

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 vs.) Docket No. SA-15-CR-271(1)-FB
6 MARGARITA MONIR HOSSEINI,) San Antonio, Texas
7 Defendant.) September 18, 2017
8)

8
9 TRANSCRIPT OF TRIAL (BEGINNING WITH OPENING STATEMENT)
10 BEFORE THE HONORABLE FRED BIERY
11 UNITED STATES DISTRICT JUDGE
12 AND A JURY

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1 (Beginning of excerpt)

2 THE COURT: All right. Members of the jury, if
3 you'll stand and raise your right hand, I'll give you the oath
4 of this case.

5 (The oath was administered)

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

7 Ladies and gentlemen, by the oath you have taken, you
8 have become fellow officers of the Court, along with Mr. Barnes
9 and Mr. Surovic and Mr. Spearman and -- as we have all taken
10 our oaths, of course long before this case, when we started
11 practicing or became a judge. But you-all have taken an oath
12 to render a true verdict based on the facts and the law as
13 given to you by the Court.

14 In addition to being officers of the Court, you now
15 are a link in that long chain of history that goes back to
16 those documents under which you sit. Indeed, when I was a
17 child, there were, let's see, about four of you who were
18 allowed to sit in the jury box. Women and people of color were
19 not allowed to sit in the jury box until about 1960.

20 So we've come a long way. We've made the
21 Constitution more expansive and apply to more people. My
22 cousin found that our fifth great-grandfather fought in the
23 Revolution, but he couldn't vote because he didn't own any
24 property. You had to be a Jefferson or a Lincoln or the landed
25 gentry. So our system has evolved. But one of the constants

1 is that you-all are a link in that chain of history.

2 You have received notepads which you may use if you
3 wish to. You don't have to. If you do use those, those notes
4 are for your own use and recollection as opposed to your notes
5 becoming a speaking, written witness in the -- in the jury
6 room. "My notes say this." Well, don't do that. If you have
7 a conflict between what your -- what you wrote down and what
8 you remember, you go with your computer up here (indicating).

9 Our schedule will be as this: Today and Tuesday we
10 will be finishing by 4:00 so that you-all can hit the road and
11 so forth. On Wednesdays, Thursdays and Fridays we will start
12 early, but we will take a very brief, maybe 30- or 40-minute
13 recess, and we will quit at 2:00 on Wednesday, Thursday and
14 Friday.

15 We will try to start as close to 8:30 every morning
16 as possible. Ms. Christmas, for example, got stuck in a
17 six-car pileup coming in this morning. So you never know.

18 And I assume, Ms. Fernandez, they have a phone number
19 if they should have some problem.

20 Now, Mr. Barnes and Mr. Surovic, when we get started
21 here, first are going to give you an opening statement. That's
22 kind of like a book report or a movie preview of what they
23 think the case is going to say and show. That is not evidence.
24 That is them being advocates for their particular side of the
25 case. At the end of the case the lawyers also will have an

1 opportunity to summarize and tell you -- in Mr. Surovic's case
2 he's going to argue presumably that you ought to write in
3 "guilty" on all 27 counts. Mr. Barnes is going to advocate
4 that the government hasn't proven that, and that you ought to
5 write in the words "not guilty" on all 27 counts. And then, of
6 course, you-all will decide.

7 In between the opening and the closing, then you will
8 hear the actual evidence on which you will base your decision;
9 not what the lawyers say, not what I think or anything else,
10 but what you-all hear from the evidence.

11 You will receive from the Court legal instructions
12 from time to time about evidence which might be stricken or
13 sustain an objection and so forth. If an objection is made and
14 I sustain the objection to a question, then you cannot consider
15 the question or what -- or speculate what the answer might have
16 been. If I overrule the objection, of course you can consider
17 the question and the answer in the context in which it was
18 given.

19 From time to time the lawyers may come up here to ask
20 the Court to rule on a legal issue outside of your hearing.
21 We're not trying to hide anything from you. But, again, we
22 keep these various processes and roles separate. So when we're
23 talking about legal issues, you won't be in the -- in the
24 hearing of that; nor when you-all are back there deliberating,
25 we won't be up next to your door, listening to what you're

1 doing because that's your job.

2 I think we've talked a little bit about not engaging
3 in talking about the case even among yourselves. When we take
4 breaks, you shouldn't talk about the case. Certainly, when you
5 go home this evening, you are free to tell your family and your
6 employers about having been selected on a very important case
7 but -- and then once it's over, you can tell them what it was
8 all about and what you thought about the process and so forth.
9 But for right now keep all of that to yourself.

10 And as I indicated, in the old days, before social
11 media, occasionally a juror would violate the rules by talking
12 about it or on the phone or going out to the scene of the
13 alleged crime and so forth, which you can't do. Nowadays --
14 that didn't happen very often, but it occasionally did. And
15 then you have to start all over because it would be a mistrial.

16 Nowadays we have Twitter. Apparently -- I don't have
17 Twitter. At any rate, don't tweet. Don't talk about the case.
18 It's pretty commonsense stuff. Because you-all have to form a
19 collective wisdom about the truth of what this case is about.
20 And you do that within this framework of the rule of law.

21 There will always be drinks and snacks and sodas in
22 here, starting at 7:45 in the morning. They will be there all
23 during the day. Some people like to bring their lunch, because
24 we're not going to have an hour and a half like you had today
25 to go somewhere. So if you want to bring your lunch, fine. If

1 you don't, Ms. Hunter and the other jury people will go out and
2 get sandwiches or soup or salad, whatever it may be. We used
3 to have a delicatessen right across the way, but they closed
4 down.

5 I think that concludes for right now -- there may be
6 some other instructions later on, but I think I've touched all
7 the ones that need to be spoken to right now.

8 So with that, Mr. Surovic, you may make your opening
9 statement.

10 MR. SUROVIC: Thank you, Your Honor.

11 Before we start opening statement, for the record,
12 the parties have agreed to the preadmission of all the
13 evidence. And that would include all the government exhibits,
14 all defense exhibits, with the exception of 70A. And neither
15 party has objection to any of --

16 THE COURT: Yes. And thank you for reminding me.

17 In the olden days, and sometimes now if it's a real
18 hotly contested evidentiary issue, the lawyer would have to
19 come to the witness and say, "I show you Exhibit 1. Do you
20 recognize it," and go back and forth, back and forth.

21 In this particular case there's no objection to these
22 various records. So all of those exhibits -- when you hear the
23 lawyers refer to exhibit such and such, know that it's already
24 been admitted. And there may be -- theoretically, may be some
25 other exhibits that come in later on. But for right now the

1 vast bulk of what the evidence -- exhibits evidence is, has
2 already been admitted.

3 Mr. Surovic.

4 MR. SUROVIC: Thank you, Your Honor. May it please
5 the Court. Counsel.

6 THE COURT: Yes.

7 OPENING STATEMENT

8 MR. SUROVIC: Ladies and gentlemen of the jury, we
9 finally got to the trial part of this. You survived jury
10 selection, and now we're here to give me an opportunity this
11 afternoon to give you a little bit of an overview of what you
12 can expect over the next few days. We'll try to move this
13 case -- both parties will try to move this case as quickly as
14 possible, but there's certain things that you need to know and
15 you need to hear witnesses about as we go through the process.
16 And that'll take a few days.

17 It's a 27-count indictment, as the Judge told you.
18 26 of the counts are remarkably similar. But you'll detect a
19 pattern as you go through listening to the witnesses over the
20 next few days.

21 This is a case that involves a tax preparer. Now, we
22 all have to pay taxes. Some of us do our own tax returns.
23 Some of us have an accountant that does the tax returns. Some
24 of us go to a tax preparer or a tax service, H&R Block,
25 something like that.

1 Ms. Hosseini ran what you've already heard, Rapid
2 Return Tax Services. It was a tax preparation service. It was
3 a little storefront thing. You'll hear some of the witnesses
4 talk about how they used to have people outside in the streets.
5 You've probably seen them as you drove along, that, you know,
6 hold up signs and things like that. And that's what attracted
7 them to take their taxes to Ms. Hosseini to be prepared.

8 People do these things for a lot of reasons. You
9 know, you will hear the witnesses tell you why they went to
10 Ms. Hosseini to get their taxes prepared. Generally speaking,
11 they're going to tell you that they're not experts in the tax
12 law. They wanted somebody to go prepare their taxes correct
13 for them. And so they brought all their stuff in and gave it
14 to her, and she asked them some questions, and she prepared
15 their tax returns.

16 What you will also hear is that she got a little
17 creative in the process of preparing their tax returns. Maybe
18 she thought she was helping them out or something like that.
19 But she would create deductions for them in order to get them a
20 larger return.

21 Count 1 involves a situation of a lady, Anita Price,
22 who doesn't gamble often, but on that particular year and that
23 particular occasion, this would be back in 2008, she went to
24 Las Vegas. And she liked playing the slots, and she had
25 managed to win \$19,740. This is Count 1.

1 And by the way, ladies and gentlemen, as you see when
2 we -- when we go through the exhibits and things like that, the
3 government's tried to structure this for you so it'll be easy
4 to follow. So, for example, all the exhibits that relate to
5 Count 1 of the indictment will be 1 dash something. 1-1, 1-2,
6 1-3. Count 2: 2-1, 2-2, 2-3. So it'll be easy for you when
7 you're back in the deliberation room to find the exhibits that
8 you need to find concerning any particular count.

9 But in any event, as far as Count 1 goes, she went to
10 Las Vegas. She won a good amount of money. And she'll tell
11 you that she gambled some of it. She spent some of it on stuff
12 for her. She brought back some for her mom, about \$5,000 she
13 said she brought back for her mom.

14 But when she went to prepare her tax returns, she
15 reported to Ms. Hosseini that she had won this amount of money.
16 And she had, of course, all the 1099s that you get from the
17 casinos when you win money. Well, Ms. Hosseini did the favor
18 for her of saying that she also had exactly \$19,740 in gambling
19 losses in order to offset that so she didn't have to pay taxes
20 on it.

21 You will hear Ms. Price tell you: I never told her
22 that. I never told her that I lost all the money. In fact, I
23 was rather proud of the fact that I walked away making money on
24 that deal. But that's what was reported in the tax returns.

25 The other counts, Count 2 through 27, all involve

1 business expenses and what is referred to as a Schedule C. And
2 Schedule C seemed to be a thing that Ms. Hosseini specialized
3 in. She liked to have people who had businesses on the side,
4 essentially. If you own your own business or if you have a
5 side business that is yours, that you're going to have expenses
6 in, you file a Schedule C because you can deduct expenses of
7 your business.

8 You know, for example, you are normally an
9 accountant, but on the weekends you're a reserve police
10 officer. You're entitled to deduct your uniform and, you know,
11 various equipment that you may have to have in order to
12 preserve that -- or to perform those duties. You may be able
13 to deduct some transportation expenses and things like that
14 related to it.

15 You're going to hear a lot of these people fall into
16 two categories. You have a large group of these people who are
17 law enforcement officers, mostly work for Bexar County
18 Sheriff's office. And one of the things you'll discover if you
19 hang around law enforcement officers -- you've probably seen
20 them as you're driving down the street. They tend to pick up
21 off-duty security jobs. For example, if you've got a church in
22 your neighborhood and there's a traffic problem when people
23 leave the church parking lot, a lot of times they'll have a law
24 enforcement officer out there to help control the traffic.
25 That's usually an off-duty police officer who's filling in that

1 role.

2 These people had -- they also do security for
3 construction sites, hotels, things like that. It's a second
4 job. They can deduct a lot of their expenses as far as the
5 second jobs.

6 The other type of second job you're going to hear
7 about is people who did lawn care, lawn services. They mow
8 lawns for people. Of course, you know, you're completely
9 entitled to deduct -- you know, you buy a lawnmower for that
10 business, you can deduct the lawnmower. Gasoline for those
11 businesses, you can certainly deduct gasoline. Mileage to get
12 back and forth to the various jobs, yeah.

13 But, again, Ms. Hosseini, trying to do -- give that
14 little extra to her various clients, she got a little creative
15 again on the preparation of the tax returns.

16 You know, for example, one of the things she liked to
17 do was to -- if you had an automobile, she'd depreciate the
18 automobile for you as part of the -- you know, as part of your
19 extra business. Now, she never asked the question: Well, did
20 you use that automobile in your business?

21 You're going to hear in one case that it wasn't even
22 the person's automobile -- the person that ran the business's
23 automobile. It was just, you know, the spouse's automobile,
24 and it was never used in the business. So she never asked that
25 important question.

1 And she never asked: Well, if you did use it in the
2 business, how much did you use it in the business?

3 But one of the questions that you have to answer when
4 you fill out the tax return is what percentage of the vehicle
5 use was for business. She always wrote in hundred percent.
6 She never asked the people that she was performing this for
7 whether they used it a hundred percent or not. She just
8 decided to make the figure up and include it in the tax return.

9 Another thing she liked to do -- you know, you don't
10 have to do -- just do depreciation on a vehicle. You can take
11 mileage off of vehicles. And if any of you have ever done
12 this, if you have a second job or anything like that, you know
13 that part of the job in order to, you know, take off your
14 mileage, you can either keep the gas receipts and deduct gas
15 receipts, or you can keep track of your mileage. You'd
16 normally do that in a written mileage log.

17 Ms. Hosseini got very creative with mileage. In one
18 instance you're going to hear how one of her clients,
19 Mr. Escobedo, came in. And he was a client for many years.
20 And so it's sort of funny. The first year he came in -- and
21 these aren't the exact numbers. But he came in and she asked
22 if he used his car in business. He said: Yeah, occasionally.

23 What's the mileage?

24 And he said: I don't know.

25 She told him: Go out and look.

1 So went out in the parking lot, looked at the mileage
2 on the car, came back in, told her. She wrote it down on the
3 form.

4 Next year, comes in, same type of thing. What's your
5 mileage?

6 I don't know.

7 Well, go look.

8 Well, he goes out and he looks. And he comes back,
9 and he reports it.

10 Well, you'll see over the four years that he was a
11 client, you know, his mileage starts out -- and these are not
12 exact numbers. You're going to hear the exact numbers when we
13 go through it. But it starts out seven or eight thousand miles
14 on the car. The next year it's like 15. And the next year
15 it's 22,000. And then it's 35,000 at the end of -- the last
16 filing. He was going out in the parking lot and was getting
17 the mileage off his car, the total mileage off his car, not the
18 mileage that year and not the mileage that went as far as
19 business goes. And she would just write it in and submit it on
20 the taxes, even though the tax form very specifically asks,
21 what is the business mileage on the vehicle for that year.

22 And then, very importantly, she never asked any of
23 these people this question. There are -- there are some boxes
24 that you have to check when you put down mileage. Is there
25 proof of it, and is the proof written? She would always check

1 "yes" to both of those even though these people didn't have
2 proof of their mileage. She didn't even ask them whether they
3 did. She just checked those boxes. So that's one of the games
4 she was going -- in order to help these people out by getting
5 them a bigger return.

6 The other scam that she ran was cellphones. There
7 are a variety of things she did, but we're focusing on
8 basically these three for purposes of this trial. She would
9 ask people if they had a cellphone; ask them, how much did
10 you -- you know, how much did you pay a monthly bill for your
11 cellphone, which is fine. If they used it for their business,
12 they could deduct the portion of their bill that they used for
13 business.

14 But she wouldn't ask: What was the portion of
15 business? She wouldn't ask, you know: What percentage of your
16 calls were business versus nonbusiness? She wouldn't even ask:
17 Well, how many cellphones do you have on your cellphone plan?

18 So you have people who -- you know, she asked them:
19 What's your cellphone bill? They gave her the cellphone bill.
20 Well, that included a phone for the wife, two phones for the
21 kids. And they're deducting, you know, upwards of, you know,
22 in some cases \$1,500 a year for their cellphone plan, and a
23 very small portion of their cellphone calls is actually
24 business related. But that didn't matter to Ms. Hosseini. She
25 had -- you know, they told her what the bill was. She wrote it

1 down. Had nothing to do with business.

2 Now, I don't want to give y'all the idea that
3 Ms. Hosseini was just a big-hearted woman who wanted to help
4 out these folks by getting them the biggest return that she
5 could, because she also got paid very well for preparing these
6 people's taxes.

7 If you've been to one of these places before, usually
8 it's one of those things where you can check a box. And you
9 don't even have to write them a check at the time. The IRS
10 will pay their portion when they cut your check. Well, she
11 worked that with these folks. And, you know, she would talk to
12 them. And she would, you know, tell them what their return was
13 going to be. And they were all very excited because, you know,
14 the year before, they had to pay taxes. Now they don't.
15 They're getting money back. This is a great thing.

16 But it turns out that she was charging 500, 600, 700,
17 in one case almost a thousand dollars, per year to crank out
18 these tax returns. And you're going to hear how she would
19 normally spend 20 to 30 minutes with the client at most in
20 order to prepare their tax returns. That's why she didn't go
21 into a lot of depth with them as far as what exactly they were
22 deducting.

23 There is a requirement when you file a tax return.
24 You'll -- you-all have probably signed them before. It's that
25 you're signing under penalty of perjury. And when a tax

1 preparer does it, there's a similar box. And when you send it
2 electronically, which is what all these tax preparer situations
3 do, there's what's called a "jurat" when you send in the tax
4 return. You're going to hear about the jurat and how she was
5 saying that all this was true, when there's no way in the world
6 it could be true because she didn't even get the information
7 from the clients that she was servicing at that point.

8 These counts in the indictment, these crimes all
9 involve a fraudulent statement, a person aiding and assisting
10 somebody in order to prepare their tax returns, which includes
11 the fraudulent statement; that they knew it was fraudulent; and
12 that they submitted it willfully, knowing that it -- submitting
13 it violated the law.

14 You've heard the structure. You're going to hear it
15 over and over again. It's going to be very repetitive because
16 people are going to come in, and they're going to tell you what
17 happened. And it happened over and over and over again to, you
18 know, similar people. Some slightly different stories here and
19 there. But, generally speaking, you're going to hear what
20 I've -- what I've just told you about.

21 It's going to become very obvious to you that she
22 knew that there's no way that she could possibly have thought
23 that the information that she was putting down was accurate
24 because she didn't even bother to ask these people what the
25 information was. She just made it up.

1 And at the end of the trial, after having listened to
2 all the evidence, there'll be no doubt in your mind that she's
3 guilty of all 27 counts of the indictment and that she needs to
4 be convicted. Thank you.

5 THE COURT: Mr. Barnes.

6 MR. BARNES: Thank you, Your Honor.

7 OPENING STATEMENT

8 MR. BARNES: Good afternoon. As the Judge was
9 referencing earlier, basically you-all are now referees. So
10 you have your imaginary referee uniforms on like the marshal
11 does on weekends. And it's sort of like in refereeing -- the
12 difference here is this is a criminal case, not a civil case.
13 So you're not here to assess whether everything was done
14 perfectly, whether there was any negligence, anything like
15 that. It's sort of like when you're a referee, you determine
16 whether there's a foul or a penalty versus whether there's an
17 intentional foul or a penalty.

18 So in basketball, since we're in Spurs land, it's
19 where if somebody's going down the court and they're fouled,
20 that's just a foul. But sometimes the defensive player
21 actually tries to hurt the offensive player. And that will
22 sometimes be called an intentional foul, a reckless foul, or
23 try to hold the person. And you're being asked to determine
24 whether or not there was an intentional foul here.

25 The same in football. Sometimes there's someone who

1 makes contact with a player, and they're not trying to hurt
2 them. It's just a mistake, and a penalty is done. Other
3 penalties are where someone targets someone to try to hurt
4 their knee or try to go after their head. And that's called an
5 intentional targeting that can lead to the person's being
6 expelled from the game.

7 Same in soccer, or football as they call it in other
8 parts of the world. The difference between a yellow card,
9 where someone is a little reckless or careless, or even a foul,
10 which is not even necessarily carded, versus a red card, where
11 somebody comes and deliberately tries to cause injury. You're
12 being asked whether this was a red card issue, whether this was
13 an intentional foul. That's what you're being asked to do.

14 And essentially, as the prosecutor laid out, what
15 you're being asked is to determine whether you believe by --
16 based on the evidence the government presents, whether beyond a
17 reasonable doubt the government presents evidence that my
18 client, Margaret Hosseini, was out to commit perjury, was out
19 to commit fraud; not whether or not she asked all the right
20 questions, not whether she got everything right, not whether
21 she understood the complexities and intricacies of tax law in
22 every circumstance, not whether all of her protocols were best
23 in every single instance; but whether she was out to commit
24 perjury, fraud, whether she had a willful, criminal intent.
25 That's what this case is about.

1 The main reason we're here is my client set out to
2 work for ordinary taxpayers. And her banner was a very simple
3 one: I work for you, not the IRS.

4 The IRS didn't take kindly to that particular slogan.
5 What she had figured out many years ago from watching TV
6 advertisements, where H&R Block and other people are on TV --
7 and they were talking about how every single year in America
8 millions and millions of ordinary Americans leave billions of
9 dollars on the table in tax deductions and tax credits that
10 Congress wrote the law for you to have, but that because
11 ordinary taxpayers don't know the intricacies and complexities
12 of tax law, because they're unaware of their rights, these
13 deductions get never taken.

14 Now, the problem was, there's a gap in service.
15 People who have a lot of resources and a lot of well-being, big
16 corporations, wealthy people, they have access to the big law
17 firms, the big accounting firms. So they make sure they get
18 all of their tax credits and deductions. Half of the Fortune
19 500 pay zero tax each year. But the problem was ordinary
20 people didn't have access to that because that's too expensive
21 for them to afford.

22 So Margaret's dream was a simple one. Try to learn
23 as much as she could about the tax system and try to create an
24 affordable, accessible mechanism where ordinary people could
25 get the tax benefits they were entitled to.

1 Basically, the way the Congress had written the tax
2 system was they knew that a lot of people try to start out
3 businesses on the side. They have a full-time job, but they
4 have a dream of their own, to do their own business.

5 Maybe it's a lawnmower guy who thinks he can do a
6 landscaping business. Maybe it's someone who does occasional
7 baby-sitting who would like to start a childcare business.
8 Maybe it's someone who's good on Facebook who would like to
9 make that into a social media marketing site. There's all
10 kinds of different side businesses that are out there. A
11 police officer who would like to go into private security.

12 Typically, when they're trying to build that
13 business, they're losing money because they have to spend money
14 ultimately down the road to get it or to build it. So part of
15 that process is they use their cars. They use their homes.
16 They use their clothes. They use furnishings. They buy
17 equipment. They go to training sessions. They travel. But
18 most people don't realize that there's all kinds of tax
19 deductions available to them because Congress wrote the system
20 so that -- tax laws are designed so that ordinary people can
21 pursue their economic dreams and opportunities through the tax
22 system. Get money back to ordinary people so they can create
23 new jobs, create new businesses, be successful and live their
24 own dreams.

25 She understood the way to bridge that gap was to try

1 to provide accessible, affordable tax preparation business to
2 ordinary, everyday people so that that dream could become real.
3 And so she opened up her office to do that. Her dream became
4 trying to fulfill the dreams of everybody who walked in.
5 Thousands of customers would come in.

6 When the IRS came in and took all the files in this
7 case, they looked at over 6,500 tax returns. They took over
8 \$12 million in refunds related to deductions and put them under
9 a macroscopic and microscopic review. To understand the power
10 of what the IRS can do when they're doing that review, they
11 have the power of summonses. They can look at every bank
12 record in the country. They can look at every credit card
13 record. They can look at internet data. They can look at
14 emails. They can search. They can seize. They can summons.
15 They can subpoena. They can surveil at a massive level.

16 So all of Margaret's returns could be put under and
17 were put under a macroscopic review. And then they can do a
18 microscopic review.

19 Another part of it is a computer database that allows
20 them to do both, out of Martindale [sic], West Virginia.
21 Imagine sort of a big cellar with a bunch of computers whirring
22 into the night, where they have software algorithms, where they
23 can match up deductions, look at 1099s and W-2s and W-3s and
24 W-9s, look at how often deductions were taken, look at --
25 comparing it to other people throughout the country. That's

1 the macroscopic part.

2 And because the IRS has the specialty and the skill
3 and the capability, they can put it under microscopic minutia
4 review, check it against bank records, credit card records,
5 data records, everything possible.

6 When that was all said and done, after 6,500 returns
7 were reviewed, more than \$12 million in deductions, thousands
8 of clients, what are we here on? We're here on 27 returns of
9 about 12 people, of less than a hundred thousand dollars.
10 That's an error rate less than one percent. When I went into
11 high school, if I got a 99 percent, they called it A plus. The
12 IRS calls it F and a crime. That's what you really are here to
13 decide.

14 If you walked into Margaret's office, you were
15 treated more like a member of a family or a friend than you
16 were a customer or a client. You often went to various events.
17 They held various customer appreciation events where you went
18 to the zoo or other places. And they wanted a one-on-one
19 experience. So if you walk into like an H&R Block or a lot of
20 other places these days, you talk to a computer sometimes
21 rather than a person. Say, "Go over to the computer. Plug
22 this in." And that's sort of about it.

23 She wanted more service. She wanted the kind of
24 service that you got at the big firms, but more affordable and
25 more accessible. She was open year-round. You could just walk

1 in for business. And if you walked in, you'd find a very
2 professional, open and transparent office. On the side would
3 be a bunch of folders where -- there were folders of the
4 checklists, all the various deductions that most people don't
5 know they're entitled to. This includes education credits,
6 employment credits, childcare credits, medical care credits.

7 For example, your grandmother has cancer, and so she
8 gets a wig for treatment when she goes to church. People don't
9 know that actually can be a tax deduction. All those kind of
10 things in detailed checklists, in folder after folder after
11 folder, on the wall, that she would give to help educate and
12 empower every customer who came in.

13 Do a personal interview, either her or members of her
14 staff or her team. The way she did training -- when the
15 government went in and seized all the files in this case, what
16 they found was all kinds of like questions and answers, quizzes
17 that she gave her employees so that they understood all the
18 different forms. 846 different tax forms that exist right now
19 that relate to your tax returns. That's how many. That's how
20 broad. That's how wide.

21 If we were trying to do the tax law, it would be one
22 of these big books like one of those big exhibit books or one
23 of the big blue books that's on the government's table. And it
24 would be sort of like this size, and it'd be like small print.
25 And that would just be the beginning.

1 And let's say we stacked it there in front of the
2 jury, in front of your room, in front of your office. And we
3 started stacking it, and we first did the tax code. That would
4 get us probably up to about six or eight feet. Then we'd go:
5 Oh, we need to add the regulations. That would probably take
6 us to the ceiling.

7 But that isn't all. Then we have to go to the Tax
8 Court opinions and the IRS letter opinions. For that we would
9 need to take those big books, stack them from the floor to the
10 ceiling, from that wall to that wall, from that wall to that
11 wall. And guess what? We still wouldn't have enough space.
12 So is it possible for people to make mistakes about tax law?
13 Yes.

14 What she did is tried to do as much as possible with
15 all kinds of quizzes that she gave her employees, that she
16 herself did. She went to seminars, self-trained,
17 self-educated, went to IRS events, learned as much as possible,
18 and relayed that to people when they came in.

19 So when they came in, they tried to make sure they
20 had the lowest possible risk of error by giving people sheets
21 to tell them what -- how the system worked, interacting with
22 them personally, putting in data entry. And then, before any
23 return was filed, having the customer review them and make sure
24 it's accurate before it's signed. In any other business a
25 99-percent success rate would be extraordinary. Only in the

1 IRS context is it suddenly a crime.

2 The next part is Margaret didn't know anything was at
3 issue. 6,500 returns filed, lots of refunds, lots of credits,
4 helping ordinary people throughout the city, injecting massive
5 amounts of money into the economy as Congress intended, until
6 suddenly the IRS showed up at her office with a massive raid.
7 Guns, there to demand -- under the search warrant, to seize all
8 of her files, all of her records, all of her data. And they
9 did that.

10 After that, the IRS does that macroscopic/microscopic
11 review where they only find what we have here in this case, 27
12 returns that they argue there's some mistakes in, sometimes
13 very small mistakes, \$200, \$300 mistakes.

14 And then what do they do next? What they could have
15 done is they could have sought the bank records to see whether
16 or not the taxpayer remembered correctly the information that
17 they relayed. They could have reviewed credit card records,
18 gas card records, email records. They don't do any of that.

19 They also could have gone back to Margaret and said:
20 Look, we think you made some mistakes here, and we think you
21 have some questions that you should be asking, that you need to
22 ask. They don't do that either.

23 They could have gone to the taxpayer, say: Look, we
24 think you made some simple mistakes. We want you to come in
25 and correct this.

1 No. The next time they do anything is they show up
2 at the IRS taxpayer's door, IRS special investigation badges,
3 guns on their hip, knock on the door. When they walk in, they
4 have the client file with them, that they took from Margaret's
5 offices. They don't give that to the taxpayer. Instead, they
6 start saying: We see items that are wrong in your return.

7 They don't give the taxpayer a chance to go get their
8 records, talk to Margaret, review their file, have a person
9 represent them there. No. It's: There's something wrong. We
10 think -- did you commit a crime? Did you commit a crime?

11 You know, so they -- so all of the sudden they say,
12 well -- they're not sure if they took that deduction. They're
13 not sure if they said they had that much amount of mileage.
14 They're not sure if they had that much amount of gambling
15 losses. And that's how we got to this stage. They weren't
16 afforded the opportunity to look at what they said, when they
17 said it, how they said it and what they meant. And all of the
18 sudden innocent mistakes become tentacular criminal conspiracy.

19 At the end, the IRS reviews a lot of these returns.
20 And what they find is just a small amount of mistakes. But
21 what you're going to find is that the IRS often made mistakes
22 of its own, including, for example, mileage. The way a mileage
23 deduction works is you get 55 cents for each mile your car
24 drives related to -- that's business activity.

25 Some people have a car just for business. A lot of

1 businesses take the whole expense of a car. I'll give you an
2 example. A lot of businesses take the whole computer cost of a
3 car [sic]. Now, might there be people at the office who ever
4 search for football scores or their Facebook page at the
5 business? Yes. But that doesn't reduce the tax value of that
6 deduction.

7 So you have a bunch of people who take a mileage
8 deduction. And that's because they say they were using their
9 car. And the proof is -- what they tell them is, I use the car
10 this much per week. They do a calculation. And that's how the
11 calculation got entered.

12 Is it possible there were mistakes in interviews?
13 Sure. Is it possible there were data entry mistakes? Sure.
14 Is it possible there were computation error mistakes? Yes.
15 None of that is a crime. None of that's intentional perjury.
16 If you're out to commit intentional perjury, you don't get
17 6,500 plus returns correct and only 27 wrong.

18 What, in fact, is reviewed is -- what will often be
19 noted is that when the IRS agents interviewed the taxpayers,
20 they often misled them about what the mileage deduction was, so
21 that there were those two cops, the two special agents in their
22 homes, interviewing but without the presence of counsel or
23 anybody else. And they start saying: Hey, did you spend this
24 much money on mileage?

25 Well, that's not the way the mileage deduction works.

1 You have two different choices. You can take a deduction based
2 on what you actually spent on your car for business purposes,
3 or you can take the mileage value that you drove the car.

4 The reason Congress does that is they realize that
5 your asset is going down, your car, the more you use it for
6 business purposes. And they want to encourage and incentivize
7 you to use it for business purposes. So you can have a
8 deduction for \$5,000 on a car because you drove it 10,000 or
9 9,000 miles over the course of a year and not have spent more
10 than a thousand dollars in actual cash for the car's expenses
11 in that year.

12 But they believed, based on the way the IRS was
13 interrogating them, that they had to actually spend the cash.
14 And that led to some of the miscommunications that took place
15 and some of the IRS mistakes that took place on the returns.

16 Similarly on the gambling. You have a person who
17 goes to Las Vegas, and the way the casinos report it, they
18 report your gross amount. And it's very rare to go to
19 Las Vegas with a small amount of money and at four different
20 casinos make it into \$20,000 or more. Typically you will have
21 gambling losses. And you're allowed to take your gambling
22 losses throughout the year at other casinos. So if you go to
23 Indian casinos or other places, like this particular taxpayer
24 did, then you're going to have deductions against that. But
25 you're only allowed to take the gambling losses up to the

1 amount of gambling income.

2 So that's why everybody that's a gambler -- 95, 96
3 percent of gamblers lose money. That's why Las Vegas is
4 otherwise known as "lost wages." They will -- their gambling
5 losses will always equal their gambling wins because they're
6 not allowed to take more than that on their return. There was
7 nothing about that that suggested anything was wrong on the
8 return, and there was no reason to believe there was any kind
9 of perjury intended at all at any time related to the return.

10 In the end this was about Margaret trying to make a
11 dream real for people all across San Antonio. Her slogan is
12 what got her here. She said: I fight for you, not the IRS.
13 The IRS didn't take kindly to that. So they put her under the
14 most macroscopic/microscopic review ever, even looked at her
15 personal medical records during the case. So everything was
16 looked at.

17 And at the end they found an error rate less than one
18 percent, for someone who's relatively new to the business, not
19 an accountant, who's just doing the best she can to make
20 affordable, accessible, high-quality representation available
21 to ordinary people across the city. That's not a crime.
22 That's why at the end of this case you'll return the only
23 verdict that truth requires, not guilty, all counts. Thank
24 you.

25 THE COURT: First witness.

Scott - Direct

1 MR. SUROVIC: Your Honor, the government at this time
2 will call Special Agent Shawn Scott to the stand.

3 THE COURT: All right.

4 (Witness enters courtroom)

5 THE COURT: If you'll come up here, please, sir. And
6 raise your right hand, please.

7 (The oath was administered)

8 THE COURT: All right. You may be seated.

9 Mr. Surovic, you may proceed.

10 MR. SUROVIC: Thank you, Your Honor.

11 SHAWN SCOTT, GOVERNMENT'S WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. SUROVIC:

14 Q. Agent Scott, would you state your full name for the
15 record, please.

16 A. Shawn Scott.

17 Q. And how are you employed?

18 A. IRS Criminal Investigation.

19 Q. How long have you been with the IRS?

20 A. Nine years.

21 Q. Could you describe for the jury what your preparation is
22 to become an IRS agent?

23 A. We do -- I have a background in accounting. I worked for
24 a CPA firm for a bit, got a master's in accountancy. I worked
25 in governmental and non-profit accounting in the past, and then

Scott - Direct

1 went to the Federal Law Enforcement Training Center, FLETC, in
2 Glynco, Georgia, for seven months to train specifically to be a
3 special agent.

4 Q. And you've been a special agent for nine years. How long
5 of that time have you been here in San Antonio?

6 A. All nine years.

7 Q. And do you have a specialty in the IRS where some agents
8 work some types of cases and some agents work other types of
9 cases?

10 A. I wouldn't say "specialty." I work primarily tax cases.

11 Q. In the course of your employment with the Internal Revenue
12 Service, in 2012 did you come to execute a search warrant at
13 Rapid Return Tax Service in Converse, Texas?

14 A. Yes, sir.

15 Q. Can you tell us how that search warrant came about?

16 A. We had -- the case agent for the investigation was Juan
17 Robles. He had the --

18 Q. By the way, is Juan Robles in the court today?

19 A. Yes, sir.

20 Q. Could you point him out for the record?

21 A. (Indicating).

22 Q. This individual right here (indicating) --

23 A. Yes, sir.

24 Q. -- at the government's table?

25 MR. SUROVIC: Your Honor, request the record reflect

Scott - Direct

1 that he's identified Special Agent Juan Robles.

2 THE COURT: Noted.

3 BY MR. SUROVIC:

4 Q. Sorry, sir. Go ahead.

5 A. I was asked to be part of the search warrant team,
6 specifically the evidence custodian for the warrant.

7 Q. Okay. And did you go to the location in Converse, Texas?

8 A. The Converse -- yes, sir.

9 Q. What did you find?

10 A. We found -- so we're there with -- the warrant was giving
11 us access for -- to look at evidence and documents related to
12 the preparation of the tax returns for 2008 through 2011. I
13 think it was wanting to focus on returns that had Schedule Cs,
14 the earned income tax credit, or I believe it was the child tax
15 credit and --

16 Q. So let's slow down a little bit. You had authority to
17 search for tax returns for 2008, 2009, 2010 and 2011?

18 A. Tax years 2008 -- yes, sir.

19 Q. Okay. And only for certain documents?

20 A. Yes.

21 Q. And those, again, were the Schedule Cs, childcare
22 credits --

23 A. Yes, sir. Schedule Cs, child tax credit and the earned
24 income tax credit. And the returns could have been prepared by
25 Ms. Hosseini or any other return preparer for Rapid Return Tax

Scott - Direct

1 Services.

2 Q. Okay. When you went to the location, you said you were
3 responsible for the evidence collection. How was evidence
4 collection handled at the Converse location?

5 A. Search warrant team will enter a location, make sure --
6 once the site is deemed secure and safe, what I do as evidence
7 custodian is set up usually a spot that's out of the way.

8 On our computer we have applications pre-installed
9 due to the volume of records that we typically come across on
10 these types of warrants. The program itself is called Search
11 Warrant. So the seasoned agents that are part of the search
12 warrant team will go through the business, and they will pull
13 documents or evidence based on the items to be seized, that
14 everyone's provided a copy of.

15 Once they identify the evidence, they will usually
16 get an evidence tag or label or some type of manila folder and
17 they'll give the detail as far as the description of the
18 evidence, where it was found, the agent that seized it. And
19 then what they do is they bring it to me, and I log it into
20 that Search Warrant program from there.

21 Q. Okay. So you carry your laptop around. And you're busy
22 typing as the search warrant is being --

23 A. I have my laptop, printer so we can print up a list of
24 items that were seized and provide that to the case agent once
25 the warrant has been executed.

Scott - Direct

1 Q. Now, you're also responsible for securing the evidence
2 that is seized so that it's unaltered; that it's maintained in
3 the proper manner; that it doesn't get lost, you know, between
4 when you seize it and when it needs to be dealt with later
5 on --

6 A. Correct.

7 Q. -- things like that; is that right?

8 A. Yes, sir.

9 Q. And did you do that in this case?

10 A. Yes, sir.

11 Q. Did you remove documents from Ms. Hosseini's offices and
12 take them back to the IRS for storage?

13 A. We did.

14 Q. Did you take all the documents out of Ms. Hosseini's
15 office?

16 A. All the documents come back to our evidence storage.
17 Computer files, stuff of that nature, the imaged server files,
18 stuff like that, goes back with our computer investigative
19 specialist.

20 Q. Okay. You indicated, though, that you had only -- you
21 know, the search warrant was focusing on tax years 2008, 2009,
22 2010, 2011 and only certain documents. Did you take everything
23 in her office and take it back to the IRS, or did you just take
24 certain things?

25 A. No, sir. We just -- we stuck to the items to be seized.

Scott - Direct

1 And those items have to be relevant to those items that were
2 listed.

3 Q. Were there a lot of documents that were left in
4 Ms. Hosseini's office?

5 A. Yes, sir.

6 Q. For example, tax returns prior to 2008?

7 A. Prior to 2008 or after tax year 2011 would be left.

8 Q. Okay. Now, the case of -- in the course of preparing for
9 this trial you had an opportunity to look at certain exhibits
10 that have already been admitted in evidence here. In
11 particular are -- and I'm not going to show them to you right
12 now. I just want to enumerate them. They're what I refer to
13 as the dash 3 exhibits. 2-3, 3-3, 4-3, 6-3, 7-3, 8-3, 9-3,
14 10-3, 11-3, 13-3, 14-3, 15-3, 16-3, 17-3, 18-3, 19-3, 20-3,
15 21-3, 22-3, 23-3, 24-3, 25-3, 26-3 and 27-3. Those exhibits --
16 which you've looked at before today; is that correct?

17 A. Yes, sir.

18 Q. Could you tell us generally what they are?

19 A. It would -- like tax returns that were related to what we
20 were previously speaking about. So it would be -- I believe
21 most of them had like signatures on the front as far as the --
22 giving authorization to have the tax return prepared. But it
23 was generally the returns that were -- that fell within the
24 period of investigation that had either a Schedule C, earning a
25 tax credit or a child tax credit.

Scott - Direct

1 Q. So these were documents that were authorized to be seized
2 in the course of the search; is that right?

3 A. Yes.

4 Q. And each of these basically consists of the preparer's
5 file for each of the indicated clients for a particular tax
6 year; is that correct?

7 A. Yes.

8 Q. Now, when you seized it, did you seize the entire tax
9 preparer's file for that client for that year?

10 A. So typically for the seizing agent, if they come across
11 the customer's folder and it has one of those items that are
12 provided, they'll take the customer file. So we'll -- normally
13 we would take that. Yes, sir.

14 Q. Okay. So each of these would be the entire file -- the
15 tax preparer's file for each of these clients?

16 A. Yes.

17 Q. And in those instances where there was not a file, where
18 there's not a dash 3, none was found; is that correct?

19 A. Yes.

20 Q. So these are the only tax preparer's files that relate to
21 the individuals that are named in this indictment for the tax
22 years 2008 through 2011?

23 A. Yes.

24 MR. SUROVIC: No further questions, Your Honor.

25 THE COURT: Cross?

Scott - Cross

1 MR. BARNES: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BARNES:

4 Q. Do you remember how many returns you seized that day?

5 A. No, sir.

6 Q. Do you know if it was over 6,500? Does that ring a bell?

7 A. No, sir.

8 Q. Was it more than 27?

9 A. More than 27, yes, sir.

10 Q. Into the thousands?

11 A. I'd say that'd be a safe --

12 Q. In terms of the IRS records, there are some IRS records
13 that you have, independent of the search warrant, that you
14 utilize before you do a search warrant; is that correct?

15 A. Like records that we're privy to through our own like
16 databases or something?

17 Q. Exactly.

18 A. Yes, sir.

19 Q. Can you describe to the jury the scope of what those kind
20 of records are that you have available to you as an IRS agent?

21 A. On a typical case like this or --

22 Q. Well, on any case. Like 1099s, W-2s, W-3s.

23 A. Sure. So we would have like some tax -- general taxpayer
24 background information, so we would have an idea what was filed
25 with that taxpayer beforehand.

Scott - Cross

1 Q. And do you have -- like any 1099 where someone has paid
2 the person, the IRS has access to that?

3 A. We would, if that 1099 was filed.

4 Q. Same if a W-2 was filed?

5 A. Yeah, if it was filed. Yes, sir.

6 Q. Same with a W-4?

7 A. Yes, sir.

8 Q. Same with a W-9?

9 A. Yes, sir.

10 Q. Are there -- does this sound about right? There are about
11 846 current tax forms that people file with the IRS?

12 A. I have -- I couldn't -- there's a form for everything.

13 Q. In addition, does the IRS have the power to summons
14 records, like bank records or credit card records, if they need
15 to?

16 A. Yes, sir.

17 Q. Do they have the right to use -- if there's a grand jury
18 involved, to subpoena records that they need or subpoena
19 witnesses if they need?

20 A. Yes, sir.

21 Q. And do you also have the wherewithal to go out and
22 interview people whenever you need to?

23 A. Yes, sir.

24 Q. And does the IRS now currently have sort of software and
25 algorithms where they can identify tax returns just by the

Scott - Cross

1 return ID preparer? In other words, the tax return preparer
2 puts in an ID number of what their number is. Can you look up
3 every return they've filed by that number?

4 A. So you're asking if there's a lookup that we can identify
5 by? Yes.

6 Q. And there's all kinds of data analysis that you currently
7 have available to you to look at those returns if you have
8 questions or issues?

9 A. Like you're saying if there's a correlation or -- yes,
10 sir.

11 MR. BARNES: I have no further questions, Your Honor.

12 THE COURT: Redirect?

13 MR. SUROVIC: No redirect, Your Honor.

14 THE COURT: Thank you, sir.

15 May he stay in the courtroom or not?

16 MR. SUROVIC: Well, I'd request he be permanently
17 excused, Your Honor.

18 THE COURT: Okay. Any objection?

19 MR. BARNES: There's an outside chance, but I don't
20 anticipate any --

21 THE COURT: All right. If we need Agent Scott,
22 Mr. Surovic, you can locate him?

23 MR. SUROVIC: Certainly, Your Honor.

24 THE COURT: All right. You're excused for now.

25 Thank you.

Walach - Direct

1 Next witness.

2 MR. SUROVIC: Next witness, Your Honor, will be
3 Deborah Walach.

4 THE COURT: All right. See, ladies and gentlemen,
5 this is the best part of the case because I get to stand up to
6 give the oath.

7 (Witness enters courtroom)

8 THE COURT: We're going to move as quickly as we can.
9 But if anybody needs a break, well, raise your hand and we'll
10 take one.

11 Ma'am, come up right here with me, please. Put that
12 down and raise your right hand.

13 (The oath was administered)

14 THE COURT: All right. You may be seated.

15 Mr. Surovic, you may proceed.

16 MR. SUROVIC: Thank you, Your Honor.

17 DEBORAH WALACH, GOVERNMENT'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. SUROVIC:

20 Q. Ma'am, would you state your full name for the record,
21 please.

22 A. Deborah Rae Walach.

23 Q. And where do you live, generally?

24 A. Von Army, Texas.

25 Q. How long have you been in Von Army?

Walach - Direct

1 A. Since 2005.

2 Q. And what do you do?

3 A. Therapist.

4 Q. What does that involve?

5 A. Oh, currently I'm director of partial hospitalization
6 services at a psych hospital.

7 Q. And is that a psych hospital in Von Army or in the area,
8 around the --

9 A. San Antonio.

10 Q. San Antonio.

11 And how long have you worked as a counselor?

12 A. Since 2004.

13 Q. Do you have any -- you indicated you worked as a director
14 of a clinic, a hospital. Do you have any other jobs that you
15 do also beyond being the director, or does that take up your
16 full time?

17 A. Takes up my full time.

18 Q. Okay. I want to draw your attention back to the period
19 of, first, 2008 and then 2009. How were you employed in 2008?

20 A. I was interning. I was working in a -- part time at a
21 residential substance abuse treatment facility. I was also
22 part time at private practice, I think.

23 Q. When you say "part time at private practice," that means
24 you worked for yourself, you provided --

25 A. I was at another agency. I was interning at an agency.

Walach - Direct

1 Q. Okay. And did you have some side jobs that you did back
2 then as well?

3 A. I did.

4 Q. What were they?

5 A. I was selling USANA products, and I was -- I think I was
6 doing some other gas/fuel additive thing. I don't remember the
7 years specifically.

8 Q. Okay. You indicated that you sold USANA products. What
9 are USANA products?

10 A. Nutritionals, supplements.

11 Q. Okay. And how --

12 A. Direct sales.

13 Q. How would you sell those? You mentioned also the fuel
14 additive. How do you -- how did you sell those items?

15 A. Contacting people directly, making phonecalls, asking
16 friends and family members to purchase items.

17 Q. Okay. Do you remember a place by the name of Rapid Return
18 Tax Service?

19 A. I do.

20 Q. How did you end up going to Rapid Return Tax Service?

21 A. I was referred by a friend.

22 Q. Okay. And do you remember approximately when that was?

23 A. I don't.

24 Q. Where was the Rapid Return Tax Service located?

25 A. Off of 78.

Walach - Direct

1 Q. Okay. You remember what town it's in? Close to Von Army?

2 A. No. No. San Antonio.

3 Q. Okay. Did you ever meet an individual by the name of
4 Margarita Hosseini?

5 A. Margaret?

6 Q. Yes.

7 A. Yes.

8 Q. Is she present in the court today?

9 A. She is.

10 Q. Could you point her out, describe what she's wearing?

11 A. (Indicating), a blue shirt and watch.

12 MR. SUROVIC: Your Honor, request the record reflect
13 that she's identified the defendant Margarita Hosseini.

14 THE COURT: Noted.

15 BY MR. SUROVIC:

16 Q. You knew her as Margaret, not Margarita?

17 A. Correct.

18 Q. How did you meet her?

19 A. I went to her agency to have my tax return done.

20 Q. And did you sort of just meet her at the door, or did she
21 have more involvement with you once you got to the tax return
22 service than --

23 A. I don't remember exactly.

24 Q. Did she, in fact, prepare your tax return?

25 A. I believe so.

Walach - Direct

1 Q. Do you recall when you started going to Rapid Return Tax
2 Service?

3 A. I guess it was 2008.

4 Q. Okay. Could you describe for the jury what would happen
5 when you went to get your tax return prepared?

6 A. Well, I would have to bring all my W-2s and receipts.
7 And, I mean, we receipted, reviewed receipts and totals for
8 different deductions.

9 Q. And so you bundled all this sort of stuff up at home. Did
10 you save it specially so that your taxes could be done?

11 A. Yes.

12 Q. And what would happen when you got to the Rapid Return Tax
13 Service office?

14 A. We sorted through things.

15 Q. When you say "we," who is "we"?

16 A. Margaret, who was I think doing my return that year. And
17 I think we started with the 1099s first.

18 Q. Okay. Would you do this standing up at the door? Would
19 you go to a desk? Would you go to an office?

20 A. No. We were seated in a common area.

21 Q. Okay. So you'd spread it out on a table or something like
22 that?

23 A. I don't remember.

24 Q. Okay.

25 A. I had things in an envelope.

Walach - Direct

1 Q. You'd hand her things, like your 1099s and all?

2 A. Correct.

3 Q. What would she do with it?

4 A. Review and enter information in a computer.

5 Q. Okay. Where was the computer located?

6 A. On a desk where we were all sitting.

7 Q. Did you get a chance to see what was going on on the
8 computer?

9 A. Yeah. I think so.

10 Q. Okay. So you could watch her as she entered things?

11 A. That's correct.

12 Q. Okay. Were you able to read the questions that she was,
13 you know, responding to when she was answering the questions?

14 A. I'm sure I could. It was a long time ago. It's hard to
15 remember those details.

16 Q. Okay. Do you recall if you paid any particular attention
17 to any of that?

18 A. I don't recall if I paid any particular attention to that.

19 Q. Okay. Why did you go to a tax preparer as opposed to
20 doing your taxes yourself?

21 A. Because of the side businesses and the deductions for the
22 house.

23 Q. Okay. I know you had those deductions and things. Why
24 didn't you do your taxes yourself? Why did you take them to a
25 tax preparer?

Walach - Direct

1 A. Because I wasn't confident in preparing itemized
2 deductions myself.

3 Q. When you went to Rapid Return Tax Service, did you feel
4 that they would have the expertise to be able to do it
5 properly?

6 A. Yes.

7 Q. Are you married?

8 A. Not currently.

9 Q. Oh, were you married in 2008/2009?

10 A. I was.

11 Q. Okay. And what was your husband's name at the time?

12 A. Joseph Walach.

13 Q. Okay. Did he go with you when you did your tax return?

14 A. Yes.

15 Q. And did you both participate in providing the information?

16 A. Yes.

17 Q. I would like to draw your attention to Government Exhibit
18 Number 26-1. It should be coming up on that screen there. If
19 we could go to Page 2.

20 MR. SUROVIC: And, Your Honor, since that is far
21 away --

22 THE COURT: I don't think this pointer is working. I
23 mean, it lights up, but it's not reaching right there.

24 MR. SUROVIC: Your Honor, since that is far away --
25 I'm going to have parts of it enlarged so it'll be easier for

Walach - Direct

1 the jury to read. I don't know if the Court will be able to
2 read it. Do you have a screen up there, Your Honor? I can't
3 -- I don't see a screen.

4 THE COURT: No. But I've got 20/10 vision so --

5 MR. SUROVIC: Much better than mine.

6 THE COURT: Well, because of the wonders of cataract
7 surgery. They pop those old ones out, and they put some new
8 ones in. I don't have any glasses or contacts. So I recommend
9 highly to get cataracts if you can.

10 MR. SUROVIC: I don't know Ms. Walach has that type
11 of sight either.

12 THE WITNESS: I don't.

13 MR. SUROVIC: Would it be okay, Your Honor, if I
14 approached her and provided her with a hard copy of the
15 exhibit?

16 THE COURT: Sure. Sure. That's fine.

17 MR. SUROVIC: This should make it a little easier to
18 see.

19 THE WITNESS: Thank you.

20 MR. SUROVIC: We're looking at Government Exhibit
21 26-1, hopefully. Page 2. And as you can see, this is a
22 certified copy of the filings at the IRS.

23 Can you get to Page 2?

24 THE COURT: Mr. Cantu, could you come up and see if
25 you can help with this?

Walach - Direct

1 BY MR. SUROVIC:

2 Q. While they're pulling this up, Ms. Walach, if I can get
3 you to turn to Page 2 of Government Exhibit 26-1. And you'll
4 see at the top of the page this is a Form 1040 for the year
5 2008; is that correct?

6 A. Yes.

7 Q. And it's got Joseph J. Walach, Jr., Deborah R. Walach, Jr.
8 and Social Security numbers and an address in Von Army. Is
9 this your tax return for 2008?

10 A. Yes.

11 THE COURT: There we go. Okay.

12 MR. SUROVIC: If I can get you to zoom in on line 12
13 of that first page there -- or the second page, I should say.

14 BY MR. SUROVIC:

15 Q. Line 12 indicates that you had a business income or loss
16 of -- and it indicates it was a loss of \$29,439 in 2008; is
17 that correct?

18 A. Yes.

19 Q. That's what it reports?

20 A. Right.

21 Q. Okay. If we turn to the third page of the exhibit, at the
22 bottom you see the third-party designee information and the
23 paid preparer's use only information at the bottom of the page.
24 If we can enlarge that.

25 It indicates that Margaret Hosseini was the

Walach - Direct

1 individual who prepared your tax return; is that correct?

2 A. Yes.

3 Q. Let's go to the Schedule C in this case, which is ten
4 pages in. Now, you filed -- your return contains two Schedule
5 Cs; is that correct? One for your direct selling and one for
6 your therapy business?

7 A. I'm trying to figure out what is what here. Schedule A I
8 have. You said Schedule C?

9 Q. Schedule C. It should be ten pages and 12 pages in.

10 A. Yes, I have it.

11 Q. Okay. If you will look -- first of all, if we can enlarge
12 the top of that page. This first one on -- tenth page in, is
13 for your direct selling business; is that correct?

14 A. Yes.

15 Q. And if we go down to line 13, it indicates a depreciation
16 of \$19,800. Do you know what this depreciation is for?

17 A. My truck.

18 Q. Okay. What type of truck did you drive?

19 A. It was a Nissan Titan at the time.

20 Q. Okay. And how much did you use that Titan truck for in
21 relation to your direct selling business?

22 A. Well, I don't know exactly. Quite a lot. I mean,
23 probably half of the time.

24 Q. Okay. So 50 percent of your mileage would have been
25 business related?

Walach - Direct

1 A. I'm just guessing. That was a long time ago. I don't --
2 I'd have to look at the form. I don't remember what I said.

3 Q. What would the -- what would the other portion of your
4 mileage be for? Did you use it for personal reasons?

5 A. Yes. And I also used it for the counseling.

6 Q. Okay. How much did you use it for for personal reasons?

7 A. I really -- I don't know. 10, 15 percent.

8 Q. So it was 85 to 90 percent business and ten percent
9 personal?

10 A. I'm guessing. I don't remember what I reported at the
11 time.

12 Q. Do you recall -- did you keep a log to keep track of your
13 mileage for business purposes?

14 A. I may have at the time. I don't remember.

15 Q. Did you provide that log to Ms. Hosseini?

16 A. I don't remember.

17 Q. Let's turn to the next Schedule C, the therapy business.

18 And if we could go to the second page -- first of all, if
19 you'll go to the top of that, you can see that is -- this is
20 the Schedule C that relates to the therapy business; is that
21 correct? Yes?

22 A. Yes. I see that.

23 Q. And if we go to -- let's look at Part V of that on the
24 second page. If you could enlarge the Part V block. There
25 is -- listed as other expenses below for business expenses you

Walach - Direct

1 have cellphone, boarding fees and membership and dues.

2 "Boarding fees," what do they relate to?

3 A. For the horses.

4 Q. And how did you use your horses in your therapy business?

5 A. They were part of the therapeutic team.

6 Q. Okay. So you would -- if you had a client or something
7 like that, that you thought would benefit from being around
8 horses, the horses would be there for them to help?

9 A. Yes. They were part of the therapeutic team.

10 Q. Okay. Let's talk a little bit about your cellphone. Do
11 you know where the \$1,200 figure comes from on this document?

12 A. I believe it was my portion of the cell bill times 12
13 months.

14 Q. Okay. What type of cellphone plan did you have at the
15 time?

16 A. I had a family plan.

17 Q. And who was on your family plan?

18 A. My spouse and children.

19 Q. Okay. So how many phones did you have on the plan?

20 A. Five.

21 Q. And what was the total annual fee for your family plan?

22 A. I think that bill runs about 300 a month. So this would
23 have been --

24 Q. One-third of the bill?

25 A. My -- I guess it would come to that, yes. It was the

Walach - Direct

1 monthly fee for my number.

2 Q. Did you -- did you use the cellphone solely for the
3 therapy business?

4 A. No. I used it for personal as well.

5 Q. Okay. About how much of it was for the therapy business
6 versus for your personal use?

7 A. It's hard to say. I'm not sure how I would determine that
8 right now.

9 Q. Did Ms. Hosseini ever ask you how much of that -- the cell
10 bill was for business versus for your personal use?

11 A. I don't remember.

12 Q. Okay. You don't remember her ever asking you that
13 question?

14 A. I remember being asked if it was used for business, yes.
15 I don't remember if there was a differentiation, but I don't
16 remember talking about it specifically.

17 Q. Okay. And did you have any records which would tell you
18 how much of it was for business versus how much of it was for
19 recreational and personal use?

20 A. No. I would not have been able to differentiate that.

21 Q. Okay. Do you recall what she did ask you about your
22 mobile phone?

23 A. I don't. I don't recall what she asked me.

24 Q. If we go back to the first page of that Schedule C, the
25 therapy Schedule C, line 9 under Part II, expenses, enter

Walach - Direct

1 expenses for business use or your -- excuse me. That's -- it
2 says, enter expenses for business use of your home only on line
3 30, but this is entitled "expenses."

4 Part II, Section 9 indicates that you had car and
5 truck expenses of \$3,816?

6 A. Yes, it does.

7 Q. Okay. And if we go to Part IV on the second page of that,
8 information on your vehicle, it goes on to say, complete this
9 part only if you are claiming car or truck expenses on line 9
10 and are not required to file a Form 4562, blah, blah, blah.

11 Under line 44 you indicate that you had 7,000
12 business miles?

13 A. That's correct.

14 Q. How did you come up with that figure?

15 A. I drove my vehicle to training in Louisiana.

16 Q. Okay. Is this for the therapy business?

17 A. Yes. I'm not sure what the rest of that is, though.

18 That's more than -- it's not 7,000 miles to Louisiana.

19 Q. You think it's 7,000 miles to Louisiana?

20 A. No, I don't. I don't remember. I'm not sure how we came
21 up with that number, but I knew I'd driven it.

22 Q. Who came up with that number?

23 A. I'm sure I was working with Margaret to figure out what
24 that total was, but I don't remember exactly.

25 Q. Okay. You didn't -- did you tell her that you had 7,000

Walach - Direct

1 business miles on your car?

2 A. I don't remember how we came up with the total.

3 Q. You'll notice that entry 47A and 47B talk about: Do you
4 have evidence to support your deduction? Is the evidence
5 written?

6 Do you have evidence to support a 7,000-mile usage --
7 business usage of your vehicle?

8 A. Not currently.

9 Q. Do you remember if you had any at that time?

10 A. I did have receipts for travel. I'm sure it was the
11 calculated mileage.

12 Q. Did you keep a mileage log?

13 A. No.

14 Q. Did -- you talk about receipts. You talking about
15 gasoline receipts?

16 A. I think so.

17 Q. Is that how you kept track of how you -- how much you used
18 your vehicle for business use, by keeping the fuel receipts?

19 A. I think -- I think we figured out the total mileage from
20 the start when I purchased the vehicle and at the time the
21 return was done. I think that's how we totaled that. Total
22 mileage.

23 Q. Total mileage of the vehicle for that year?

24 A. Possibly. I think that's where that may have come from.

25 Q. But you indicated that you used the vehicle ten percent

Walach - Direct

1 for your own personal use?

2 A. That's correct.

3 Q. So that would have been included in the 7,000 miles?

4 A. Yes. It would have been.

5 Q. Okay. So you wouldn't have written support to indicate
6 that the 7,000 miles was for business purposes; is that
7 correct?

8 A. Yes. That's correct.

9 Q. Now, did you ever tell Ms. Hosseini that you used your
10 truck one hundred percent for business?

11 A. I don't -- I don't remember exactly, but I'm sure that --
12 I'm sure that I didn't because I had some personal use.

13 Q. Let's go to Government Exhibit 26-3. This has already
14 been admitted into evidence. This is -- and you've seen this
15 before. This is the preparer's file. This was what was taken
16 from Ms. Hosseini's office.

17 And I would like to flip through it just very
18 briefly, if we could. And let me provide you with a copy of
19 that.

20 MR. SUROVIC: If I might approach the witness, Your
21 Honor?

22 THE COURT: Yes.

23 BY MR. SUROVIC:

24 Q. This is 26-3. You can just look through it.

25 Have you had a chance to look through that?

Walach - Direct

1 Let's first of all take a look at the first page. If
2 you notice, you -- well, let me ask you. Is that your
3 signature on the first page?

4 A. Yes.

5 Q. Okay. That's the second signature down?

6 A. Yes.

7 Q. And then whose signature is on the very bottom?

8 A. Margaret.

9 Q. Okay. And that's the defendant, Ms. Hosseini?

10 A. Yes.

11 Q. Now, if we turn to the second page, at the bottom there
12 are two Xs and two signatures. Can you tell me who those
13 signatures are?

14 A. Myself and my ex-husband.

15 Q. Okay. And if you go through the various pages, your
16 signature's on almost every page in here; is that correct?

17 A. Yes.

18 Q. Can you tell me how your signature got on each of these
19 pages?

20 A. I signed it.

21 Q. Okay. When did that happen?

22 A. I don't remember if it was in the office or if it was
23 faxed.

24 Q. Do you remember why you signed it?

25 A. Because I was in agreement with the material that was

Walach - Direct

1 there.

2 Q. Okay. So you did a review of the tax return; is that
3 correct?

4 A. Yes.

5 Q. How was the review conducted?

6 A. I think we probably just went through and looked at each
7 page.

8 Q. Okay. So you looked at each page. Did she sit down and
9 explain to you what each deduction was, what the different
10 numbers meant?

11 A. I don't remember exactly.

12 Q. Okay. How long did the entire preparation take for your
13 taxes in 2008, do you think?

14 A. I'm guessing at least an hour.

15 Q. Okay. Was that the same for your tax preparation in 2009?

16 A. I would imagine.

17 Q. Okay. If we look at Page 4 -- yeah. Again, that's your
18 signature and your husband's signature at the bottom of that
19 page?

20 A. That's correct.

21 Q. And if we go up, amount paid to tax preparer, which is in
22 the box -- second line in the box. No. It's -- it will be
23 numbered 1. \$834.05, is that what you recall paying her for
24 preparing your return in 2008?

25 A. Yes.

Walach - Direct

1 Q. And that means that you received a return on your -- you
2 received a check from the IRS for \$7,679?

3 A. Yes. I guess. I mean --

4 Q. That would have been -- that would have been your refund?

5 A. Yes.

6 Q. Does that sound about right to you now?

7 A. Yes. I remember it being a large return.

8 Q. Okay. Did you write a check to her when you were there,
9 for the \$800?

10 A. I don't think so.

11 Q. How did that work? How did she get paid?

12 A. I think it was deducted from the return.

13 Q. Okay. So you never actually saw -- you never had to write
14 a check or anything like that?

15 A. I don't think so.

16 Q. Did you pay much attention to how much you were paying
17 her?

18 A. Yes. I mean, I saw that it was a lot.

19 Q. How did you feel about the fact that you were paying that
20 much money?

21 A. Well, I thought it was a lot, but it was the first time I
22 had business taxes done ever, and so I thought maybe that was
23 the norm.

24 Q. Let's go on to 2009. And I'm going to show you
25 Government's Exhibit Number 27-1. And I'm going to provide you

Walach - Direct

1 with a hard copy of 27-1.

2 MR. SUROVIC: And, Your Honor, if I could approach
3 the witness again?

4 THE COURT: Yes.

5 BY MR. SUROVIC:

6 Q. I'm going to show you 27-1. I'm also going to provide you
7 with 27-3 in order to save me a trip up again. 27-1 is your
8 tax return. 27-3 is the preparer's copy.

9 We go to Page 2. And I'll ask you again to look at
10 the top of that tax return for 2009. This one is labeled; is
11 that correct?

12 A. Yes.

13 Q. And, again, Joseph J. Walach, Jr., Deborah R. Walach, Jr.,
14 Social Security numbers and an address in Von Army. Is that
15 your tax return for 2009?

16 A. Yes.

17 Q. If we go down to line 12, this indicates that you had a
18 business loss of \$31,840, and it indicates that your total
19 income was \$134,657. Do those numbers sound correct?

20 A. I think so. I don't remember.

21 Q. Do you recall spending \$31,840 on your side businesses?

22 A. It's possible.

23 Q. Let's take a look at the Schedule C again. It's Page 11.
24 First of all, I'll show you the -- let's go to Page 13, the
25 therapy. This is for the -- this is your Schedule C from your

Walach - Direct

1 therapy business?

2 A. Okay.

3 Q. And if we go to Page 2 of that, on Part V at the bottom,
4 once again, there's a series of items: Mobile phone business
5 use, boarding fees, membership dues, demonstrations. In this
6 instance you listed your mobile phone business use as \$696. Do
7 you recall that?

8 A. I don't recall.

9 Q. Do you recall how Ms. Hosseini got that number?

10 A. I do not.

11 Q. Okay. You listed 696 for the mobile phone in -- for
12 therapy. And apparently, if we go back to the direct selling
13 business, there's also a mobile phone business -- if you could
14 back up to the direct selling business. For this one you
15 used -- for direct selling you used your mobile phone for \$173?

16 A. That's what it says.

17 Q. Okay. Did you keep any records to determine how your
18 mobile phone was being used?

19 A. I don't -- I don't recall how that was put.

20 Q. Did you provide any records to Ms. Hosseini concerning
21 your mobile phone bill?

22 A. It would have just been receipts of my phone bill.

23 Q. Okay. You didn't break it out as far as how much was
24 business, how much was not business?

25 A. I don't remember how that was done.

Walach - Direct

1 Q. You have on -- if we can go to the therapy business
2 schedule C again. You have on your -- in Part II, line 9, car
3 and truck expenses. \$14,025 this time on car and truck
4 expenses. Do you recall where that came from?

5 A. I do not.

6 Q. If we go to Part IV, on the back of that form, it
7 indicates that you had 25,500 miles -- business miles in the
8 therapy business. Do you recall driving that much?

9 A. I probably drove that much for the whole year.

10 Q. Okay. Did you drive that much for the therapy business?

11 A. I don't remember, but that's about what I drive a year.

12 Q. Okay. And how much are your -- what percentage of your
13 driving is for the therapy business versus personal back and
14 forth to your regular job, going out, getting groceries, things
15 like that?

16 A. I don't recall what percentage.

17 Q. Okay. So this would reflect your entire mileage for the
18 whole year?

19 A. It's possible.

20 MR. BARNES: Objection, leading. Just objection,
21 Your Honor, leading the witness.

22 THE COURT: Sustained.

23 BY MR. SUROVIC:

24 Q. Did you have any written evidence to support this mileage
25 other than the mileage off your vehicle?

Walach - Direct

1 A. No, I don't think so. I think we were just using the
2 mileage on my vehicle.

3 Q. Did you ever tell Ms. Hosseini that you had written
4 evidence to support your business mileage?

5 A. I don't recall. I may have had some receipts.

6 Q. Okay. Again, those receipts would have been gas receipts,
7 right?

8 A. Possibly. I don't recall if I was using any kind of
9 mileage log.

10 Q. Now, we go to -- there's a form called a Form 4562,
11 depreciation and amortization. It should be about two pages
12 beyond that.

13 A. Uh-huh.

14 Q. And if you'll turn to the second page of that, this talks
15 about depreciation for a 2008 Nissan. That would be your
16 Nissan truck that you used?

17 A. Yes, sir.

18 Q. And then you'll see there are -- there are columns right
19 next to that.

20 Do you have it pulled up?

21 (Discussion off the record)

22 BY MR. SUROVIC:

23 Q. Now, when did you purchase the 2008 Nissan?

24 A. Probably 2007.

25 Q. Okay. Placed in service February 20th of 2008?

Walach - Direct

1 A. I don't -- yes. That's what it says.

2 Q. Did you tell Ms. Hosseini that date?

3 A. I don't -- I don't remember.

4 Q. And then in the next box under business investment use
5 percentage: 100 percent. Did you tell Ms. Hosseini that you
6 used that Nissan truck 100 percent for your businesses?

7 A. For that part of the business, yes.

8 Q. What do you mean by "that part of the business"?

9 A. Was this for the counseling or --

10 Q. This is for depreciation. It would be for both the
11 counseling and for the direct selling?

12 A. Well, yes, I used the vehicle 100 percent for that
13 business.

14 Q. Okay. You didn't use it at all for your own personal uses
15 at all?

16 A. Yes. But that was my primary vehicle for work.

17 Q. Okay. But was it used 100 percent for business?

18 A. Business only?

19 Q. Business only.

20 A. No.

21 Q. So did you tell her that it was used 100 percent for
22 business?

23 A. I don't think so. I don't think I would have. I don't
24 know.

25 Q. Let's go to 27-3. This is the preparer's file, the next

Walach - Direct

1 file. And, again, if we'll go to Page 2 and all the pages
2 after that, you've signed every one of these pages; is that
3 correct?

4 A. Yes.

5 Q. And did you do a review of these taxes with Ms. Hosseini
6 in 2009 like you did in 2008?

7 A. Yes.

8 Q. Let's go to Pages 11, 12 and 13, Pages -- let's start with
9 Page 11. Can you tell us what these are?

10 A. Deductions.

11 Q. Okay. And are these deductions that you gave her?

12 A. Yes.

13 Q. And then if we can go to Page 14. And as you can see,
14 there's a box called tax preparation fee, tax preparation. If
15 you'll pull that up. It indicates -- above that. The box
16 above that. You paid \$822.05 for your tax preparation that
17 year?

18 A. Yes.

19 Q. Okay. Do you recall that?

20 A. Vaguely.

21 Q. Okay. And then if we go to Page 16, this is a page that's
22 entitled depreciation detail listing. And, again, at the top
23 row there that's the 2008 Nissan Titan?

24 A. Uh-huh.

25 Q. And, again, business percentage, it indicates a hundred

Walach - Direct

1 percent business usage. But you don't recall whether you told
2 her it was for business usage or not?

3 A. I don't recall what the percentage of my usage was. I'm
4 communicating with her.

5 Q. As far as your vehicle mileage, you do not recall at this
6 time whether you had a vehicle mileage log or records of
7 mileage that you provided to Ms. Hosseini?

8 A. I don't. I don't recall.

9 Q. Would you look through Government Exhibits 36-3 and 37-3,
10 the preparer's copies, and see if you can find any mileage log
11 in any of those -- any of that paperwork?

12 A. In the back of the form is where -- where am I looking?

13 Q. Anywhere in that file. Is there a mileage log in that
14 file?

15 A. No.

16 Q. And do you recall keeping a strict mileage record of all
17 your therapy appointments or anything like that?

18 A. Appointments, yes, I would have had that.

19 Q. As far as the mileage?

20 A. No. I don't recall the mileage.

21 Q. So there wouldn't have been one to provide?

22 A. Probably not.

23 MR. SUROVIC: No further questions, Your Honor.

24 THE COURT: Cross?

25 MR. BARNES: Yes. Thank you, Your Honor.

Walach - Cross

1 CROSS-EXAMINATION

2 BY MR. BARNES:

3 Q. Good afternoon.

4 A. Hi.

5 Q. So your degree is in psychology; is that right?

6 A. Mental health counseling.

7 Q. Okay. You were mentioning that you use horses and that
8 you drove a lot related to the business. Could you explain to
9 the jury what the nature of your business was, because not
10 everybody knows how -- horses' role with therapy and things
11 like that.

12 A. We had horses available in session for individual and
13 group therapy so --

14 Q. And why were horses helpful for your therapy work?

15 A. They were very sensitive to movement and emotion of people
16 and gave very clear and honest feedback.

17 Q. Do you recall -- well, after you went in with Margaret and
18 had the returns filed, when was the first time you heard from
19 anybody at the IRS that they had any questions about the
20 returns?

21 A. Oh, gosh. Maybe 2012, 2013. It was before I got
22 divorced. So it was at least those years.

23 Q. Did you receive like a letter in the mail? A phone
24 request? How did they -- how did you come -- how did they come
25 to interact with you?

Walach - Cross

1 A. They came to my house.

2 Q. How many were there?

3 A. Two.

4 Q. And did they identify themselves as criminal investigative
5 special agents?

6 A. I don't remember exactly. I remember the badge.

7 Q. Do you remember if they were -- had the guns with them at
8 the time, too?

9 A. I don't remember if -- no, I don't remember.

10 Q. Before that time, had they ever contacted you to ask you
11 that -- to look into your returns and see if there was any
12 mistakes in them?

13 A. I don't think so, no.

14 Q. Prior to them showing up that day, had they called you and
15 said: We want you get your records and receipts together.

16 A. No. I don't think I had any -- I didn't have any contact
17 until they showed up in my driveway.

18 Q. And did they ask to come in and talk to you?

19 A. Yes.

20 Q. Did they -- at that time did they give you a copy of the
21 preparer's -- Margaret's file that she had related to your
22 return?

23 A. I think we reviewed it.

24 Q. Did they give you a copy of it before they started asking
25 you questions? What do you remember?

Walach - Cross

1 A. I don't remember. I just -- we were kind of all at the
2 dinner table.

3 Q. Did they ask you to go locate your receipts before they
4 started talking to you?

5 A. I don't recall.

6 Q. Do you -- did they ask if -- or did they show you any bank
7 statements or anything of yours that they had looked at?

8 A. I think they had copies of my tax return, but I don't
9 remember exactly what they had. I don't remember that. I
10 don't remember bank statements.

11 Q. And do you recall telling them that your estimate was that
12 you drove the truck in those early years about 30,000 miles or
13 so a year?

14 A. It's possible.

15 Q. And did they explain to you that another way you could
16 take your truck deduction is by taking a mileage deduction
17 where you take it 50 cents times each mile you drive?

18 A. No. I don't remember discussing any of that.

19 Q. Did they explain to you whether that deduction was
20 actually much larger than the deduction that you did take?

21 A. No, sir.

22 Q. When you filled out the returns and reviewed them with
23 Margaret, were you trying to commit perjury?

24 A. No, sir.

25 Q. Were you trying to commit a fraud?

Walach - Cross

1 A. No, sir.

2 Q. If any mistake happened in the relaying of information,
3 was it an honest mistake?

4 A. I would hope so, yes.

5 Q. And have you ever heard that when sometimes you overpay
6 your taxes and you make a mistake to your detriment, but it's
7 to the IRS's benefit, did they ever send you a letter and say:
8 Here's your refund. You overpaid. Have you ever heard of
9 that?

10 A. Yes.

11 Q. That'd be nice. Thank you.

12 A. Got a 9-dollar check once.

13 Q. Perfect.

14 A. I did.

15 THE COURT: Redirect?

16 MR. SUROVIC: No redirect, Your Honor. Request the
17 witness be permanently excused?

18 THE COURT: Yes, ma'am. You may be excused. Thank
19 you.

20 THE WITNESS: Thank you.

21 THE COURT: Next witness?

22 MR. SUROVIC: Your Honor, we'll call Mr. Mike Trevino
23 to the stand.

24 THE COURT: All right. Mr. Trevino.

25 MR. SUROVIC: And I apologize, Your Honor. We're

Trevino - Direct

1 trying to -- we've got a couple of witnesses who have
2 scheduling problems, and so we're trying to get them, out of
3 order.

4 THE COURT: Yeah. That's fine. I figured that.

5 MR. SUROVIC: Ms. Walach was one of them.

6 (Witness enters courtroom)

7 THE COURT: Mr. Trevino, if you'll come up here,
8 please, sir.

9 THE WITNESS: Yes, sir.

10 THE COURT: And raise your right hand.

11 (The oath was administered)

12 THE COURT: All right. You may be seated.

13 And, Mr. Surovic, you may proceed.

14 MR. SUROVIC: Thank you, Your Honor.

15 MIKE TREVINO, III, GOVERNMENT'S WITNESS, SWORN

16 DIRECT EXAMINATION

17 BY MR. SUROVIC:

18 Q. Would you state your full name, please, sir.

19 A. My name is Mike Trevino, III.

20 Q. And how are you employed?

21 A. I am currently employed by the Bexar County Sheriff's
22 office. I am a deputy with the sheriff's office.

23 Q. And where do you live?

24 A. I live at 6218 --

25 Q. You don't have to give the exact address. You can just

Trevino - Direct

1 tell us what city.

2 A. Here in San Antonio.

3 Q. Here in San Antonio?

4 A. San Antonio.

5 Q. How long have you been with Bexar County Sheriff's office?

6 A. 24, going on 25 years.

7 Q. Did you have prior experience in law enforcement before
8 you joined the Bexar County Sheriff's office?

9 A. No. I was in the military for quite a bit.

10 Q. Okay. Did you retire from the military?

11 A. No. I got out. And I did, I believe, 14 and a half
12 years.

13 Q. Where did you grow up?

14 A. Here in San Antonio.

15 Q. So you're a lifelong San Antonio resident?

16 A. Lifelong San Antonio.

17 Q. Do you recall the period 2008, 2009 and 2010 because I'm
18 going to be asking you about those years?

19 A. Yes, sir.

20 Q. Were you working for the Bexar County Sheriff's office
21 back then?

22 A. Yes, sir. I sure was.

23 Q. And in addition to your work as a Bexar County Sheriff's
24 deputy, what type of work -- did you have jobs on the side?

25 A. Yes, just like every Bexar County Sheriff's deputy.

Trevino - Direct

1 Q. Could you describe what those jobs are?

2 A. We have to subsidize our pay. So security, pretty much
3 everywhere that we work, it's providing security. I worked at
4 the Calaveras plant here in San Antonio, here in Bexar County,
5 all kinds of -- there are security jobs everywhere.

6 Q. Okay. You got paid for those jobs?

7 A. Yes, sir, absolutely.

8 Q. How did you get paid?

9 A. Sometimes cash and sometimes by check.

10 Q. Okay.

11 A. And mostly by check.

12 Q. And at the end of the year would they give you what's
13 referred to as a 1099?

14 A. Yes, sir.

15 Q. When you're doing those type of jobs, what type of things
16 do you need to bring to be able to conduct that job?

17 A. As far as to go work at that job?

18 Q. Correct.

19 A. Full uniform, my sidearm, radio. Everything that I carry
20 on patrol, that's what I would carry on my side job.

21 Q. Do you wear the things you wear when you're working as a
22 Bexar County Sheriff's deputy?

23 A. Yes, sir. I'm in full uniform.

24 Q. You don't change the patches or anything like that?

25 A. No. Bulletproof vest, patches, you name it, radio,

Trevino - Direct

1 everything.

2 Q. So all that stuff is stuff that you would have for your
3 regular job?

4 A. Yes, sir.

5 Q. Okay. What about, for example, transportation to and from
6 the job?

7 A. Now, that was on my own. That was my own POV I provided.
8 You know, I drove to and from in my own car or pickup truck.

9 Q. Did you have to -- you know, like a law enforcement
10 officer's got to -- have to drive around on patrol. Did you
11 have to drive around using your own vehicle on patrol or
12 anything like that?

13 A. For the side jobs?

14 Q. Yes.

15 A. Not for Calavaras. They provided a vehicle. But you
16 would drive to Calavaras Lake and -- the plant, and they would
17 provide -- we would park and they would provide us a security
18 vehicle.

19 Other, like Pappadeaux, we would sit in the parking
20 lot in our -- in our POV and provide security for the parking
21 lot.

22 A lot of the restaurants that we worked, that's
23 basically what we did, was trying to minimize burglaries to
24 vehicles. So we would sit in the parking lot, try to blend in
25 and try to catch the bad guy.

Trevino - Direct

1 Q. Okay. So you would be driving around a lot, not in your
2 personal vehicle as part of the job, just getting there and
3 coming back?

4 A. Yes, sir.

5 Q. Did you ever go to a place by the name of Rapid Return Tax
6 Service?

7 A. Yes, sir. I sure did.

8 Q. How did you hear about Rapid Return Tax Service?

9 A. Through -- and I don't know exactly who told me about it,
10 but through word of mouth at work. We had -- a lot of us would
11 go to this guy named Mayfield, and he passed away. So we asked
12 around, and they recommended me.

13 Q. So somebody at work told you to go there?

14 A. Yes.

15 Q. Do you remember why they told you you should go to Rapid
16 Returns as opposed to someplace else?

17 A. The way they told me -- because my thing is I was always
18 paying taxes, and then they told me that the person there could
19 help me out. And I was fine with, you know, breaking even. So
20 I went over there, and that's why I started going over there.

21 Q. Do you remember approximately when you started going over
22 there?

23 A. I'm going to say two thousand, I think, seven or eight,
24 somewhere around there.

25 Q. Okay. You ever remember meeting an individual by the name

Trevino - Direct

1 of Margarita Hosseini or Margaret Hosseini?

2 A. Yes, sir. I sure do.

3 Q. And is she present in court today?

4 A. Yes, sir.

5 Q. Could you point her out and describe what she's wearing?

6 A. She's wearing a blue blouse.

7 MR. SUROVIC: Okay. Your Honor, request the record
8 reflect that he's identified the defendant.

9 THE COURT: Noted.

10 BY MR. SUROVIC:

11 Q. How did you meet Ms. Hosseini?

12 A. I went to Rapid Refund and told her that I had -- she had
13 been recommended. So I went over there to get my taxes done.

14 Q. Okay. Did you go in uniform?

15 A. No. I was off duty.

16 Q. Civilian clothes?

17 A. Yeah, civilian clothes.

18 Q. Could you tell us what happened? Walk us through the
19 process when you walked into Rapid Return Tax System?

20 A. You know, just go in there. I started talking to her. I
21 introduced myself. I told her she was recommended by a bunch
22 of deputy friends of mine. I told her --

23 Q. Describe -- describe, if you would -- since you're a
24 trained observer, describe what the office looked like.

25 A. It was well-kept. I was professional. They had like --

Trevino - Direct

1 I'm going to say like four or five desks. They had a back room
2 where they had snacks and stuff. They had a main desk at the
3 front. And they had a receptionist. It was -- it looked nice.
4 I wasn't like you go into, you know, somebody's house or
5 something like that. No, it was professional.

6 Q. Okay. And what happened when you -- when you walked in?
7 Who did you talk to first?

8 A. To tell you the truth, I spoke to a girl at the front.
9 She put my name on a list. And then after that, I spoke to
10 Ms. Hosseini.

11 Q. Okay. And what type of things did you bring in to help
12 with your tax preparation?

13 A. Just my 1099 and W-2, the stuff that normally you would
14 use for your taxes.

15 Q. Did you bring in receipts or anything like that?

16 A. No, I did not.

17 Q. Okay. When you showed her your 1099s and your W-2s, what
18 did she ask you?

19 A. She gave me a list to go through, and she advised me to
20 check off the stuff that I had used that year and the things
21 that I had bought that year. She told me: Hey, you can put
22 this down. Did you get this? And I told her: Yeah. So I
23 started checking off the list.

24 Q. Okay. Let's -- if we could pull up Government Exhibit
25 13-3.

Trevino - Direct

1 MR. SUROVIC: And if I might, Your Honor, approach
2 the witness and provide him with a copy so he can -- doesn't
3 have to rely on the screen as well.

4 THE COURT: All right.

5 MR. SUROVIC: And I'll provide you with 13-1 as well,
6 but I'll ask --

7 THE COURT: Okay.

8 MR. SUROVIC: I'm going to start with 13-3 which is
9 the folder on the top.

10 BY MR. SUROVIC:

11 Q. 13-3 is the tax preparer's copy, the copy that was
12 collected as a result of a search warrant at Ms. Hosseini's
13 office. Okay? And I want to go to -- let's see how many pages
14 back it is. Nine pages back there is something that is
15 entitled "deputy PD tax deductions."

16 A. Yes.

17 Q. Is that the sheet that you're talking about?

18 A. Yes, sir.

19 Q. Okay. And when we're looking at this, do you recognize
20 the handwriting on this page?

21 A. Yes. That's mine.

22 Q. Okay. So all of these things were done by you?

23 A. Yes, sir.

24 Q. Is that correct?

25 A. Yes, sir.

Trevino - Direct

1 Q. And it asks for things like uniform, shirts, pants,
2 T-shirts, nameplates, dry cleaning, haircuts, et cetera; is
3 that correct?

4 A. Yes, sir.

5 Q. This sheet does not talk about mileage, does it?

6 A. No. I don't think so.

7 Q. Do you recall if she ever asked you about mileage on your
8 vehicle?

9 A. She did, and I don't remember if it was this one or
10 another one where I -- because I don't -- I don't remember if I
11 was already working at Calavaras Lake for this one.

12 Q. Okay. Let's take a look at your 2008 tax return. If we
13 could go to Government Exhibit 13-1. That'll be in that
14 folder.

15 A. Same folder?

16 Q. Different folder. The second folder.

17 A. 13-1?

18 Q. 13-1. Should be the folder underneath that one. And
19 we'll look at the top of that.

20 A. Okay.

21 Q. It's a Form 1040 individual tax return 2008; is that
22 correct?

23 A. Yes, sir.

24 Q. And Mike Trevino, III. And it's got a social, and it's
25 got an address here in San Antonio. Is this your tax return

Trevino - Direct

1 for 2008?

2 A. Yes, sir.

3 Q. Okay. If we look down at line 12, business income or loss
4 says \$13,193. And that's a loss because there's a negative
5 after it.

6 A. Yes, sir.

7 Q. Did you lose that much on your side businesses?

8 A. No.

9 Q. Your total salary at the time was \$47,156; is that right?

10 A. Yes, sir.

11 Q. So that would have been a significant portion of your
12 income?

13 A. Yes, it would.

14 Q. Let's go to the Schedule C that's attached to that. It
15 is -- oh, wait. Excuse me. Let's go to the second page of the
16 tax return. At the bottom, third-party designee and paid
17 preparers indicates that Ms. Hosseini prepared this tax return.
18 Is that what your recollection is as well?

19 A. Yes, sir. Yes, sir.

20 Q. Now we'll go to the Schedule C.

21 A. What page is that?

22 Q. It is, I believe, Page 5 if you count the blue page on
23 top.

24 A. Okay.

25 Q. It'll say "Schedule C" in the top left-hand corner.

Trevino - Direct

1 A. Okay. I got you.

2 Q. And then if we go down to -- this is for your security
3 business; is that right? Line A, security, Mike Trevino.

4 A. Yes, sir.

5 Q. Okay. And is that -- all of your side businesses are
6 security businesses, right?

7 A. Yes, sir.

8 Q. Okay. Whether you're working at Calavaras or you're
9 working somewhere else, it's all together?

10 A. All together, yes.

11 Q. Let's go down to line 9 -- Part II, line 9, car and truck
12 expenses.

13 A. Okay.

14 Q. According to this, you spent \$23,925 on car and truck
15 expenses. Is that what you recall for 2008?

16 A. I bought a brand new Tundra. I don't know if that's what
17 that line indicates, but I know I had bought a brand new
18 Tundra. And I don't remember if that's -- this is the return
19 where she told me that we could claim it.

20 Q. Well, we'll go back to the preparer's copy in just a
21 second.

22 A. Okay.

23 Q. Did you use that Tundra one hundred percent for business?

24 A. Yes.

25 Q. Okay. It was only for going to your side businesses?

Trevino - Direct

1 A. Just to go to work, yes.

2 Q. Okay. Not to work as a deputy, to work on your security
3 job?

4 A. No, just to work, to my part-time.

5 Q. Okay. Let's take a look at -- let's go back to 13-3. And
6 we can go to Page 3 of that.

7 A. Is that the W-2?

8 Q. Well, this -- Okay. We're at 13-3, the preparer's copy
9 again.

10 A. Oh, okay.

11 Q. I'm sorry.

12 A. All righty.

13 Q. It's entitled "federal supporting statements," 2008, Page
14 1. And then you'll see service date, business miles, commuter
15 miles, other miles. This indicates date of service 1/1/2005,
16 45,000 business miles?

17 A. Okay. I don't --

18 Q. Are we on Page 3?

19 A. Page 3. I got Page 2.

20 Q. That's what the page looks like. It's largely blank.

21 A. There it is. It was in there. Okay. Yes, I got it here.

22 Q. Okay. 45,000 business miles?

23 A. No.

24 Q. Did you come anywhere near 45,000 business miles --

25 A. No, sir.

Trevino - Direct

1 Q. -- on any of your jobs?

2 How did Ms. Hosseini come up with that number?

3 A. No idea.

4 Q. Did you ever tell her: I did X amount of miles in the
5 course of my extra jobs?

6 A. She asked me how many miles was it from my house to
7 Calavaras. And that's about -- approximately, give or take,
8 five or ten -- about 25, 30 miles.

9 Q. Okay. And you drive out there how many times a week?

10 A. Normally, I was working two to three days. I had signed
11 up for two to three days. And that was the most I was working.
12 And then sometimes he would call me and tell me, I need you
13 here, so I would put in for a day off. So I would try to get
14 as many days because they were paying very, very well. So I
15 would -- up to five to six days, but not every week. There was
16 a week here where you would work five to six days, and then
17 there was another day [sic] you would work just three days or
18 two days. But there was times that I would work five to six
19 days out there.

20 Q. Okay. You think you drove about 800 miles a week out to
21 Calavaras?

22 A. No, no.

23 Q. Commuter miles: 15,000. Now, commuter miles would be
24 back and forth from the job as opposed to business miles, which
25 are actually in association with -- do you remember driving

Trevino - Direct

1 about 15,000 miles to get out to Calavaras?

2 A. No, sir.

3 Q. Okay. By the way, did you have -- did you keep a log of
4 your mileage when you went out?

5 A. No, sir. I never did.

6 Q. And so if -- did you ever tell her that you had a log of
7 mileage?

8 A. No, sir.

9 Q. Did you ever tell her that you wrote down how many miles
10 you had?

11 A. No, sir.

12 Q. Did she ever ask you: Do you have a written log?

13 A. No.

14 Q. If we go back to the 13-1, the one with the blue cover to
15 it --

16 A. Okay.

17 Q. -- and go to Page 6, which is on the second page of the
18 Schedule C.

19 A. Page 6.

20 Q. If you look at line 47A and 47B --

21 A. Okay.

22 Q. -- it asks, "Do you have evidence to support your
23 deduction?" Did you have evidence to support your mileage
24 deduction?

25 A. No, sir.

Trevino - Direct

1 Q. And then, "If yes, is the evidence written?" Did you --
2 you said you didn't have evidence. So there would not be any
3 written evidence; is that correct?

4 A. That's correct.

5 Q. So if we look over here where the boxes are checked "yes,"
6 can you explain how those boxes got checked "yes" as opposed to
7 "no"?

8 A. No, sir.

9 Q. Did you ever tell her that you had written evidence?

10 A. No, sir.

11 Q. Also, if you look a little further down on Part V, towards
12 the bottom of that list on Part V is a mobile phone. Do you
13 see that?

14 A. Yes, sir.

15 Q. And the mobile phone, it says for business uses, \$1,740.
16 What did Ms. Hosseini tell you about mobile phones and
17 deducting mobile phones?

18 A. That you can deduct the payment to the phone.

19 Q. The full phone?

20 A. Yes.

21 Q. Did she ever tell you about -- ask you how much of that
22 phone usage was for business versus for personal or anything
23 like that?

24 A. No. The way she asked me was: Do you use it for
25 part-times? I said yes.

Trevino - Direct

1 Q. She never asked you: How much do you use it for
2 part-time?

3 A. No, sir.

4 Q. This \$1,740, was that your total bill for your phone plan
5 for that year?

6 A. I don't know, to be honest. I didn't calculate for the
7 whole year -- how much I spent in a year on my phone. I never
8 did that. I just paid the bill, just like everybody else.

9 Q. What type of phone plan do you have?

10 A. Now or then?

11 Q. Then. Back in 2008.

12 A. It was just myself and my wife on the phone plan, and it
13 was -- back then it was big phones.

14 Q. Okay. So you had a phone, and she had a phone?

15 A. And that's it.

16 Q. Okay. Did you keep track of how many calls you made
17 related to your security side job versus others?

18 A. No.

19 Q. Approximately -- you know, just -- if you -- if you can
20 tell the jury, how much did you use that phone for your
21 security jobs as opposed to, you know, your real job as a
22 deputy or for personal use?

23 A. I used it at least 25 percent of the time. I mean,
24 because we were always getting calls: Hey, you want to work
25 here? You want to work there? They're paying better over

Trevino - Direct

1 here. You can make a good chunk of money tonight, you know.

2 Can you fill in? And they would call you. If you're a good

3 deputy, people call you.

4 Q. So you'd use it about 25 percent of the time, did you say?

5 A. About 25, 30 percent.

6 Q. Okay. So the rest of it, the other 70 percent, would be

7 for what? Personal use?

8 A. For work, personal use, my regular job.

9 Q. Okay. Is \$1,740 about 30 percent of your phone bill?

10 A. I don't know. I wouldn't -- I wouldn't know if that's

11 about --

12 Q. You don't remember at the time?

13 A. I don't remember.

14 Q. I mean, that would mean that you were paying over \$5,000 a
15 year on phone bills if that's only -- if that's 30 percent.

16 A. I don't know. If you say it's 5,000 -- I don't know.

17 Q. We'll go back to the -- and I'm sorry I'm skipping back
18 and forth between these two. We'll go back to the 13-3 and the
19 first page of that. In the middle of the page there's an X and
20 a signature?

21 A. Yes.

22 Q. Is that your signature?

23 A. Yes, sir.

24 Q. And then at the bottom it indicates -- there's a typed

25 space, and it says "Margaret Hosseini." It's not signed. It

Trevino - Direct

1 just has her name typed there; is that correct?

2 A. That's correct.

3 Q. Is she the one that prepared your tax return during this
4 period, 2008?

5 A. Yes.

6 Q. Did she sit down with you and go through these forms?

7 A. Yes.

8 Q. And I notice, if you go through the different forms, every
9 page has your signature on it; is that correct?

10 A. Yes, sir.

11 Q. You know, for example, if we go to the federal supporting
12 statement we just looked at with the mileage on it --

13 A. Yes, sir.

14 Q. -- it has your signature on it as well, right?

15 A. Yes, sir.

16 Q. How did she do the review of your taxes? Could you
17 describe that?

18 A. We sat down. I brought -- like I said, brought my W-2,
19 1099s. We sat down. She gave me the sheet to mark what I
20 could claim. And then she told me: You qualify for this --
21 not qualified. But you can deduct this. You can deduct that.

22 And then we started checking off, did you -- did you
23 use this? There was things I didn't know. And did you use
24 this? I said, yeah. I never -- I never thought about socks.
25 So she told me, you can deduct socks. So okay. I need socks,

Trevino - Direct

1 and I paid for socks. So I deducted socks. I mean, I signed
2 it. I checked it off.

3 Q. Okay.

4 A. And we went through the list. And then she did her thing.
5 And then, okay, this is --

6 Q. When you say "she did her thing," what do you mean by
7 that?

8 A. I mean, she was working on paperwork, calculating whatever
9 she needed to calculate.

10 Q. Did she have a computer in front of her?

11 A. I believe she had a computer in front of her.

12 Q. Okay. And was she typing things into the computer while
13 you were talking to her?

14 A. Yes, sir.

15 Q. Then what happened after you gave her all your
16 information?

17 A. She went through it. We went through it again. And she
18 said: Here you go. Is this correct?

19 Yeah. You're the expert. You tell me.

20 And I signed it.

21 Q. Okay. And you signed every page? She had you sign every
22 page?

23 A. Yes, sir.

24 Q. Did she explain to you, as she was going through, what
25 each page was about?

Trevino - Direct

1 A. No.

2 Q. So, for example, we go to Page 3 again of 13-3. That's
3 the one with the mileage.

4 A. Yes. We did talk about the mileage. And she told me that
5 I could claim that.

6 Q. The 45,000 miles?

7 A. I don't remember to be, you know, honest. I don't
8 remember if that was -- I don't remember. Okay.

9 Q. Did she explain to you that she had indicated that you had
10 evidence and the evidence was in writing to support that
11 mileage?

12 A. No.

13 Q. Did she explain in detail every page, or did she just sort
14 of move through?

15 A. We just moved through it, trying to get out of there.

16 Q. How long do you think it took to review your tax returns?

17 A. Ten minutes.

18 Q. How long do you think the whole process took in order to
19 get your taxes -- give her the information, have her type it
20 in, get it filed, do the review?

21 A. Maybe an hour.

22 Q. And if we can go to the next page following this page. If
23 you look at the total projected bank fee, and then there's a
24 tax preparation line on the next page. Were you aware that she
25 was charging you \$346.05 to prepare your taxes?

Trevino - Direct

1 A. No. When I saw that, I was -- I didn't know.

2 Q. Did she -- did she tell you that when she was going
3 through this page when you signed it?

4 A. I think she did, but I don't -- I don't remember her
5 telling me that day. I remember my wife pointing it out to me.
6 Did you know you paid this much for your taxes?

7 I'm like: No, but I ain't paying taxes.

8 Q. She did indicate to you how much refund you were getting?

9 A. Yes.

10 Q. Had you gotten a refund like that in the past?

11 A. No.

12 Q. Was this the first year that you had gotten a refund?

13 A. Yes. Now, I did a couple of times break even, and I was
14 happy with that.

15 Q. Now, I'd ask you to look through again that package that
16 you got in front of you, 13-3. And tell me -- and you've
17 already indicated that you did not keep a written log of your
18 mileage. Can you find anything that even remotely looks like a
19 written log of your mileage in this package?

20 A. No, sir.

21 Q. Okay. And, again, did you tell her that you had driven
22 45,000 miles --

23 A. No, sir.

24 Q. -- as business miles on your security job?

25 A. No, sir.

Trevino - Direct

1 Q. Let me show you Government Exhibit Number 14-1 and 14-3.

2 MR. SUROVIC: And if I could approach the witness
3 again, Your Honor, with those exhibits?

4 THE COURT: All right.

5 THE WITNESS: Can I get some water?

6 THE COURT: Yeah. Go ahead.

7 MR. SUROVIC: Get these out of your way.

8 THE COURT: Mr. Surovic, given what you have left
9 with Mr. Trevino on direct and Mr. Barnes' cross, I'm assuming
10 this is probably going to be it for today?

11 MR. SUROVIC: Yes, Your Honor. If the Court intends
12 on stopping at 4:00, this would be it.

13 THE COURT: Do you have anybody else waiting?

14 MR. SUROVIC: We have one person waiting, but she's
15 already indicated she'd be willing to come back tomorrow.

16 THE COURT: She can come back. Okay. All right.
17 Well, let's finish up Deputy Trevino then.

18 BY MR. SUROVIC:

19 Q. Deputy, let's look, first of all, at Government Exhibit
20 Number 14-1, which is the official tax return that was filed.
21 And, again, if we look at Page 1 of that tax return at the top,
22 it's your Form 1040 from 2009. Is this your tax return for
23 2009?

24 A. Yes, sir.

25 Q. And then if we go down to line 12, line 12 indicates that

Trevino - Direct

1 you had a business loss of \$19,813?

2 A. Yes, sir.

3 Q. And this, again, is at a time when you had -- your total
4 income was a little over \$50,000; is that right?

5 A. Yes, sir.

6 Q. Did you lose that much money on your business?

7 A. No.

8 Q. Your side businesses?

9 A. No, sir.

10 Q. And if we go to Page 2 of the form, again, at the bottom
11 it indicates that Margaret Hosseini was the one that prepared
12 your taxes?

13 A. Yes, sir.

14 Q. Let's go to the Schedule C, which will just be a couple of
15 pages beyond that.

16 A. Got it.

17 Q. Line 9 indicates that you spent \$21,450 for car and truck
18 expenses. Did you spend that much on your car or your truck --

19 A. No, sir.

20 Q. -- during that period of time?

21 A. No, sir.

22 Q. If we flip over to Part IV on the second page, it
23 indicates that you had 39,000 miles -- business miles and
24 12,000 other miles. Do you know where those numbers came from?

25 A. No, sir.

Trevino - Direct

1 Q. Did you ever tell Ms. Hosseini that you drove 39,000 miles
2 as part of your security business?

3 A. No, sir.

4 Q. What did you tell her about the mileage in the security
5 business?

6 A. The same as always. I was driving to and from Calaveras.

7 Q. Okay. And that would be commuting miles?

8 A. Yeah.

9 Q. But Calaveras provided you with a vehicle, right?

10 A. When I got there.

11 Q. When you got there, you were provided --

12 A. They provided me with a vehicle, yes.

13 Q. Okay. And the distance to Calavaras, again, was about how
14 far?

15 A. 25, 30.

16 Q. Miles?

17 A. Yeah, miles.

18 Q. Okay. And during 2009 did you keep a written log of your
19 mileage?

20 A. No, sir.

21 Q. I note, if you go down to Boxes 46 -- 47A and B, it
22 indicates that: Do you have evidence to support your
23 deduction? Yes. Is the evidence written? Yes.

24 Did you tell Ms. Hosseini that you had written
25 evidence to support this 39,000 miles?

Trevino - Direct

1 A. No, sir.

2 Q. Did you have evidence?

3 A. No, sir.

4 Q. Did you have any evidence at all? Did you tell her that
5 there was any evidence that existed of those mileages?

6 A. No. Just by word of mouth, just I drove to and from.

7 Q. If we go to the next page of the Schedule C, it's a
8 typed-out page, business other expenses. It's a continuation
9 of Part V.

10 A. Yes.

11 Q. You see down there, mobile phone business use \$1,620?

12 A. Yes.

13 Q. Same situation in 2009 apply to -- was it the same as in
14 2008, where --

15 A. Yes.

16 Q. -- you only used the phone about 30 percent of the time?

17 A. Yes, sir.

18 Q. Okay. And do you know where this \$1,620 fee -- or figure
19 came from?

20 A. No, sir.

21 Q. Did you ever tell her that that's how much you used as far
22 as business use of your phone?

23 A. No, sir.

24 Q. Did you have any records or anything like that that you
25 provided her as far as your cellphone?

Trevino - Direct

1 A. No.

2 Q. If we go back to the first page of the Schedule C, it also
3 talks about depreciation in box 13?

4 A. Yes.

5 Q. \$17,325. Do you know what that's for?

6 A. Well, I don't want to assume, but I think that was my
7 truck.

8 Q. Okay. What type of truck did you have -- did you use?

9 A. A Tundra.

10 Q. Okay. Let's look at Government Exhibit 14-3. That's the
11 preparer's copy.

12 A. Okay.

13 Q. Let's turn to Page 5 of that, which will be -- it's
14 sideways, but it'll be entitled "depreciation, detail listing."

15 A. I got it.

16 Q. Okay. That refers to a 2010 Toyota Tundra truck?

17 A. Yes, sir.

18 Q. Date it was put into service is 2009, 12/27?

19 A. Yes, sir.

20 Q. Cost, \$33,000?

21 A. Yes.

22 Q. And then business percentage, a hundred percent. You only
23 used this truck for your security business; is that right?

24 A. No.

25 Q. What did you use this truck for?

Trevino - Direct

1 A. Everything.

2 Q. Okay. That was your vehicle -- your get around --

3 A. That was my vehicle. That's my to and from work, my
4 regular work, my family, everything.

5 Q. Did you ever tell Ms. Hosseini that you used this truck
6 exclusively for your business?

7 A. No. Told her I used it for my business but not
8 exclusively.

9 Q. Okay. You never told her that -- hundred percent business
10 percentage on that truck; is that correct?

11 A. Correct.

12 Q. Okay. Now, again, I notice on this page -- and if you'll
13 go back to the whole page -- it's got your signature on it?

14 A. Yes, sir.

15 Q. Could you tell us how you did the review with Ms. Hosseini
16 on this one?

17 A. Sign it.

18 Q. Did you -- did she sit down and explain to you: Okay.
19 We've got your Toyota Tundra truck. I've got it down a hundred
20 percent business usage, et cetera, et cetera?

21 A. Again, I don't remember exactly if we went through this.
22 I just know I signed it.

23 Q. Okay. And at any time did you tell her that that truck
24 was -- whether it was true or not, did you tell her that that
25 truck was a hundred percent for business?

Trevino - Direct

1 A. No, sir. I never did.

2 Q. If you flip back two more pages beyond that, you'll see
3 bank product information.

4 A. Yes, sir.

5 Q. And then again that box, tax preparation, \$484?

6 A. Where is that?

7 Q. It's --

8 A. I got \$584.

9 Q. Okay. Five hundred eighty -- total preparer fee, \$584.

10 A. Yes.

11 Q. Okay. Were you aware that you paid her that much for
12 preparing your taxes?

13 A. I don't remember. But if I signed it, I'm assuming I
14 looked at it.

15 Q. Okay. And you got a refund check for \$3,920; is that
16 right?

17 A. Yes, sir.

18 Q. Did you go back to her to prepare your taxes in 2010?

19 A. I think that was the last year I went.

20 Q. Okay. The times that you went back, did the process
21 pretty much work exactly the same way?

22 A. Yes, sir. Nothing changed.

23 Q. Okay. And you would bring in your 1099s --

24 A. 1099s and my W --

25 Q. -- W-2s. And that was it?

Trevino - Direct

1 A. That was it.

2 Q. Nothing else.

3 And you would sit down and fill out with her one of
4 those sheets --

5 A. Yes, sir.

6 Q. -- as far as the deputy stuff, the equipment and things
7 like that?

8 A. Yes, sir.

9 Q. Let's look at 15-5 -- or 15-1. Excuse me. And I'll get
10 you those two exhibits.

11 MR. SUROVIC: If I might, Your Honor, approach the
12 witness stand?

13 THE COURT: All right.

14 BY MR. SUROVIC:

15 Q. We'll talk about 15-1 first. 15-1 at the top, and Form
16 1040 for 2010; is that correct?

17 A. That's correct, sir.

18 Q. And it's got your name, social and address?

19 A. Yes, sir.

20 Q. This is your 1040?

21 A. Yes, sir.

22 Q. If we go line 12, this time it says, business income or
23 loss, \$6,270. Do you recall that?

24 A. No, sir.

25 Q. You see line 12?

Trevino - Direct

1 A. Yeah. I mean, I don't remember losing 6,000.

2 Q. Considerably less than you lost in the previous two years;
3 is that --

4 A. Yes, sir.

5 Q. I guess you were much more efficient in your job in 2010.

6 If we look to Schedule C, that whole \$6,270 comes
7 from depreciation? If you look at line 13, Part II.

8 A. Yes.

9 Q. Okay. Did you not have -- were you not using a cellphone
10 that year?

11 A. Yes.

12 Q. You not using all the other equipment and things like that
13 that you deducted previously?

14 A. I was using everything that I used the previous two years.

15 Q. Did you fill out one of those sheets with Ms. Hosseini as
16 far as the equipment and stuff that you use, your laundry
17 expenses and uniforms and all that stuff?

18 A. I sure did.

19 Q. And you provided that to her, right?

20 A. Yes, sir.

21 Q. Okay. It's not in your taxes. Do you know why?

22 A. No.

23 Q. If we look at the -- Exhibit 15-3, the preparer copy --

24 A. Okay. I got 15 -- oh, there it is.

25 Q. 15-3.

Trevino - Direct

1 A. Okay.

2 Q. Again, that's your signature?

3 A. Yes, it is.

4 Q. Okay. And if we look at Page 4 --

5 A. Okay.

6 Q. Page 4. It says, overflow statement.

7 A. Yeah. I'm there. I'm sorry.

8 Q. Page 4 basically has all the deductions you used to get,
9 including the cellphone and all that sort of stuff, right?

10 A. Yes, sir.

11 Q. So it was included in her package but not included in your
12 income tax return?

13 A. Yes, sir.

14 Q. And if we turn to the next page, you'll see -- this is the
15 bank product information page again. And it indicates, total
16 preparer fees, \$479?

17 A. Yes, sir.

18 Q. Would that be what you paid her that year?

19 A. Yes, sir.

20 Q. Now, if we jump back a little ways, six pages back, it's
21 the depreciation detail listing again.

22 A. Okay. I'm there.

23 Q. This is -- this is for 2010.

24 A. Yes, sir.

25 Q. And, once again, it's that same Toyota Tundra truck?

Trevino - Direct

1 A. Yes, sir.

2 Q. And how much did you use that in your business?

3 A. Hundred percent. That's what it says.

4 Q. Is that what you told her?

5 A. No.

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Trevino - Direct

1 Q. What did you tell her as far as the percentage of use that
2 you had on that Toyota Tundra truck?

3 A. I don't think we -- she just asked me: Do you use it for
4 your job or your part-time? Yes.

5 Q. Okay. She never asked you how much you used it?

6 A. No, sir.

7 Q. Once again, all of these pages in the tax preparer's copy
8 are signed by you; is that right?

9 A. Yes, sir.

10 Q. Did she review them with you?

11 A. She just -- like every year, just sign it here. And I'm
12 signing. I'm just -- I signed it. I can't -- I own up to
13 that. I signed it.

14 Q. Did you pay much attention to what was written on the
15 pages as you flipped through it and signed?

16 A. No, sir.

17 Q. Did you ask any questions as you were going through?

18 A. No. I trusted Ms. Hosseini.

19 Q. By the way, why did you go to a tax preparer in the first
20 place?

21 A. I was tired of paying taxes. I was trying to do it on my
22 own, and I wasn't getting anywhere. So people recommended
23 Ms. Hosseini, and it worked.

24 Q. What -- you started getting returns.

25 A. Yes, sir.

Trevino - Cross

1 Q. You started getting refunds.

2 Did you trust in her experience and expertise to
3 guide you to make sure that you got the right --

4 A. I sure did.

5 Q. Did you assume that everything she was doing was correct?

6 A. Yes. Absolutely.

7 Q. Now, you -- until you were -- until these specific things
8 were pointed out to you during the course of the investigation,
9 did you even know, you know, about the extent of the losses or
10 about the fact that your vehicles were being claimed hundred
11 percent for business?

12 A. No, sir.

13 Q. Did that come as a surprise to you?

14 A. Yes.

15 MR. SUROVIC: No further questions, Your Honor.

16 THE COURT: Cross?

17 MR. BARNES: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BARNES:

20 Q. You're a deputy, correct, Mr. Trevino?

21 A. Yes, sir.

22 Q. You sign things every day and people rely upon the fact
23 that you have reviewed whatever it is you've signed before you
24 sign it, correct?

25 A. Yes, sir.

Trevino - Cross

1 Q. And in this case Margaret just didn't have you sign the
2 end documents. She had you sign literally every single page?

3 A. Every page. Yes, sir.

4 Q. Did you understand that your signature meant nothing when
5 you signed it?

6 A. No. It meant that I agreed with what she put on the
7 paper.

8 Q. And that what she put on was those mileage amounts, was
9 those deduction amounts?

10 A. Yes, sir.

11 Q. Was those hundred percent amounts?

12 A. Yes, sir.

13 Q. Now, was it your -- if you made a mistake in those amounts
14 or if you misinterpreted or misread something, were you out to
15 commit a crime?

16 A. Was I out to commit a crime?

17 Q. Yes.

18 A. No.

19 Q. If you made a mistake, did the IRS ever come to you -- or
20 when did you first learn from the IRS that they believed a
21 mistake was made on the return?

22 A. When the special agent knocked on my door.

23 Q. You didn't get a note or a letter from them asking to come
24 in to review it?

25 A. No, sir.

Trevino - Cross

1 Q. You didn't get a phonecall from them saying: We would
2 like you to get your receipts and records together to see if
3 there's some issues with the returns?

4 A. No, sir.

5 Q. Did they say you could have your counsel or a tax
6 representative there with you to go through all the tax
7 interpretation of this?

8 A. No, sir.

9 MR. BARNES: No further questions, Your Honor.

10 THE COURT: Redirect?

11 MR. SUROVIC: Very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SUROVIC:

14 Q. Deputy Trevino, 2010 we noted that the loss was
15 considerably less. It was only \$6,000. Were you working a
16 part-time job in 2010?

17 A. We had lost the contract at Calaveras. So the two years
18 that I made a considerable amount of money was Calaveras. We
19 went back to the normal. We were just working traffic jobs,
20 security jobs at restaurants and special events.

21 Q. Okay. Did you do a lot of that, or was 2010 really an off
22 year? And I -- you have your 2010 tax return there.

23 A. Okay.

24 Q. And I guess my question is, did you earn anything as a
25 result of your side jobs that year?

Trevino - Cross

1 A. Not a whole lot. I would have to look at it again. But I
2 don't remember -- that year was not a banner year like the two
3 years.

4 Q. I see your W-2 but I don't see anything else, is why I
5 ask.

6 A. I guess. I don't remember, to tell you the truth, if I --
7 I know 2010 I worked some traffic jobs, but I don't remember
8 working the way I was working before.

9 MR. SUROVIC: Okay. No further questions, Your
10 Honor.

11 THE COURT: Cross? Recross?

12 MR. BARNES: No, Your Honor.

13 THE COURT: All right. Thank you, sir. You may be
14 excused.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Ladies and gentlemen, that will conclude
17 today's proceedings. Keep in mind your instructions.
18 Mr. Miller's going to show you now where your deliberation room
19 is. He will show you how to leave now that you are officers of
20 the Court and how to come back in in the morning. And then
21 leave your pads -- notepads here on the table, please.

22 And if you want to bring lunch, snacks, what have
23 you, the -- otherwise, we'll order something for you. And the
24 doors, as I said earlier, will open at 7:45. And we will try
25 to start as close to 8:30 as possible, given traffic. And,

1 Mr. Surovic, you'll have a witness ready for us?

2 MR. SUROVIC: Yes, Your Honor, we will.

3 THE COURT: All right. We're in recess for the jury.
4 You-all are excused.

5 (Jury leaves courtroom)

6 THE COURT: You may be seated.

7 Outside the presence, Mr. Surovic, anything further
8 before we quit for the day? Anything else?

9 MR. SUROVIC: No, Your Honor, not at this time.

10 THE COURT: Okay. Mr. Barnes?

11 MR. BARNES: No, Your Honor.

12 THE COURT: All right. We'll see you at 8:30. Thank
13 you.

14 MR. BARNES: Thank you, Your Honor.

15 * * *

16 (Overnight recess)

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2 I certify that the foregoing is a correct transcript
3 from the record of proceedings in the above-entitled matter. I
4 further certify that the transcript fees and format comply with
5 those prescribed by the Court and the Judicial Conference of
6 the United States.

7
8 Date: 10/2/2017

/s/ Chris Poage

United States Court Reporter

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