask you this -- and I don't mean it in any way to be
3 insulting, but there is not a lot of ways to ask this. You do
4 realize, don't you, that probably the vast majority of people
5 don't subscribe to your understanding of the law. Right?

6 A. Yes, sir. That's correct. Including my own family.

7 Q. I mean, you do realize that -- I mean, this is a little
8 like Don Quixote tilting at a windmill; right?

9 A. Yes, sir.

10 Q. And yet you persist; right?

11 A. Yes, sir.

12 Q. Why?

13 A. There is a part of me that once I think I've found the
14 truth in a matter, I cannot ignore it any longer. I persist in
15 researching it, and it just becomes a basis for my belief
16 system. I can't discard it. I can't turn a blind eye to it.

17 Q. Is it simply a question of you being a stubborn guy?

18 A. No, not at all. I don't think anybody that knows me would
19 say I'm a stubborn guy.

20 Q. Do you simply turn a blind eye to any contrary argument?

21 A. No. That's not my nature.

22 Q. Are you an ostrich?

23 A. I am not.

24 Q. At some point, as we know, the IRS contacted you about
25 nonpayment issues. Do you remember roughly when that first

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1 occurred?

2 A. I'm thinking about spring of 2000, maybe, I got my first
3 CP515 letter, which is basically a letter from the IRS that
4 says, I did not get your return.

5 Q. And at some point, did you try to let the IRS know what you
6 thought the law was concerning tax liabilities?

7 A. Yes, I did.

8 Q. How did you do that?

9 A. Via correspondence, initially.

10 Q. And, generally speaking, what do you feel the IRS response
11 was to that correspondence?

12 A. Almost always it was that I was taking a frivolous position
13 and they were not going to address it.

14 Q. Do you believe that the IRS answered your questions?

15 A. No.

16 Q. Let me back up a bit. So the correspondence -- and we'll
17 talk and look at some of it -- but the correspondence was --
18 that you sent to them, was it in the form of, you know, a
19 manifesto or a series of questions or a little bit of each?

20 A. Well, certainly, I had questions that I would ask. A
21 manifesto, I don't think so. I don't think I would call my
22 beliefs a manifesto.

23 Q. Okay. Did they, as far as you could tell, try to rebut
24 your position in any meaningful way?

25 A. I don't believe so. Usually what I heard was, my position

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1 was frivolous, that the courts had consistently ruled against
2 these positions, and they weren't answering my specific
3 questions.

4 Q. Did they ever provide you evidence that your view of the
5 law was unfounded?

6 A. Well, they certainly provided me with some information.
7 They would point me to pamphlets or provide them as
8 attachments, and I did read those.

9 Q. And we'll talk about those in some detail.

10 So when they present with you information -- and by
11 "they," I mean the IRS specifically -- when they present that
12 information to you that was contrary to your position, what did
13 you do with that?

14 A. Well, once again, if it was in the form of case law -- I
15 like to read case law -- I would go to look at those decisions.
16 One of the things that I always kind of used as a screening
17 device, it wasn't a Supreme Court case and it was very case
18 specific. And I would kind of set those aside in a separate
19 category. Meaningful information.

20 Q. Were you, in fact, willing to discuss your tax liability
21 with the IRS?

22 A. Absolutely.

23 Q. With respect to answers to questions, are you familiar with
24 something called a petition for redress?

25 A. Yes, I am.

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1 Q. As it applies here, what are we talking about?

2 A. The -- once again, through my association with the We the
3 People Foundation, we decided after a couple of years as
4 individuals and as an association attempting to get the IRS and
5 the Department of Justice to attend a meeting with us to
6 discuss these issues, that they were not going to do that. So
7 we resorted to our First Amendment right -- the last ten words
8 of the First Amendment -- to petition the government for a
9 redress of grievances. These petitions were drafted -- the
10 first one was regarding correct application of our federal tax
11 laws, and it was served upon the government.

12 Q. Fast forwarding. That didn't end well; correct?

13 A. It did not.

14 Q. What happened?

15 A. Well, after years of serving petitions for redress -- and
16 it got to be a much bigger matter constitutionally than just
17 federal tax issues, but that's not for this discussion -- but
18 we decided as an association -- and a group of individuals,
19 something over 1400 plaintiffs joined the lawsuit, the right to
20 petition lawsuit, we called it, against the United States
21 government.

22 Q. And what happened to that lawsuit eventually?

23 A. It was filed in the District Court for the District of
24 Columbia. And I believe it was Judge Emmet Sullivan had the
25 case. After about a year, he dismissed the case, stating in

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1 his comments that, sure, we have a right to petition, but the
2 government has no obligation to listen or provide redress.

3 Q. Did it end there?

4 A. It did not. We appealed that case to the Circuit Court of
5 Appeals for the District of Columbia.

6 Q. And what happened?

7 A. After about nine months, they issued a decision, affirming
8 the lower court decision to dismiss. The opinion for the Court
9 was written by Judge Kavanaugh, who is now on the Supreme
10 Court, and Judith Rogers.

11 Q. And then what?

12 A. We petitioned the Supreme Court to pick up the case.

13 Q. Did they?

14 A. They did not.

15 Q. So is that the end of it?

16 A. Well, it was the end of that lawsuit, for sure. I don't
17 believe it's the end of it. I think the American people need
18 to pick it up through their elected representatives, is the
19 next step.

20 Q. So this petition for redress -- and we'll look at some of
21 that -- but does it contain a bunch of claims about the
22 applicability of tax?

23 A. Not really claims. It's formatted as a remonstrance, as
24 a --

25 Q. Questions, then?

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1 A. Questions. I believe there are 60 plus, 62, maybe, in that
2 particular petition on the federal income tax.

3 Q. Do the claims in the petition go beyond the specific
4 understandings of law that you have as to the applicability of
5 income to your business income?

6 A. Oh --

7 Q. In other words, is the petition broader?

8 A. Yeah, it's broader. There are a number of different issues
9 addressed in there.

10 Q. Do you subscribe to each issue, every single one of them in
11 there?

12 A. No, I don't.

13 Q. Summarize for us what issues in the petition you did
14 subscribe to.

15 A. The first one had to do with the constitutional matter of
16 two types of taxes.

17 Q. Okay.

18 A. That you find in Article I, which is our legislative branch
19 of government. We have direct taxes -- that's covered in
20 Section 2 and Section 9 of Article I -- and we have indirect
21 taxes in Section 8.

22 Q. Who drafted those portions?

23 A. I helped quite a bit on that particular question. There
24 were a few other related ones to that same issue that invoked
25 some Supreme Court cases that addressed the issue.

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1 Q. Okay. Back to you and the IRS. How many letters would you
2 guess -- let me put it differently, because I don't want you to
3 guess.

4 Do you have a rough idea of how many letters you sent
5 the IRS over time explaining your position or seeking answers
6 to questions?

7 A. I would say well over two dozen.

8 Q. Now, the government's introduced some of them. Fair to say
9 that's not all two dozen?

10 A. No.

11 Q. Let's take another look at Exhibit 20 -- Government Exhibit
12 20.

13 Fourth paragraph, first sentence, if you could zoom
14 that, Mr. Cohen. The one that begins "there are."

15 "There are people who encourage others to deliberately
16 violate our nation's tax laws." The IRS is telling you this,
17 huh?

18 A. Right.

19 Q. Did that come as news to you?

20 A. No, sir.

21 Q. Are you one of those people?

22 A. I am not.

23 Q. Do you believe you were deliberately violating tax laws?

24 A. No, I don't.

25 Q. Do you consider yourself a tax protester?

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1 A. I do not.

2 Q. In fact, you even told the IRS as much, that you weren't a
3 tax protester; right?

4 A. I did.

5 MR. HARRIS: No. 38, please.

6 BY MR. HARRIS:

7 Q. This is, of course, already introduced. But let's
8 familiarize ourselves with it. What is this?

9 A. That's a letter from Agent Michael Jeka that was on the
10 witness stand I believe yesterday. It's a letter of
11 determination. I think it's below that certified mail receipt.

12 Q. Okay.

13 A. That he had received -- "we have reviewed the collection
14 actions," and so on.

15 MR. HARRIS: Okay. And let's scroll forward in
16 that -- to the next page, if you would, and the next. Let's
17 keep going down a little. Okay.

18 BY MR. HARRIS:

19 Q. There is a sentence in here -- and I won't bog us down
20 finding it unless Mr. Cohen finds it before I'm done -- that
21 says, "I asked him if he's against the tax system." Do you
22 remember seeing that at some point?

23 A. I do.

24 Q. And then it continues, "Basically, he said that he believes
25 that taxes are needed and that he is willing to pay what is

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1 fair." And we see that on the screen now.

2 Thank you, Mr. Cohen.

3 Is that true?

4 A. I --

5 Q. Well, let me ask that better. It's a terrible question.

6 Number one, is it true that he asked you if you're
7 against the tax system, to the best of your recall?

8 A. Yes.

9 Q. And did you, in fact, say something to the effect of, no, I
10 believe taxes are necessary. I'm willing to pay what is fair?

11 A. Yes. I remember that conversation.

12 MR. HARRIS: Okay. You can take that down.

13 BY MR. HARRIS:

14 Q. The IRS has also said at some point -- well, do you recall
15 at some point getting a letter from the IRS associating with
16 you a group called American Rights Litigator?

17 A. I do.

18 Q. Were you ever associated with that group?

19 A. I had hired them -- they had an attorney on staff and a
20 CPA. I had hired them to do some consulting and to write some
21 letters for me.

22 Q. And that's it?

23 A. That's it.

24 Q. Let's look again at some correspondence. And let's again
25 go back to No. 20, which we've looked at already. But I want

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1 to focus in on the line talking about -- the very first, right
2 after the salutation. "Dear Mr. Birk," the very next sentence.

3 "This is in reply to your recent correspondence." So
4 looking at that letter --

5 We can take that down, just zoomed in --

6 Do you believe that letter to be in any meaningful
7 respect responsive to anything you ever sent the IRS?

8 A. No, sir. I do not.

9 Q. Do you believe -- well, let's look at another thing.

10 Last paragraph before the "sincerely."

11 They're telling you that federal courts have
12 consistently ruled against the arguments you have made. Do you
13 agree with that?

14 A. I do not.

15 Q. When you read that, what kind of understanding did you come
16 away with of what the IRS meant by that, if any?

17 A. Well, it doesn't use the word "frivolous"; but they end it
18 by saying they're not going to respond to any of my future
19 correspondence.

20 Q. Did you view that as responsive?

21 A. I did not.

22 MR. HARRIS: Okay. We can take that down.

23 BY MR. HARRIS:

24 Q. On February 3 or potentially, February 2 of 2004, did you
25 write to the IRS?

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1 A. I --

2 Q. If you recall?

3 A. I don't recall that specific date. It's very possible.

4 Q. Okay. If you could -- and we would like not to publish
5 this one yet -- take a look at Defense Exhibit 1, that
6 Mr. Cohen will put on the screen.

7 Do you see that?

8 A. I do.

9 Q. And does that refresh your recollection as to whether you
10 wrote to them --

11 A. Yes --

12 Q. -- on --

13 A. Yes, it does.

14 MR. HARRIS: Let's go ahead and show that to everyone.

15 BY MR. HARRIS:

16 Q. What is that?

17 MR. HARRIS: I believe it's a stipulated exhibit. If
18 not --

19 COURTROOM DEPUTY: Yes, it is.

20 THE COURT: It's in by stipulation.

21 MR. HARRIS: Yes.

22 BY MR. HARRIS:

23 Q. So let's go back to that. What is that?

24 A. That's a letter from me to Agent Burgman.

25 Q. By the way, did we hear from Agent Burgmann this week?

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1 A. No, we did not.

2 Q. So does that letter contain some of your questions to the
3 IRS?

4 A. Let me take a moment, here.

5 Well, using tax avoidance transactions -- let's see,
6 things that I've been accused of. I stand by my statement
7 there, I've done nothing with American Rights Litigators that
8 I'm aware of that is abusive or unlawful. And to set the
9 record straight, it talks about, there is no such thing as an
10 abusive tax avoidance scheme, as tax avoidance is perfectly
11 legal. And I give a cite there.

12 Once again, that's refers to the nature of the income
13 tax, which I believe the Supreme Court says very clearly is an
14 indirect tax. An indirect tax can be avoided.

15 Q. Let me direct your attention to a couple of passages. Last
16 full paragraph on that page.

17 So in there you say that -- with respect to the 2003
18 return, you say, "I am a firm believer in the rule of law" and
19 that you haven't found a requirement for you or your wife to
20 file; right?

21 A. Right.

22 Q. Then you ask them to be so kind as to send the statute and
23 implementing reg requiring the filing of a specific return;
24 correct?

25 A. Correct.

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1 Q. So what did you mean by that? What was your intention in
2 asking them to do that?

3 A. Well, I believe -- back to my primary belief I have. I
4 believe that the income tax is an indirect tax. It's a form
5 and -- with proper subjects of an indirect tax -- what the
6 Supreme Court called it -- and as such, I should be able to
7 find in the tax code, as we do with many other kinds of
8 indirect taxes, the specific taxable source activity I'm
9 involved in, what the tax applies to, and how much it is.

10 Q. Did they ever send you what you asked them to send you?

11 A. They did not.

12 MR. HARRIS: If we could zoom out and go to the next
13 page. Zoom in on the 1 through 4 bullet points.

14 BY MR. HARRIS:

15 Q. What are those?

16 A. These are specific questions that I asked the IRS.

17 Q. Did you ever get answers?

18 A. I did not.

19 Q. The first question, what -- to the extent that it may
20 require any explanation, what does it mean? What did you mean?

21 A. When you search the tax code for a specific definition of
22 taxable source activities that you may be involved in, thereby
23 incurring a tax liability, that's the section that comes up.

24 Q. And so why did you ask them about that?

25 A. I wanted them to verify for me that that's what I'm

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1 supposed to use to determine my taxable domestic income.

2 Q. Why did you think they -- well, let me back up. Did you
3 think they'd answer?

4 A. I -- I believed they would.

5 Q. Did you hope they would answer?

6 A. It was my expectation. Yes.

7 Q. Why did you think they'd answer you?

8 A. Well, you asked earlier about a collaborative effort. I
9 believe that our government should answer our questions in good
10 faith and public and in a timely manner and allow us to work
11 together on these things, not accuse me of being frivolous.

12 Q. Looking at No. 2 on that list, what did you mean?

13 A. Once again, this talks about domestic income. If a U.S.
14 citizen lives and works exclusively in the 50 states and
15 receives all of their income -- I don't have any foreign
16 income -- does that section show that income to be taxable?
17 And there is a list there.

18 Q. Question 3, what did you mean?

19 A. That specific one -- and I put it in parenthesis -- items
20 of income they receive. I give examples, compensation,
21 interest, rents, et cetera, are they excluded for federal
22 income tax purposes? If they're not on that list, are they
23 then excluded, was the point of the question.

24 Q. Let me ask you this because, you know, some people might
25 think -- they have different take-aways. To ask them all of

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1 this stuff -- but you know there are laws; right?

2 A. Yes.

3 Q. I mean, are you just kind of jerking them around?

4 A. No, I don't think so. I think they're legitimate
5 questions. They're very detailed questions.

6 Q. And questions as to which you had hoped and expected
7 legitimate responses?

8 A. Absolutely.

9 Q. Quality responses?

10 A. Yes.

11 Q. Question No. 4, what did you mean by that?

12 A. The purpose of the list of non-exempt income found at that
13 particular cite and why is the domestic income of most
14 Americans not on that list? I think that's a valid question,
15 such as the income I have with my log home business. That's
16 not on that list.

17 Q. Okay. Let's take a look at government 23.

18 What is that?

19 A. Okay. There we go. Much better, thank you.

20 All right. It's a reply to correspondence of
21 February 3. "We have determined the arguments you have raised
22 are frivolous and have no basis in law. Federal courts have
23 consistently ruled" -- we've seen that before. And I can
24 obtain IRS publications, "Why Do I Have to Pay Taxes," and so
25 on.

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1 Q. Okay. So that's what we've now come to lovingly know as a
2 3175 letter; right?

3 A. Correct.

4 Q. All right. Now, they say that in reply to your
5 correspondence of February 3; right?

6 A. Correct.

7 Q. As best you can recall, did you ever send them a February 3
8 correspondence?

9 A. Once again, I can't off the top of my head verify that.

10 Q. Is it possible? To the extent that that is a reply to a
11 February 3 correspondence, if you sent one, would you have
12 written anything to them that you would consider this to be
13 responsive to?

14 A. No. Once again, it starts out saying that I've raised
15 frivolous arguments, I can obtain publications, the paragraph
16 we've seen before about people who encourage others to violate
17 tax laws. It's the same.

18 Q. Okay. And this is not, certainly, responsive, in your
19 view, to your February 2 correspondence, which we just
20 discussed; correct?

21 A. Absolutely not.

22 Q. You know, kind of to put it in the vernacular, it's like a
23 big F-U; right?

24 A. Correct.

25 Q. What would you have done if they had actually provided

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1 answers to your questions?

2 A. Well, I think if they had given specific answers, either in
3 correspondence or agreed to meet and provide those answers, I
4 would have taken the effort to research those. And if they
5 answered my questions, I guess I would have accepted that.

6 Q. Let's take a look at Government Exhibit 43. What's this?

7 A. Okay. It's from Agent Bentley -- who I believe we heard
8 from yesterday -- dated 5th of May. "Received your request for
9 a collection due process hearing," is what it is.

10 Q. Okay. Now in there, there is an advisement that says
11 they're required to advise you -- let's find that. That might
12 be on the next page. Yeah. Four lines down.

13 A. Okay. I got it.

14 Q. Here it is a little bigger.

15 So such issues -- refer to such issues. Let's back up
16 and go up one line. Let's highlight the first line of that.

17 Did you ever assert to the IRS any argument about tax
18 liability based solely on moral, religious, constitutional,
19 conscientious, or similar grounds?

20 A. Perhaps in the constitutional arena, but not solely.

21 Q. Okay. And in the constitutional arena, only insofar as it
22 relates to the applicability questions that you've already
23 discussed?

24 A. Right. Based on the Supreme Court decisions.

25 Q. Okay. So they're advising you that such issues and any

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1 other frivolous arguments raised -- let's stop there.

2 Frivolous arguments raised, did they ever tell you in
3 any letter which argument you're raising was frivolous or why?

4 A. No. I think that's been used consistently as a blanket
5 statement.

6 Q. In any event, does that admonition in any way describe or
7 address your claims?

8 A. I believe it does not.

9 Q. They also write -- let's look at the next paragraph. "All
10 of the correspondence you have sent to the IRS has been
11 identified as espousing frivolous tax arguments." Again, your
12 response to that?

13 A. I believe my questions were absolutely relevant. And I did
14 try to address some at a due process hearing, and I was told
15 face to face that they weren't going to do that.

16 Q. Okay. Let's turn to that question of the due process
17 hearing.

18 Government Exhibit 27, please. First paragraph after
19 the "Dear Mr. Birk."

20 More of the same?

21 A. More of the same.

22 Q. Disagree?

23 A. I disagree 100 percent.

24 Q. This time they add some descriptive adjectival language
25 referring to your argument not only as frivolous but

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1 groundless. Disagree with that?

2 A. I disagree.

3 Q. Does that statement or the letter as a whole appear to
4 address any specific question you raised ever?

5 A. Not that I can see.

6 MR. HARRIS: Okay. We can take it down.

7 Actually, let's put -- let's put 43 up again. I just
8 want to make sure we covered it. Go to the second page.

9 We did. Let's take it down.

10 BY MR. HARRIS:

11 Q. Okay. Let's take a look at Defendant's Exhibit 2. What's
12 that?

13 A. This is a letter from me dated February 14, 2005, with a
14 request that this letter and its attachments to be added to the
15 individual master file maintained by the Internal Revenue
16 Service.

17 MR. HARRIS: Okay. Let's take that down and look at
18 Defense Exhibit 3.

19 And before we -- I just want to make sure with the
20 government, you're fine with this subject to a 105?

21 MR. MAGNANI: 3, you say?

22 MR. HARRIS: Yeah.

23 MR. MAGNANI: Yes.

24 MR. HARRIS: Okay. So that is published.

25

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1 BY MR. HARRIS:

2 Q. What is this?

3 A. It's a request from me for a collection due process
4 hearing.

5 MR. HARRIS: Just to be sure that I check off a small
6 or not so small legal box. I'm moving if it's not already
7 admitted to admit Defendant's Exhibit 2 and 3.

8 THE COURT: They're in by stipulation. You only get
9 it in once.

10 MR. HARRIS: Okay. That's fine.

11 BY MR. HARRIS:

12 Q. Does this appear to be the letter referred to in
13 Exhibit 27?

14 If we can scroll through, see if we can get a better
15 sense. Or better yet, let's do this --

16 Can you put up Government Exhibit 27 side by side?

17 And let's -- on Exhibit 3, go to the next page. Next
18 page after that. Actually, let's put up Exhibit 2 in place of
19 Exhibit 3.

20 Okay. So does it appear that Exhibit 2 is the letter
21 referred to in Exhibit 27. In other words, Exhibit 27 being
22 their acknowledgment of request for a collection due process
23 hearing, and your letter in February being the request.

24 A. I think that's possible. Although, February to June seems
25 like a long time. The IRS is usually pretty responsive as far

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1 as replying to requests for CDP hearings.

2 Q. Okay. At least as far as timeliness?

3 A. Timeliness. Sure.

4 Q. Okay. In any event --

5 Let's take down Government Exhibit 26.

6 Does Exhibit 2 lay out your concerns that you were
7 holding at that point about tax payments?

8 A. The first page does.

9 Q. And then the second page?

10 A. Petitions for redress -- let's see where I'm -- to my
11 understanding, there is a larger list of folks --

12 Q. Yeah. In fact, maybe it will be easier -- let me break
13 that down a little.

14 A. Okay.

15 MR. HARRIS: Let's see. Go back to the first page,
16 please. The first paragraph, four lines down, "I have put
17 forth," up to "schemes" or -- maybe a little further is fine.

18 BY MR. HARRIS:

19 Q. Okay. You say, "I have put forth many questions regarding
20 the correct application of tax laws." True?

21 A. True.

22 Q. Determination of your taxable income, in other words,
23 questions about it; true?

24 A. True.

25 Q. Questions about due process of law; true?

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1 A. True.

2 Q. "IRS has steadfastly refused to answer those questions."

3 True?

4 A. True.

5 Q. IRS has accused you of participating in abusive tax
6 avoidance schemes; true?

7 A. Also true.

8 *MR. HARRIS:* Okay. That's take that down and zoom in
9 on this, at some point -- "also of record are four petitions."

10 *BY MR. HARRIS:*

11 Q. When you say "also of record," what did you mean?

12 A. That means they were formally served upon the government,
13 to the Legislative and Executive branches of government in
14 Washington, D.C., and --

15 Q. And the --

16 A. And it went on to talk about the lawsuit that I had joined.

17 Q. And it says there, "In the interest of seeking answers from
18 my servant government," what does that mean?

19 A. Well, I think that's a -- some language that I used -- the
20 government of this country serves by the consent of the people.
21 It says so right in the Constitution, in the Preamble, and
22 that's just a reference to that. Obviously, I don't consider
23 them servants *per se*, other than I expect the government as a
24 whole to be a servant to the people.

25 Q. Okay. Let's look at another passage.

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1 Last sentence on that page, "in 1998."

2 "In 1998 I became aware of a substantial incredible
3 body of legal evidence in support of the proposition that the
4 income tax system was fraudulent in its origin." Let's stop
5 there.

6 Well, fraudulent in its origin. What's that?

7 A. Well, a little bit of history here. In 1894, the Congress
8 passed an income tax act. It was promptly struck down by the
9 *Pollock* decision in 1895 as being an unapportioned direct tax
10 on property -- on income. The Supreme Court, I think -- that's
11 a lengthy case. It covers a lot of different aspects, but
12 that's probably the gist of it right there. The unapportioned
13 direct tax aspect of the income tax --

14 Q. Let me ask you, then, if it's fraudulent in its origin,
15 does that mean you felt you could never owe taxes again under
16 any circumstances?

17 A. Oh, absolutely not. I was going to carry that thought
18 forward just a little bit.

19 Q. Okay. Go right ahead.

20 A. It's a history lesson. The 16th Amendment, which started
21 its ratification process in 1910 and ended in February of 1913,
22 when it was declared to be ratified by Philander Knox, then
23 Secretary of State. There is a body of evidence published
24 by -- entitled "The Law that Never Was" by a man named Bill
25 Benson. And what he did in the late '70s, early '80s, was

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1 visit the state capitals of all 48 states that were in the
2 union at the time and got certified copies of what had actually
3 occurred during the ratification process. And if you look at
4 that body of evidence, you find out that the process left a lot
5 to be desired. It did not even come close. That was -- when I
6 used the term "fraudulent in its origin," that's exactly what
7 I'm referring to.

8 Q. You say it was limited in its application to most
9 Americans, what does that mean?

10 A. Yes. That, again, refers to the two types of taxes that
11 the Constitution authorizes. The Supreme Court has said it
12 must be an indirect tax; therefore, it must have the form and
13 proper subjects of an indirect tax. It does not apply to the
14 private sector funds that most Americans earn. If they work
15 for themselves or a U.S. company, they have no foreign income,
16 no income from a commerce act of Congress of any kind, or a
17 federal privilege is another way to look at that --

18 Q. Let me interrupt you, if I might. Where do you believe the
19 legal authority for that statement derives?

20 A. I think it derives from the Constitution itself, as
21 amended, and that handful of Supreme Court cases that define
22 what the income tax is and what it is not.

23 Q. Okay. Well, take a look at the next page of this exhibit.

24 And turning -- actually, further down in that exhibit,
25 another page in. Highlighting the numbered section.

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1 What is this?

2 A. That is a group of statements that I'm making regarding my
3 understanding at the time of many different issues surrounding
4 the federal income tax.

5 MR. HARRIS: Let's zoom back out on that. And go to
6 the paragraph that begins at "beyond."

7 BY MR. HARRIS:

8 Q. You respectfully request that someone be prepared to
9 discuss something at the due process hearing. What were they
10 supposed to be prepared to discuss? Those statements?

11 A. That list of statements.

12 Q. And who was supposed to be prepared to discuss it?

13 A. Whoever the government was going to provide -- holding that
14 meeting, representing the IRS.

15 Q. So these are basically, in one form or another, eleven
16 questions that you have for them; correct?

17 A. Yeah.

18 Q. And did they ever address those eleven issues with you?

19 A. No, they -- they will not do that.

20 Q. When you got to the hearing, did you try to raise those
21 issues?

22 A. I tried to. But I was informed right away that those were
23 considered frivolous, and they were not going to discuss it.

24 Q. By Mr. -- as you knew him, Mr. Bass? Now we know his real
25 name.

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1 A. Correct.

2 Q. And Mr. Jeka?

3 A. Correct.

4 Q. What happened any time you tried to raise those issues at a
5 hearing?

6 A. Basically brought the meeting to a close.

7 MR. HARRIS: Okay. We can take that down.

8 BY MR. HARRIS:

9 Q. At some point did the IRS send you a publication, "The
10 Truth About Frivolous Tax Arguments"?

11 A. Yes.

12 MR. HARRIS: Let's go to Government Exhibit 43 at page
13 92. Actually -- Government 43.

14 BY MR. HARRIS:

15 Q. Is that the document we're talking about?

16 A. That is it.

17 MR. HARRIS: Okay. Just flip through to the next
18 page, and the page after, then the page after that. Okay. And
19 one more page.

20 So you can take that down.

21 BY MR. HARRIS:

22 Q. You actually read that?

23 A. I did. Still have a copy of it.

24 Q. Okay. Considered it?

25 A. I did.

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1 Q. Reflected on the possibility that to the extent that it
2 might at some level address some issues, that you might be
3 wrong about stuff?

4 A. I was certainly hopeful of that. Yes.

5 Q. Why were you hopeful of that?

6 A. Well, at this stage --

7 I forgot the date of the letter we were looking at.
8 2008; is that right?

9 Q. We can pull it up again.

10 A. Yes. May 5.

11 Q. Okay.

12 A. By this time it had become sort of an arduous journey for
13 me and my wife. And I was hopeful that we were going to either
14 at a collection due process hearing or perhaps a document like
15 this start to make some progress on this collaborative effort
16 we've been talking about. And it just didn't answer the mail.

17 MR. HARRIS: Let's go back to that document in
18 Government Exhibit 43, publication. Let's actually go one page
19 in. Keep going. Yeah. This. How many -- let's go one more
20 page and one more after that.

21 BY MR. HARRIS:

22 Q. So how many pages was that, if you can tell, more or less?

23 A. Fifty-nine, this says.

24 Q. So at least 59?

25 A. Right.

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1 Q. Right. And looking at this, letters A through J; right?

2 A. Right.

3 Q. Each of those letter designations referring to some
4 argument that the Government or the IRS puts forth as
5 frivolous; correct?

6 A. Well, looking at this short list right here, I don't see
7 any position there -- issue that I ever took a position on.

8 Q. Okay.

9 A. Challenging authority of the IRS authorities, no, that's
10 not me. Unauthorized representatives, no. And no authority to
11 bring an action, I don't --

12 Q. Okay.

13 A. I've never espoused those beliefs.

14 Q. So there is, like, a dozen subheadings under there?

15 A. Yes.

16 Q. Dozens of potential tax arguments that some people are
17 making, that they're swatting down; right?

18 A. That's what I believe the purpose of this is.

19 Q. Have you ever taken any courses in law?

20 A. No.

21 Q. Are you familiar with the concept called a straw man
22 argument.

23 A. Yes.

24 Q. What is that?

25 A. A straw man, a canned response, a boilerplate, where you

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1 come up with a response to a particular situation -- typically
2 a general response -- and you build that straw man as you go.
3 And then that becomes your response in general to these
4 frivolous arguments.

5 Q. Even if what you're responding to isn't what was put forth
6 to you?

7 A. Correct.

8 Q. And that paradigm, how does this fit in, if at all?

9 A. That was sent to me, not as an answer or a specific
10 response to my questions, but, once again, a straw man
11 approach. Take a look at these frivolous arguments and see if
12 you find something in there that matches what you're -- the
13 position that you've taken, I think is what they're trying to
14 do here.

15 Q. Well, let's do that. Let's match some stuff up.

16 Defense Demonstrative Exhibit No. 10.

17 Now, looking at this, on the left side, what do we
18 see?

19 A. Those look like the lists -- from my letter, my February 3
20 letter of '04, some of the items off that list.

21 Q. And the bottom --

22 *THE COURT:* Counsel, excuse me. We appear to be
23 discussing an exhibit that you have characterized as a
24 demonstrative exhibit without response by the government or
25 approbation by the Court.

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1 MR. MAGNANI: The Government has no objection.

2 THE COURT: Very well, then. Neither do I. And,
3 thus, Defendant's Exhibit 10 may be used, published, and
4 discussed in the presence of the jury as a demonstrative
5 exhibit only.

6 MR. HARRIS: And I'll be more careful with respect to
7 the next couple.

8 THE COURT: I'll help you.

9 MR. HARRIS: Thanks.

10 BY MR. HARRIS:

11 Q. So on the left side on the bottom, where it says No. 6.,
12 what's that?

13 A. It says "The Internal Revenue Code as written does not
14 impose a tax on the income of most Americans who have no
15 foreign income or derive income from federal possessions."

16 Q. Okay.

17 A. That's a statement that I made in my letter.

18 Q. Okay. And so all of these items on the left side from your
19 letters, generally speaking, fall under the category of a
20 question of what is taxable domestic income; correct?

21 A. Correct.

22 Q. What's on the right side?

23 A. That's from the table of contents, I believe, from the
24 document we just had up.

25 Q. And do you believe that the right side and the content that

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1 you've reviewed that goes with that table of contents addresses
2 the questions on the left side?

3 A. Well, I don't believe that. I don't think I've made a
4 contention that only foreign source income is taxable.

5 Q. What about wages, tips, other compensation for personal
6 services?

7 A. Which one is that? I'm looking for it.

8 Q. It's the -- it's on the right side. Contention 1.

9 A. Okay. It's not highlighted. All right.

10 Q. Yeah.

11 A. I believe that, once again, you have to look at the source
12 of wages, compensation for services. And if it's not as a
13 result of the exercise of some federal privilege -- I think I
14 made a statement earlier that I believe that -- if the
15 government pays it, they can tax it, whether it's Social
16 Security or whether you get a salary from the government or the
17 military. So I don't know that I would embrace that entirely.
18 I think there could be some exceptions to that statement.

19 Q. Okay. Back to the highlighted one, foreign source income.
20 So on the left side, when you talk about 861 and domestic
21 income, and income from the 50 states, domestic income again,
22 No. 6, Americans without foreign source income, why -- what's
23 the disconnect between that and what they're replying to?

24 A. Well --

25 Q. Purporting to reply to.

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1 A. Well, I think my statements are asking a specific question.
2 We'll take No. 6, for example. The Internal Revenue
3 Code as written does not impose a tax on the income of most
4 Americans who have no foreign income or derive income from
5 federal possessions. It's a partial statement. I think you
6 can go on to say -- I think I mentioned earlier, income from a
7 commerce act of Congress, for example. If you mine or drill
8 for oil, if you take commercial pictures in the national forest
9 and derive income from that, that's taxable income, regardless
10 of -- you know, where it is. If it's a federal privilege,
11 you're going to pay a tax on it.

12 So I think the purpose of No. 6, when I made that
13 statement, I was saying that the way it's written -- once
14 again, I think that the Constitution sets the boundaries for
15 interpreting that -- it's an indirect tax. And I think if it's
16 not from the exercise of a federal privilege, then it's not
17 taxable income.

18 Q. Okay. Now, you reviewed the entirety of Government Exhibit
19 43; correct?

20 A. I have. And I still have a copy of it.

21 Q. And are you prepared if, for example -- I'm not going to do
22 it -- but if the government came up and pointed you to some
23 section of it, to discuss with them why -- or how or whether
24 that answers questions?

25 A. I would do my best.

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1 MR. HARRIS: Okay.

2 Your Honor, at this time I would ask to show the jury
3 defense demonstrative Exhibit No. 11.

4 THE COURT: Response.

5 MR. MAGNANI: The Government doesn't object to the use
6 of any of defense counsel's demonstrative exhibits, provided
7 they're the ones that the defense has shown us previously.

8 MR. HARRIS: I promise I've not sneaked in new ones.

9 THE COURT: Well, as we focus on Defendant's
10 Exhibit 11 for identification, it may be used, published, and
11 discussed in the presence of the jury as a demonstrative
12 exhibit only.

13 BY MR. HARRIS:

14 Q. So looking at what's now on the screen -- actually, let's
15 go -- let's go back to the other exhibit for a moment.

16 And before we take a look at I think it was 11, I
17 would also seek the Court's leave with respect to Demonstrative
18 9, to show it to the jury.

19 THE COURT: Same response by the government?

20 MR. MAGNANI: Yes, Your Honor.

21 THE COURT: Focusing now on Defendant's Exhibit 9 for
22 identification, it, too, may be used, published, and discussed
23 in the presence of the jury as a demonstrative exhibit only.

24 MR. HARRIS: Okay. Let's look at No. 9.

25

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1 BY MR. HARRIS:

2 Q. Okay. On the left side, what do we have?

3 A. That's from my February 3 letter of 2004. And it's a
4 statement I made, "As I've been unable to find a requirement in
5 law for me and my wife to file, if you would be so kind as to
6 send me the statute and implementing regulation that requires
7 said filing of a specific tax return, I will promptly send it
8 in."

9 Q. And below that?

10 A. It says, "In fact, I have looked for such a statute and
11 regulation for the past six years. What I did find was really
12 interesting."

13 Q. And then the next entry, the one with the 11.

14 A. "The IRS steadfastly refuses to cite its legal authority to
15 require filing of returns and payment of taxes."

16 Q. Okay. And on the right side, an excerpt from Government
17 43, concerning the voluntary nature of the federal income tax
18 system and whether or not filing is voluntary. Isn't that
19 synonymous with saying that, you know, you don't have a legal
20 requirement to file if you're saying something is -- you're not
21 required to file it, aren't you, in effect, saying it's
22 voluntary?

23 A. I think the -- under the frivolous tax arguments, there are
24 in fact some people out there that would try to get you to
25 believe it is a voluntary act, and they try to reference things

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1 in instructions for tax forms that says, voluntary compliance,
2 et cetera, et cetera. I do not adhere to that belief. I
3 believe that the income tax is absolutely mandatory for all of
4 those to whom it applies.

5 Q. Why do you say you can't find a requirement that you need
6 to file?

7 A. Once again, within the boundaries that I believe are set by
8 the Constitution as amended and the applicable Supreme Court
9 decisions early on, it's an indirect tax and must take the form
10 and proper subjects of an indirect tax. And that would mean I
11 need to go look for specific taxable source activity that I am
12 involved in, that I have received income from, then I would be
13 told what kind of forms I've got to file and what kind of tax
14 I've got to pay.

15 Q. Okay. We've looked at Demonstrative Exhibit 10. Let's now
16 look at 11, which we've previously been granted leave to
17 publish.

18 Okay. On the left-hand side, that shows a question
19 you've asked concerning, where do you look to find out if
20 income is taxable; correct?

21 A. Correct.

22 Q. On the right-hand side, there is the contention that
23 certain types of income are not income that are taxable;
24 correct?

25 A. Yeah. The wages, tips, and other compensation received for

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1 personal services are not income.

2 Q. All right.

3 A. And I think we addressed that. I said, certainly some who
4 receive those types of income are involved in a taxable source
5 activity, the exercise of a federal privilege, and they do have
6 to pay a tax --

7 Q. Okay.

8 A. -- and file.

9 Q. And that's not responsive; correct?

10 A. The -- well, the -- without reading what they said there,
11 that's out of the table of contents --

12 Q. Right.

13 A. -- but --

14 Q. As you recall from what you have read of it, you didn't see
15 anything responsive?

16 A. No. The IRS would refer you to the Internal Revenue Code,
17 where it said -- where it defines gross income and taxable
18 income, it has these lists of classes, types of income, and --
19 but -- nor does it tell you what is the taxable source
20 activity. If it's an indirect tax, it must take the form and
21 proper subject of an indirect tax. It needs to tell me, what
22 activity is that?

23 MR. HARRIS: Okay. I would request leave to publish
24 Demonstrative Exhibits -- Defense Exhibits 12, 13, 14 --

25 THE COURT: Any objection?

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1 MR. MAGNANI: No objection to any of the
2 demonstratives, Your Honor.

3 THE COURT: Again focusing on Defendant's Exhibit 12
4 for identification, it, too, may be used, published, and
5 discussed in the presence of the jury as a demonstrative
6 exhibit only.

7 BY MR. HARRIS:

8 Q. And let's look at that.

9 Okay. You posit that if you file, you've waived your
10 Fifth Amendment rights. They reply that taxpayers -- they
11 reply that it's frivolous to say taxpayers don't have to file
12 returns because of Fifth Amendment protections; right?

13 A. That's what they're saying.

14 Q. Do you believe that that's responsive -- I mean, is that a
15 match in terms of arguments, at least?

16 A. Well, the issue of what generated my statement was a case
17 right here in the Tenth District, gentleman by the name of Bill
18 Conklin -- it's an unpublished case, but it's still
19 available -- where the court finally came through and says,
20 well, yeah, that could happen. Now, I have never taken that
21 position that -- that I believe you're waiving your Fifth
22 Amendment rights. Pay attention to what it says on the
23 signature block, though, under penalty of perjury. So if you
24 do file, you better tell the truth.

25 Q. Okay. No. 13, if we could look at that. What's that?

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1 A. My statement goes back to my commentary on Mr. Benson's
2 evidence, "The Law that Never Was." I was seeking the
3 government to respond to that. And what they said -- I don't
4 exactly remember what was said in Paragraph 5 there, but --

5 Q. Let's take a look --

6 A. Let's take a look at that.

7 Q. -- 43, I believe it is.

8 Why don't we do this -- it might be easier to pull
9 that up. Let's put 13 back up, and then side by side to the
10 other, and we can flip to it quicker.

11 Okay. So page 31 in the document, on the -- on the --
12 we can take down 13. If we can go backwards to 31 as it's
13 numbered at the top.

14 Okay. So we're looking at that. Let's zoom that in a
15 little.

16 So this is what is on the right side. This is the
17 content that goes with that table of contents. Do you view
18 this as responsive to your statement, or do you not? And why
19 or why not?

20 A. This particular one provides a lot of good information. It
21 says that -- references the *Brushaber* case. I've got to see
22 what is below that. If we could scroll down a little bit,
23 because I see a name I recognize. That's the chairman of the
24 We the People Foundation. Yeah, I remember that tax
25 termination package. I did not support that.

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1 Q. Then scrolling down to the case law.

2 A. Let's keep going.

3 Q. Okay.

4 A. A lot of circuit court cases, which is good information.

5 Once again, I would rest upon the evidence as published. It

6 was provided to every member of Congress from 1983 and the

7 President. I believe that was Ronald Reagan at the time.

8 Q. By the way, did you read every one of these cases?

9 A. No, I didn't read all of them. I like to read case law,

10 but I just read the highlights on most of these. Certainly,

11 this one -- if a case refers to another case, like the

12 *Brushaber* case, certainly I would go -- that would get my

13 interest going. I would look at that one for sure.

14 Q. Let me ask you about that one, while we're up there.

15 The first case, if we could highlight on that

16 paragraph, number one.

17 So this is a Seventh Circuit case, where they say --

18 they talk about specifically rejecting the argument advanced in

19 "The Law that Never Was"?

20 A. I do not personally espouse the belief that the 16th

21 Amendment was not ratified, or maybe it was. I don't think it

22 matters. The Supreme Court spoke often and consistently in the

23 1916 through about 1929 time frame about what the income tax

24 was and what it was not. So does it really matter? It's one

25 of those things. We've had it for 106 years. Does it really

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1 matter if it wasn't properly ratified at this stage of the
2 game? If you look at the Supreme Court decisions and what they
3 said the income tax was and what it wasn't, I think it settles
4 the matter. It creates very clear boundaries on how the tax
5 code should be interpreted.

6 Q. Okay.

7 A. And I believe the tax code is absolutely constitutional.

8 Q. All right. Let's take that down.

9 And two more, briefly. Exhibit 14, demonstrative.

10 This is your unapportioned direct tax --

11 A. Correct.

12 Q. -- area. And on the right -- well, let me back up.

13 You said, based on constitutional limits, that most
14 Americans' income can't be taxed in the form of an
15 unapportioned direct tax, those limits being circumscribed by
16 which amendment?

17 A. It's actually in the body of the Constitution and
18 Article I. I think I spoke to that earlier. Talks about the
19 two types of taxes that Congress can levy, direct taxes --
20 which is found in Section 2 and 9 -- which requires the
21 apportionment of a direct tax. And, basically, that means to
22 the states based on census or population. And in Section 8 of
23 Article I, the indirect tax.

24 Q. So your argument isn't premised on the 16th Amendment?

25 A. No. I don't -- I'll say it again. I don't think the 16th

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1 Amendment in and of itself addresses the issue. The Supreme
2 Court has almost set it aside by saying it did not authorize in
3 Congress any new power to tax. It did not create a third type
4 of tax.

5 Q. Okay. One last area on this, and that would be Exhibit 15.
6 This one a little different, a due process argument.

7 You say a tax system that violates due process is
8 unconstitutional. Not terribly controversial; right?

9 A. I don't think so.

10 Q. And --

11 A. Anybody would agree with that statement.

12 Q. Okay. And they address due process in their exhibit, and
13 they talk about it in the context of collection due process
14 cases. Right?

15 A. Yes.

16 Q. Is that what you mean?

17 A. I think the reference to collection due process cases is
18 very specific to collection actions by the IRS. I think that
19 there is potentially other issues -- fourth Amendment issues,
20 primarily -- that sometimes come into play. Now, there are due
21 process solutions. For example, if the IRS issues a
22 third-party summons, like they did to my bank, I can go to the
23 court and petition them to quash that summons. I know other
24 people who have done that. If you give the court a good reason
25 for it, normally they'll grant that. I did not see any reason

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1 to do that. I didn't have anything to hide. There had been a
2 very thorough discussion of my banking in this court.

3 Q. Okay. And we're going to get to that, as well.

4 We can take this down. Let's take one more look at
5 Exhibit 2.

6 In Exhibit 2 you say, "The federal government cannot
7 tax income within the 50 states." Let's just find that. And
8 it might be on the next page, or the page after. Sorry.

9 It's No. 5. Did Exhibit 43 address that argument?

10 A. Oh, boy. I don't remember off the top of my head.

11 Q. Well, let me ask you -- go ahead.

12 A. I do believe what I was talking about here is what we call
13 jurisdictional limitations. If you look at the Constitution
14 and where the federal government has legal jurisdiction, it --
15 it's varied and far reaching. Certainly, the District of
16 Columbia and the federal territories, any kind of property
17 where the federal government holds a deed, Army posts, some
18 post offices -- not always. Sometimes it's a lease. You've
19 got to be careful.

20 But the relationship I think constitutionally between
21 the federal government and the state speaks for itself, that in
22 many cases, where the government, due to the Ninth and Tenth
23 Amendment limitations -- where it is not specifically granted
24 an enumerated power, it doesn't have.

25 Q. Okay.

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1 A. The states or the people retain that.

2 Q. Okay. That's what you meant?

3 A. That's where I was going with this one.

4 Q. Okay. All right.

5 Let's look at another exhibit. Let's take another
6 look at Government 38. And, specifically, where -- this is
7 just to review and expedite -- a letter from Jeka to you;
8 correct?

9 A. Correct.

10 Q. And what -- it says in there on the next page -- sorry, on
11 this page, first page -- something about the 16th Amendment --
12 maybe not.

13 A. Huh.

14 MR. HARRIS: Apparently not. Let's pull that -- let
15 me look at one thing.

16 I just want to confirm, is this 38?

17 Let's take that down. I'll ask that a different way.

18 BY MR. HARRIS:

19 Q. At some point you received a notice of determination from
20 the IRS; correct?

21 A. Correct.

22 Q. That notice of determination had some discussion in it
23 summarizing your views of the tax system. Remember, we looked
24 at that a little earlier; right?

25 A. Correct.

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1 Q. And somewhere in there, it was stated by the IRS that you
2 believe the 16th Amendment is fraudulent in origin and that IRS
3 collection actions are actually outside the law. Do you
4 remember words to that effect?

5 A. I believe I do.

6 Q. Is that an accurate statement of your understanding of the
7 law? And you can just answer yes or no.

8 A. I would say, yes.

9 Q. Okay. And does that mean that you're unwilling ever to
10 pay?

11 A. No.

12 Q. Okay. Let's look at Government 51 now.

13 And this is made up of several pieces. But this first
14 piece, what is that?

15 A. You say the first piece?

16 Q. Yeah, just this first page, because it's actually --

17 A. Oh. The whole first page?

18 Q. Yeah.

19 A. All right. Copies of correspondence -- and I've got them
20 listed there in my reference list -- to my Congressman. Let's
21 see here, Agent Bentley, who we saw on the stand --

22 Q. Let me direct your attention to the top of the document --

23 A. Okay.

24 Q. -- subject line. So this is a letter. Basically, what's
25 the letter deal with?

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1 A. I'm requesting -- I've made a demand for release of notice
2 of federal tax liens.

3 Q. Who is the letter addressed to?

4 A. It was addressed to Agent Miller.

5 MR. HARRIS: Let's go to the bottom of the page, and
6 carrying over to the next page -- go up a little. Okay.

7 "Also, we hereby demand" -- that paragraph, if we could zoom
8 that.

9 BY MR. HARRIS:

10 Q. So this is you writing. And you're saying you're demanding
11 the IRS release all notices of tax liens; right?

12 A. Correct.

13 Q. Why?

14 A. Well, it's primarily -- if you look at a federal -- a
15 notice of federal tax lien -- and there may be some folks in
16 here who have seen some -- Paragraph A on the back of that
17 notice is missing. And I believe that was the paragraph that
18 gives the authority to do what they're doing and who it applies
19 to. And I address that -- that very topic in my right -- in my
20 petition that I had filed with the government.

21 If you read that missing paragraph, it basically tells
22 you that it only applies to officers and employees of the
23 federal government. And I said, well, number one, why would
24 they take that out? And then number two, that's not me. So
25 I --

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1 Q. Okay.

2 A. That was basically the gist of why I wanted that out. It
3 also had to do with -- if you look above, I had tried to get a
4 signed verified assessment from the IRS; and I never received
5 one.

6 MR. HARRIS: Okay. Let's zoom back out. And moving
7 to what is marked at the bottom as page 731. It's this letter.
8 Zooming to the top quarter or so of it.

9 BY MR. HARRIS:

10 Q. What's that letter, and who is it to?

11 A. That's one I wrote to my Congressman, Doug Lamborn. I
12 referenced some letters I had written to the IRS. And I was
13 filling him -- I was trying to keep him up to speed on the
14 status on this, because I had solicited his aid in trying to
15 work with the IRS. And that's basically the gist of the
16 letter.

17 Q. Okay.

18 A. Refused to answer questions regarding the correct
19 application of our tax laws.

20 Q. Let's zoom back out on that.

21 Language in there, withdrew our request.

22 A. Where are we at on this letter? Which paragraph?

23 Q. Mr. Cohen will find it.

24 A. Let's see --

25 Q. Maybe the next page -- oh, no, it's up here in the first

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1 paragraph. That entire paragraph.

2 A. Okay.

3 Q. Okay.

4 A. Yeah. "At the time we withdrew our request for a hearing
5 on the basis that the federal government refused to answer
6 questions regarding the correct application of the tax laws,
7 determination of taxable income, and due process of law."

8 Q. Okay. Let's stop there. Let's go back out, highlighting
9 the date of the letter.

10 A. April of 2009.

11 Q. So back in April of 2009, more than ten years ago, you were
12 already concerned about the IRS's refusal to answer your
13 questions; correct?

14 A. Oh, very much so.

15 *MR. HARRIS:* Okay. Let's go back into the letter.

16 Second full paragraph, fourth line to the end, from "lives,"
17 down to the end.

18 *BY MR. HARRIS:*

19 Q. You say, "What the IRS has done is create a fiction, at
20 best." What do you mean?

21 A. Could we include one more line at the top?

22 Q. Yeah, sure.

23 A. I want to reference that number.

24 Q. Mr. Cohen --

25 A. Because we've seen a lot of data during this trial. At the

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1 time of -- referencing those notices of federal tax liens, that
2 number there, \$2.1 million and some change, I was making the
3 statement -- and I'll stand by it -- an amount that exceeds our
4 total income from all sources for our entire lives -- that's me
5 and my wife -- including the value of our real property.

6 So the next question, obviously, would be, this
7 fiction that was created, at best, and at worst, fraud, by
8 recording it into the public record, those notices of tax liens
9 come through the Secretary of State and into your county Clerk
10 and Recorder's office. They not only encumber your property,
11 but affect your credit and your good name, for that matter. So
12 I was challenging that.

13 We have seen some data since then in this trial that's
14 a number that is slightly more than 10 percent of that. So my
15 question is, I could understand it being maybe double because
16 of the issue of me not providing or volunteering the
17 information at this time that I did give to, say, Advanced Tax
18 Solutions, and what drove those returns; but I was challenging
19 this number. And by recording it into the public record, I'm
20 concerned about that. I was very concerned about that at this
21 time.

22 MR. HARRIS: Okay. Zooming back out. Next page.

23 Actually, back to the other page. Last paragraph.

24 BY MR. HARRIS:

25 Q. You say, "The only nonviolent option remaining is for the

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1 government to answer." Let me stop right there, because that
2 will strike someone reading that as jarring. Are you
3 threatening?

4 A. You mean violence?

5 Q. Yeah.

6 A. That's a direct reference constitutionally to the Second
7 Amendment. What follows the First Amendment, and why is it
8 where it is? The last ten words, we have a series of
9 fundamental rights and law. And the last ten words of the
10 First Amendment says, "and to petition the government for
11 redress of grievances." If we cannot get good faith answers
12 through correspondence or meetings about the significant legal
13 issues surrounding the federal income tax, what is going to be
14 left to a free people?

15 Now, am I personally threatening violence? No, I'm
16 not. I'm talking about, what did our founding fathers and the
17 framers of our Constitution and those first ten amendments give
18 us as far as the tools to hold our own government accountable
19 to the law? That was why I put that in there. The Second
20 Amendment speaks for itself.

21 MR. HARRIS: Okay. Next, if we can zoom back out and
22 go to the next page. Last part of that paragraph. Yeah,
23 there.

24 BY MR. HARRIS:

25 Q. "No answers, no taxes," what does that mean?

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1 A. That referred directly to our petitions for redress.

2 Q. Okay. One more letter, and then we'll turn to other

3 topics, most likely after the mid-afternoon break. But let's

4 see how far we can get.

5 Government Exhibit -- well, same exhibit. Let's go

6 forward in it a page. Highlighting the top part.

7 And just to expedite, at the risk of leading, letter,

8 May 29, 2008, from you to Bentley; correct?

9 A. Correct.

10 Q. Bentley was the other bearded gentleman that testified;

11 correct?

12 A. Correct.

13 Q. Okay. So did you write this letter?

14 A. I did.

15 Q. Why?

16 A. I was -- what I was trying to do was talk about the due

17 process hearing that was originally scheduled. We had been

18 informed repeatedly by the IRS that they were not going to

19 address in good faith my questions regarding the correct

20 application of our tax laws. What's the point of going to

21 another meeting, or even a telecon meeting if I'm going to be

22 told the same thing.

23 MR. HARRIS: Zooming in on four lines down from "it

24 has been our intent." Down a couple of lines.

25

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1 BY MR. HARRIS:

2 Q. "It has been our intent these past nine years to
3 communicate with the IRS in good faith." You wrote that;
4 right?

5 A. I did.

6 Q. You meant that; right?

7 A. Uh-huh.

8 Q. "To administratively resolve the many issues between us as
9 afforded by the law." Is this the collaborative aspect that
10 you were talking about and hoped Ms. Trabold was sincere about?

11 A. It is. And we've heard about that often in this trial.
12 And I certainly appreciate that we have that right to due
13 process in this country; but when they end it abruptly by
14 accusing you of having frivolous positions and they won't even
15 talk to you, that's what it is.

16 MR. HARRIS: Okay. Let's zoom back out.

17 "We've put forth many questions." It's -- in that
18 paragraph, letter -- it's -- let's just highlight the bottom
19 third of that paragraph.

20 BY MR. HARRIS:

21 Q. We'll get back to the other. But here you refer to his
22 letter of May 5 and that he says, "All of the correspondence
23 you have sent was identified as espousing frivolous tax
24 arguments. We strongly disagree." Right?

25 A. I do.

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1 Q. Okay. And then you say, at this point you see no benefit
2 for anyone in further meetings or correspondence for any
3 purpose. That's what you were just testifying about?

4 A. That's correct.

5 Q. Okay. We can pull that down.

6 Last half or so of the first paragraph from the R.
7 Creamer down. There.

8 A. Yeah. Okay.

9 Q. You say, "Also of record are several petitions for redress
10 of grievances." And you say, "Those petitions remain
11 unanswered as of this date."

12 A. Correct. They still are.

13 Q. That was my next question.

14 Let's pull that down.

15 Bottom paragraph. "We have watched with dismay as
16 basically everyone refused to respond to questions." True?

17 A. True.

18 Q. Why was it dismaying?

19 A. Well, I think by this time -- this is 2008 -- my
20 frustration is beginning to show somewhat in my letters. I am
21 continually told that I'm espousing frivolous arguments; but
22 I'm not getting any answers, any specific responses that would
23 lead me to believe that I am incorrect. I'm not getting any
24 answers.

25 MR. HARRIS: Same paragraph. If you could highlight,

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1 Mr. Cohen, the sentence that says "We have also watched."

2 BY MR. HARRIS:

3 Q. "We have also watched with dismay the blatant judicial
4 conspiracy evidenced by recent legal actions" -- well, judicial
5 conspiracy --

6 A. Yeah. When --

7 Q. You want to elaborate?

8 A. There is a legislative act called the Anti-Injunction Act
9 that basically forbids a taxpayer, an American citizen, to
10 bring a tax matter into the court for resolution to -- as the
11 Act calls, to avoid paying a tax. You are required, I guess,
12 by due process to try to administratively resolve that somehow.
13 And if you don't, then they begin collection and seizure and
14 apportionment actions against you. That was part of what I was
15 talking about there, judicial conspiracy.

16 But there were all kinds of things that were happening
17 against what I called leaders of the tax honesty movement.
18 Outside of the We the People Foundation, there were other
19 things going on. I did not necessarily support some of the
20 positions these people were taking. The government was trying
21 to shut down websites. I think that's a First Amendment issue.
22 We had -- We the People -- I'll give you an example about an
23 attack on the right of free speech, which is the next one.

24 We had a contract with *USA Today* for twelve full-page
25 ads, that were not inexpensive. We succeeded in running six of

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1 them before we received a letter from *USA Today* and a refund on
2 our balance saying, hey, you know, we've been contacted by the
3 Department of Justice, and our attorneys say we better stop
4 doing this. Oh, really?

5 We had a similar experience with C-Span regarding our
6 meetings at the National Press Club --

7 Q. Okay. Let me just bring it back for a moment to the
8 letter. I'm not going to go through every line of the letter;
9 I don't think that would be fair to the jury or the Court. But
10 fair to say that the bulk of this letter is expressing your
11 concerns historically with what you perceived as the lack of
12 responsiveness and answers to what you viewed as legitimate
13 questions; correct?

14 A. That's the bulk of it.

15 Q. Okay.

16 *THE COURT:* Counsel, a propitious time, as I am wont
17 to say, to declare and take our medication afternoon recess for
18 this afternoon of trial. During this recess, Mr. Birk, you may
19 stand down and return to your seat.

20 *THE WITNESS:* Thank you, Your Honor.

21 *THE COURT:* You're welcome.

22 And, counsel, you may be seated at your convenience.

23 Ladies and gentlemen of the jury, in preparation for
24 this mid-afternoon recess, two things: First, once again,
25 leave your notetaking materials face down on your seats or your

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1 chairs. And on all such occasions, be mindful of those
2 important rules that continue to govern you as jurors in this
3 trial.

4 We are in recess for 15 minutes.

5 (Recess at 3:03 p.m.)

6 (In open court at 3:25 p.m.)

7 *THE COURT:* Thank you. And either be seated or remain
8 standing, as you choose, while waiting for the jury.

9 Madam Clerk, one more time, please.

10 Thank you.

11 (Jury in at 3:27 p.m.)

12 *THE COURT:* Ladies and gentlemen, again, please be
13 seated, with the exception of you, Mr. Harris. You may resume
14 your direct examination of Mr. Birk.

15 *MR. HARRIS:* Thank you, Your Honor.

16 *THE COURT:* You're welcome.

17 *BY MR. HARRIS:*

18 Q. Let's move to a different topic area. At some point,
19 despite your understanding of the law concerning your duty to
20 file returns, you did decide to file returns under duress or
21 under protest; correct?

22 A. Yes, sir.

23 Q. When approximately did that decision happen?

24 A. To the best of my recollection, let's see -- that was
25 probably about August of 2006, July -- maybe a little bit

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1 before that. Because I think that's when I approached Advanced
2 Tax Solutions. Let's say sometime in the spring of '05.

3 Q. And the spring of '05. Okay.

4 And did you decide -- why did you decide to do that?

5 A. I would say it's a twofold answer. The first one is my
6 loving wife, she was beginning to get nervous about collection
7 and enforcement actions; so she got me thinking about that.
8 The other aspect that I'd been thinking about for some time was
9 the magnitude of the assessments against me and wanting to take
10 some kind of action that would pave the way for coming back
11 into the system, perhaps, and disarming those assessments.

12 Q. Had you at that point changed any of your understandings of
13 or beliefs with respect to your duty to pay taxes on that
14 income?

15 A. No.

16 Q. So when you say or write that these returns were filed
17 under duress, what do you mean?

18 A. At that time I was a plaintiff in a lawsuit -- we spoke
19 briefly about that -- the right to petition lawsuit with We the
20 People Foundation, and approximately just under 1,500
21 plaintiffs total.

22 Q. And so what's -- what's the relation between the lawsuit
23 and the under the duress?

24 A. The -- at the time I had expectations that our right to
25 petition lawsuit would bear fruit and that the government would

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1 be required to provide answers in good faith in public to those
2 petitions.

3 Q. And so when you write "under duress," what does it mean to
4 you?

5 A. It meant to me that I was willing to file those returns and
6 sign them under penalty of perjury at the time. Even though my
7 philosophies may have been different, the data was as accurate
8 as I could make it at the time.

9 Q. Okay. Now, you sometimes refer to this as getting back
10 into the system; correct?

11 A. Correct.

12 Q. What does that mean?

13 A. It basically means, filing returns and working with the IRS
14 to pay the taxes.

15 Q. So -- okay. You're going to get back into the system.
16 What steps did you take to get back in?

17 A. Well, the first one was approaching Advanced Tax Solutions
18 to prepare returns from '98 through 2005. And then --
19 certainly, behind the scenes, I do keep good records; and I had
20 to get busy generating data for Mr. Erikson.

21 Q. And about how much did it cost in total to get back in?

22 A. As far as what I paid Advanced Tax Solutions, I believe
23 that the total number ended up being around \$12,000.

24 Q. Now, when you met with Advanced Tax Solutions -- let's
25 actually step back a minute. You did meet with them; correct?

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1 A. I did.

2 Q. And was that with Mr. Whalen initially?

3 A. Initially, Mr. Whalen; correct.

4 Q. Did you have any second meeting with Mr. Whalen?

5 A. I don't believe I did.

6 Q. Did you have any meeting with Mr. Erikson?

7 A. I did.

8 Q. More than one or just one?

9 A. I remember two meetings with Mr. Erikson.

10 Q. In any of those three in total meetings, variously, with
11 Erikson or Whalen, did you have any conversation with them
12 concerning your understanding of tax law applicability to you?

13 A. I believe in the initial meeting with Mr. Whalen, we had a
14 short discussion. And he made his position very clear to me,
15 that that was not going to be something they could do. That
16 they would prepare those returns to the best of their ability
17 in accordance with the rules as they understood them.

18 Q. Who decided what materials they would have to prepare your
19 returns?

20 A. Mr. Erikson requested specific information from me, and we
21 kind of built on that as we went through the process of
22 preparing those returns. There was quite a bit of email
23 traffic and some phone calls with Mr. Erikson to provide that
24 information to him.

25 Q. Did you provide everything that you had been requested to

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1 provide?

2 A. I did.

3 Q. Were you ever dishonest with them?

4 A. I was not.

5 Q. Did you ever hide anything from them?

6 A. I did not.

7 Q. Did you either discuss or provide to them information about
8 Tarryall Asset Management?

9 A. I did. There were some handwritten notes, I think, that
10 have been part of the record for this trial. There was a
11 specific phone call I had with Mr. Erikson about that, where he
12 requested some information from me. And I did my best to come
13 up with that.

14 I think the information was originally flagged by the
15 IRS to Mr. Erikson through Mr. Bass, and I went and retrieved
16 those records, and we corrected that return.

17 Q. With respect to Tarryall Asset Management, was it your
18 intention that Tarryall Asset Management be used as some sort
19 of device to hide income from the IRS?

20 A. That was not my intent. I think I said earlier, I was
21 intending to use it as a conduit to move my funds in the form
22 of -- primarily my wife's retirement funds, and she agreed with
23 that -- from the custodians into that conduit so that those
24 funds could be used in Tarryall River Log Homes.

25 Q. Did Mr. Erikson ever tell you, write you, or otherwise

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1 advise you that you were doing anything wrong in -- with
2 respect to Tarryall Asset Management?

3 A. No, he did not.

4 Q. Had he told you that you were doing something wrong, what
5 would you have done?

6 A. Well, I think at that point, when we were preparing
7 returns, it was probably overcome by events. The -- the
8 actions that were taken far preceded my involvement with
9 Advanced Tax Solutions, so it was a -- a past data point that
10 really needed to be corrected. And I think the handwritten
11 notes that Mr. Erikson had as part of this court record show
12 that.

13 Q. Did you rely on Advanced Tax Solutions to complete returns
14 correctly?

15 A. Yes.

16 Q. At some point your relationship with Advanced Tax Solutions
17 ended; right?

18 A. That's correct.

19 Q. How did it end and why?

20 A. Well, I think we reached a point after we had produced all
21 the returns through 2005, to file those returns under duress,
22 as we have just spoken about, and I felt at that time their
23 work for me was completed. I had not ruled out a future
24 relationship with them, and I don't think they had either, but
25 we were done.

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1 Q. Amicably?

2 A. Yes.

3 Q. Now, there was a power of attorney, POA, in effect at
4 times; right?

5 A. That's correct.

6 Q. And that granted them the right to advocate for you with
7 the IRS; right?

8 A. That's correct.

9 Q. We've heard some testimony about that. Who terminated it?

10 A. I did.

11 Q. For the reasons you've just discussed?

12 A. That's correct.

13 Q. Now, you've heard the testimony from Ms. Trabold and other
14 witnesses, and it -- to summarize, it would appear the IRS is
15 claiming, variously, number one, that you deliberately
16 underreported income at times. Did you?

17 A. I did not consider that in the overall scheme, that it was
18 taxable income. It was earned income that my wife had made or
19 myself -- mostly my wife's, again. Those were my funds. I
20 made no intent to violate anything. I was merely using my
21 funds.

22 Q. Did you at any time deliberately overreport business
23 expenses or list as expenses things that were not expenses?

24 A. No. I would not do that.

25 Q. Did you at times use the Tarryall business bank account,

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1 the PSBT bank account ending in 694, to conduct personal
2 business affairs?

3 A. Yes, I did.

4 Q. Did you at times use your business account to pay personal
5 expenses?

6 A. I did.

7 Q. Why?

8 A. Once again, it was -- those were considered my funds. One
9 of the convenience items -- I had a debit card for that
10 account, which I did not have on my personal account, which
11 made it easy on the fly to purchase fuel occasionally. Most of
12 the fuel was, in fact, business use. It's a long way to
13 anywhere in Park County. I think most of the special agents
14 who have been out there, they probably know. Groceries
15 occasionally, using that debit card, that's how it was
16 purchased are. It was a matter of convenience for me.

17 Q. Did anyone ever -- let me ask a different question. Did
18 you hold any funds in that business account in a fiduciary
19 capacity for anyone?

20 A. If we're talking about something like deposit money --

21 Q. Uh-huh --

22 A. -- yes. Occasionally I would get large deposits on a log
23 home package, *per se*, that I would deposit to my business
24 account.

25 Q. Now, this business of official checks, is what you've told

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1 Agent Hopping true, that you maintained -- that you
2 deliberately maintained a low balance in the Tarryall business
3 account by purchasing official checks?

4 A. I did.

5 Q. And why?

6 A. To protect my funds, which were also my customers' funds at
7 times, or my subcontractor or suppliers' funds, from being
8 seized.

9 Q. And the reason for that is you didn't believe that the IRS
10 was legally entitled to those funds; correct?

11 A. That's correct.

12 Q. Now, with respect to the IRA rollover issue and the -- you
13 remember the discussion of that; correct?

14 A. I do.

15 Q. And the demonstrative exhibit with all of those circles;
16 right?

17 A. Correct.

18 Q. Tell us about that. What -- what -- why did you not simply
19 transfer that distribution from one trust to another?

20 A. I --

21 Q. One --

22 A. My wife decided and I decided we wanted to use those funds
23 to invest in our log business. We actually used a lot of that
24 money to build what we called a spec house, which we used as a
25 model and a place to store things like doors and windows for

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1 other projects.

2 Q. Was it your intention in handling the funds the way you did
3 with TAMI as the intermediary for them, to defraud the IRS?

4 A. No. Of course, not. I considered those to be our funds.
5 That was a conduit that I used for that purpose.

6 Q. Did you consider those distributions, those funds, to be
7 taxable income?

8 A. I did not.

9 Q. And is that for the same or similar reasons to the reasons
10 you've expressed as to other income?

11 A. That's correct. It's private sector funds.

12 Q. Did you hide either the existence of TAMI or the
13 distributions themselves from Advanced Tax Solutions?

14 A. I did not. I called them personal funds. They were on the
15 handwritten notes, and that's what I considered them.

16 Q. Now, there was discussion in Ms. Trabold's testimony of a
17 company you had worked for, PRC.

18 A. Correct. That was the last company I worked for in my
19 defense industry career.

20 Q. And she explained a discrepancy between the 1998 return you
21 filed and Advanced Tax Solutions' return as it related to some
22 of that income. Do you recall that testimony?

23 A. I certainly do.

24 Q. What comment, if any, do you have with respect to the PRC
25 question?

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1 A. Those funds that were discussed, the lion's share of that
2 was really from my wife's employment at MCI. She was laid
3 off -- when WorldCom purchased MCI, she was laid off at the end
4 of 1998. She had a rather substantial benefit, based on her
5 years of service, that was paid at the end of 1998. Obviously,
6 taxes and withholding was done on that. When I say "taxes,"
7 I'm talking about payroll taxes, Social Security, and Medicare.
8 And we decided that since we did not believe that was taxable
9 income, that we would correct those W-2s and make a request for
10 a refund.

11 Q. Just a couple of more questions. I won't say one last
12 question, because I've never been correct when I said it.

13 But do you expect to be issued SFRs or otherwise be
14 assessed taxes and forced to pay them on at least some of these
15 tax years at some point regardless of the outcome of this case?

16 A. I would hope to avoid going down that path again and having
17 the IRS prepare returns. I believe it's fair to say that my
18 wife and I are poised regardless of the outcome of this case to
19 file those returns, to work with the IRS, to get squared away
20 on that. We're retired now. We don't need these kind of --
21 these kinds of things in our lives. So I would intend to avoid
22 going through that whole process again and to approach the IRS
23 and sit down, get the paperwork done, get into an offer in
24 compromise, and call it good.

25 Q. Trepidatiously, I'll say this, one last question --

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1 *THE COURT:* Perhaps with subparts.

2 *MR. HARRIS:* Perhaps.

3 *BY MR. HARRIS:*

4 *Q.* Why are you pleading not guilty?

5 *A.* I believe that the research I've done on the federal tax
6 system, the original intent of those who wrote the tax laws,
7 the 16th Amendment, even back to the Constitution itself, the
8 original intent of those taxing clauses, gave me an
9 understanding of the true nature of the income tax. And it was
10 my sincere belief that the tax laws were being misapplied. I
11 think that it's fair to say that the government and, for the
12 most part, the lower courts, believe that the 16th Amendment
13 did authorize some kind of unapportioned direct tax or perhaps
14 a -- some unknown third kind of tax, and I disagree with that.
15 I believe that that is not what the law says and the Supreme
16 Court cases that surround it, and that is my belief.

17 *MR. HARRIS:* No further questions.

18 *THE COURT:* Very well. Cross-examination for the
19 government. Mr. Magnani.

20 *MR. MAGNANI:* Your Honor, at this time can we have
21 that 105 instruction, please?

22 *THE COURT:* You may.

23 Ladies and gentlemen of the jury, you are instructed
24 as follows: At various times during the testimony of the
25 defendant, he expressed his beliefs and understanding or

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1 referred to exhibits in which he expressed his beliefs and
2 understanding about his legal duty to pay federal income taxes.
3 This testimony and those exhibits may only be considered by you
4 for the limited purpose of determining what the defendant
5 believed or understood about his legal duty to pay federal
6 income taxes. This testimony and those exhibits may not be
7 considered or accepted by you as correct statements of the
8 applicable law governing the legal duty to file federal tax
9 returns or to pay federal income taxes.

10 It is the duty of the Court, not a party or an
11 attorney, to explain to you the law that applies in this trial.
12 You may not rely on any statements of law expressed by the
13 defendant in his testimony or in the exhibits to which he
14 referred. Instead, you may rely only on the law as the Court
15 gives it to you in the final jury instructions at the end of
16 this case. It is your sworn duty to follow all of the rules of
17 law as the Court explains them to you, and you are so
18 instructed.

19 Now, I reiterate my earlier question,
20 cross-examination for the government?

21 *MR. MAGNANI:* Thank you, Your Honor.

22 *THE COURT:* You're welcome.

23 **CROSS-EXAMINATION**

24 *BY MR. MAGNANI:*

25 *Q.* Good afternoon, Mr. Birk.

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1 A. Good afternoon, sir.

2 Q. Did you understand the instruction that the judge just gave
3 to everyone in this room?

4 A. I believe I did.

5 Q. And so do you understand that, basically, it's the Court's
6 duty to interpret the law?

7 A. I understand that.

8 Q. And that it's the Court's job to say what the law is --

9 *MR. HARRIS:* Objection. 401, 402, 403. Relevance.

10 *THE COURT:* Response.

11 *MR. MAGNANI:* The defendant's understanding of what
12 the law is, is at the heart of this case, Your Honor. It's
13 imminently relevant.

14 *THE COURT:* It's relevant under Rule 401, thus
15 ostensibly admissible under Rule 402. Its probativity is not
16 substantially outweighed by any one or more of the six dangers
17 made the focus of Rule 403. So those bases of objection are
18 respectfully overruled, and the examination may continue.

19 *BY MR. MAGNANI:*

20 Q. Do you need me to repeat the question --

21 A. No, I understand.

22 Q. And so do you understand, although you may have opinions
23 about the law, it's ultimately the courts that get to say what
24 the law is?

25 A. I understand that.

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1 Q. You mentioned a lot of cases. Are you familiar with
2 *Marbury v. Madison*?

3 A. I am.

4 Q. Ever since 1803, that's what the law has been in this
5 country?

6 A. I understand that.

7 Q. Now, you don't think that means that because the courts
8 have that power, that's not a judicial conspiracy, is it?

9 A. No, it's not.

10 Q. Well, let me switch gears. You mentioned that you're
11 recently retired?

12 A. That's correct.

13 Q. Okay. And -- I'm sorry, can you remind us again, when did
14 you say you retired?

15 A. Last December.

16 Q. You say you're 65?

17 A. I'm 65.

18 Q. And how much money do you have saved for retirement?

19 A. I never really thought about -- probably \$50,000, I guess,
20 in liquid assets, and my home, which is paid for and probably
21 worth 3 or 400K. Depends on the market.

22 Q. Sure. And just to sort of get through the jargon, when you
23 say liquid assets, do you mean cash?

24 A. I would say cash, other liquid kinds of assets that you
25 could sell. I've got some machinery that I kept from the

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1 business that has some value, motor vehicles, just liquid
2 assets. If I needed money, I could go sell something.

3 Q. And apart from the liquid assets that you're referring to,
4 do you have any other bank accounts?

5 A. No, I do not.

6 Q. Stock accounts?

7 A. I do not.

8 Q. I should clarify, when I'm asking the questions, did the
9 answers that you gave, does that apply to your wife, as well?

10 A. That's correct.

11 Q. So you're an MBA --

12 A. (Nodded head.)

13 Q. I'm sorry. You have to answer yes.

14 A. Yes, I am.

15 Q. Okay. You run a business?

16 A. I did.

17 Q. You created profit and loss statements?

18 A. I did.

19 Q. So do you think that you can live the rest of your life on
20 \$50,000?

21 A. That is not my plan. The short answer is, I am truly
22 blessed to have some very deep pockets in the family, on both
23 my wife's side and mine. There will be some inheritance kinds
24 of transactions at some day in the future, should I live long
25 enough to enjoy that.

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1 Q. And is -- you heard Ms. Trabold testify earlier?

2 A. I did.

3 Q. Okay. And so is it fair to say that your folks or Jean's
4 folks are giving you some guys some money now?

5 A. We've been getting a gift once a year from my mother and
6 from her father. It's not a big number. Whatever the gift
7 threshold is. I think it's \$14,000 now.

8 Q. Okay.

9 A. That certainly factors into, you know, the cash we have to
10 live. It's not cash in my pocket until I get the check, but
11 those -- those deposits would certainly be reflected in my bank
12 records.

13 Q. And are gifts taxable, as you understand it?

14 A. No, they're not. Up to that threshold.

15 Q. What about inheritance, is that taxable?

16 A. I think it is, both at the federal and state level. I
17 think there will be some tax liability when that happens.

18 Q. You -- and please correct me if I misquote you. But I
19 think you said on direct that if the government pays it, they
20 can tax it, or something to that effect?

21 A. It's a general rule. I think unless it's, like, disability
22 payments and things that are, you know, of law. Generally
23 speaking, yes. Like a Social Security check, you bet.

24 Q. So if the government pays wages to me, for example, that
25 can be taxed?

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1 A. Yes.

2 Q. Okay. Now, also, just drawing on your experience as an
3 MBA, do you think that the government could fund itself only
4 from taxing government employees?

5 A. No, no. There is indirect taxes, duties, tariffs, excises.
6 And then there is, of course, the Federal Reserve system, and
7 we all know what is going on there.

8 Q. Now, do you remember when Mr. Harris gave his opening
9 statement, and he said that it wasn't because you thought you
10 were someone special. That's not why you stopped paying;
11 right?

12 A. That's correct.

13 Q. And you agree with that?

14 A. I do.

15 Q. Would you agree you've gotten an extra special amount of
16 attention from the federal government over the years?

17 A. I have. And believe me, I know a lot of other folks that
18 have been in the tax honesty movement that have also received a
19 lot of attention.

20 Q. And is some of that attention what your lawsuit was about,
21 the retaliation that you mentioned in the lawsuit?

22 A. Not the lawsuit, *per se*. The lawsuit was specifically to
23 the right to petition.

24 Q. But in the lawsuit, there were two claims; right?

25 A. The first claim -- we're talking about the right to

Lawrence Martin Birk - Cross

1 petition lawsuit?

2 Q. I'm sorry. I'll just be clear. In the lawsuit that We the
3 People filed with 1,000 something plaintiffs --

4 A. Yes.

5 Q. -- there were two claims in that lawsuit; correct?

6 A. I believe there was.

7 Q. And one of the claims was basically, we are
8 constitutionally entitled to a response from the government?

9 A. That is correct.

10 Q. The other one is that the government should be enjoined,
11 prevented from retaliating against us for holding these views?

12 A. That's correct.

13 Q. So the retaliation was about the government attention that
14 was focused on those folks in the movement?

15 A. That was my intent of that statement; correct.

16 Q. Just speaking -- Mr. Harris asked you a little bit about
17 the intent of your statements. Would you agree as you sit here
18 today and you read some of those statements, would you forgive
19 someone for someone perceiving them as threatening?

20 A. I would forgive them. I got asked that point-blank by a
21 special agent on my property one day. He put that letter in my
22 face -- it wasn't George; I don't believe, it was. It was an
23 older gentleman, very large. He put that letter in my face and
24 said, What do you mean by that?

25 Q. Was that the gentleman who came with Ms. Morgan, who

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1 testified earlier?

2 A. Correct.

3 Q. Okay. So you sent the letter to Ms. Morgan first; and then
4 she came to your property with an older gentleman, as you
5 described it?

6 A. With six agents. Yes.

7 Q. Okay. Those agents were armed?

8 A. They had body armor on, so I don't know for sure. There
9 were also still some sitting in vehicles.

10 Q. My question is, would you forgive Ms. Morgan for after
11 receiving your letter, talking about the only nonviolent means,
12 for not coming alone to your house?

13 A. Absolutely. I fully appreciate. The frustration was
14 probably showing in any correspondence by then.

15 Q. Okay. So I just want to run through a few things that I
16 hope are not too controversial. So you understand that in this
17 case, you know, this the government has a burden to prove
18 certain elements?

19 A. I do.

20 Q. Okay. And my understanding is that you don't contest any
21 of those elements except for one; is that right?

22 A. If you could --

23 Q. Sure --

24 A. -- remind me of the elements. Be specific.

25 Q. Okay. Sure.

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1 MR. HARRIS: He's here to testify about facts, not to
2 interpose his views of the law. It's burden shifting.

3 THE COURT: Response.

4 MR. MAGNANI: There is only one fact in dispute in his
5 question, Your Honor, and it's about what is in the defendant's
6 brain. And so these questions are probative of that. And it's
7 only circumstantial evidence that the government can rely on in
8 this case.

9 THE COURT: Well, you know, you can ask specific
10 questions without framing them in the essential elements on the
11 law, which I will instruct the jury concerning. And you simply
12 can proceed on that basis.

13 MR. MAGNANI: Very well.

14 BY MR. MAGNANI:

15 Q. So just -- we'll keep it simple. You agree that between
16 1998 and 2005, you worked every year?

17 A. I did.

18 Q. You made money?

19 A. I did.

20 Q. And you lived on that money?

21 A. I did.

22 Q. Okay. And would you agree that the amounts of income that
23 were reported on the returns that you worked with Advanced Tax
24 on, those accurately reflected the amount of income you earned?

25 A. In accordance with the rules that Advanced Tax Solutions

Lawrence Martin Birk - Cross

1 supplied, yes.

2 Q. Now, before you -- you testified that in those early years,
3 you were still at PRC?

4 A. Correct.

5 Q. Can you just tell us, what exactly is it? You said defense
6 contracting, but what did you do?

7 A. PRC at that time was a subsidiary of Litton Industries, a
8 defense contractor. We did a variety of design and support
9 activities for U.S. Space Command, Cheyenne Mountain, other
10 kinds of sensor systems, we'll call them. I can't say any more
11 than that, because I'm still bound by my agreement.

12 Q. Okay. What was your job there?

13 A. I started out as what they call a logistics support
14 analyst. What that entails is defining operation and support
15 requirements, spare parts, operation and maintenance manuals,
16 training, teaching the government end user how to operate and
17 maintain the system. That basically encompasses that.

18 Q. And so when you're talking about this -- was your client
19 the Department of Defense?

20 A. Yes, it was -- Department of Defense, Air Force, Space
21 Command, other entities.

22 Q. Okay. Now, for your 1998 return --

23 A. Uh-huh.

24 Q. -- the one you filed before Advanced Tax Solutions.

25 A. Okay.

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1 Q. Do you recall that?

2 A. Yes, I do. The corrected W-2 one.

3 Q. Exactly. So you -- PRC Inc., your company, gave you a W-2
4 at the end of the year?

5 A. Correct.

6 Q. That W-2 said that they paid you a lot of wages?

7 A. Correct.

8 Q. You asked them if they would issue you a W-2 that said they
9 paid you no wages?

10 A. I'm not sure if that's correct. What I did was I asked
11 them to correct the W-2 -- there is a line -- there is a
12 number -- as you well know, there is different blocks on that
13 W-2 that define what kinds of income you've received. And what
14 I was asking them to do is correct the taxable income line and
15 zero that out, because I did not believe it was taxable income.
16 They, obviously, refused to do that.

17 Q. Well, there is not a taxable income on a W-2. Isn't the
18 first line on a W-2 wages?

19 A. Wages, okay. I agree with that.

20 Q. On your tax return you put zero for wages?

21 A. Correct.

22 Q. And you had asked them if they would put zero for wages on
23 the W-2?

24 A. I did.

25 Q. Okay. So they disagreed with your reading of the law, and

Lawrence Martin Birk - Cross

1 they refused to do it?

2 A. I expected that. Yes.

3 Q. Now, you said if the government pays, it can tax it. Does
4 that not apply if they pay a contractor?

5 A. It would apply to the contractor, certainly, as a
6 corporation, but not their private sector employees. It's a
7 different thing than, say, working for a civilian Department of
8 Defense.

9 Q. Now, switching over from being a W-2 wage earner -- is that
10 term something you're comfortable with?

11 A. Yes.

12 Q. Okay. Switching over to being your own businessman, did
13 that mean that you were no longer required to have taxes
14 withheld from your income?

15 A. I believe that. Yes.

16 Q. And you switched over in about 2000?

17 A. The first quarter of 2000; that is correct.

18 Q. And you agree that even though taxes are no longer
19 withheld, it is the IRS's position that you still owed tax?

20 A. I understand that. Yes.

21 Q. And just so we're clear, is it also true that between 2006
22 and up until your retirement, you continued to build log homes
23 for your company?

24 A. That's correct.

25 Q. You continued to make profit?

Lawrence Martin Birk - Cross

1 A. I continued to earn income, yes.

2 Q. Okay. Is -- well, let me ask you this: Was the income you
3 earned greater than the money that you spent to earn that
4 income?

5 I'll ask a different question, were you in the black
6 or in the red?

7 A. Sometimes I was in the red.

8 Q. Okay.

9 A. But depended on the project. I obviously endeavored not to
10 do that. But we had to operate on a pretty slim margin up
11 there in central Colorado, so --

12 Q. Now, after not -- when you first dropped out of the system,
13 the IRS audited you; right?

14 A. I never went to a face-to-face audit; so from that
15 perspective, no. They were conducting audits for the purpose
16 of creating SFRs.

17 Q. So did the IRS audit you?

18 A. I did not participate in that. No.

19 Q. Sorry. My question is, did they audit you?

20 A. I -- yes. They audited me without my presence or my
21 participation.

22 Q. You didn't -- did they invite you to participate?

23 A. I don't recall getting invited to an audit. I got some
24 letters requesting some documentation. But I didn't -- I've
25 been to an audit. I went to one in my life. I spent 27 years

Lawrence Martin Birk - Cross

1 as a W-2, including my military service; and I did my own taxes
2 for 27 years. I got audited one time, and I paid the amount at
3 the audit, \$1.26.

4 Q. I'm sorry. My only question was, did you participate in
5 the audit?

6 A. No.

7 Q. You saw Ms. Applegate testify?

8 A. I did.

9 Q. Okay. And would you agree that she sent you a letter and
10 that you called in response and left her a voicemail?

11 A. Yes, I remember that.

12 Q. And would you agree that you would not give her any bank
13 records?

14 A. I -- I wouldn't give her any records.

15 Q. And when your bank, Park State Bank & Trust, got a summons,
16 you reached out to them and told them not to give up any
17 records?

18 A. No, I did not --

19 Q. You --

20 A. I did not instruct them to do that. The only notification
21 that I got was a letter from the president of the bank, wanting
22 to close my accounts.

23 Q. And when --

24 A. And then I found out when I went in to talk to him that it
25 had to do with the summons. So we worked out an agreement. I

Lawrence Martin Birk - Cross

1 said, I'll take care of my issues. Don't worry about me suing
2 the bank. He said, fine. You can have your accounts.

3 Q. So is it your testimony that you never threatened to sue
4 the bank at first?

5 A. I never threatened to sue the bank.

6 Q. But the resolution was, I'll promise not to sue you, and
7 you can --

8 A. They were good with that. Absolutely.

9 Q. Okay.

10 A. I never tried to quash the summons. I didn't have anything
11 to hide.

12 Q. Now -- and do you agree with the witnesses and exhibits
13 that show that you have not voluntarily paid a dollar in tax
14 since 1998?

15 A. I agree with that.

16 Q. And is that also true for the state of Colorado?

17 Voluntarily, I'm talking about.

18 A. Aside from withholding, that's correct.

19 Q. And does -- now, shortly after you got those notices of
20 intent to levy, is that about the time frame when you stopped
21 using your personal account?

22 A. I'd say that's correct.

23 Q. And that's when you started using your business account for
24 personal expenses?

25 A. Certainly started using it a lot more. That's correct.

Lawrence Martin Birk - Cross

1 Q. It's your only bank account at that point?

2 A. My only bank account with a debit card. I still had
3 another account, but we didn't use it much.

4 Q. You agree that about a million six of official checks
5 coming out of that account?

6 A. That's the record. I don't have that number handy, but I
7 assume that Park State Bank & Trust keeps good records and that
8 the IRS does too.

9 Q. Well, I don't want you to assume. Sir, I mean, if the
10 question is you don't know, that's fine. You can say you don't
11 know.

12 A. I don't know.

13 Q. Okay. You don't have any reason to dispute that figure?

14 A. No.

15 Q. And also you don't dispute that you did all of this to
16 protect against the IRS or the Department --

17 A. No, that --

18 Q. I'm sorry. If I could --

19 A. That is not correct.

20 Q. Oh, I want to make sure so it's clear for the court
21 reporter and the record. My question is, did you engage in the
22 official check buying to prevent the IRS and Colorado
23 Department of Revenue from sweeping your account?

24 A. Not entirely. No.

25 Q. In part?

Lawrence Martin Birk - Cross

1 A. In part, I did. Yes.

2 Q. Okay. Now I'd like to ask you about -- he that's what you
3 told Agent Hopping?

4 A. Absolutely. Had nothing to hide.

5 Q. Now, I want you to focus on TAMI. And since you said you
6 have nothing to hide, why did you incorporate TAMI and open a
7 bank account as a conduit?

8 A. I needed to have a conduit to do those transfers from the
9 custodians who -- various custodians to an account that I had
10 access to so that I could use those funds.

11 Q. So you had an IRA at Park State Trust, didn't you?

12 A. I had an MSA.

13 Q. Talking about an IRA?

14 A. I don't know that I had an IRA at Park State. I don't
15 remember having one.

16 Q. So some of the money came from Janus, for example?

17 A. That was my wife's funds.

18 Q. So there was nothing preventing you from saying, hey,
19 Janus, that's my money. Just send it to my personal account.

20 A. That's correct.

21 Q. If you did that, they would have withheld tax?

22 A. That's correct. A tax that I did not believe I owed.

23 Q. And so -- you had had tax withheld from earlier
24 distributions that you had taken from retirement accounts.

25 If -- I'll ask a clearer question.

Lawrence Martin Birk - Cross

1 Before you created TAMI, you had taken other
2 retirement distributions, and tax was withheld?

3 A. I'm thinking about that. There might have been one that I
4 did, and I'm trying to remember when that would have been. I'm
5 thinking it was, I don't know, \$30,000 or something. But there
6 was one. Yes.

7 Q. And not to get into specifics, but -- and you got a
8 record -- a tax record about that distribution at the end of
9 the year called a 1099; right?

10 A. I did.

11 Q. And when you got that 1099, you brought it to Advanced Tax
12 Solutions and gave it to Mr. Erikson.

13 A. Are we talking -- we're talking about the --

14 Q. So --

15 A. -- '98 and subsequent distributions, not prior to that.
16 Because mine would have been prior to that.

17 Q. And when I'm asking about yours, I'll just say yours or
18 your wife's, if that's easier.

19 A. That's fine.

20 Q. So you brought Mr. Erikson 1099s showing that you had
21 retirement distributions; right?

22 A. I did.

23 Q. And that factored into his tax preparation; right?

24 A. That's correct.

25 Q. And you agree, though, that you didn't tell him about TAMI

Lawrence Martin Birk - Cross

1 as this conduit?

2 A. Only from the standpoint that I was using that to -- as a
3 conduit for personal funds.

4 Q. So I guess my question is, you did not tell Mr. Erikson
5 that you took over \$400,000 in retirement assets, put it into
6 TAMI, and then into your business?

7 A. Not specifically, I didn't. No.

8 Q. Did you tell him that in any way?

9 A. I don't recall doing that. I think when the information
10 from the IRS came back, he had some questions, and I explained
11 what that was. I was not intending to mislead him. I honestly
12 believed that was not taxable income. It was personal funds.

13 Q. So why did you give him the 1099s for other distributions
14 for him to use in his tax analysis?

15 A. What were the other 1099s --

16 Q. The 1099 --

17 A. Other than the rollover ones, there was other 1099s? I
18 don't recall hearing about those.

19 Q. I'll move on.

20 A. Or what they would be.

21 Q. So -- now, you said that you terminated Advanced Tax after
22 you filed the tax returns?

23 A. Correct.

24 Q. Just briefly, why did you terminate them?

25 A. I -- I believed that we were done with that phase, which

Lawrence Martin Birk - Cross

1 was to get those returns produced and filed.

2 Q. And so -- I'm sorry. One more question on TAMI. I want to
3 make sure I just understand this.

4 When you talk about the conduit, is it your testimony
5 that you used TAMI as a way to avoid paying withholding on a
6 tax you didn't believe in?

7 A. Yes.

8 Q. Okay. So you started your testimony -- and forgive me if
9 I'm misquoting you -- but you basically said you might file tax
10 returns going forward or you might not, or it may become
11 necessary? What was it that you said?

12 A. I think sitting here today, that there is a -- some
13 certainty that's going to happen, that I will be going back and
14 filing those returns, working with the IRS to resolve this
15 matter. I'm retired now. I don't -- I don't need any more of
16 this, and I know my wife doesn't.

17 Q. Just today, as you sit here, do you believe that you are
18 required to file a tax return?

19 A. I do not.

20 Q. So what about on your wife's social security income that
21 she's drawing?

22 A. Yes.

23 Q. And --

24 A. There will be a 2019 return filed. I can assure you of
25 that.

Lawrence Martin Birk - Cross

1 Q. And what about you, are you going to take social security?

2 A. Maybe some day. I'm not in a hurry to do that until age
3 70.

4 Q. Now, you mentioned that you don't -- that you haven't paid
5 federal tax in about 20 years; right?

6 A. About 20 years. That's correct.

7 Q. Or Colorado state tax?

8 A. Or Colorado state tax.

9 Q. What about real estate tax?

10 A. That's a direct tax that's levied on property by the
11 state -- by the county, actually, is who collects it. I'm good
12 with that.

13 Q. So, sorry, is the answer yes?

14 A. Yes.

15 Q. Yes, that you do pay real estate tax?

16 A. I do.

17 Q. Do you pay vehicle tax?

18 A. I do.

19 Q. And how many vehicles would you say you've owned since
20 1998?

21 A. Oh, my gosh. Including trailers and special mobile
22 equipment and machinery, maybe a dozen.

23 Q. And you've always paid your taxes on those things?

24 A. I did.

25 Q. Okay. Now, why don't you pay the state tax?

Lawrence Martin Birk - Cross

1 A. Thirty-four states in the union have what we call a
2 piggyback tax. That means if you look at the implementing
3 statute and regulation at the state level, you always start out
4 with your federal tax liability. Typically, you take your
5 federal adjusted gross income and add your state deduction to
6 it, and that's where you start. It's Article 39, I think
7 Section 24 -- 22, Paragraph 104.

8 Q. Of --

9 A. Colorado Revised Statute.

10 Q. Just so -- I just want to make sure I clearly understand
11 your position. So are you saying that because the state tax
12 relies on the federal tax computations, therefore, it's not
13 lawful?

14 A. Well, it's -- if I -- I would say that if I don't have a
15 federal tax -- if I don't believe I have a federal tax
16 liability, I don't have a state tax liability. The state wrote
17 the law.

18 Q. Okay. And now the -- is it also true if you don't pay your
19 real estate tax, the state will take your house?

20 A. I believe that will happen.

21 Q. But, I mean, the IRS, you heard from agents, that they
22 can't really take a house that you live in with much ease.

23 A. Oh, no. I --

24 Q. So if you don't pay your vehicle tax, can they suspend your
25 registration on your cars?

Lawrence Martin Birk - Cross

1 A. Well, it will expire; and then you get to talk to the
2 sheriff's deputy or the trooper or whoever notices that. And
3 there is a penalty applied.

4 Q. So -- now -- and just -- if I'm not phrasing this
5 accurately, please correct me. But is, basically, your basic
6 position that you would file taxes if you got a sort of
7 tailored explanation to your particular issues from the IRS?

8 A. Well, from the government, the IRS, somebody in Congress.
9 I want the issue of the unapportioned direct tax on our incomes
10 to be addressed.

11 Q. And you tried to raise this with several appeals officers,
12 for example?

13 A. I did.

14 Q. Three of whom testified in this trial?

15 A. Correct.

16 Q. And, basically, they said, I'll listen to your argument but
17 not really engage, but just sort of be polite and ignore it?

18 A. I don't think we got that far.

19 Q. Okay. So do you think that an appeals officer at the IRS
20 has the power to interpret statutes and the Constitution?

21 A. No, I don't. But they have a chain of command also. And
22 all I was really asking was for them to accept many materials I
23 had provided and to take -- take that up the chain of command,
24 and maybe I would get a response.

25 Q. So the answer is no, you don't --

Lawrence Martin Birk - Cross

1 A. No.

2 Q. -- don't think they have it?

3 A. No. They don't have.

4 Q. And so you know that at the top of that chain of command,
5 their position is, you have to pay tax on income you earn in
6 this country?

7 A. Well, so far that's been true. Yes.

8 Q. That's always been true, the last 100 years?

9 A. Well, I guess you could make that statement. Sure.

10 Q. Now -- and you're aware that no court in this country has
11 ever said anything other than that folks have to pay tax on the
12 income earned in this country?

13 A. I'll accept that for face value.

14 Q. Well, I'm just asking if you're aware of it. I don't want
15 you to accept what I'm saying.

16 A. Well, I don't know that that's true. No.

17 Q. Now, you mentioned that you were skeptical of folks who
18 sold silver bullet "here's the way to get out of taxes"
19 packages?

20 A. True.

21 Q. Okay. So you never fell for any of those silver bullet
22 schemes?

23 A. No. I don't ever remember signing up or buying something
24 like that. No.

25 Q. But you just did your own research?

Lawrence Martin Birk - Cross

1 A. I did.

2 Q. And you mentioned spending -- was it 50 bucks a month, was
3 it?

4 A. Well, yeah, that was kind of almost like association dues.
5 I was just supporting the home team.

6 Q. And so -- and the home team, this is We the People?

7 A. We the Peopled Foundation; correct.

8 Q. And We the People -- you mentioned John Turner. You
9 described him I think as a *pro se* litigant?

10 A. That was the chairman, Mr. Schultz.

11 Q. Bob Schulz?

12 A. Right. Mr. Turner was a former revenue officer out of
13 Washington state, I think.

14 Q. Mr. Schulz -- so when you say a *pro se* litigant, that means
15 he wasn't a lawyer; right?

16 A. No, he was not a lawyer.

17 Q. And you mentioned that meeting you went to in D.C. Were
18 there a lot of the big members of the movement there?

19 A. Yes.

20 Q. Larry Becraft, was he there?

21 A. Yes.

22 Q. You know who he is?

23 A. Yes.

24 Q. An attorney from Alabama?

25 A. Yes.

Lawrence Martin Birk - Cross

1 Q. Okay.

2 A. I know him.

3 Q. You're aware he's been sanctioned by the courts for making
4 frivolous tax arguments?

5 A. Amount least once.

6 Q. For arguing that the 16th Amendment was not properly
7 ratified?

8 A. I am aware of that.

9 Q. Okay. And that case is cited in that big packet that the
10 IRS sent you; isn't it?

11 A. It is.

12 Q. And you also mentioned Mr. Banister. I think you said he
13 was the IRS agent and CPA?

14 A. He was a -- yeah. He called himself a forensic CPA. He
15 was a special agent, CID agent.

16 Q. He's not a special agent anymore, is he?

17 A. No, he's not.

18 Q. He's not a CPA anymore; right?

19 A. Not that I know of.

20 Q. He was disbarred from being a CPA?

21 A. Yes.

22 Q. He was indicted criminally?

23 A. He was.

24 Q. Okay. Now, the folks that testified here, the CPAs,
25 Mr. Erikson and Mr. Whalen, haven't been indicted; right?

Lawrence Martin Birk - Cross

1 A. Not that I'm aware of.

2 Q. Still have their CPA licenses?

3 A. Yes.

4 Q. Okay. But you didn't agree with them and their
5 understanding of how the system works?

6 A. I'm -- I really didn't discuss that aspect of it. I knew
7 they were going to apply the rules as they understood them, and
8 I was okay with that.

9 Q. And so you -- you mentioned the American Rights Litigators
10 earlier.

11 A. Yes.

12 Q. And I think you said -- and correct me if I'm wrong -- you
13 hired them to do some consulting and write letters?

14 A. Correct.

15 Q. And when you say "write letters," do you mean send
16 correspondence to the IRS on your behalf?

17 A. Yes.

18 Q. So it's true that one of those folks was your power of
19 attorney --

20 A. That's correct.

21 Q. -- before the IRS?

22 A. You bet.

23 Q. And that person's name was Brian Malatesta?

24 A. That sounds right.

25 Q. And he was a CPA?

Lawrence Martin Birk - Cross

1 A. That sounds right.

2 Q. Not anymore?

3 A. That's my understanding.

4 Q. And he was enjoined by a federal court -- prevented from
5 representing folks before the IRS?

6 A. I don't know about that, but -- could be.

7 Q. He wasn't your CPA for long.

8 A. No, he wasn't. I ceased activity with that group.

9 Q. Now -- so why -- well, let me just ask you: You never
10 hired a lawyer to serve as your counsel and give you advice on
11 taxes?

12 A. I did not.

13 Q. You never pressed your case in a court?

14 A. I did not.

15 Q. Not tax court?

16 A. Not a tax court.

17 Q. Not in Article III court?

18 A. No.

19 Q. Okay. And is -- but you understand that legal
20 controversies are decided in courts; right?

21 A. Unless there is -- like the anti-injunction act that I
22 referred to previously, where you're not allowed to go to the
23 court --

24 Q. And that --

25 A. -- with a tax matter.

Lawrence Martin Birk - Cross

1 Q. But that holding was decided in a court; right? Judge
2 Kavanaugh, he's the one that said that; right?

3 A. I believe so.

4 Q. Okay. Do you understand in this country, courts are where
5 we settle legal disputes?

6 A. I agree with that.

7 Q. Okay. Not in appeals conferences or places like that?

8 A. True.

9 Q. Not on the phone with your auditor?

10 A. True.

11 Q. And isn't it true that in one of your letters you wrote --
12 that you basically said, you had no chance winning in the
13 courts.

14 A. I don't recall what letter that was, but -- it's possible
15 that I would have said something like that out of frustration.

16 Q. So does that mean that you didn't really mean it?

17 A. I'm sure when I wrote it, I did.

18 Q. So you knew when you wrote that letter that you had no
19 chance of prevailing in court?

20 A. I don't believe I had any intent to use the court at that
21 time. I was going to use the right to petition and the
22 Congress, who makes the laws, to try to resolve the matter. I
23 thought our chances were far better with the Congress.

24 Q. So you didn't -- you did not intend to use the courts?

25 A. I did not intend to use the court.

Lawrence Martin Birk - Cross

1 Q. And when you say "petition," do you mean like that letter
2 you sent to Congressman Lamborn?

3 A. No. The petition for redress itself.

4 Q. So --

5 A. All I was doing is informing him that we had done so and
6 that he had not responded.

7 Q. So why would you have said that you had no chance in court
8 and that you were going to rely on the petition process even
9 after the Supreme Court denied the We the People lawsuit?

10 A. We, first of all, I guess I was not surprised that that
11 happened. I had high hopes that we would get into the Supreme
12 Court with that issue. In fact, the appeals court, Judge
13 Rogers, wrote in her opinion that it would be interesting to
14 see how the Supreme Court would handle it, since it was a first
15 impression constitutional issue. It never had been
16 adjudicated. So that did not happen.

17 Q. Now, you just mentioned the Constitution. And correct me
18 if I'm wrong, but you testified on direct -- you said, I
19 believe the tax system is 100 percent constitutional. Was that
20 your testimony?

21 A. I believe it is, if it's properly applied. Absolutely.

22 Q. Okay. But in your testimony, you referenced Article I of
23 the Constitution?

24 A. Correct.

25 Q. First Amendment?

Lawrence Martin Birk - Cross

1 A. Correct.

2 Q. Second Amendment?

3 A. I did.

4 Q. Fifth, Ninth, and Tenth?

5 A. Sure.

6 Q. 16th?

7 A. You bet.

8 Q. So -- and in your letters you references several amendments
9 to the IRS?

10 A. Yes.

11 Q. Now, when you say that you believe the tax system is
12 100 percent constitutional -- well, let me withdraw that
13 question.

14 You know that no court has ever held the tax system
15 unconstitutional; right?

16 A. Correct.

17 Q. Would you agree that in your correspondence, however, you
18 claimed that the tax system was not constitutional?

19 A. If I said that, it was probably related to the 16th
20 Amendment issue.

21 Q. Okay. And so -- but is the answer yes --

22 A. Yes.

23 Q. -- that you said that.

24 Okay. Are you saying that your view has changed from
25 when you wrote those letters to today?

Lawrence Martin Birk - Cross

1 A. No. I think it's a matter of interpretation. I believe if
2 the tax laws are applied properly in accordance with the way
3 the tax code is written, within the boundaries of the
4 Constitution, that it is absolutely constitutional. The
5 problem is the misapplication, not the least of which is a
6 direct unapportioned tax on our income.

7 Q. When you use the words "direct" and "unapportioned," those
8 are constitutional terms, are they not?

9 A. They are.

10 Q. But you're saying your argument is not constitutional.

11 A. My argument is not constitutional? I'm not making an issue
12 out of the ratification of the 16th Amendment. I talked to
13 that earlier. I don't think it matters. I think that Supreme
14 Court cases early on address those issues and certainly I
15 believe clearly stated that it did not create some kind of a
16 new tax and that it was an indirect tax --

17 Q. Okay --

18 A. -- with proper form and subjects.

19 Q. You have said that the government violates the taxing
20 clauses of the Constitution; correct?

21 A. I believe that is what we're facing today. Yes.

22 Q. So today as you sit here, you believe the government's
23 interpretation of the tax laws is violating the taxing clause
24 of the Constitution?

25 A. Yes, I do.

Lawrence Martin Birk - Cross

1 Q. Now, this -- the views that you have, do you espouse them
2 to other folks?

3 A. Well, when I was associated with We the People, I certainly
4 did. I went to meetings. I even held meetings. I was the
5 Park County coordinator for We the People Congress.

6 Q. But today, do you try to get other people to not pay their
7 taxes?

8 A. No. I don't discuss it with anybody anymore.

9 Q. Your kids, do they pay their taxes?

10 A. They do.

11 Q. Okay. What about your clients, do you ever discuss it with
12 them?

13 A. No. I wouldn't say my clients. I may have had some
14 discussions with subcontractors, but certainly not initiated by
15 me.

16 Q. Let me ask you, you would agree that your view is an
17 outlier view?

18 A. Yes. I would say that it's not mainstream.

19 Q. It's a view on the far fringes; would you agree with me?

20 A. Perhaps you could categorize it as that.

21 Q. Let me ask you this: Besides you and your wife, do you
22 know anyone else that doesn't pay taxes?

23 A. Yes. I know quite a few people who don't.

24 Q. Even though they earn income?

25 A. Yes.

Lawrence Martin Birk - Cross

1 Q. Who?

2 A. Well, I can't divulge that. I won't do that. Why would I
3 do that? Let's just say that up where I was running my
4 business, we had a lot of subcontractors, carpenters and
5 drywall guys and roofers, they don't even have bank accounts.

6 Q. So --

7 A. They want to be paid in cash.

8 Q. So I'm asking you if you could tell us who the people that
9 you know are that don't pay taxes, even though they earn
10 income?

11 MR. HARRIS: Objection. Relevance as to the names of
12 individual people.

13 THE COURT: Response.

14 MR. MAGNANI: Your Honor, it goes to this witness's
15 credibility. He's just testified he knows many people who
16 don't pay taxes. And if he actually does, he should name them.
17 He has no privilege.

18 THE COURT: Credibility is always relevant. We start
19 in the Federal Rules of Evidence at 104(e), go quickly to Rules
20 401, 402, 403, and wind up at 611(b), just showing off. The
21 objection is overruled.

22 Sir, you shall answer the question, as long as you
23 recall it and can answer it.

24 THE WITNESS: Very well, Your Honor.

25 I know several -- I'll call them concrete flatwork

Lawrence Martin Birk - Cross

1 contractors that are outside the system.

2 *BY MR. MAGNANI:*

3 Q. I'm sorry. The question is, would you tell me the names of
4 the people you know who make income and don't pay taxes?

5 *MR. HARRIS:* I think he's trying to answer the
6 question. Maybe if Mr. Magnani gave him a chance.

7 *THE WITNESS:* Greg -- you want full names?

8 *BY MR. MAGNANI:*

9 Q. First and last names.

10 A. Greg Langendorfer is one. Oh, boy, I'm trying to remember
11 the other guy's last name.

12 Q. How do you spell the last name?

13 A. I think it's Langendorfer. L --

14 Q. Try your best.

15 A. L-A-N-G-E-N-D-O-R-F-E-R. I'm trying to remember the guys
16 that work on that crew.

17 Q. What's the name of the crew?

18 A. Oh, they're just a group of subcontractors that work for
19 many people. Bona Fide Concrete Companies. And when they need
20 help, they bring these guys in.

21 Q. So the question is, what's the name of the crew?

22 A. Of the crew?

23 Q. So, Mr. Birk, if I wanted to find these people and bring
24 them into court to ask them the same questions, how would I
25 find them?

Lawrence Martin Birk - Cross

1 A. Well, quite honestly, I have a hard time finding them
2 sometimes, up in Park County. But I'm trying to remember some
3 more names for you. I'm trying to multiplex here.

4 Q. Sir, you were on a lawsuit with over 1,000 plaintiffs
5 claiming that the tax laws were unconstitutional. Are you
6 saying that the only person that you can tell me --

7 A. That was a long time ago. And I didn't know a lot of these
8 people personally.

9 Q. So is the answer -- so here is my question: Are you
10 telling us the only person you can name is one guy who works on
11 a crew?

12 A. No. There is lots of contractors up there. In many cases,
13 I don't even know their last names.

14 Q. Okay. So it's your testimony that you can't give the name
15 of a single person, except for this one person that you've
16 named and you don't know where he works?

17 A. I don't -- well, he works at various places. I don't know
18 where he lives.

19 Q. Sir, you testified that you paid membership dues in an
20 organization; correct?

21 A. I did.

22 Q. That organization protested the tax system; correct?

23 A. I don't know if I would the use the word "protest." We
24 don't consider ourselves tax protesters.

25 Q. Sure. That organization filed a lawsuit in federal court

Lawrence Martin Birk - Cross

1 saying they don't have to pay federal taxes because of their
2 First Amendment rights to a response to their petition of
3 grievances?

4 A. That is correct.

5 Q. You worked with these people. And in working with them,
6 you placed ads in newspapers; correct?

7 A. Correct.

8 Q. You said you spent hundreds of dollars on travel; correct?

9 A. I did.

10 Q. Okay. And what you're saying now is that you don't know if
11 any of these people by their names, whether or not they pay
12 taxes on income earned in this country?

13 A. That particular group of people, no, I don't.

14 Q. So you're still sticking with, you know one person, a guy
15 on a crew?

16 A. No, I --

17 *MR. HARRIS:* Mischaracterizes his testimony. That is
18 absolutely not what he's saying.

19 *THE COURT:* Guess what? We're in luck. The jury gets
20 to determine who said what to whom and when, and we'll leave it
21 up to the jury to determine that. Whether or not counsel
22 believes it or not is irrelevant. The objection is overruled.

23 Let's move on, counsel.

24 *MR. MAGNANI:* I just -- to answer the question -- may
25 the witness answer the question?

Lawrence Martin Birk - Cross

1 *THE COURT:* Well, let's do it this way: To the extent
2 that you persist in your question, please reiterate it.

3 *MR. MAGNANI:* Sure.

4 *BY MR. MAGNANI:*

5 Q. Is it your testimony that you only know the first and last
6 name of one person who makes income in this country and doesn't
7 file tax returns?

8 A. No. That's not correct.

9 Q. So please tell us the name of the other folks.

10 A. And I don't know what their current status is, but I know
11 they've had issues with the IRS. John Dillon.

12 Q. Sort of a celebrity?

13 A. Well, he had a company named Gunsmoke Excavating.

14 Q. Are you saying that you were personal friends with him?

15 A. I wouldn't say friends. Business associates.

16 Q. Okay.

17 A. You know -- I guess I didn't come prepared to give you a
18 list of names today. But if I sat down, I could probably come
19 up with some. But -- never really thought about that. But
20 there is -- you know, the rural areas are a lot different.
21 There are a lot of people that live up there on purpose, and
22 they don't even have bank accounts.

23 Q. So you're saying, you just know some unbanked people who
24 get paid in cash, those are the only ones --

25 A. No. I like I said, I don't initiate the conversations, but

Lawrence Martin Birk - Cross

1 sometimes these people do?

2 Q. So in your travels in the We the People movement, haven't
3 you met a lot of like-minded people?

4 A. Years ago I did, yes.

5 Q. None of those people, you can't think of any of them?

6 A. Not off the top of my head.

7 Q. So --

8 A. The senior people. We talked about Joe Banister and John
9 Turner and Sherry Jackson.

10 Q. So you're talking about the senior people, some of whom we
11 talked about before?

12 A. Yes.

13 Q. And --

14 A. But I don't know what their status -- I don't know if they
15 were paying taxes or filing them. We never really discussed
16 that.

17 Q. Now, you've done a lot of legal research over the course of
18 your study in taxes; right?

19 A. I think that's a fair statement.

20 Q. I think -- you say that you do research, you get data, test
21 hypothesis --

22 A. Sure.

23 Q. Sort of pretty scientific?

24 A. Yeah.

25 Q. Okay. But you would agree that you have a bit of a

Lawrence Martin Birk - Cross

1 conflict of interest. This isn't an impartial academic study;
2 right?

3 A. I think that would probably be fair. I think most people
4 would be that way if they've come to a position where they
5 think they have an understanding of something. That doesn't
6 mean they won't consider alternatives, they won't look at that
7 information. I think I've already testified to that.

8 Q. Sure. And you have. But my question is, you would agree
9 with me that you have a bit of a conflict in this regard.

10 A. A conflict? I'm not --

11 Q. Right --

12 A. I might have a bias of some sort because of the information
13 I've seen year after year after year.

14 Q. You're not like an unbiased, impartial law professor
15 studying this as an academic issue?

16 A. Probably not. No.

17 Q. You're not aware of any law professors that have agreed
18 with your conclusions?

19 A. I don't know that I've talked to any about my conclusion.
20 Quite frankly, I was a student sitting in a class listening to
21 other people talk.

22 Q. So my question was, you're not aware of any law professors
23 that agreed with your position?

24 A. No, I'm not.

25 Q. You're not aware of any federal judges who agree with your

Lawrence Martin Birk - Cross

1 position?

2 A. The only one that comes to mind -- and I don't know if
3 Judge Fox is still in the Eastern District of North Carolina.
4 But in 2003, he had a case where during a hearing, he made a
5 comment on the record about the ratification of the 16th
6 Amendment that I thought was interesting. That if you looked
7 at the evidence, you would find that not the prerequisite
8 number of states ratified that amendment. Okay? I just
9 thought it was curious that a senior judge in a District Court
10 would make a comment like that on the record. But --

11 Q. I'll ask a different question. When I say "agree with your
12 views," I'm not talking about the 16th Amendment --

13 A. Okay.

14 Q. -- I'm talking about your views --

15 A. No. I do not know anybody.

16 Q. Just so we're clear, I need to make sure the court reporter
17 gets this --

18 A. Okay.

19 Q. Your view that folks like you in business in America don't
20 have to pay income tax, that specific view is not shared by
21 anyone on the federal bench in this country?

22 A. Not that I know of.

23 Q. Now, you also know that a lot of the folks who have been
24 affiliated with this movement have ended up in pretty bad
25 shape; right?

Lawrence Martin Birk - Cross

1 A. I'm aware of some of that, yes.

2 Q. Some folks have been indicted?

3 A. Yes.

4 Q. Some folks been convicted?

5 A. Yes.

6 Q. Some folks gone to prison?

7 A. Yes.

8 Q. In your study, did you ever study those cases of those
9 people?

10 A. The ones that I spent the most time on were the acquittals.

11 Q. So let me ask you this: Looking at those acquittals, did
12 you ever look at the jury instructions in those cases?

13 A. I did.

14 Q. So did you look at the way the judge instructed the juries
15 on the law in those cases?

16 A. I did.

17 Q. Did any judge in any of those cases ever tell the jury that
18 your view of the law was a correct one?

19 A. No. It -- in the instructions, it had more to do with what
20 I believed the law is.

21 Q. And so the -- so you do understand that the instruction is
22 about what you believe the law is?

23 A. Correct.

24 Q. Okay. And you also read instructions in those cases that a
25 belief that the law is unconstitutional is not a good faith

Lawrence Martin Birk - Redirect

1 defense?

2 A. I'm not sure I'm making that claim, that it's
3 unconstitutional.

4 Q. I'm sorry. I'll repeat the question. Did you read
5 instructions in criminal cases -- judges instructing juries --
6 that a belief that the law is unconstitutional does not
7 constitute a good faith defense?

8 A. I believe that's correct.

9 Q. And that's why you are 100 percent not making a
10 constitutional argument; isn't that right?

11 A. No, not from that perspective. I think that it's my
12 understanding of the law of the Constitution and the Supreme
13 Court cases, that's why I'm making that statement.

14 *MR. MAGNANI:* Very well, Mr. Birk. Thank you.

15 *THE WITNESS:* You bet.

16 *THE COURT:* Mr. Harris, redirect examination?

17 *MR. HARRIS:* Yes. If I could have a moment?

18 *THE COURT:* And you may, of course. Thank you.

19 Stand and stretch if you're quick, ladies and
20 gentlemen of the jury.

21 **REDIRECT EXAMINATION**

22 *BY MR. HARRIS:*

23 Q. Couple of questions, following up on what Mr. Magnani was
24 asking you in different areas.

25 So I want to make sure that you're clear on what he

Lawrence Martin Birk - Redirect

1 was asking you, because I wasn't at times, with respect to
2 people who don't pay taxes that you may know. So let me, with
3 that introduction, introduce this topic.

4 It's fair to say, isn't it, that over periods of time,
5 you knew plenty of people who didn't pay taxes; right?

6 A. Over periods of time; correct.

7 Q. People in the tax honesty movement; correct?

8 A. Correct.

9 Q. People at We the People; right?

10 A. Correct.

11 Q. Other people here and there that you would come into
12 contact with through your study and associations; correct?

13 A. Correct.

14 Q. He asked you, however, two distinct questions that at times
15 I believe were conflated. I want to know, do you think that
16 those questions sometimes merged together? Do you think that
17 sometimes he was asking --

18 *MR. MAGNANI:* Objection, Your Honor.

19 *MR. HARRIS:* I'll ask it differently.

20 *MR. MAGNANI:* Counsel is testifying.

21 *THE COURT:* Well, we've got a part of the question;
22 we've got an objection; we've got an offer to rephrase. I'm
23 going to make it easy on myself and allow counsel to rephrase.
24 That moots the objection; obviates the necessity for my ruling;
25 I'm off the hook.

Lawrence Martin Birk - Redirect

1 You may ask your next question, counsel.

2 *MR. HARRIS:* Thank you, Your Honor.

3 *BY MR. HARRIS:*

4 *Q.* Did you fully understand his question as referring to one
5 or another of the two groups, people you've known generally and
6 people you know now in Park County?

7 *A.* I -- I think he was just testing me to know if I could list
8 a group -- bunch of people by name, which made me very
9 uncomfortable, quite frankly.

10 *Q.* Why?

11 *A.* Well, I don't think that it's proper to name other people
12 by name that -- you know, I'm not sure what their current
13 situation is. Maybe they're already engaged with the IRS too.
14 I don't know. Maybe they've left the area. Maybe they've
15 died, for that matter, because this goes back 20 years.

16 *Q.* Okay. Have you spent a whole lot of time other than in the
17 last few minutes wracking your brain to figure out who you know
18 who pays taxes and who you know who doesn't?

19 *A.* Not really, no.

20 *Q.* That hasn't been a big focus of your attention; right?

21 *A.* Not at all, really.

22 *Q.* You've got your own tax problems?

23 *A.* That's correct.

24 *Q.* Law professors, judges, other people, you're aware of
25 plenty of people besides law professors and judges that don't

Lawrence Martin Birk - Redirect

1 endorse your view of the law; right?

2 A. Yes. My own family.

3 Q. Does it mean you're wrong?

4 A. I don't think so.

5 Q. Has it given you pause to think, though, over time as to
6 whether you might be wrong?

7 A. No, not really.

8 Q. Why?

9 A. Well, I think people have a variety of opinions about
10 things; and how they form those opinions is also varied. I
11 don't think it's my role to try to correct them. I learned a
12 lesson in graduate school about, you know, phases of truth.
13 You know, you start out with disbelief. Somebody will look at
14 you and say, that can't be true because -- I would know about
15 it. And then they would ridicule you, you don't believe that,
16 really. Then they get angry about it, say, if you don't stop
17 that, you're going to get in trouble. And the last one is
18 acceptance, because now the truth has manifested itself. You
19 know, are there lessons there in dealing with people? Yes.

20 Q. Are you familiar with a guy named Galileo?

21 A. I am.

22 Q. Did he hold an unconventional belief?

23 A. Very much so.

24 Q. Mr. Magnani talked about some statement, no chance in
25 court. Do you know what document he was referring to that he's

Lawrence Martin Birk - Redirect

1 quoting from?

2 A. Not off the top of my head.

3 Q. Do you believe that whether or not you had a chance in
4 court, that -- well, let me put it differently.

5 Would your view concerning whether or not you had a
6 chance in court affect your understanding of the law?

7 A. No. I don't think so.

8 Q. Just a few loose ends.

9 Vehicle taxes, you were okay paying those; right?

10 A. Yes. I think those are valid constitutional taxes at the
11 federal and the state levels, depending on what kind of tax
12 you're paying. I've never been involved in things like
13 commercial trucking or things that have DOT requirements, but I
14 do know a lot of people that do.

15 Q. If we had a national sales tax, would you be okay paying
16 that?

17 A. Well, I think from the standpoint of a valid indirect tax
18 and a proper form and subject, yes, I would.

19 Q. Colorado taxes. I just want to make sure we all understand
20 your position. Colorado state income taxes, what's your
21 concern with respect to those.

22 A. I don't have a concern. I have an understanding of what
23 the revised statute says --

24 Q. That's --

25 A. -- and how it works.

Lawrence Martin Birk - Redirect

1 Q. That's a better way to put it. What's that understanding?

2 A. It's basically a piggyback tax. It starts right in the
3 statute in the first line, it talks about your federal adjusted
4 gross income. So you start with the federal tax liability.

5 Q. So if you start -- so garbage in, garbage out?

6 A. Basically.

7 MR. HARRIS: If I could have a moment.

8 THE COURT: You may, counsel. Thank you.

9 MR. HARRIS: I have no further questions.

10 THE COURT: Very well.

11 Mr. Birk, once again, you may stand down and return to
12 your seat.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 * * * * *

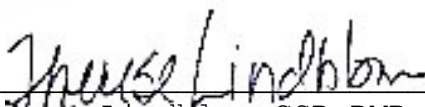
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23 REPORTER'S CERTIFICATE

24 I certify that the foregoing is a correct transcript
25 from the record of proceedings in the above-entitled matter.

26 Dated at Denver, Colorado, this 9th day of August,
27 2019.

28 
29 Therese Lindblom, CSR, RMR, CRR