

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

1 UNITED STATES OF AMERICA,) Case No. A04-0025-CR (JKS)
 2)
 3 Plaintiff,) Anchorage, Alaska
 4) Friday, June 25, 2004
 5 vs.) 9:02 a.m.
 6 JOHN THOMAS HARPOLE,) TRIAL BY JURY - DAY 5
 7 Defendant.)

PARTIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JAMES K. SINGLETON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 that was sent to Mr. Harpole on February the 25th of 1998. And
2 that letter at the bottom, you know, just for the Court to kind
3 of see real quick -- it says down here at the bottom of the
4 second page "publication 1."

5 Now Mr. Bradley made the contention that, you know,
6 that publication 1 is this document right here.

7 MR. BRADLEY: No.

8 MR. BECRAFT: Well -- well, they've offered it for
9 that, I guess.

10 MR. BRADLEY: No, we haven't. I just -- I don't
11 have -- this is publication 1.

12 THE COURT: Yeah. I'm not sure -- I feel like I came
13 into the movie kind of in the middle and I'm not -- I'm not
14 seeing everything.

15 MR. BECRAFT: Okay.

16 MR. BRADLEY: This one is publication 2105. This was
17 mentioned --

18 MR. BECRAFT: Oh.

19 MR. BRADLEY: -- in -- in both 2-19 and 2-20. This is
20 publication 1, which was mentioned in most of the
21 correspondence. I think it's pretty typical that they send
22 this out. And it does mention (indiscernible - simultaneous
23 speech).

24 MR. BECRAFT: I just wanted to -- yeah, I wanted to
25 move the Court since -- I was provided this publication on

1 Wednesday afternoon. I looked at it, didn't have any
2 objections to it. Then yesterday, we got a copy of it and last
3 night we, for the first time, dug out our copy of publication
4 1. What I'd like to do is have the opportunity to just reopen
5 the defense for the purpose of reintroducing what it called
6 publication number 1.

7 THE COURT: Do you have any objection, Mr. Bradley?

8 MR. BRADLEY: No, Your Honor.

9 THE COURT: Okay.

10 MR. BECRAFT: Or -- or a stipulation?

11 MR. BRADLEY: It's publication 1. It --

12 MR. BECRAFT: All right.

13 MR. BRADLEY: It was in effect in 1999, which is
14 probably at least one of the ones that he received.

15 MR. BECRAFT: Well, I'll just -- I'll offer it
16 pursuant to a stipulation, Your Honor, then we'll close, if
17 that's all right.

18 THE COURT: Is -- will you stipulate to its
19 admissibility?

20 MR. BRADLEY: I will.

21 THE COURT: Very well.

22 MR. BECRAFT: Good enough.

23 THE COURT: Okay.

24 MR. BECRAFT: Thank you, Your Honor.

25 THE COURT: And then just so we don't get lost, I know

1 what you just did but the jury doesn't, so somebody's going to
2 have to, you know --

3 MR. BECRAFT: I'll take care of it, Your Honor.

4 THE COURT: All right. Okay. So we're -- we're
5 raring to go, then. And I don't want to infringe upon your
6 oral argument preparation time too much, but I do want to go
7 over, briefly, the final jury instructions. Before I do that,
8 however, I wanted to let you know how I intend to proceed. My
9 practice is to leave the preliminary jury instructions with the
10 jury during final argument and then at the completion of final
11 argument, collect them and substitute for them the final *jury*
12 instructions so that the jurors can read along with me as we go
13 forward.

14 Now in -- as -- as I mentioned yesterday, both to you
15 and to the jury, there is an error in preliminary Jury
16 Instruction No. 3, which reads, basically:

17 "I shall discuss with you briefly the law related to
18 each of these elements. An act is done knowingly if
19 the defendant is aware of the act and does not act or
20 fail to act through ignorance, mistake or accident."

21 So far, so good. The next sentence says:

22 "The government is not required to prove that the
23 defendant knew that his acts or omissions were
24 unlawful."

25 That's inappropriate in a tax case. So I propose --

1 and I mentioned to the jury yesterday I was going to identify
2 the instruction and ask them just to line that out. I propose
3 to do that before final argument. Okay. And of course, as you
4 can see from the final jury instructions, that sentence is not
5 in the final jury instructions.

6 Okay. Mr. Bradley, does the government have any
7 objections, corrections, suggestions with regard to the final
8 jury instructions?

9 MR. BRADLEY: Your Honor, with the correction, which I
10 had spotted prior to trial but didn't bring to the Court's
11 attention, they seem to be fine. The only additional proposed
12 instruction I have is government's proposed Instruction No. 9,
13 which I believe I've provided you and -- and your law clerk,
14 and to the defense. There was an issue that came up -- I'm not
15 sure if it's going to be argued or be something that's
16 confusing for the -- the jury, but there were 1997, 1998 and
17 1999 1040 forms sent in delinquent by the defendant in July
18 of 2000.

19 I just want to make sure that the jury understands
20 that those are not tax returns that would somehow negate the
21 crime of failure to file for the years 1997, '98 and '99, for
22 two reasons. Number one, they weren't timely. Those crimes
23 were complete on April 15th of the year filing. Number two,
24 they're not really tax returns. They have asterisks on them
25 and they're not sufficient to qualify as a tax return. And I

1 just want to make sure the jury isn't getting back there going,
2 'Well, look, we got 1997 tax returns, so he can't be guilty of
3 failure to file.'

4 THE COURT: Okay. A couple of questions. The parties
5 are in agreement, are they not, that the failure to file counts
6 are lesser-included counts of the evasion?

7 MR. BRADLEY: No, sir. We address that in our
8 objection to the -- the -- the defendant's proposed jury
9 instructions. We don't believe that it's a lesser-included
10 offense.

11 THE COURT: Now my understanding was, you said that it
12 was your position that they were. My understanding was that --
13 that the defense asked the Court to give lesser-included
14 offense instructions. The government came back in its
15 memorandum regarding the defendant's proposed instructions and
16 said that issue is moot because in this case, the defendant was
17 charged with failing to file.

18 MR. BRADLEY: Yes, Your Honor.

19 THE COURT: And because he was charged with failing to
20 file, the jury is going to respond to -- to each of those --
21 those points.

22 MR. BRADLEY: That's correct. It's the Department of
23 Justice's position that the elements test of Schmuck vs. United
24 States does not make failure to file a lesser-included offense
25 of evasion.

1 THE COURT: All right.

2 MR. BRADLEY: Although the Ninth Circuit in Boone did
3 say what may -- what may be dicta or what may be not because it
4 wasn't really that germane to the decision, but does make the
5 quote:

6 The misdemeanor of willful failure to file an income
7 tax return is a lesser-included offense of the felony
8 of willful attempt to evade or defeat income taxes."
9 However, I'm required by Department of Justice policy to take
10 the position that the Ninth Circuit is in error.

11 THE COURT: Well, that -- many, many people take that
12 position, but -- but only --

13 (Laughter)

14 MR. BRADLEY: The Supreme Court quite often takes that
15 position.

16 THE COURT: Only one group of nine men and women are
17 in a position to do anything about it and, clearly, this lowly
18 court is not. All right. So irrespective of the Department of
19 Justice's position, it is the position of the parties under the
20 Ninth Circuit that if Mr. Harpole is convicted of all 12
21 counts, the failure to file essentially falls out and he would
22 only be sentenced on the evasion.

23 MR. BRADLEY: I think in a post-guidelines world, that
24 probably -- given that there's, you know, six counts of evasion
25 and six counts of failure to file, the statutory maximums would

1 far exceed any guideline calculation. So it's probably nothing
2 the Court would have to --

3 THE COURT: All right.

4 MR. BRADLEY: -- really address.

5 THE COURT: Now I'm not asking you to comment on what
6 might be an academic question. However, there is a potential
7 for inconsistent verdicts if, assuming for the moment that the
8 Ninth Circuit is correct, if Mr. Harpole is acquitted of some
9 counts and convicted of others. I don't want to get into that
10 now because I haven't thought -- thought through the
11 interrelationship between all of them. But the practice in the
12 Ninth Circuit is, as I understand it, that a party waives
13 claims of inconsistency if they don't raise them before the
14 jury is discharged. Now there is a series of U.S. Supreme
15 Court decisions that say jurors can act inconsistently in some
16 circumstances.

17 But what I would like to do is, before I discharge the
18 jury, allow coun- -- I'll xerox copies of the verdict form and
19 allow counsel to review the xeroxed forms for potential
20 inconsistency, and then we'll take that up before I discharge
21 the jury.

22 MR. BRADLEY: That'll work.

23 THE COURT: Okay. Mr. Becraft, what -- what is your
24 position on Government's Instruction No. 9, or proposed 9?

25 MR. BECRAFT: They've offered one and we've offered

1 one, Your Honor. And in light of --

2 THE COURT: Did you recently offer one or --

3 MR. BECRAFT: I thought it was -- let me -- I thought
4 I had a --

5 THE COURT: Yeah, I think I left the -- I left my set
6 of previously proposed jury instructions back. But -- well --

7 MR. BECRAFT: I only have a few that I have offered
8 that I'd be making arguments about, Your Honor.

9 THE COURT: Okay.

10 MR. BECRAFT: There would be one that would address
11 that issue.

12 THE COURT: All right. Okay. Well, then I best go
13 get those. This proposed, Mr. Bradley, is your paraphrase
14 of -- of some cases. It is not a Devitt and Blackmore or a
15 Ninth Circuit pattern?

16 MR. BRADLEY: That's right. These are just taken from
17 these cases that were addressed in a paragraph in our trial
18 brief.

19 THE COURT: Okay. Well, let me -- let me go get my
20 set of the parties' instructions, which I -- I think I
21 mistakenly left in --

22 MR. BECRAFT: Your Honor, I can hand you mine.

23 THE COURT: Huh?

24 MR. BECRAFT: I can hand you mine.

25 THE COURT: Okay.

1 MR. BECRAFT: Okay. If I can approach the Court.

2 THE COURT: Sure.

3 MR. BECRAFT: My 28 was the one I was talking about.

4 THE COURT: Okay.

5 (Side conversing)

6 THE COURT: Okay. What about defendant's number 28,
7 Mr. Bradley?

8 MR. BRADLEY: Well, that is one that I did not object
9 to in my -- when I was objecting to most of the others in my
10 14-page motion in limine. It appears to be -

11 THE COURT: Does it cover the concerns you have in
12 your proposed number 9?

13 MR. BRADLEY: The only thing I would add to it is that
14 it be timely filed, for purposes of this -- for purposes of
15 this -- of filing a timely return. But -- but that --

16 THE COURT: All right. So -- so your suggestion is
17 that we should give defendant's number 28 and interlineate as
18 follows. The instruction currently provides:

19 "In order for a document to qualify as an income tax
20 return: (1)" -

21 And you want to put in there, "it must be timely filed"?

22 MR. BRADLEY: Yes.

23 THE COURT: And then -- and then continue on
24 renumbering?

25 MR. BRADLEY: I mean, I like my proposed one better

1 just because it gives more detail about what a return is and
2 what a return isn't.

3 THE COURT: Well, I think I'm going to give -- give
4 the defendant's. I'm troubled about the -- you certainly can
5 argue about the zeroes, to the extent you already have. But
6 I -- I think I'll go ahead and -- and give the -- the defense
7 version.

8 MR. BRADLEY: I think it's an accurate statement of
9 the law.

10 THE COURT: And that -- that covers the government's
11 concerns. So then, Mr. Becraft, what additional instructions
12 are you concerned about?

13 MR. BECRAFT: Your Honor, I wrote them on the front
14 page of mine.

15 THE COURT: Okay.

16 MR. BECRAFT: If I could have them back, I could

17 THE COURT: Yeah.

18 MR. BECRAFT: Give me the numbers.

19 THE COURT: No, you have. Let me --

20 MR. BECRAFT: I'm sorry to --

21 MR. BRADLEY: You can have my copy.

22 THE COURT: No, that's all right. I'm -- I'm covered.
23 I'm going to go get mine because I want -- okay.

24 MR. BECRAFT: Thank you, Judge.

25 (Side conversing)

1 THE COURT: Yeah, we can -- we'll be able to go
2 through these pretty -- pretty quickly. We'll be able to go
3 through these pretty quickly.

4 THE CLERK: Off record.

5 (Court recessed at 9:18 a.m., until 9:21 a.m.)

6 (Jury out)

7 THE CLERK: All rise. His Honor the Court, the United
8 States District Court is again in session.

9 THE COURT: Okay. So the defendant's proposed Jury
10 Instruction No. 28, modified by stipulation of the parties to
11 include the sentence, "It must be timely filed," will be given,
12 and it will be placed in the packet of final jury instructions,
13 between current Instruction No. 5 and Instruction No. 6. So it
14 will be the new 6. Very well. Mr. Becraft --

15 MR. BECRAFT: May it please the Court. I have no
16 objections to the Court's instructions, with this one
17 exception. You know, the Court, when he came on the bench this
18 morning, we've got this problem about lesser-included. And of
19 course, the defense has requested through its requested
20 Instruction No. 4, a lesser-included instruction.

21 Now our position is, is that as charged in the
22 indictment, if you take a look at the evasion counts in the
23 indictment, you know, it really charges, in essence, a
24 lesser-included offense. And then if you base this case based
25 upon the evidence, take a look at the evidence in this case and

1 see what the government has proven, you know, still the failure
2 to file counts are the lesser-included. So, you know, we still
3 have this problem.

4 I'd like to have the Court at least modify the
5 instructions to at least add this one clause, that the jury
6 cannot convict -- this is in my requested Instruction 4. I
7 realize that the government charged the evasion counts and the
8 failure to file counts, which -- which has happened. However,
9 I'm not -- my lesser-included is 6. I'm sorry, Your Honor.

10 THE COURT: Yes. Okay.

11 MR. BECRAFT: You know, on the failure to file counts
12 and how we resolve this issue of presenting this case that's
13 charged both evasion and failure to file, and how we deal with
14 this issue of presenting it to the jury, I think under the
15 circumstances, we should at least instruct the jury or modify
16 the -- the current instructions to say that the defendant can't
17 be convicted, you know, this last clause on number 6 of the
18 defense:

19 "You cannot convict the defendant for both tax evasion
20 and willful failure to file federal income tax returns
21 for the same tax period."

22 So that would give them the alternative to choose, you know,
23 either the greater offense or the lesser-included offense.

24 THE COURT: Mm hmm (affirmative). And Mr. Bradley,
25 you're -- the question I'm putting to you is not what is the

1 position of the Department of Justice, but what do you
2 understand to be the position of the Ninth Circuit on this?

3 MR. BRADLEY: I think the position of the Ninth
4 Circuit's irrelevant because the crimes are charged separately
5 and we can cross the inconsistent verdicts bridge when we -
6 when we get to it. If they convict him on the failure to file
7 and acquit him on the evasion, then, you know, it's basically a
8 lesser-included. At this point, we've charged him separately
9 with the -- and -- and by doing that, there's certainly no --

10 THE COURT: What if --

11 MR. BRADLEY: It's -- it's certainly not multiplicitious
12 to do so under the case law.

13 THE COURT: What if they convict him on the evasion
14 and acquit him on the failure to file?

15 MR. BRADLEY: Under Supreme Court positions, the --
16 because there's -- under Blockburger or the other elements
17 test, strict elements test, it is not a -- and I believe that
18 would be the case of first impression that the -- the courts
19 would have to address as to whether it is -- does fall under a
20 strict elements test or not, because the element of failure to
21 file -- 7203 does not have an element of an affirmative act of
22 evasion, and 7201 does not have an element of failure to file a
23 return.

24 Now I think it's pretty clear that failure to pay, an
25 evasion of payment, failure to pay is a -- which is also

1 another way that 7203 can be violated -- would be. But he's
2 not charged with failure to pay under 7203, simply with failure
3 to file. I think seventy- -- I think failure to pay under 7203
4 is a lesser-included offense of evasion of payment under 7201.
5 But that's not what's charged here. I think the -

6 THE COURT: And you're not asking for a lesser -- for
7 that lesser; is that correct?

8 MR. BRADLEY: No, sir.

9 THE COURT: Well, Mr. Becraft, you're not asking for
10 that lesser?

11 MR. BECRAFT: No, Your Honor.

12 THE COURT: Okay. All right. I'm going to leave the
13 instructions as they are, but I -- I think -- and I definitely
14 am not going to excuse the jury until counsel have had an
15 opportunity to thoroughly review the verdict forms. Of course,
16 if -- if Mr. Harpole is acquitted of everything, your review of
17 the verdict forms is going to be short.

18 (Side conversing)

19 THE COURT: But yeah, I -- I think this is -- I'm
20 going to have to go back and re-read Boone, and -- and I'd also
21 like to re-read Buckley, which is the Fifth Circuit case, on
22 this. And then from them on, Mr. Becraft?

23 MR. BECRAFT: Yes, Your Honor. The remaining -- let
24 me, if I could, I'll just tell you where the -- we've addressed
25 my requested Instruction 6. The remaining requested

1 instructions that I would like to have included is defense --
2 requested Instructions 4, 16, 18, 19, 20 -- 28 we've
3 addressed -- and 32. 4 deals with something that I think is
4 important for this case. I don't think it's the -- the concept
5 is addressed in the instructions that the Court has provided.
6 4 is just something real simple, you know, that affirmative
7 acts are required for evasion and acts or omissions such as
8 failing to file returns, to keep records, failure to report or
9 failure to pay are not affirmative acts of evasion. And I
10 think that's important in this particular case, especially
11 considering the way that the evasion counts were charged along
12 with the proof that's been offered during trial.

13 16 is, you know, Mr. Harpole mentioned the case of
14 United States against Bishop in his testimony. The evidence in
15 this case shows that he relied upon supreme court decisions.
16 You know, I think that under the facts of this case, the theory
17 of the defense jury instruction should include number 16, you
18 know, which is the concept in Bishop, you know, that you ask
19 the courts to render opinions and people can rely upon them.

20 That is kind of similar also -- Your Honor, if I may
21 just skip over one to 32, a similar concept. You know, the --
22 the cases that I mentioned in the footnote of that
23 instruction -- and this is also covered in the trial brief.
24 There's a lengthy section in my trial brief that addresses this
25 issue. But I think the concept of, you know, people reading

1 the law or reading government documents and relying upon them
2 has a direct relationship to the issue of willfulness. And
3 it's a -- it's a concept that is accepted by the courts, you
4 know, you can rely upon what the government has to say. And I
5 will tell the Court, you know, that in closing, that's a
6 concept that I'm going to be dealing with.

7 THE COURT: Sure.

8 MR. BECRAFT: And --

9 THE COURT: You can argue that.

10 MR. BECRAFT: Yeah. But, you know, I may argue --

11 THE COURT: Well, yeah, but the -- the Ninth
12 Circuit -- that's why I distributed to the parties prior to
13 opening statements an instruction drafted to meet what the
14 Ninth Circuit calls entrapment by estoppel. And -- and
15 they've -- and that is the Ninth Circuit's take on the Raley
16 (ph) case, Cox vs. Louisiana and Lowe. And defense indicated,
17 'No, we're not relying on that theory.' Because that -- that
18 theory requires the defendant to undertake a burden. And so --
19 okay. So I -- you may go on.

20 MR. BECRAFT: All right. And then I'd direct the
21 Court's attention to proposed defense Instruction No. 18. Real
22 simple. In this case, the defendant's not presumed to know the
23 law. And there are cases that support that, and I think that
24 that's definitely something that, you know, the Court kind of
25 touches upon it in the willfulness instruction, the Court's

1 willfulness instruction, but I think that it requires also a
2 specific mention, you know, that in tax cases, you know, the
3 defendant isn't presumed to know the law.

4 THE COURT: Very well.

5 MR. BECRAFT: And I believe that's it, Your Honor.

6 THE COURT: Okay. With regard to defendant's
7 requested Instruction No. 4, Mr. Bradley, should the Court not
8 include in Instruction No. 2, where it sets out the elements of
9 the offense -- and I'm directing your attention now to that
10 part of Instruction No. 2 that addresses Counts I through VI
11 and list the elements one through four -- should the Court not
12 put in a sentence after item four but before the sentence -
13 the paragraph that begins, "The defendant is charged in Count
14 VII to XII":

15 "Failing to file tax returns, failing to keep records,
16 failing to report and failing to pay income taxes are
17 not affirmative acts or acts of commission."

18 MR. BRADLEY: It's an accurate statement of the law.
19 I would add in the -- in between -- after "failure to pay
20 income taxes," comma, "absent more," comma, "are not
21 affirmative acts of commission."

22 THE COURT: You agree?

23 MR. BECRAFT: Sounds pretty good to me, Your Honor.

24 THE COURT: All right. So we'll -- we'll just take
25 the second sentence of your proposed number 4 and just say:

1 "Failing to file tax returns, failing to keep records,
2 failing to report and failing to pay income taxes,
3 standing alone, are not affirmative acts."

4 MR. BRADLEY: Yes, sir.

5 THE COURT: "Are not an affirmative attempt to evade
6 or defeat an income tax." Okay. I wanted to parallel with
7 what's -- what's there already. Very well. We'll give that.
8 Okay. I'll make those changes, then. I think as to -- to the
9 other proposals by the defense, I think they are covered by the
10 existing instructions and you certainly are free -- free to
11 argue those points. And I'm going to leave the -- I'm not
12 going to specifically address lesser-included, but I -- I will
13 certainly, depending on what the jury does, hear further
14 argument on -- on whether there is a conflict between the
15 sentencing.

16 And of course, as you know from yesterday's U.S.
17 Supreme Court decision, if we ever get to sentencing -- and I'm
18 not suggesting we will -- we're going to have to go back and
19 figure out where we're going. Court will stand at ease.

20 THE CLERK: All rise.

21 THE COURT: And I'll see you all back at 10 o'clock.

22 THE CLERK: Court stands at ease until 10 a.m.

23 (Court recessed at 9:34 a.m., until 10:03 a.m.)

24 (Jury out)

25 THE CLERK: All rise. His Honor the Court, the United

1 States District Court is again in session. Please be seated.

2 THE COURT: Very well. Okay. The -- my Clerk is in
3 the process of getting jury instructions typed up for the jury.
4 A couple of things I wanted to mention before we begin final
5 argument. First of all, I don't like to break during final
6 argument. So that might be exhausting for the jury, but
7 counsel have indicated that they're going to take approximately
8 45 minutes on a side, so an hour and a half without a break
9 shouldn't bother them. So my plan would be to go through final
10 argument, take a break, pass out -- retrieve the preliminary
11 jury instructions, pass out the final jury instructions, and
12 then go ahead and read the final jury instructions.

13 Secondly, it is not my practice, at least for the last
14 10 years, to send the indictment to the jury. My -- my concern
15 is that frequently, the way indictments are -- are drafted,
16 they're more confusing than helpful.

17 (Side conversing)

18 THE COURT: So what I tend to do is -- no reflection,
19 of course, on pride of authorship in the U.S. Attorney's
20 Office -- but I just feel that we're better off using the jury
21 instructions, setting out the elements for the jury to find.
22 And that's the practice. So I didn't want counsel to lead the
23 jury to believe that they were going to get physical possession
24 of the indictment.

25 While it's not particularly germane, I -- I should

1 probably point out, too, that I don't like to include verbatim
2 excerpts from statutes in jury instructions. I've prepared a
3 pull-out of the instruction of the statute's elements and then
4 instruct on the elements. So that's where we're going to go.

5 Now counsel may have already cited these cases to me
6 and, if you did, I apologize. But on the question of
7 lesser-included, greater offenses, I would like counsel to just
8 jot down citations to U.S. v. Nichols, 9 F.3d 1420, and U.S.
9 vs. Foster, 789 F.2d 457. And those may or may not become
10 important later on as we proceed.

11 Madame Clerk, you may bring in the jury.

12 MR. BECRAFT: When we start, Your Honor, may I reopen
13 just for the purpose of --

14 THE COURT: Certainly.

15 MR. BECRAFT: All right.

16 (Pause as Madame Clerk summons the jury)

17 (Side conversing)

18 THE COURT: Counsel have gone over the exhibits to
19 make sure that what is in is in and what is out is out, and
20 everyone is in agreement on that?

21 MR. BECRAFT: I kept my list. I think we could do it
22 real quick. We didn't do it, Your Honor, but --

23 THE COURT: Okay. All right.

24 (Jury in at 10:07 a.m.)

25 THE COURT: You may be seated. The record will

1 reflect all members of the jury are present. Ladies and
2 gentlemen, yesterday I indicated to you that I wanted to modify
3 one of the preliminary jury instructions. I told you what the
4 modification was, but I didn't tell you what the jury
5 instruction was. It's preliminary Jury Instruction No. 3.
6 Preliminary Jury Instruction No. 3 currently reads:

7 "I shall discuss with you briefly the law relating to
8 each of these elements. An act is done knowingly if
9 the defendant is aware of the act and does not act or
10 fail to act through ignorance, mistake or accident."

11 Now it's the next sentence that I ask you to line through and
12 put your initials next to -- next to the line. That sentence
13 reads:

14 "The government is not required to prove that the
15 defendant knew that his acts or omissions were
16 unlawful."

17 As I mentioned to you yesterday, that's true of some
18 offenses, but not this one. So in this one, part of the
19 government's duty to -- or responsibility or requirement to
20 negate good faith in order to prove willfulness would require
21 them to prove that the defendant knew that his acts or
22 omissions were unlawful, were not in conformity with law.
23 So -- so that is out.

24 As I understand it, counsel, you wish to reopen
25 briefly?

1 MR. BECRAFT: Yes, Your Honor, briefly. Pursuant to a
2 stipulation by the parties, the defense would like to offer
3 publication number 1, marked as Defense Exhibit No. RR. That's
4 it.

5 (Defendant's Exhibit RR identified)

6 MR. BRADLEY: No objection.

7 THE COURT: And that is agreeable?

8 MR. BRADLEY: Yes, sir.

9 THE COURT: Very well. Then Defense Exhibit RR is
10 admitted. Would counsel approach the Clerk and make sure that
11 your respective exhibit lists and hers are in conformity? That
12 shouldn't take more than a second or two.

13 (Defendant's Exhibit RR admitted)

14 (Side conversing)

15 THE COURT: During -- during final argument, counsel
16 will often refer to exhibits and I want to make sure that each
17 of their lists of what is admitted and what is not admitted are
18 in conformity. So if there's any problem about that, I like to
19 clear it up before final argument to avoid any confusion.

20 (Pause - side conversing)

21 THE COURT: We are truly having outstanding weather.
22 I understand men and women in Juneau and Ketchikan are
23 wandering around dazed, wondering what all this bright stuff
24 is.

25 (Laughter)

1 THE COURT: I was trying a case down in Ketchikan a
2 few weeks ago, and men and women were saying that for the first
3 time in -- in their memory, water is being rationed in
4 Ketchikan. A lot of people apparently rely on catchments, you
5 know, water off the roof. And of course, there hasn't been
6 any. So this may -- may well be a unique year, I hope,
7 unless -- unless there's more to this global warming business
8 than I know.

9 Mr. Bradley, is the prosecution intending to call any
10 rebuttal witnesses?

11 MR. BRADLEY: No, Your Honor.

12 THE COURT: You rest?

13 MR. BRADLEY: We rest.

14 THE COURT: Very well. And defense rests?

15 MR. BECRAFT: Yes, Your Honor. Could I briefly, for
16 the record, renew a motion, Rule 29, same grounds.

17 THE COURT: Same grounds.

18 MR. BECRAFT: Okay.

19 THE COURT: Very well. Is the government ready to
20 proceed, Mr. Bradley?

21 MR. BRADLEY: Yes, sir.

22 THE COURT: Is the defense ready to proceed, Mr.
23 Becraft?

24 MR. BECRAFT: Yes, sir.

25 THE COURT: All right. Ladies and gentlemen, both

1 sides have rested. You've heard all of the evidence. The next
2 order of business is for counsel to make their final arguments
3 to you. And counsel, in light of the number of -- of exhibits,
4 have requested 45 minutes on a side. So that will be roughly
5 an hour and a half. I don't like to break in the middle of
6 argument, so what I propose to do is allow counsel to make
7 their final arguments to you. Then we'll break and take a
8 brief recess.

9 When we get back from the recess, I'll collect the
10 preliminary instructions and substitute for them the final
11 instructions. Each of you will have a set of final
12 instructions to read along with the Court.

13 Final argument is not evidence. The evidence has
14 already been completed. The evidence consists of what the
15 witnesses have testified to and the exhibits that have been
16 admitted into evidence. If counsel's recollection of a fact
17 differs from your recollection, you should, of course, rely on
18 your own recollection because you are the sole judges of the
19 facts. On the other hand, counsel have lived with this case
20 for some time. They're highly competent lawyers and I'm sure
21 their arguments will be very helpful in organizing for you
22 those contentions and those issues which, in counsel's
23 estimation, are most important for your evaluation.

24 Bear in mind, of course, that you must consider all of
25 the jury instructions and make -- reach conclusions regarding

1 all of the elements, even if counsel do not emphasize an
2 element in their final arguments. But again, counsel's
3 arguments can be very helpful to you in organizing the evidence
4 and helping you to -- to see how you should approach this case.
5 So I hope you'll give counsel the same patience and
6 consideration that you've extended to the Court and the
7 witnesses during the course of the trial.

8 Mr. Bradley, you may make your opening statement.
9 Because the government has the burden of proof and the
10 defendant has no burden to offer any evidence or present any --
11 any evidence, the government is allowed to both open and close
12 the argument. So Mr. Bradley will split his 45 minutes in some
13 manner suitable to him. Mr. Becraft, on behalf of the defense,
14 will then give his argument, taking as much of the 45 minutes
15 as he wishes. You may proceed, Mr. Bradley.

16 MR. BRADLEY : Thank you, Your Honor.

17 OPENING ARGUMENT BY PLAINTIFF

18 MR. BRADLEY: May it please the Court, Mr. Becraft.
19 Ladies and gentlemen. When you came in here on Monday, you saw
20 one defendant sitting at the table. But during this trial, the
21 evidence has shown, there's really two defendants. There's
22 John Harpole, the average guy who goes to work and applies for
23 jobs and applies for loans and signs his name the same way as
24 everybody else does. Then there's John Harpole, the IRS guy.
25 And he's got a different persona when he's dealing with the

1 IRS. He's always asking questions and he's never getting any
2 answers. He's always confused when he's dealing with the IRS.

3 Well, what's the real story? The defendant laid out
4 his defense for you. He -- he got up there and he told you
5 about his belief system. He's known this day was coming for a
6 long time. So you have to decide what Ms. Carlisle told you in
7 opening -- and what Mr. Becraft told you was that there really
8 is one main issue in this case. What was John Harpole's
9 intent? Did he act in good faith or did he act willfully,
10 intentionally violating the law, knowing what the law was?

11 As the Court's told you, you know, most crimes -- most
12 people understand that ignorance of the law is no defense. But
13 in a tax case, it actually is. If you make a mistake, if you
14 don't know you're supposed to file a tax return, then you're
15 not guilty of a tax crime. So you have to decide, did this man
16 know he was supposed to file a tax return on April 15th, making
17 the kind of money that he was making? Did he make a mistake?
18 Was he confused? Was he acting in good faith or was he
19 intentionally breaking the law?

20 And as Ms. Carlisle suggested, you've got to get
21 inside his head to do that. And it's something that you do all
22 the time. You look at who he is, what he did, what he said,
23 sometimes more importantly what he didn't say, who he asked,
24 maybe more importantly who he didn't ask, what he did, what he
25 didn't do. Well, who is he? He's a man who does his job well,

1 gets along well with people and gets paid very well, \$20 an
2 hour plus overtime, 12 hours a day, 4 hours of overtime a day.
3 You saw the kind of money that he was making. He's paid well
4 for doing his job well. There's no evidence that he wasn't
5 very good at his job.

6 Who did he ask about these tax ideas when he started
7 asking questions? Some guy from Texas up on the Slope. Some
8 guy from Florida handed him a flyer and he looked at that and
9 said, 'Wow, those apply to me.' When he sat down with his
10 accountant, not only did he not listen to her warnings that,
11 'Don't do that, you'll go to jail' -- which was her testimony,
12 although Mr. Harpole didn't recall that -- he didn't ask her.
13 And -- and she characterized it that way. She said, 'He didn't
14 really ask my opinion. He had made up his mind.'

15 Is that a good faith search for the truth, trying to
16 find out, hey, you know, what is the law on this, or is it
17 simply somebody who's made up his mind that he's not going to
18 pay? One way you can determine that is looking at, was his
19 position consistent? Did he determine, hey, look, you know,
20 taxes are voluntary, and that's what he stuck with the whole
21 time? Or did he come up with dozens of reasons and -- and keep
22 changing his reasons about why he didn't have to pay? It was
23 voluntary, it wasn't constitutional -- and you heard the
24 witness who said that he claimed it wasn't constitutional.

25 Didn't go see a lawyer, didn't go see an accountant.

1 There's plenty of those, Lord knows, here in Anchorage and
2 everywhere else that you can go talk to. It's not like they --
3 they can advertise in -- in the newspaper, they can advertise
4 on the bus bench, they can advertise in the yellow pages now.
5 It used to be you couldn't do that, but they sure do it now.
6 They're on the Internet. And his testimony was he never asked
7 one of them. Why was that? Was it because he knew that they
8 were going to tell him, 'Go file your tax returns or you'll go
9 to jail'? That's your decision.

10 He kept saying he didn't get any answers, but he
11 wasn't getting the answers he wanted to hear. The answer he
12 wanted to hear, ladies and gentlemen, was, 'Oh, you're right,
13 Mr. Harpole. You don't ever have to file a tax return again.
14 And by the way, here's a refund check.' He didn't get that
15 answer. He was told by his return preparer, 'Don't do this,
16 you'll go to jail.' He was told by his ex-wife -- and she
17 testified that she said, 'I want no part of this. This is
18 wrong.' He didn't remember that.

19 He was told by his friends up on the Slope, 'That's
20 how they got Al Capone. They couldn't get him on anything
21 else, but they got him on taxes. You better watch it, they're
22 going to get you. You can't get away with it.' And his
23 response was that he was going to get away with it.

24 The IRS people, when they first sent him notices, 'You
25 can't send in these zero tax returns. We haven't got your tax

1 return.' They sent him -- they're form letters. Some of them
2 are customized form letters, but, for the most part, he got a
3 lot of correspondence. And you see that in the evidence, in
4 those transcripts -- notice of intent to levy, notice of
5 deficiency, statutory notice of deficiency, notice of intent to
6 levy. It seems like they were sending something out every
7 month, some computer-generated letter saying, 'You need to pay
8 your taxes.' But it wasn't the answer that he was looking for.

9 He went through appeals at IRS. They said, 'Don't
10 argue your constitutional issues, but, you know, you can argue
11 your case.' Apparently, he wanted to argue constitutional
12 issues because he didn't show up for his appeals hearing. He
13 showed up at tax court until he realized that, frankly, he was
14 going to lose. So he didn't show up for his trial. Yet he
15 complains that he didn't get due process and that no one would
16 answer his questions. Ladies and gentlemen, he kept getting
17 answers. They just weren't the answers that he wanted to hear.

18 Finally, the Judge, the United States tax court judge
19 said, 'You can't do this. This is wrong. These are frivolous
20 arguments.' And -- and the defendant testified that he
21 researched the law and he came up with these ideas on his own.
22 Ladies and gentlemen, you heard from the evidence and from
23 other witnesses, these are -- these are nothing new. These
24 aren't unique arguments that -- that Mr. Harpole came up with
25 on his own. This is what you heard referred to as standard,

1 you know, tax protestor arguments that have been rejected by
2 the courts for decades. Well, he didn't listen to the judge.
3 He wanted everybody to answer his questions. The answer was
4 "no."

5 He did research on cases, found old supreme court
6 cases and corporate tax cases that showed him that these taxes
7 were excise taxes and they didn't apply to him. But when the
8 IRS sent him cases -- and he admitted, finally -- he denied it
9 originally on direct examination that he had gotten anything
10 from Stephen Baker, but then admitted that, well, Stephen
11 Baker's paralegal, Greg McClintock, did send him a dozen cases.
12 But those cases didn't apply to him. He didn't agree with them
13 because they told him that they he was wrong. And his
14 testimony was, he didn't find any cases that showed him he was
15 wrong. He didn't find any criminal cases. 'I wasn't looking
16 for that.' He was looking for one thing. He was looking for
17 things that would support the decision that he made in 1993 or
18 1994, that he wasn't going to pay one thin dime.

19 Now I'd like to go over a timeline with you.

20 THE COURT: Counsel, if you need to see the -

21 MR. BECRAFT: I've already, Your Honor.

22 THE COURT: Okay. Fine.

23 MR. BRADLEY: Timing is important in this case because
24 as I told you, it's important to consider what he did, when he
25 did it, what he knew and when he knew it. So let's start back

1 in 1993. About 1993, it was Nancy Gowdy's testimony that in
2 1993, 1994, in that time period, Mr. Harpole started talking
3 about not filing tax returns. And that's consistent with his
4 testimony that that's about when he started seeing flyers up on
5 the Slope. Nancy Gowdy told you that in -- certainly in 1995,
6 perhaps before that, but certainly in 1995, in a face-to-face
7 with his wife and the defendant in her office, he started
8 talking about his theories of not filing tax returns. And she
9 told him, 'Don't do that. I've heard about cases like that.
10 My ex-husband was involved in cases like that. It's bad. It's
11 wrong. You'll go to jail.' That was her testimony.

12 April 2nd of 1995, Mr. Harpole goes to work with VECO.
13 And his W-4 claims two allowances. He fills that out the same
14 day he fills out his job application. He's applying for a job.
15 He doesn't put any weird spellings of his name on there, he
16 doesn't claim that he's filling out the job application under
17 threat, duress or coercion. He simply fills it out, puts down
18 his Social Security number because he wants a job. And he
19 fills out his W-4 the same day. And it's a normal W-4, even
20 though he's already, based on his testimony, dabbling in the
21 world why he doesn't have to pay taxes.

22 And the year that he meets with Nancy Gowdy and she
23 tells him that this tax stuff is wrong, he does file his 1994
24 1040. Remember, that's the one he got the refund on for over
25 \$7,000. Even though he was forming his belief system at that

1 point, he filed a tax return. Why? Because he was going to
2 get a refund. He wasn't going to leave that money on the
3 table. And he doesn't sign it anything weird, he just signs it
4 and he puts down that he's an electrician.

5 By November of 1995, less than a month after he files
6 that '94 refund return to get seven grand, he files his
7 certificate of W-4 in lieu of -- it wasn't the IRS form, it was
8 the one that he (indiscernible) up on the computer claiming
9 that he's exempt. And VECO didn't accept that. They said,
10 'This isn't a real form. We're not going to take it.' So a
11 month later, he files the form W-8, claiming that he's a
12 non-resident alien, he doesn't live in the United States. And
13 his testimony was, 'Well, I researched that and for about 15
14 minutes, I thought that was right.' Well, he thought it was
15 right enough to sign a document under penalty of perjury and
16 file it. What did he want? Well, he wanted the same thing he
17 wanted on November 9th. He wanted them to stop taking money
18 out of his check. And when he filed it on December 18th, the
19 W-8, he wanted them to stop taking money out of his check.

20 Of course, Mary Pate testified that she sent him a
21 letter that says, 'No, you're a U.S. citizen. You're not a
22 non-resident alien. You live in Alaska. You're a U.S.
23 citizen. You were born in Texas. We're not going to honor
24 this.' He had already argued it with the personnel office. He
25 didn't want to take their word for it. So they sent it to the

1 lawyers. So he gets that letter in January.

2 What does he do next? Well, he finally files the
3 official IRS W-4 claiming that he's exempt, and that worked.
4 So he finally (indiscernible) system. He sends them the
5 in-lieu. That didn't work. He sends them the alien form.
6 That didn't work. He finally sends in the official IRS W-4
7 claiming to be exempt, and that worked. They stopped
8 withholding taxes. That's why in these years, there's no taxes
9 being withheld from his -- from his check. And that's what he
10 wanted.

11 He, at the end of '96, he files that first version of
12 the 1995 form 1040 with the zeroes on it. Now first of all,
13 that was late. He didn't have an extension and he filed it
14 after the due date, so it wasn't a timely 1995 return. And if
15 you look at it, it's not -- it's not some attempt to get, you
16 know, to be honest. He wants money back. He wants his tax
17 withholding back because there was withholding, remember, for
18 1995, because he had his -- his attempts to stop withholding
19 hadn't succeeded yet. So he had about \$13,000 in tax withheld
20 and about \$5,000 in Social Security and Medicare taxes
21 withheld. He wants that back, so he sends that in demanding
22 money from the IRS. His wife, in the meantime, starts filing
23 separate returns, saying, 'Hey, I want no part of this.'

24 1997, he doesn't file. But his affirmative act of
25 evasion is that in 1996, he had filed his exempt W-4 and that

1 was still -- the testimony was, that was still in effect in
2 1997. If he didn't file a different one, the prior year's was
3 still in effect. He files in 1998, February of '98, files one
4 for '98 saying, 'I'm still exempt.'

5 Then he starts -- when he didn't get a refund on the
6 1040 because he put down on the first 1040 for 1995, the one
7 with the zeroes, he put down that he wanted his Medicare tax
8 back and his Social Security tax back on the same form -- then
9 he figured out that, well, I need to try it separately. So he
10 files the second 1995, wants \$13,000 back, and then files a
11 separate form 843 for the -- for the April through December
12 Medicare and Social Security taxes that were withheld.

13 1998, files the exempt W-4. Later in 1998, November,
14 files his, again, the 843s, the claims, and saying, 'Look.
15 Look, I want -- I want money back.' Files more claims for
16 refunds in 1999. 1999, files another '98 W-4 claiming to be
17 exempt. And they had the old form, so he didn't have the 1999
18 form to file. 2000, files the same thing. Now he has a
19 letter -- he puts letters on these. And if you see them,
20 they're different. There's a different reason. He's filing
21 under "threat, duress or coercion," but he files it and he
22 signs it. Why does he sign it? He admitted to you why he
23 signed it. Because if he didn't sign it -- he says, 'Well, I
24 thought they're fired me.' But when I pressed him on it, he
25 said, 'Well, they said they'd withhold at single zero.' And

1 that's what you heard from the other witnesses, that if you
2 don't fill out a W-4, they withhold at single zero. That means
3 they treat you as if you're single and you have zero -- that's
4 the maximum withholding unless you specifically ask for more
5 withholding. He didn't want money being withheld from his
6 check. He wanted to keep the money. Taxes are expensive.

7 He files a 1997, 1998 and 1990 forms 1040. Those are
8 the ones that had the asterisk on them instead of the zeroes.
9 But he still claims that he didn't have any tax liability. But
10 when does he do that? He does that -- they come in in early
11 July, and they're dated -- one of them was misdated in June.
12 But, well, they accepted they were filed around June 1st of
13 2000. What happened right before that?

14 In the meantime -- and it's not on the chart because
15 there's only so much room -- he had been going through appeals.
16 He had been going through problem resolution. He had been
17 exhausting his remedies with the Internal Revenue Service,
18 protesting his -- the decision that he disagreed with. He had
19 every right to do that. And he ends up in tax court.

20 We heard about what happened in tax court, and I'll go
21 over that in a little bit. But he had received -- at the end
22 of the day, the tax court says, 'Look, you're wrong. You got
23 to pay \$20,000 in -- in fines.' What does he do? And the
24 order came out on July 5th, but he had been -- he knew what had
25 happened by June -- June 19th, when he didn't show up in court.

1 Well, he showed up in court that morning to file suit against
2 the judge and get yelled at by the judge -- didn't even bother
3 to come back at 3 o'clock that afternoon for his trial. Yet
4 he's told you that he didn't get due process, he didn't get his
5 day to have his argument heard.

6 He had plenty of opportunities to have his argument
7 heard. He kept losing. He appealed that decision. He lost.
8 He appealed his recusal of the judge to the chief judge. He
9 lost. He kept losing. He didn't get the answer that he wanted
10 to hear. But he files these frivolous -- and just -- just to
11 be clear, the 1997, 1998 and 1999 1040s that he sent in in
12 June/July of 2000 don't somehow make his failure to file for
13 previous years go away. Number one, those crimes are completed
14 on April 15th when you don't file the return. You can't later
15 on file and say, "oh, here you go," and make that go away.

16 The crime was completed April 15th and he filed these
17 in 2000. '97 was due in 1998. '98 was due in 1999. And 2000
18 was due -- I'm sorry -- 1999 was due in 2000. But it was due
19 April 15th, without an extension, and you see from the
20 transcript there was no extension. So filing it in July was
21 really too late. Plus, he just puts asterisks on there and
22 some argument, and he claims that he's exempt and he doesn't
23 owe any taxes.

24 Continues to file, when he goes to BP, more exempt
25 documents. His divorce is finalized in 2002, which is relevant

1 simply because he's treated as a single man in 2002 rather than
2 married filing separately or married filing jointly.

3 And finally, his -- his last dispute with the IRS is,
4 finally the IRS gets around to shutting down his exempt W-4s
5 with BP. They send him correspondence. And that's when he's
6 threatening Helen Mendez with, 'government employees who
7 operate under color of law or without lawful authority do so at
8 their own risk.' You remember Helen Mendez? She's sort of
9 the, you know, low-level employee from the service center in
10 Fresno that -- my microphone fell off.

11 Helen Mendez was the woman who came and testified and
12 she didn't know a whole lot, I mean, she's basically a
13 low-level employee that got transferred from place to place,
14 and sent out correspondence to taxpayers. And he was
15 threatening her. Now keep that in mind. This defendant, in
16 his letters to the IRS, is continually threatening IRS
17 employees with being sued and with being prosecuted for crimes.
18 Criminal offenses. He was certainly well aware of criminal
19 offenses he thought IRS people might be committing against him,
20 but he says he never -- it never crossed his mind that he might
21 be committing a criminal offense. Does that sound legitimate?

22 Does it sound legitimate that during his years of
23 study, five days a week in the law library, nights on the
24 Internet -- I believe you heard his wife testify about how much
25 he was spending -- how much time he was spending when he was

1 home from the Slope studying the law -- he didn't come across
2 anybody being prosecuted for doing this stuff? Is that
3 believable?

4 He testified that he didn't get the brochure from the
5 IRS that said why he had to pay taxes. Well, the evidence in
6 2-19 and 2-20 shows that that was sent to him at least twice.
7 You can take a look at it. It basically debunks the -- the
8 standard tax protester myths about unconstitutional taxes and
9 taxes being voluntary, the same things that the defendant says
10 he believed.

11 He was an alien, when he thought that would work.
12 Then he was not an alien. 'No, taxes only apply to alien, and
13 I'm a citizen.' Did he -- was he trying to find something that
14 was legal, find the truth, or just finding something that would
15 work to get them to stop withholding his taxes. And it did
16 work. It did stop withholding his taxes. And he did
17 successfully evade the payment and assessment of his taxes for
18 years and years and years.

19 What's the motive there? Did money have anything to
20 do with it? Tens of thousands of dollars a year. You can
21 consider that. What was his motive? Was the money important?
22 He said that it wasn't. Is that believable?

23 He repeatedly threatens people at the IRS. He
24 knows -- he knows the law. He studied the law enough to find
25 statutes that might make them criminally liable for violating

1 his rights. Look at government's Exhibit 2-3. When you see
2 it, you can see that he's -- the government sends him notices.
3 He claims that he doesn't get notices. You can look at 2-3.
4 It's the February letter, February 25th, '98, saying, 'You can
5 get a civil penalty for filing these frivolous zero documents.
6 Your position has no basis in law. It represents a frivolous
7 position.'

8 And they sent him tax forms, including publication
9 1 -- these are your rights, these are your opportunities to
10 appeal if you disagree. Nobody told him that he couldn't --
11 couldn't argue his positions. They send him more -- more
12 correspondence. They enclose more documents. They send him
13 notices of deficiency.

14 How does he respond? Well, he sends his -- 2-15 is in
15 response to Ms. Decker, who is the service center -- the
16 district director -- and of course, she doesn't -- this is her
17 signature. She isn't the one that sent the letter out. But he
18 addresses it to her and -- and says that he's concerned that
19 his name is spelled incorrectly, and he's not going to respond
20 unless they spell his name correctly with a properly formed
21 address. He doesn't like the capital letters and he doesn't
22 like them not putting the punctuation in his name, the
23 "John-Thomas: Harpole," or -- or however it was at that time.
24 And he says the IRS is disregarding United States Code. There
25 will be civil and criminal penalties. You need -- 'I have no

1 choice to move -- to move to the next level of appeal.

2 And of course, Mr. Harpole is concerned about how his
3 name's spelled, but, of course, he spells his own name wrong.
4 It's H-a-r-o-p-l-e. Now that's just a typo. He's typing this
5 up and he -- he made a typo. But he claims to be really
6 concerned about how his -- how his name is spelled. And you'll
7 see in one of the correspondence from the IRS that they left
8 the "e" off the end of his name. It was addressed to H-a-r-p-
9 o-l. But how concerned is he about the spelling of his name?
10 Do you think for one minute -- and consider this -- if the IRS
11 had sent him a refund check and they put it in capital letters
12 and they didn't put a semi-colon in his name, and they mailed
13 it to an address that had "AK" in it instead of "Alaska," and
14 they put his Social Security on it -- number on it, do you
15 think he would have cashed the check or do you think he would
16 have sent it back? Was he acting in good faith or is he
17 playing a game?

18 Government's Exhibit 2-19, 'We have no record of
19 receiving your income tax return.' A letter sent to him in
20 2000, right about the time that he's doing battle in tax court.
21 This is about '97 and '98. Remember, in tax court he was
22 dealing with '95 and '96. And he's not charged with '95 and
23 '96 in this case. He's not charged with failure to file, just
24 because the statute of limitations has passed. But ladies and
25 gentlemen, those years are relevant because those are the years

1 that he's fighting over with the IRS during the years that he's
2 continuing to fail to file tax returns. And you can consider
3 that with respect to his willfulness. What was his intent?
4 Was he acting in good faith or is he -- because he's being
5 told, "you're wrong, you're wrong, you're wrong," and yet he
6 continues to fail to file.

7 He doesn't file for '97, '98, '99, 2000, 2001 or 2002.
8 And you heard him testify -- and this was interesting. And
9 consider this. When I asked him if he filed a tax return for
10 2003 after making another hundred grand or more from BP up on
11 the Slope, he said, 'Well, I've been kind of busy. I'm not
12 sure if I did or not.' Do you think for one second that this
13 defendant isn't sure whether he filed a tax return or not this
14 year on April 15th? That's what he said.

15 And on the next page of 2-19, this shows he was sent
16 publication 2105. Now he said he never received anything that
17 pretty from the IRS. But the records show that it was sent.
18 It's -- this version is dated 1999. And you can look at it.
19 It says:

20 "Why do I have to pay taxes? The IRS has
21 focused its efforts against willful nonfilers and
22 noncompliance schemes by offering -- adopting a
23 twofold approach:

24 "I. Assist taxpayers to correct their filing
25 status and comply with the tax.

1 "2. Vigorously apply both civil and criminal
2 sanctions against individuals who persist in violating
3 the tax law."

4 In it, it debunks a bunch of the claims about the Constitution,
5 the 16th Amendment, taxes being voluntary. It talks about the
6 frivolous arguments and talks about why they're bogus, and says
7 people go to jail for making these arguments. Mr. Harpole
8 said, "I never got that." Is that believable?

9 "Dear Mr. Harpole" -- 2-20 -- again, they're assessing
10 taxes for '97 and '98, and sent him another copy, the same
11 document. Same time in 2000, he's going -- he didn't know by
12 then? He's just gotten creamed in tax court, he's gotten
13 sanctioned \$20,000 for making statements -- and you can see the
14 judge's order. It says "for purposes of delay." What was he
15 trying to delay? Paying taxes. That was the judge's finding.
16 That's what he was told. And -- and you can consider that for
17 the effect on him, is -- is his behavior after that point still
18 in good faith.

19 After 2000, he's being sent these publications, he's
20 being told by the judge you can't do this. Yet he still, after
21 2000, doesn't file 2001, doesn't file 2002. That's Counts V
22 and VI, Counts XI and XII. He's still committing these crimes,
23 ladies and gentlemen. He's being told time and time again that
24 he can't do it, and he still does it.

25 Ms. Mendez. He threatens Ms. Mendez, that lady that

1 came in and testified. He said, 'You're doing this at your own
2 risk. I suggest that you consult IRS legal counsel.' He wants
3 her to talk to IRS legal counsel but he certainly didn't listen
4 to IRS legal counsel when they told him that he was wrong. You
5 can see from the transcripts in 2-26 -- there's a lot of
6 transcripts -- statutory notices of deficiency, intents to levy
7 going out just about every month, sometimes every three months,
8 all through these years. Does it change his behavior? He
9 says, 'They wouldn't tell me. They never sent me anything.
10 They wouldn't answer my questions.'

11 Ladies and gentlemen, you saw there was one man
12 sitting here when you came in, and then you heard about two
13 different men, the legitimate guy and then the tax guy. At the
14 end of the day, there's only man sitting here. The IRS persona
15 is a facade. This man knew what his obligations were. He
16 filed tax returns for years. He was told time and again by
17 knowledgeable people and by average people that he was going to
18 have to file his tax returns and, if he did this, he wasn't
19 going to get away with it forever.

20 He committed affirmative acts of evasion effecting
21 every year. Filing -- failure to file a tax return as itself
22 is not enough. He has to do something affirmatively -- filing
23 the false W-4s, sending in the false documents saying, 'I don't
24 owe -- I don't owe taxes.' He did more than simply sit back
25 and wait for the IRS to come get him. He took affirmative

1 steps to evade his taxes. That's why he's guilty of Counts I
2 through VI. Counts VII through XII, he failed to file his tax
3 returns -- didn't send them in on April 15th and he knew that
4 he had to.

5 Ladies and gentlemen, he didn't act in good faith.
6 Indeed, I think the evidence has shown that he acted in bad
7 faith. We'd ask you to find him guilty of all of the counts in
8 the indictment. Thank you.

9 THE COURT: Thank you, counsel. Defense.

10 CLOSING ARGUMENT BY DEFENDANT

11 MR. BECRAFT: May it please the Court, Mr. Harpole,
12 members of the prosecution. Ladies and gentlemen of the jury,
13 when we started this case on Tuesday morning after we picked
14 the jury, the Court gave you some preliminary instructions, and
15 those preliminary instructions are what I consider every
16 American already knows about the operation of the American
17 criminal justice system. Everybody knows that a criminal
18 defendant -- and in this case, that criminal defendant is John
19 Harpole -- as he sits there, he is clothed with the presumption
20 of innocence. And in order for the government to rip off that
21 presumption of innocence in a criminal case, the government
22 must prove its case beyond a reasonable doubt.

23 Now when the Court gave the preliminary
24 instructions -- and of course, you'll hear them at the ending
25 when the Court gives the instructions in this case, that a

1 reasonable doubt is a doubt based on reason and common sense.
2 It's one of those things that you consider, you know, you got
3 to acquaint reasonable doubt with the most important affairs in
4 your life. Now the Court gave some, during the preliminary
5 instructions, some examples of what are those important things
6 in life which are illustrative of what a reasonable doubt is.

7 Well, let me give you a suggestion of something I
8 think that is suggestive of what a reasonable doubt is. Let's
9 take the situation of a young child gets injured. Let's say he
10 runs out in front of a car, he gets hit and he's in the
11 hospital. The parents are down there at the hospital and
12 they're getting advice from the doctors about his injuries, and
13 the doctors are saying, 'We may as well pull the plug.' That,
14 ladies and gentlemen, is an example of the most important
15 affairs in your life.

16 And this indeed is a most important affair in the life
17 of John Harpole. He sits here clothed with that presumption of
18 innocence. And until you get back there in that jury room and
19 reach the conclusion that the government has proven its case
20 beyond a reasonable doubt, that presumption of innocence will
21 remain with him. And if you don't conclude that the government
22 has proven its case beyond a reasonable doubt, you have a duty
23 to come back into this courtroom and render verdicts of not
24 guilty on all 12 counts in this indictment.

25 What are the charges against John Harpole? Well,

1 there are a total of 12. Every single one of them relates to
2 tax crimes. The years that are involved are '97, '98, '99,
3 2000, 2001, 2002. Those are the tax years that are involved.
4 Well, the first 12 -- the first six counts of this indictment
5 charge that for '97 through 2002, John Harpole committed tax
6 evasion. In Count VII through XII, the government is
7 contending that, well, for the same years, Mr. Harpole
8 willfully and intentionally failed to file federal income tax
9 returns for those years.

10 Now during the preliminary instructions, the Court
11 gave you an idea of what the government must prove in order to
12 prove tax evasion and willful failure to file. You'll hear
13 those elements again. Let me tell you what an element is.
14 It's how to -- it's fancy lawyer language for a fact, you know,
15 like the government has to prove a fact. We may call it
16 elements, you know, it's really a fact. You know, for example,
17 in order to prove that Mr. Harpole willfully and intentionally
18 failed to file a federal income tax return, the government's
19 got to prove that Mr. Harpole was required to file a return,
20 that he didn't, that he had sufficient amounts to be required
21 to file a return, and that he also committed the act willfully.
22 Well, you -- that's -- those are facts that must be proven.

23 Now in reference to evasion, you know, there's
24 basically the same elements. And there is this element of
25 willfulness, this fact of willfulness, that the government must

1 likewise prove in order to prove its case of tax evasion. So
2 it doesn't matter what the charge is in this case, what this
3 case has been -- the way it's been presented to you -- the
4 defense has been asserting from the very beginning something
5 that the government even acknowledges. This case revolves
6 around that element of willfulness, which is basically a
7 criminal state of mind.

8 And what is that criminal state of mind? The Court's
9 going to give you the instructions. Basically, John Harpole
10 has to know that he was required to file an income tax return
11 or even know that he was required to pay some -- some taxes
12 and, notwithstanding that knowledge, he deliberately and
13 intentionally refused to do so. That, ladies and gentlemen, is
14 what constitutes willfulness.

15 Now what does not constitute willfulness? Well,
16 again, let me use an illustration. Suppose -- again, this is
17 another example of a young child. Suppose a young child, you
18 know, they live on kind of a busy street. And mother instructs
19 this young child, this little boy, that he can't cross the
20 street to go play with Tommy, who lives on the other side of
21 the street, unless the mother gives permission. Let's say that
22 the child also gets an instruction from dad, 'Well, you can go
23 across the street. Play with Tommy.' Now is this
24 inconsistent? Parents giving inconsistent instructions to a
25 little boy.

1 If there's inconsistencies, if there is confusion
2 about the command, then I think that that has a direct
3 relationship to his intent. Is the mother to come along and
4 punish little Johnny for going across the street against her
5 instructions? Or does it constitute a defense, that he can sit
6 there and say, 'Well, you know, dad did -- did let me go across
7 the street. I had his permission.' That, ladies and
8 gentlemen, is a rough parallel, if I can say that, with what
9 this case is about.

10 Now this case is about these books right here. John
11 Harpole bought this '96 Internal Revenue Code. John Harpole
12 bought this July of 2001 Internal Revenue Code and studied it
13 And what I'm going to show to you in a few moments are some of
14 those things that are kind of, you know, against the
15 conventional wisdom. And what John Harpole encountered was
16 those things that are against conventional wisdom. And he
17 realized -- he reached a conclusion, it's not as clear as
18 everyone would think.

19 Now John Harpole is your average guy, average citizen
20 of Alaska. I will readily admit that if you go through -- I
21 think it might be the VECO employment records -- we haven't
22 brought it out. But the only thing that I have seen that he
23 has done that was wrong is, I think he got a speeding ticket
24 for going 50 in a 35-mile-an-hour zone up there on the North
25 Slope. That's the only thing that I've seen that he has done

1 wrong. So he's -- he's just your average citizen.

2 Now in 1993 and 1994, he's up there on the Slope. He
3 is just like your average American. And these people that he's
4 working with, these men that he's working with, start talking
5 about what is a common topic of conversation among Americans.
6 Ronald Reagan talked about taxes. The current President of the
7 United States talks about taxing. Bill Clinton talked about
8 taxes. Taxes are going to be a debate we're going to probably
9 be hearing about for the next couple of months until the
10 election's over with. Common for people to talk about taxes.

11 Well, while they were talking about taxes, some of
12 these cohorts, some of these workers, fellow workers of John
13 Harpole -- now I'm going to show to you what's been marked and
14 admitted into evidence as Defendant's Exhibit C. Now we
15 don't -- we don't, you know, you're going to have to take this
16 document for what it's worth. It purports to be a document
17 coming from the Ogden Service Center. Somebody has whited out
18 who it was addressed to, but it looks like, you know, somebody
19 could be convinced that this might in fact be something that's
20 legitimate.

21 Mr. Harpole is told that, hey, somebody that just
22 works -- makes -- gets paid, received this letter from the IRS.
23 It says, "Based on our information, you are not liable for
24 filing a tax return for this period." Now why shouldn't
25 something like that raise a legitimate question in someone's

1 mind? John Harpole said, 'Well, you know, you got to take it
2 for what it's worth, but it does look like to me there's
3 something a little odd.'

4 This question of a government document submitted into
5 evidence talking about or disposing of contentions about
6 voluntary -- well, Mr. Harpole, at about the same time, he
7 received a document back in '93 or '94, Defense Exhibit No. B.
8 It purports to be an Internal Revenue investigation, an
9 official hearing in Congress, where a man named Dwight Avis
10 shows up and appears. And during the -- the course of that
11 hearing, Mr. Dwight Avis makes a comment as follows:

12 "Let me point out this to you now. Your income tax is
13 100 percent voluntary tax and your liquor tax is 100
14 enforced tax."

15 Now the situation is as different as day and night. Well, this
16 purports to be a statement coming from the government. Does it
17 not conflict with other statements from the government that
18 it's mandatory?

19 Here's another something that Mr. Harpole felt was a
20 little odd. One of his friends, co-workers there on the Slope,
21 offered him these documents, which is Defense Exhibit No. D.
22 And he was told that OMB numbers have got to be provided for
23 income tax regulations and there's an important income tax
24 regulation, this 1.1-1, which incidentally this particular
25 exhibit also includes this regulation 1.1-1, the very first

1 section of the Internal Revenue Code. And the OMB control
2 number assigned to that regulation also happens to be assigned
3 to a form name, form 2555, foreign earned income.

4 Now is this consistent? Can somebody explain the
5 inconsistencies here? Why does this happen? Can't -- can't
6 some- -- does John Harpole have to be a legal scholar? Does he
7 have to be a tax professor at NYU in order for him to study the
8 law and reach conclusions? This is a little odd.

9 Another document that was examined by Mr. Harpole. He
10 ran across this Defense Exhibit F, an article out of the
11 quarterly magazine called American Affairs by a fellow by the
12 name of Beardsley Ruml, the chairman -- well, he was a Federal
13 Reserve official. That's for sure. Whether he's like Alan
14 Greenspan, I don't know. But, you know, the article says taxes
15 for revenue are obsolete. Well, doesn't this conflict with
16 conventional wisdom?

17 Another document that Mr. Harpole acquired up there on
18 the Slope is Defense Exhibit E. Now isn't this a little bit
19 odd -- you know, I think that you can -- this document clearly
20 looks like an official government publication. It has that
21 appearance. Now it also has on the second page -- if you read
22 this, this looks like a document where somebody has taken an
23 excerpt out of it and then blown it up:

24 And if an individual gives you a written statement in
25 duplicate stating that he or she is a citizen or a

1 resident of the United States and you do not know
2 otherwise, you may accept the statement and are
3 relieved from the duty of withholding the tax."

4 Now is that not a little bit odd, you know, for the -- for the
5 government to be coming along and making statements like this?
6 And -- and people can, you know, true, there may be people out
7 there that are looking for this stuff and they just want to
8 point it out to people. That's the natural consequences of
9 inconsistent statements of government.

10 Well, I think that, you know, clearly there are
11 inconsistent statements of government that Mr. Harpole saw from
12 these documents and he made a decision to investigate further.
13 Sometime in '93 or '94, or certainly by '95, he had reached a
14 conclusion, 'Hey, it's not all that clear there. I have some
15 legitimate questions.' And so he embarked upon the task of
16 doing what every American is entitled to do -- not only
17 entitled to do but I think you have a social obligation to do,
18 and that is, to try to study and learn the law.

19 Now I think you can't fault -- nobody can fault
20 another American for attempting to study the law. It'd be a
21 bad day in America when studying the law was to be something to
22 be maligned, something to be looked down upon. I think we all
23 should study the law.

24 And so John Harpole starts that task of studying the
25 law. What does he do? Well, you know, he mentioned that he

1 was going to the law library. And at the law library, he found
2 down here at the law library here in Anchorage, he found this
3 book, Constitution of United States of America Annotated. We
4 didn't offer this into evidence. It's plain to see that it's
5 the book that he got. But he came along -- and what we have
6 offered into evidence is Defense Exhibit G. That's -- these
7 are copies of pages from that book. Now you sit down and you
8 read it.

9 And, you know, this official government document sits
10 there and talks about a case the United States Supreme Court
11 decided in 1895 that held a federal income tax
12 unconstitutional. Well, of course, John Harpole has mentioned
13 to his friends and neighbors "unconstitutional." Where does
14 that idea come from? Where does that information come from?
15 It comes from a government book. And nobody denies that the
16 United States Supreme Court did hold in that case that he read,
17 the Pollock case, that the 1894 Act was unconstitutional in
18 that case.

19 Also in this Constitution -- what he called the
20 Constitution Annotated, he read, well, gee, there's this
21 Brushaber case. And he -- he sat up there on the stand, told
22 you that he got these cases and read them. You know -- well,
23 you know, after the 16th Amendment came into effect, this
24 Brushaber held that the -- in a constitutional sense, the
25 federal income tax is an excise tax.

1 Then another case that is mentioned in Constitution
2 Annotated was this Flint against Stone Tracy case. So he sits
3 down and reads that case, and he reaches a conclusions that a
4 definition of an excise tax from the United States Supreme
5 Court is of such a nature -- what'd he say, it was on
6 privileged occupations and -- or privileged -- or privileges to
7 licensed occupations, corporate privileges. He relies on what
8 the United States Supreme Court says. 'Well, here's the
9 definition of excise tax and it doesn't appear to be a tax
10 that's imposed upon me.'

11 Is there any doubt in anyone's mind that John Harpole
12 did not study? He testified, his ex-wife testified, that the
13 studies of John Harpole into this issue of taxes became
14 consuming for him, became something that he seemed to have a
15 burning desire to get to the bottom of. You know, it's kind of
16 like, you know, we -- we -- we, you know, we watch these sports
17 programs -- let's take football. And you know the players --
18 or basketball. The players when they're, you know, those guys
19 are charged up. They're enthused. And, you know, it's kind of
20 hard when you see players out on the field when they're all
21 pumped up. You know it takes a long time to -- to kind of come
22 down from a high like that. Well, don't you know that John
23 Harpole was probably going through the same things. He's
24 delving into something for the first time he's never dug into,
25 and he's coming up with things, and -- and -- and it's become

1 obsessive for him. He wants to get to the bottom of things.

2 So what does he do? Down there at the law library,
3 Mr. Harpole starts going through cases. It's got the United
4 States statutes at large down there sitting on rows of those
5 bookshelves at the law library. He's kind of looking around at
6 the law library and he looks up on a top shelf. And on the top
7 shelf, there's a set of books, Treasury Decisions of Internal
8 Revenue. And what'd he say, the -- the set of books that goes
9 from 1898 through the '40s or whatever he said. So he starts
10 digging through these documents. And guess what he found,
11 ladies and gentlemen?

12 He found -- this is Exhibit No. -- Defendant's Exhibit
13 No. W. And this is a copy of -- he identified these were some
14 old income tax regulations. But one of the things that he --
15 when he's sitting down and reading all this stuff, he runs
16 across this in the same set of regulations. This would be for
17 regulation 62 for the Revenue Act of 1941. He runs across this
18 thing right here, article 71 in these regulations, that
19 mentions something here. It says:

20 "What is excluded from gross income? Gross income
21 excludes the items of income specifically exempted by
22 statute and also other kinds of income by statute or
23 fundamental law free from tax. Such tax-free income
24 should not be included in the return of income and
25 need not be mentioned in the return."

1 So he begins to see, what is this, something excluded by
2 fundamental law?

3 Mr. Harpole goes on. He goes into, you know, digging
4 through more and more similar items, old tax regulations. This
5 is Defendant's Exhibit W, Treasury Decision 3146. This is the
6 regulations for one of the income tax acts. Again, right here
7 in an official government document, Mr. Harpole sees what I
8 just read to you a moment ago and he wonders what is this
9 fundamental income. Mr. Harpole continues going on. He runs
10 across -- now this -- this next Treasury Decision that I throw
11 up here, this 3640, this is important not only for what appears
12 in the other ones. Let me go ahead and address that.

13 This document right here, which is Defense Exhibit X,
14 again, article 71 mentions this fundamental law and items of
15 income that are excluded by fundamental law. But here in
16 this -- this seems to me, this -- this seems to me to kind of
17 categorize how Mr. Harpole reached his conclusions. Let me
18 kind of lead you through it. It kind of -- it kind of dawns on
19 you, once you have this kind of explained to you, and then you
20 can see the conclusions that he reached.

21 At the very front of this Treasury Decision 3640 --
22 and let me stop right there -- you will see, as you examine a
23 lot of the letters that Mr. Harpole wrote, sent to the IRS --
24 he sat down and wrote out a letter, typed it up, signed it,
25 dropped it in the mail, sent it to the IRS. He mentions this

1 Treasury Decision, or T.D. 3640. Why did he do that? Well, he
2 kind of told you on the stand. He said that this part right
3 here that I'm kind of rolling around here on the screen, this
4 was a part of the law back then, the Revenue Act of 1924.

5 This says, according to John Harpole, it says, 'Well,
6 this section 210, in lieu of the tax that was imposed in the
7 previous act, there is hereby imposed this tax.' But then he
8 went down further and he read (b):

9 "In lieu of the tax imposed in subdivision (a), there
10 is hereby a levy collected and paid on the income of
11 every non-resident alien individual."

12 Well, it just kind of seemed clear when he said it that that
13 is -- this is -- if you want to isolate and pinpoint where it
14 is that Mr. Harpole had some legal conclusion that he chose to
15 stick with, it looks like to me it's this 3640. He's sitting
16 there and says, 'Well, there's this tax that's imposed. But
17 then in -- in paragraph (b), in lieu of the tax imposed by
18 subdivision (a), there is hereby imposed a tax on non-resident
19 aliens.' That is, right or wrong, reasonable or unreasonable,
20 this is where Mr. Harpole reached his kind of fundamental
21 foundation. This is his belief.

22 Now is this a belief based on something that's wild
23 and fanciful? No. Is it based upon something that he got out
24 of government documents? Yes. It's quite obvious and it's
25 unchallenged that this came from a government document.

1 Mr. Harpole continued his studies. He's sitting there
2 and -- 'Well, it looks like to me, based on this regulation,
3 that, you know, there's this hereby -- there's a tax imposed
4 upon individuals, but in lieu of that tax, there's this tax
5 imposed upon non-resident aliens.' That's -- that's the mental
6 operation that he's going through. And he goes further into
7 time. He's sitting down in his studies and he reaches -- he
8 reaches the 1939 Internal Revenue Code at some stage during
9 investigation or his studies. And this is Defendant's Exhibit
10 AA. And so he's sitting there and reading this 1939 Internal
11 Revenue Code and he comes across -- he said he relied on this
12 section 4 there, which is in Defense Exhibit AA, and he reaches
13 the conclusion, 'Well, that looks like to me that this -- this
14 tax applies to these people and I'm not in this list.'

15 Now ladies and gentlemen, you got to know, this stuff
16 is complex. It's also heavy. Those books over there at the
17 end of the table, Mr. Harpole says, 'Well, I read all these
18 regulations.' Isn't it possible, isn't it likely, and isn't it
19 proven from the stand, from the looks of John Harpole, that he
20 sat down and read this -- this -- this Internal Revenue laws,
21 and basically what he was confronted with was a maze. Now we
22 can all imagine -- now I intended to try to pull something off
23 of the Internet last night like a little maze, but, you know,
24 let me just -- I didn't do it, so let's just kind of talk about
25 it.

1 You've seen, you know, like in the paper on Sunday
2 morning, you know, these little kid games, you know, you can
3 chart through a maze, draw -- draw a line through this maze.
4 Well, that, ladies and gentlemen, is much like the Internal
5 Revenue Code. You -- you can start here at one place and
6 you -- you can go in a million different directions. Why?
7 Because it's complex. And -- and just because John Harpole
8 sits down and tries to chart this maze of something that, you
9 know, even government officials admit today is incredibly
10 complex, just because he tried to chart his way through the
11 maze, is it something for which he should be faulted if he's
12 wrong?

13 John Harpole sat down and -- let me show you something
14 here. In one of these letters from Mr. Harpole, Government
15 Exhibit 4-12, right here -- now over here, this is kind of --
16 oh, it looks like it might be 20 or 30 pages in this particular
17 document. But right here, Mr. Harpole, you know, you can take
18 a look. This is -- well, when you get to a document that says
19 1996 claim for refund and request for abatement, Mr. Harpole
20 sits here and he -- he -- he believes that 26 U.S.C. §211
21 relates to foreign earned income. That's his belief. It's
22 here in black and white.

23 Now Mr. Harpole sat down and he goes through this
24 Internal Revenue Code right here. And if you look at
25 Defendant's Exhibit 00, what Mr. Harpole did is, he, you know,

1 one of the first things that he did is, he consulted the index.
2 That's -- that's wise. You know, I think that if I were going
3 to start for the first time trying to study a book that looks
4 like it's several thousand pages long, it might be beneficial
5 to start off at the index. And he goes over the index and he
6 sees such things, you know, he takes a look at "citizen" in
7 this thing here. And rather than the index itself making some
8 reference to section 1 of the Code, you've got this stuff right
9 here. Is that not confusing? Why? Why does this happen? Why
10 are -- when you try to walk your way through the Code, why do
11 you -- when you walk through there, you -- you get these
12 obstacles and these uncertainties and this, you know, maze that
13 cannot be made sense of?

14 How about when you're looking at compensation for
15 personal services? You know, right here. Mr. Harpole drew
16 some conclusions from that, why when he -- when he -- when he
17 looks for -- under the topic of "income" does he find all these
18 other references, income from sources within the United States,
19 income from sources without the United States? Why does he
20 encounter these things? Why is the index set up that way? Is
21 it not confusing?

22 Mr. Harpole ultimately sits down and -- you can
23 remember, I -- I probably have forgotten. But here's
24 Exhibit -- Defendant's Exhibit CC. And he kind of lays out in
25 here his conclusions about, this is the road map of John

1 Harpole through this thing. And he reaches a certain
2 conclusion. You can sit here and, you know, rather than having
3 us belabored the point and gone through all of this stuff, John
4 Harpole looked at this and said, 'This is my road map through
5 the Code.' And he reaches a different conclusion. Now that,
6 ladies and gentlemen, is exactly what John Harpole did. He
7 can't be faulted for discharging a social obligation of reading
8 and studying the law.

9 Now one of the first things that Mr. Harpole did,
10 after he read the law, is -- take a look at Government Exhibit
11 2-1. This is a letter -- it doesn't have a date on it itself,
12 but we know that on July 10th of '96, John Harpole sent it to
13 Ogden. He notes in here that, you know, the -- his contention
14 is, is that pursuant to some federal document, the IRS has a
15 duty to communicate the requirements of the law to the public.
16 It only makes sense. It only makes sense that government
17 agencies will tell you what the requirements are.

18 And down here at the bottom of this page 2 of this
19 letter, Mr. Harpole asks the question, 'Am I liable' -- or, "Am
20 I person liable? Does the IRS have jurisdiction over me?"
21 Well, you know, he didn't necessarily go into details about why
22 he asked those questions, but the details or the basis for it
23 is irrelevant. What is important is, is that he's an American
24 citizen and he asked a question. And I think that it relates
25 to -- whether you are culpable of a crime or not turns upon

1 this. If he asked some questions and didn't get answers, the
2 very answers that he needed in order to determine what he
3 should do, that has a direct bearing on his intent. Is it
4 criminal or is it innocent?

5 Mr. Harpole also -- let me show you a couple more.
6 Government Exhibit 2-16. This is a request for conference. It
7 was mailed in March of '99. Down here on page 3 of this
8 letter:

9 "I have all Treasury Decisions, statutes and
10 regulations that say I am right. If I am not right,
11 then the IRS will surely produce the regulation that
12 makes me liable for the tax."

13 Moving over into the same document, he's got almost a similar
14 phrase, you know, this page 2 of 2. There's his signature down
15 at the bottom, 3/18 of '99 is when he signed this letter.
16 Right here it says, "If I am not right," again, "then the IRS
17 will surely produce the regulation that makes me liable for the
18 tax."

19 At the same time, Mr. Harpole, you know, I'd like to
20 direct your attention just real quickly -- the defense has
21 offered into evidence, you know, here is Defendant's Exhibit
22 QQ. This is -- this is a document, the evidence will show, if
23 you dig through the exhibits, that for I think 2000, 2001,
24 2002, Mr. Harpole sent in documents to the IRS disclosing what
25 he made. Look right here. I think we already pointed this out

1 when these documents were offered into evidence. Some
2 unnumbered page here showed -- is this everything that the
3 government showed that he made during that year? Yeah, sure
4 is. Look over here to this page, you know, same thing. He's
5 disclosing what he made. And he did that for 2000, 2001, 2002.
6 These documents are in evidence.

7 (Side conversing)

8 MR. BECRAFT: I might also say that there is no proof
9 that the statement made by Mr. Harpole -- incidentally, this
10 is, if you take a look at the last page:

11 "This declaration of statement is made under the
12 penalties of perjury and is true, correct and
13 complete, and not misleading, to the best of my
14 knowledge."

15 But on the very front part of this letter, April 14, 2002, he
16 makes this statement. Look right there where my finger is.

17 "I support the revenue tax laws of the United States
18 and do not dispute their lawfulness when properly
19 applied."

20 Read those documents, ladies and gentlemen. That's
21 what John Harpole did, studied the tax laws. It became an
22 obsession with him. He didn't hide it. He told his friends
23 and neighbors, and he wrote letters to the IRS. He asked
24 questions that weren't answered.

25 Now the government tries, you know, to say that Mr.

1 Harpole surely didn't believe this, that somehow, some way, he
2 was just trying to beat the tax. Well, during the government's
3 side of the case, there was a man by the name of Bruce Woodruff
4 that came in and testified -- worked with John Harpole up there
5 on the Slope. I specifically asked him when he was on the
6 stand, 'Did Mr. Harpole believe these tax arguments?' And he
7 said "yes."

8 Now ladies and gentlemen, you know, the instructions
9 in this case are going to say it doesn't matter, you know, what
10 type of argument you've got. You know, let's presume that what
11 is stated here in the way of legal arguments by Mr. Harpole is,
12 well, I'm not going to call it crazy, but let's say that it's
13 just kind of off flavor or different, maybe different. But
14 does believing different law, a different view of the law, does
15 believing that make you a criminal?

16 Now the instruction in this case is going to say,
17 well, you know, if you believe that he believed, then you have
18 concluded, if that's the ultimate thing that you reach and
19 conclude, you have just concluded that he did not act
20 willfully. Mr. Harpole does have the ability, when pointed
21 out, to change his mind if he's in error. Remember, one of the
22 first things that Mr. Harpole, you know, in the early part
23 of -- well, I think it's -- I don't know the date. It seems
24 like to me it was December of '95, Mr. Harpole sent in this
25 certificate of foreign status. It creates a controversy. He's

1 got some view, some belief about taxes that somehow, some way,
2 a certificate of foreign status is something important to him.

3 Well, you know, VECO sent that to Mary Pate. What did
4 Mary Pate say? She got on the stand. She's a lawyer. She got
5 on the stand and said, 'Well, I looked all this over at the
6 request of VECO, and I concluded that Mr. Harpole was wrong.'
7 And Mary Pate sent a letter to Mr. Harpole and said, 'Boom,
8 boom, boom, boom, boom. For these reasons, you are wrong.'
9 Now did Mr. Harpole change his conduct as a result of being
10 informed? Yes. Once he was told and it was explained to him
11 why, he then knew he had an answer to his questions.

12 Now what would have happened in this case if John
13 Harpole's questions that he had posed to the IRS had been
14 answered? Well, you know, it's kind of, you know, in this
15 particular case, we got some real live features, you know, he
16 goes to tax court and, you know, he -- he asserts certain
17 issues and -- and Mr. Baker comes into court and says, 'Well,
18 gee, I told him all these things.' Well, identify John
19 Harpole's specific issue and where in some case -- where was it
20 shown, like Mary Pate had done, here is your issue, here's
21 where it was addressed?

22 If you look at this case, do you know what is -- what
23 is missing? The only thing that is there is this implication,
24 not proof, an implication, a pregnant pause, if you will, you
25 know, 'We -- we told him something and we -- we characterized

1 it as an answer.' Was it an answer? Was what the IRS did
2 sufficient for him? No, it wasn't.

3 John Harpole, under the facts of this case, simply
4 stood his ground, held to his beliefs, his different beliefs,
5 odd beliefs, but nonetheless firmly held good faith beliefs.
6 And so in this case, what is the big problem here is, is that
7 there's an absence of proof beyond reasonable doubt. What you
8 have is, you have John Harpole sitting here right now clothed
9 with the presumption of innocence. And there has been no proof
10 offered in this case that is sufficient, that is beyond
11 reasonable doubt, that you know clearly in judging this case as
12 one of the most important affairs of your life, that John
13 Harpole has not been presented with evidence in this case to
14 rip that presumption of guilt [sic] -- presumption of innocence
15 away from him, so that you can go back in that jury room and
16 conclude that he's guilty.

17 Now ladies and gentlemen, I would like to pose one
18 final thing. You know, the -- the government gets to -- Mr.
19 Bradley's going to get up here in a minute and -- and have a
20 rebuttal for what I had to say because he's got the burden of
21 proof. I don't have that opportunity to get up and answer
22 again what he has, you know -- you know, the burden is on the
23 government. Well, I would like to, you know, no matter what he
24 has to say in the way of rebuttal, please consider, you know,
25 what -- what about some of these odd features of this case.

1 You know, Mr. Harpole got up there on the stand. He said, 'I
2 read these old documents and there's this thing known as
3 fundamentally exempt income. Can -- can we -- can we -- can we
4 have answers to these questions?'

5 I think that the government of the United States has
6 the responsibility to demonstrate that Mr. Harpole's questions
7 were answered. And since they weren't answered in this case,
8 there is no proof that John Harpole committed these crimes.
9 And it is for this reason that I ask that you go back in that
10 jury room and return the only verdict that is justified by the
11 facts of this case, and that is across-the-board acquittals on
12 all counts. Thank you, ladies and gentlemen.

13 THE COURT: Thank you, counsel. You may complete your
14 argument, Mr. Bradley.

15 MR. BRADLEY: Thank you, Your Honor.

16 CLOSING ARGUMENT BY PLAINTIFF

17 MR. BRADLEY: The defense lawyer talked about beyond a
18 reasonable doubt. Don't be afraid of that. That's the same
19 standard that's used by every jury in every criminal case in
20 the United States every day, in every state and federal
21 courtroom across this country. It's important, and we welcome
22 that burden, and we've met that burden. Don't be afraid of
23 that burden.

24 Secondly, the presumption of innocence has been torn
25 away. It's been torn away by the evidence in the case. He

1 begins the case presumed innocent. The evidence overcomes that
2 presumption, and that's the evidence that you've heard in this
3 case.

4 This defendant has claimed that he was confused. And
5 his lawyer talked about that in closing, that -- they were just
6 inconsistent statements. And it's kind of like, 'Well, mom
7 tells you you can -- you can't go across the street. But dad
8 tells you can go across the street, and so if you go across the
9 street, you shouldn't get in trouble.' That's not what
10 happened in this case. It wasn't mom and dad. Who told him
11 that it was okay to do this? Some guy from Texas and some guy
12 from Florida. Who told him not to do this? Well, his
13 accountant, the tax court judge, IRS lawyers, the IRS
14 paralegal.

15 Bruce Woodruff, the cowboy from Montana that you heard
16 from, said, 'Yeah, he acted like he believed it.' He also
17 said, 'I told him that he was going to go to jail if he kept
18 doing it.' Mary Pate. Mary Pate told him he wasn't a non-
19 resident alien, and he changed his behavior. But he didn't
20 stop his attempts to have withholding stopped from his checks,
21 he just found a new approach. He found something that worked.
22 The non-resident alien claim, the bogus W-8 form, didn't work,
23 so he sent in a false W-4 form and that did work. He wasn't
24 looking for the truth, he was looking for a way to jimmy the
25 system and stop having money withheld from his check.

1 This isn't like mom tells you to stay there and dad
2 tells you to go ahead, it's like your 6-year-old brother tells
3 you it's okay to go across the street and your dad and your mom
4 tell you not to do it, and then you're wondering why you're
5 getting spanked later on. It wasn't equal information.

6 Now remember, in the letter to Helen Mendez, the lady
7 from the Fresno Service Center, 'You should talk to IRS counsel
8 if you're not sure about this because you're going to be in
9 trouble, lady.' Did he follow his own advice? Did he ever
10 talk to counsel? Why? Because he knew they were going to tell
11 him, just like everybody else, you can't do this.

12 Now why is it that in those defense exhibits -- and
13 they don't, I mean, some -- some flier, some -- some testimony.
14 He -- he wraps himself in the testimony of some government
15 official before Congress in 1953 that says taxes are voluntary.
16 But he doesn't listen to the IRS people who tell, 'Well, with
17 respect to you now, in the '90s, they're not voluntary.' He
18 ignores that but embraces 1953, when he was three years old.
19 The, 'Oh, there's cases, oh, there's this that says it's
20 unconstitutional.' Well, he doesn't listen to the judge when
21 she tells him that he's wrong. Again, he got plenty of
22 answers, just not the answers he wanted to hear.

23 The article about the man who writes about corporate
24 taxes and he says that, in that 1946 speech to the American Bar
25 Association, that corporate taxes are bad. They keep wages

1 down, they keep productivity down, they should be abolished.
2 Lots of people think that today. That's just one man's
3 opinion. There's nothing wrong with having that opinion, with
4 agreeing with that opinion. It doesn't have anything to do
5 with whether he has to pay taxes today. The judge will
6 instruct you that disagreement with the law, no matter how
7 strongly held, no matter whether it's in good faith or not,
8 disagreement with the law is no defense. If you know the law
9 well enough to disagree with it, then you know the law.
10 Likewise, if you believe that the law is unconstitutional,
11 that's no defense because everyone has to obey the law, whether
12 they agree with it or not. It's not a defense.

13 His study. Was it in good faith or was he looking for
14 the answers that he had already decided? When he changed his
15 behavior after Mary Pate said "you're not a non-resident
16 alien," did that -- did that somehow -- did he start pay taxes?
17 No. He found a new scam to stop paying taxes. As you ponder
18 the truth of this case -- and that's what you have to do. You
19 have to ponder what the truth is, whether he told you the truth
20 or not, what his intent was, looking to see whether he was
21 trying to pander the truth and pander to you about whether --
22 what he believed.

23 Was he telling you -- look at the demeanor that he had
24 on the stand. 'Absolutely. That's what I relied on. Yeah,
25 that's what I did.' But then look at the inconsistencies in

1 his testimony, look at why he can't really -- 'Well, I didn't
2 get that document. Well, no, I didn't study those things.'
3 Was that a good faith search for the truth or was it some bad
4 faith attempt to get out of taxes?

5 I want to show you one more chart and talk to you
6 about one more thing, then I'm going to be done. This
7 defendant made over \$75,000 in 1997, 10 times the filing
8 requirement, made over \$75,000 in 1998, over \$75,000 in 1999,
9 over \$80,000 in 2000, almost \$100,000 in 2001. And you'll see
10 there's some documents that indicate -- or he admitted that he
11 made more than that. And then in 2002, \$112,000.

12 He talked about how complicated the tax laws are. No
13 question that all those books and all those regulations look
14 complicated. Ladies and gentlemen, you knew when you came in
15 here and you know it now, the fact is that if you make \$100,000
16 a year, you got to file a tax return April 15th. That ain't
17 complicated. That's not something that's hard to figure out.
18 It's pretty obvious. You knew that when you came in here. And
19 the Judge is not going to tell you to leave your common sense
20 at the jury room door.

21 What was he motivated by? Was it the 25 to 33 percent
22 of that money that he was going to have to pay in taxes? Was
23 that any kind of motive for this man? He said it wasn't. Is
24 that believable?

25 This defendant is like a man who's driving down the

1 highway. He's in his car. It's got a speedometer in it. And
2 he sees the speed limit sign, and it says 55 or 65. He knows
3 what the speed limit is and he knows how fast he's going. His
4 speedometer isn't broken. But he decides to disregard the
5 speed limit, something we've probably all done this week. And
6 he -- he sees the speed limit, he sees the -- the speedometer,
7 and he puts his foot to the floor. And he's buzzing by the
8 signs and passing other cars, weaving in and out, has to move
9 over to the right and, you know, weaving back and forth through
10 traffic.

11 And pretty soon, he looks behind him and he sees a
12 police car. It's got the lights on and the siren going. He's
13 not pulling over. 'That doesn't -- they're not after me. I'm
14 not doing anything wrong. That doesn't apply to me.' And he
15 puts his foot farther down. Pretty soon, he can't even see the
16 needle anymore because it's pegged beyond the -- where the
17 speedometer goes. And the -- the speed limit signs are going
18 by so fast, he probably can't even read them anymore.

19 And pretty soon, they've got more police cars and
20 they're setting up roadblocks and they got helicopters and
21 they're putting out spike strips to blow out his tires, and
22 pretty soon he's riding on the rims, you know, the tires --
23 'This doesn't apply to me. The law doesn't apply to me. It
24 must apply -- they're after somebody else, not me. I'm not
25 doing anything wrong.' That's what he wants you to believe.

1 Now as men and women, you came in here to this jury
2 with common sense and you have to sit in judgment on this man.
3 And that's an important duty. It's a solemn duty as citizens.
4 But the evidence in a criminal case, in this criminal case, has
5 been overwhelming. The presumption of innocence has been
6 overcome. It's been stripped away. It's been shredded by the
7 evidence. The defendant's claim that this was some good faith
8 search for the truth is just not believable, and I think you
9 ought to conclude that. But that's your decision.

10 You determine the credibility of the witnesses, you
11 determine what this defendant intended. If you look at the
12 evidence, look at what he said, look at what -- look at what he
13 was told. He's still running on the rims saying, 'They're not
14 after me. I'm not doing anything wrong.' Ladies and
15 gentlemen, he did do something wrong. He knew it. And it's
16 your duty as jurors to follow your oath and find him guilty of
17 the crimes that he's been charged with. Thank you very much.

18 THE COURT: Thank you, counsel. Ladies and gentlemen,
19 we're going to take about a 15-minute break now. And when we
20 return, I'll collect the preliminary instructions from you,
21 substitute for those the final instructions, and then we can
22 read through the final instructions together. While you heard
23 the arguments of counsel, you heard all the evidence, you have
24 not as yet heard the final instructions of the Court. So I
25 would ask that during this 15-minute break, that you continue

1 to refrain from forming or expressing any opinion about any
2 issue in the case, and discussing anything about the case with
3 anyone, including other members of the jury. We'll reconvene
4 in 15 minutes.

5 THE CLERK: All rise. Court stands in brief recess.

6 (Recess at 11:37 a.m., until 11:51 a.m.)

7 (Jury out)

8 THE CLERK: We're back on record.

9 THE COURT: Very good. As counsel remember, when we
10 began the case, you stipulated not to choose the alternate
11 until the end of the case.

12 (Side conversing)

13 THE COURT: So what I'm going to do is go ahead and
14 read the jury instructions to the jury, make sure that none of
15 the 13 men and women remaining has had something come up in
16 their life that is going to require them to bow out before the
17 jury has had sufficient time to deliberate and consider the
18 evidence. And then assuming that all 13 are prepared to go
19 forward, then Madame Clerk has her -- has the old jury wheel.
20 She'll put 13 of the names in and just blindly pull one out.
21 And then whoever's name is selected will be the person who is
22 identified as the alternate and excused. And the remaining 12
23 will go back to begin their deliberations. Is that agreeable?

24 MR. BECRAFT: No objections, Your Honor.

25 MR. BRADLEY: It worked last time, Judge.

1 THE COURT: Very well. Well, the interesting thing
2 last time was that in a tax case, we had the 13 men and women,
3 and the one woman was a CPA, an accountant who did tax advice,
4 and both sides left her on the jury and she was the one who was
5 excluded at the end.

6 MR. BECRAFT: They got -- the fifth juror in the Scott
7 Peterson case is a lawyer and a doctor.

8 THE COURT: Oh, my Lord. That is interesting. That
9 is interesting.

10 MR. BRADLEY: That's a -- that's a dice roll on there.

11 THE COURT: Well, you never know until it's over.

12 THE COURT: Madame Clerk, would you bring in the jury,
13 please?

14 (Pause as Madame Clerk summons the jury)

15 (Side conversing)

16 THE COURT: I know counsel have gone over the jury
17 instructions for substantive matters. Did you also skim them
18 for typos and things like that?

19 MR. BECRAFT: If I saw one, Judge, I brought it to
20 your attention.

21 THE COURT: Very well. And I'm sure, Mr. Bradley --

22 MR. BECRAFT: I didn't see any.

23 THE COURT: -- and Ms. Carlisle, you -- you would have
24 done the same?

25 MR. BRADLEY: Yes, sir.

1 as I give it to you. You must follow the law as I give it to
2 you, whether you agree with it or not, and you must not be
3 influenced by any personal likes or dislikes, opinions,
4 prejudices or sympathy. That means that you must decide the
5 case solely on the evidence before you. You will recall that
6 you took an oath promising to do so at the beginning of the
7 case.

8 In following my instructions, you must follow all of
9 them and not single out some and ignore others. They are all
10 equally important. You must not read into these instructions
11 or into anything the Court may have said or done, any
12 suggestion as to what your verdict should be. That is a matter
13 entirely up to you.

14 This is a criminal case brought by the United States
15 government. The defendant, John Thomas Harpole, is charged in
16 a 12-count indictment with attempted tax evasion and failure to
17 file income tax returns. The indictment is simply the
18 description of the charges made by the government against the
19 defendant. It is not evidence of anything. In order to help
20 you follow the evidence, I will now give you a brief summary of
21 the elements of the crimes that the government must prove to
22 make its case.

23 The defendant is charged in Counts I to VI of the
24 indictment with attempted tax evasion for the years 1997, 1998,
25 1999, 2000, 2001 and 2002, in violation of 26 U.S.C. §7201. In

1 order for the defendant to be found guilty of that charge, the
2 government must prove each of the following elements beyond a
3 reasonable doubt. First, John Harpole owed federal income tax
4 for the years in question. Second, the defendant knew that he
5 owed federal income tax. Third, the defendant made an
6 affirmative attempt to evade or defeat an income tax. And
7 fourth, in attempting to evade or defeat such additional tax,
8 the defendant acted willfully. Failing to file tax returns,
9 failing to keep records, failing to report and failing to pay
10 income taxes, standing alone, do not constitute an affirmative
11 attempt to evade or defeat an income tax.

12 The defendant is charged in Counts VII through XII of
13 the indictment with failure to file income tax returns for the
14 years 1997, 1998, 1999, 2000, 2001 and 2002, in violation of 26
15 U.S.C. §7203. In order for the defendant to be found guilty of
16 that charge, the government must prove each of the following
17 elements beyond a reasonable doubt. First, the defendant was
18 required to file an income tax return for the years in
19 question. Second, the defendant did not file a tax return by
20 the due date required by law. And third, the defendant acted
21 willfully for the purpose of evading his duty under the tax
22 laws and not as a result of accident or negligence.

23 I shall discuss with you briefly the law relating to
24 each of these elements. An act is done knowingly if the
25 defendant is aware of the act and does not act or fail to act

1 through ignorance, mistake or accident. You may consider
2 evidence of the defendant's words, acts or omissions, along
3 with all the other evidence, in deciding whether the defendant
4 acted knowingly.

5 Willfulness requires the government to prove that the
6 law imposed a duty on the defendant, that the defendant knew of
7 this duty, and that he voluntarily and intentionally violated
8 that duty. Prior and subsequent acts of the defendant filing
9 tax returns may be considered by you to show that the defendant
10 knew that the law required him to file federal income tax
11 returns and that he voluntarily and intentionally violated that
12 legal requirement. You may similarly consider a pattern of
13 failing to file returns for several years as evidence the
14 defendant willfully failed to file his or her income tax
15 returns.

16 Other conduct you may consider in determining whether
17 the defendant acted willfully includes: first, whether an
18 accountant gave reminders or suggestions to the defendant to
19 file tax returns; second, whether the defendant was aware of
20 any court decisions rejecting his interpretation of the law;
21 third, whether the defendant participated in tax protest
22 activities; fourth, whether the defendant received warning
23 letters from the IRS; and fifth, whether the defendant received
24 a large amount of gross income.

25 A defendant does not act willfully if he fails to file

1 federal income tax returns or evades his taxes if he believes
2 in good faith that he is acting within the law or that his
3 actions comply with the law. Therefore, it is the government's
4 burden to prove beyond a reasonable doubt that the defendant
5 did not act as a result of a good faith belief that his actions
6 complied with the law.

7 A good faith belief is one that is honestly and
8 genuinely held. Therefore, if the defendant actually believed
9 that what he was doing was in accordance with the tax statutes,
10 he cannot be said to have the criminal intent to willfully
11 evade taxes or to willfully fail to file tax returns. A good
12 faith belief need not be objectively reasonable to be held in
13 good faith. Therefore, a good faith belief can be based upon a
14 misunderstanding or a mistaken view of the tax laws. However,
15 you are permitted to consider whether the defendant's stated
16 belief about the tax statutes was reasonable in deciding
17 whether the belief was honestly or genuinely held.

18 A person who knows the requirements of the tax laws
19 and simply disagrees with those requirements cannot be said to
20 have acted in good faith. Likewise, the generalized belief
21 that tax laws are unconstitutional, no matter how earnestly
22 asserted, is not a good faith belief that can constitute a
23 defense to any charge in the indictment. It is the duty of all
24 citizens to obey the law whether they agree with the law or
25 not.

1 In order for a document to qualify as an income tax
2 return: first, it must be timely filed; second, it must
3 purport to be a return; third, it must be executed under
4 penalty of perjury; fourth, it must contain sufficient data to
5 allow calculation of tax; and fifth, it must represent an
6 honest and reasonable attempt to satisfy the requirements of
7 the tax law.

8 A separate crime is charged against the defendant in
9 each count. You must decide each count separately. Your
10 verdict on one count should not control your verdict on any
11 other count.

12 The defendant has pled not guilty to the charges and
13 is presumed innocent unless and until proved guilty beyond a
14 reasonable doubt. Proof beyond a reasonable doubt is proof
15 that leaves you firmly convinced the defendant is guilty. It
16 is not required that the government prove guilt beyond all
17 possible doubt.

18 A reasonable doubt is a doubt based upon reason and
19 common sense. It is not based purely on speculation. It may
20 arise from a careful and impartial consideration of all the
21 evidence or from a lack of evidence. If, after careful and
22 impartial consideration of all the evidence, you are not
23 convinced beyond a reasonable doubt the defendant is guilty, it
24 is your duty to find the defendant not guilty. On the other
25 hand, if, after careful and impartial consideration of all the

1 evidence, you are convinced beyond a reasonable doubt the
2 defendant is guilty, it is your duty to find the defendant
3 guilty.

4 You are here only to determine whether the defendant
5 is guilty or not guilty of the charges in the indictment. Your
6 determination must be made only from the evidence in the case.
7 The defendant is not on trial for any conduct or offense not
8 charged in the indictment. You should consider evidence about
9 the acts, statements and intentions of others, or evidence
10 about other acts of the defendant, only as they relate to these
11 charges against this defendant.

12 The evidence you are to consider in deciding what the
13 facts are consists of the sworn testimony of any witness, the
14 exhibits which were received into evidence, and any facts to
15 which all the lawyers stipulate. In reaching your verdict, you
16 may consider only the testimony and the exhibits received into
17 evidence.

18 Certain things are not evidence and you may not
19 consider them in deciding what the facts are. I will list them
20 for you.

21 First, arguments and statements by lawyers are not
22 evidence. The lawyers are not witnesses. What they have said
23 in their opening statements, closing arguments and at other
24 times, is intended to help you interpret the evidence, but it
25 is not evidence. If the facts as you remember them differ from

1 the way the lawyers state them, your memory of them controls.

2 Questions and objections by lawyers are not evidence.
3 Attorneys have a duty to their client to object when they
4 believe a question is improper under the rules of the evidence.
5 You should not be influenced by the question, the objection, or
6 the Court's ruling on it.

7 Testimony that has excluded or stricken, or that you
8 have been instructed to disregard, is not evidence and must not
9 be considered.

10 In addition, some evidence is admitted for a limited
11 purpose only. When I have instructed you that an item of
12 evidence has been admitted for a limited purpose, you must
13 consider it only for that limited purpose and for no other.

14 Anything you may have seen or heard when the court was
15 not in session is not evidence. You are to decide the case
16 solely on the evidence received at the trial.

17 Evidence may be direct or circumstantial. Direct
18 evidence is direct proof of a fact such as the testimony of an
19 eyewitness. Circumstantial evidence is indirect evidence.
20 That is, it is proof of one or more facts from which you could
21 find that another fact exists, even though it has not been
22 proved directly. You are to consider both kinds of evidence.
23 The law permits you to give equal weight to both, but it is for
24 you to decide how much weight to give to any evidence.

25 Certain charts and summaries have been received into

1 evidence. Charts and summaries are only as good as the
2 underlying supporting material. You should, therefore, give
3 them only such weight as you think the underlying material
4 deserves.

5 The defendant has testified. You should treat this
6 testimony just as you would the testimony of any other witness.

7 In deciding the facts in this case, you may have to
8 decide which testimony to believe and which testimony not to
9 believe. You may believe everything a witness says, or part of
10 it or none of it. In considering the testimony of any witness,
11 you may take into account: first, the witness's opportunity
12 and ability to see or hear or know the things testified to;
13 second, the witness's memory; third, the witness's manner while
14 testifying; fourth, the witness's interest in the outcome of
15 the case and any bias or prejudice; fifth, whether other
16 evidence contradicted the witness's testimony; sixth, the
17 reasonableness of the witness's testimony in light of all the
18 evidence; and seven, any other factors that bear on
19 believability.

20 The weight of the evidence as to a fact does not
21 necessarily depend on the -- on the number of witnesses who
22 testify.

23 You have heard testimony that the defendant made a
24 statement. It is for you to decide whether the defendant made
25 the statement and, if so, how much weight to give to it. In

1 making those decisions, you can consider all of the evidence
2 about the statement, including the circumstances under which
3 the defendant may have made it.

4 You have heard testimony from persons who, because of
5 education or experience, are permitted to state opinions and
6 the reasons for their opinions. Opinion testimony should be
7 judged just like any other testimony. You may accept it or
8 reject it, and give it as much weight as you think it deserves,
9 considering the witness's education and experience, the reasons
10 given for the opinion, and all the other evidence in the case.

11 The punishment provided by law for this crime is for
12 the Court to decide. You may not consider punishment in
13 deciding whether the government has proved its case against the
14 defendant beyond a reasonable doubt.

15 Your verdict must be based solely on the evidence and
16 on the law as I have given it to you in these instructions.
17 However, nothing that I have said or done is intended to
18 suggest what your verdict should be. That is entirely for you
19 to decide.

20 When you begin your deliberations, you should elect
21 one member of the jury as your foreperson. That person will
22 preside over the deliberations and speak for you here in the
23 courtroom. You will then discuss the case with your fellow
24 jurors to reach agreement, if you can do so. Your verdict,
25 whether guilty or not guilty, must be unanimous.

1 Each of you must decide the case for yourself, but you
2 should do so only after you've considered all the evidence,
3 discussed it fully with the other jurors and listened to the
4 views of your fellow jurors. Do not be afraid to change your
5 opinion if the discussion persuades you that you should. Do
6 not come to a decision simply because other jurors think it is
7 right. It is important that you attempt to reach a unanimous
8 verdict but, of course, only if each of you can do so after
9 having made your own conscientious decision. Do not change an
10 honest belief about the weight and effect of the evidence
11 simply to reach a verdict.

12 Some of you have taken notes during the trial.
13 Whether or not you took notes, you should rely on your own
14 memory of what was said. Notes are only to assist your memory.
15 You should not be overly influenced by the notes.

16 A verdict form has been prepared for you. After you
17 have reached unanimous agreement on a verdict, your foreperson
18 will fill in the form that has been given to you, sign and date
19 it, and give a note to the bailiff outside the door that you
20 have reached a verdict.

21 If it becomes necessary during your deliberations to
22 communicate with me, you may send a note through the bailiff,
23 signed by your foreperson or by one or more members of the
24 jury. No member of the jury should ever attempt to communicate
25 with me except by a signed writing. And I will respond to the

1 jury concerning the case only in writing or here in open court.
2 If you send out a question, I will consult with the lawyers
3 before answering it, which may take some time. You may
4 continue your deliberations while waiting for the answer to any
5 question. Remember that you are not to tell anyone, including
6 me, how the jury stands numerically or otherwise on the
7 question of the guilt of the defendant until after you have
8 reached a unanimous verdict or have been discharged.

9 Dated at Anchorage, Anchorage, this 25th day of June,
10 2004, and signed by me, James K. Singleton.

11 Now a couple of other things. First of all, reference
12 is made in the instructions to the verdict form. The verdict
13 form bears the caption of the case and then as to each of the
14 12 counts says, "We, the jury, find the defendant, John Thomas
15 Harpole" -- and then in brackets, "not guilty or guilty," end
16 brackets, "on the charge of" and then lists the count. And
17 that goes through, through the 12. And then at the end,
18 there's a place for the foreperson to date the verdict form and
19 sign her or his name.

20 Now in the instructions, two things. There's mention
21 in Instruction No. 22 that if the jury reaches a unanimous
22 verdict, the foreperson should date the verdict form and sign
23 it and send a note to the Court that a verdict has been
24 reached. Some jurors have had some confusion about that, so I
25 want to clear that up in advance. The foreperson hangs on to

1 the verdict form until she or he can publish it here in open
2 court. The foreperson should not hand the filled-out verdict
3 form to the bailiff. She should -- she or he should simply
4 hand a note that says "we have reached a verdict," without
5 indicating anything further.

6 In the Instruction No. 23, it says that:

7 "Remember that you are not to tell anyone, including
8 me, how the jury stands numerically or otherwise on
9 the question of the guilt of the defendant, until you
10 have reached a unanimous verdict or have been
11 discharged."

12 Now if you send a note to the Court, whatever that note says,
13 you should never put in the note how the jury stands
14 numerically or otherwise. You certainly have the right to ask
15 questions about the law if, after reviewing the jury
16 instructions, you find them ambiguous or confusing or anything
17 like that. But you're never to indicate to the Court or anyone
18 else how the jury stands, and you are never to pass the verdict
19 form to the bailiff or the clerk.

20 The foreperson hangs on to that until that can be
21 published in open court. And essentially, what we do is, we --
22 we check to make sure that the -- the verdict form is filled
23 out, and then we'll ask the foreperson to read it into the
24 record. That's known as "publishing the verdict." And
25 that's -- that's how we'll go on from there.

1 Now you're going to be our guests for lunch today, and
2 your -- your orders have already been taken, and I'm sorry that
3 prime rib and chateaubriand are not on the list. You have to
4 understand that we're going through budget crises.

5 At the beginning of the trial, counsel stipulated that
6 we would not initially choose our alternate jurors, but that we
7 would wait until the end of the case to see if any of the
8 jurors, for whatever reason, had to request to be excused. Has
9 anything come up in any juror's life, any emergencies, any
10 problems, that leave you in doubt about your ability to remain
11 with the jury through deliberations, until the jury either
12 reaches a verdict or is unable to reach a verdict and is
13 discharged? Anybody need to be discharged or excused right
14 now?

15 (No audible reply)

16 THE COURT: Okay. What we're going to do then is,
17 Madame Clerk has pulled out of the depths of the court's
18 archives the old jury wheel. We don't use that anymore. We --
19 we typically use a computer now. But she's found -- found the
20 old jury wheel and she's put each of your 13 names in the
21 wheel. And she's going to spin the wheel. Madame Clerk, spin
22 the wheel. And then she's going to reach in and take out a
23 name. The name she takes out will be the alternate juror, and
24 I will then excuse that alternate juror at this time, with our
25 thanks. Madame Clerk, you may pull the name.

1 THE CLERK: The alternate juror will now be juror
2 number 14, Richard Blake.

3 THE COURT: Very well. Mr. Blake, on behalf of the
4 parties, counsel and myself, I want to extend to you our thanks
5 for your patience and consideration during the course of this
6 trial. I will excuse you at this time. And if you're
7 interested in -- in what happens, if you'd contact the jury
8 clerk sometime next week, she'll be able to tell you what --
9 what occurred. You may be excused, Mr. Blake.

10 (Alternate juror, Richard Blake, excused at 12:15 p.m.)

11 THE COURT: Ladies and gentlemen, for the remainder of
12 you, I will excuse you at this time. Up to this time, I've
13 told you not to talk about the case. Now, of course, it's your
14 obligation to talk about the case. You have copies of the
15 instructions and the verdict forms. You may be excused.

16 Sir, did you have a question?

17 UNIDENTIFIED JUROR: A question about the scheduling
18 for the rest of the day.

19 THE COURT: Oh, I'm sorry, sure. The jury deliberates
20 during the week from 9 in the morning until 4:30 in the
21 afternoon. If you have not reached a verdict by 4:30 on any
22 particular day, then you can recess and go to your homes and
23 return on the next business day to resume your deliberations.
24 Today is Friday, so that if you have not reached a verdict by
25 4:30 this afternoon, you may be excused, go to your homes and

1 return at 9 o'clock on Monday morning to take up your
2 deliberations wherever you left them off.

3 We're now a sitting jury and it is very important that
4 you not allow any extraneous influence to have any effect
5 whatsoever. So you should, during periods that you are in
6 recess, refrain from discussing the case with anyone who is not
7 a member of the jury. It is important that you remember that
8 you're a collegial body and all deliberations should take place
9 in the presence of all jurors. Consequently, if you break at
10 4:30 this afternoon, all deliberations should end at that time
11 and not resume until all of the jurors are together again on
12 Monday. Now occasionally, problems will arise, a juror will
13 run into difficulties, will not be able to get here right on
14 time. If that happens, please don't deliberate. Wait until
15 all the jurors are present.

16 During the day, it is not uncommon for jurors to --
17 who have been deliberating -- to want to take a break, a
18 recess. You are the masters and mistresses now of your case.
19 Anytime you want to take a recess, by all means, do so.
20 Anytime some jurors want to go outside to smoke, fine. All I
21 ask is that if you take a recess that it be a recess and you
22 don't begin your deliberations again or discussions until all
23 the jurors are back together. It's been found not to be
24 helpful if some of the jurors discuss the case in the absence
25 of other jurors. So please all be together. You may be

1 excused.

2 (Jury out at 12:18 p.m.)

3 THE COURT: You may be seated for a minute. I just
4 have a couple of things to go over. Mr. Harpole, there are
5 essentially three things that can -- well, actually, four, but
6 three things that could happen before the jury reaches a
7 verdict or is discharged. First, the jurors can come back with
8 a question, some ambiguity in the jury instructions, something
9 they don't understand, something they're fighting about or
10 arguing about. Any question will be presented to the Court in
11 writing and the Court is not going to communicate with the jury
12 until it provides copies of any question to both counsel, and I
13 hear from both sides as to recommendations as to how to
14 respond.

15 The second possibility is the jury might ask to
16 re-hear testimony because we don't have court stenographers or
17 transcript reporters. What that means is, the Clerk plays back
18 the requested testimony from the tape recorder. Now in state
19 court, the court took the view that once the jury begins its
20 deliberation, it's the master of its fate. If it wants to hear
21 something, it's got a right to hear it.

22 The Ninth Circuit takes a slightly different view.
23 And for that reason, we have to discuss any request by the jury
24 to re-hear testimony before the Court authorizes it. And at
25 the very least, the Court has to give an instruction cautioning

1 the jury not to over-emphasize anything they re-hear over
2 against testimony that they do not re-hear but has a bearing on
3 the same topic. So we'll have to cover that.

4 The third thing they could do is come in and say,
5 'We're at loggerheads, we can't reach a verdict, we need to be
6 discharged.' Before the Court can discharge a jury over the
7 objection of the defendant, the Court has to find that there is
8 a manifest necessity. And what that means in context is, that
9 the jury would not reach a verdict no matter how long they
10 deliberated, bearing in mind that the Court always has to be
11 cautious about a majority of jurors coercing a minority. So
12 the Court cannot do or say anything to the jury to lead them to
13 believe they're going to have to stay here until they reach a
14 verdict. The Court has to be prepared to discharge them at
15 some reasonable point in time if convinced that they are truly
16 hung.

17 Now typically what I do when the jury comes back the
18 first time and says "we can't reach a verdict," particularly if
19 they do it within the next 15 minutes, I re-read them
20 Instruction No. 19, which is the ABA standard instruction on --
21 well, it's the ABA substitute for what we used to call the
22 Allen charge. And you can look over Instruction No. 19. It
23 just tells them to -- to talk about the case together but don't
24 let -- don't sacrifice your honest belief just to get a
25 verdict.

1 The Court can do that once, but there's a feeling in
2 the Ninth Circuit that if you do it more than once, you're
3 beginning to coerce the jury. So -- but the Court is not going
4 to discharge a jury until I've heard from both sides and
5 gotten -- gotten your advice.

6 The fourth thing, of course, that can happen is the
7 jury comes in with a verdict.

8 Now if any of those four things happen, I have to have
9 everybody here. So I need to make sure that the Clerk knows
10 where she can reach you in a reasonably short time. Now in the
11 old days, we used to require everybody to sit in the courtroom
12 and wait for the jury. And those of you who have seen the
13 movie ^{To} "Kill a Mockingbird" saw that that in fact was the
14 practice years and years ago. The judge, the -- the lawyers,
15 the parties simply waited in the -- in the jury room until the
16 jury came in. We don't do that anymore.

17 So we'll allow you to go to lunch and do whatever you
18 want to do, but I do need to be able to get in touch with you
19 on short notice. Hopefully, everybody has a cell phone or some
20 other way that I can communicate with you because I'd really
21 like to be able to get you back in here shortly. If the jury
22 asks a question, if the jury requests to re-hear testimony and
23 we appear to be ignoring them, that can get one or more jurors
24 angry, and then -- then they may be deciding the case not on
25 the basis of the evidence but on the basis of their feelings.

1 So we -- we try to respond as quickly as we can.

2 Frequently, particularly on a Friday, jurors will come
3 in around 4:30, but they may miss 4:30 by a few minutes.
4 Consequently, I need to know where I can reach you up until 5
5 o'clock. Now I've told them they can go home at 4:30. They
6 may go home at 4:30, particularly if they're nowhere near
7 reaching a verdict. But they may hang around and I don't like
8 to shoo them out. So I need to know where I can reach you
9 until 5 o'clock. If you haven't heard from me by 5 o'clock,
10 you can assume the jury has not reached a verdict, that they've
11 gone home, and we'll pick it up again at 9 o'clock on Monday
12 morning. If that happens, I've got to know where I can reach
13 you at 9 o'clock on Monday morning.

14 Now counsel, are you prepared to just remain here in
15 town until the jury either is discharged --

16 MR. BECRAFT: Absolutely, Your Honor.

17 THE COURT: Okay. Some --

18 MR. BECRAFT: With this proviso. You have said
19 something about going over to the museum. I was wondering if
20 we can eat and then --

21 THE COURT: Sure. Sure.

22 MR. BECRAFT: -- I normally sit outside the courtroom.
23 But if you invited me, I guess, to go to the museum --

24 THE COURT: I would go to the museum. I would go to
25 the museum to eat if I were you because they have great food,

1 as long as -- as the Clerk knows where she can reach you on
2 relatively short notice. Sometimes when counsel are from out
3 of -- from out of town, they like to go home over the weekend,
4 they've got other things to do, and that's caused disaster for
5 me.

6 MR. BECRAFT: Leave Alaska?

7 THE COURT: Not in the good weather. Okay, fine. So
8 we'll have everybody here until I hear from you further. I did
9 want to say this -- and I know judges say things like this all
10 the time. Please don't accuse me of insincerity because in
11 this case I am being completely sincere. I thought this was a
12 well tried case. I thought counsel were civil and organized,
13 ready at every point of time. I assure you, if I could look
14 forward to having cases as well tried as this one, my job would
15 be a lot easier and I would enjoy it a lot more. So it's truly
16 been a joy for me.

17 MR. BECRAFT: Well, on our side of the courtroom, Your
18 Honor, I think I speak for them, it's been a pleasure for us to
19 be here.

20 THE COURT: Very good. We'll see you all when and if
21 further activity is required. Madame Clerk, do make sure you
22 know where you can reach them.

23 THE CLERK: Yes. Thank you. Off record.

24 (Recess at 12:26 p.m., until 2:50 p.m.)

25 (Audio Server, Log No. 2:50:25)

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