

## Fifth Amendment

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**MR. SCHULZ:** I would remind MR. Banister and MR. Becraft that they're still under oath. And,

**MR. CHAPPELL,** would you stand, please. And there's a Bible there in front of you. Would you stand,

**MR. CHAPPELL.** And would you raise your right hand. And do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

**MR. CHAPPELL:** I do.

**MR. SCHULZ:** Thank you.

**MR. CHAPPELL,** would you, for the record, tell us where you live and what your professional background has been and what you're doing now.

**MR. CHAPPELL:** I'm a resident of Fredericksburg, Virginia. I've been a member of the bar of the State of Maryland since 1954. I became interested in the subject of federal taxation when I was sent by a local law firm to Capitol Hill to cover House Ways and Means and Senate Finance Committee hearings in drafting the 1954 Internal Revenue Code. After some 17 years of government experience serving first as a clerk to a Tax Court judge and subsequently in the office of Chief Counsel of Internal Revenue I entered private practice in 1973. I have had an active practice which majored and emphasized federal tax cases, representing taxpayers before the Internal Revenue Service and in the federal courts for approximately 28 years. I became very much interested in the last two years in the subject of Internal Revenue Service procedural matters. My concern has risen over such matters as violations of IRS regulations by the service; violations of statutory requirements by the IRS; disregard of their own math and records system; manipulation of

1 data on the IRS master record system; ignoring statutory requirements for making proper  
2 assessment of taxes; the ignoring of requirements for collection matters such as the enforcement of  
3 IRS liens, levies and property seizures; and also a great deal of concern about the current trend  
4 toward abusive searches and seizures which, in my opinion, so often violate the Fourth Amendment  
5 to the Constitution.

6 **MR. SCHULZ:** Thank you.

7 **MR. CHAPPELL.** I was just handed a note. We're talking about the webcast, just handed a  
8 note that since this morning 109 new people have signed up and are watching the proceedings  
9 today, in addition to whatever the number was -- it was somewhere between 1,000 and 2000 that  
10 had previously signed up. Well, just to recap. Before the lunch break we had, through a series of  
11 lines of inquiry, we had proven that there is no statute that requires most Americans to file a tax  
12 return and to pay the income tax; no statute that requires most employers to withhold the income  
13 tax from the paychecks of their employees. That, in other words, the income tax is in fact a  
14 voluntary tax. We also discussed possible good reasons why that is so. The constitutional and  
15 moral right that we have to -- it's an unalienable right protected by the Constitution, certainly moral  
16 right to our own labor and that that could be a reason why you don't find a law that requires us to  
17 file and pay. And also that the federal government lacks jurisdiction in areas outside of D.C. and  
18 the federal territories. That is probably another good reason why Congress, knowing this, has not  
19 imposed a statute that requires us -- most of us to file and pay. We'll now discuss the Fifth  
20 Amendment, a line of inquiry relating to the Fifth Amendment to the United States Constitution.  
21 With the assistance of the questions in this next line of inquiry we will show that there is no income  
22 tax exception to the Fifth Amendment's guarantee of the people's unalienable right not to be  
23 compelled to be a witness against themselves. On question 281 -- MR. Bodine, question 281. This

1 is where we'll begin. Is it true that the Internal Revenue Code at Section 6001 requires the keeping  
2 of records?

3 **MR. BANISTER:** That is correct.

4 **MR. SCHULZ:** Is it true that the Internal Revenue Code at Section 7203 makes it a federal  
5 crime not to keep the records required under 6001?

6 **MR. BECRAFT:** Yes.

7 **MR. CHAPPELL:** That is true.

8 **MR. SCHULZ:** Is it true that the records required under 6001 contain information that will  
9 appear on the tax returns pertaining to federal income taxes?

10 **MR. BANISTER:** That is true.

11 **MR. SCHULZ:** Is it true that the Fifth Amendment prohibits the government from  
12 compelling an American to be a witness against themselves?

13 **MR. CHAPPELL:** That is absolutely true.

14 **MR. SCHULZ:** I almost said compelling the government -- I almost said the Fifth  
15 Amendment prohibits the government compelling Americans who incriminate themselves. That's a  
16 common mistake. That's not what it says. The Fifth Amendment protects our right not to be a  
17 witness against ourselves. Is it true that the Internal Revenue Service currently uses the following  
18 Non-custodial Miranda warning? MR. Banister, I would ask this question of you as a former  
19 special agent of the Criminal Investigation Division.

20 **MR. BANISTER:** MR. Schulz, I can certainly verify that up until 1999 when I left the  
21 Service, that that was the common practice for special agents to use the non-custodial Miranda  
22 warning. In fact, one of the momentos that I brought with me was the actual statement of rights  
23 card that each special agent was required to carry with them. There was a statement of rights for

1 non-custodial questioning which would be if I just came to your house. There would also be a  
2 statement of rights for in custody; if I had already put the handcuffs on you. And the language that  
3 you have on the screen --

4 **MR. SCHULZ:** Would you read that, please.

5 **MR. BANISTER:** Certainly. Let's see, you have the non-custodial.

6 **MR. BECRAFT:** Non-custodials.

7 **MR. BANISTER:** Actually, mine has the paragraph preceding that, so I guess if you don't  
8 mind I'll just read it right off my card. This is document 5661 issued by the Internal Revenue  
9 Service, revised August of 1982. I'll read the entire thing. "Statement of Rights Non-Custody. At  
10 the outset of your first official meeting with the subject of an investigation identify yourself as a  
11 special agent of IRS and produce authorized credentials. Then state, 'As a special agent one of my  
12 functions is to investigate the possibility of criminal violations of the Internal Revenue laws and  
13 related offenses. In connection with my investigation of your tax liability or other matter I would  
14 like to ask you some questions. However, first I advise you that under the Fifth Amendment to the  
15 Constitution of the U.S. I cannot compel you to answer any questions or to submit any information  
16 if such answers or information might tend to incriminate you in any way. I also advise you that  
17 anything which you say and any documents which you submit may be used against you in any  
18 criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek  
19 the assistance of any attorney before responding. Do you understand these rights?'" And that's the  
20 extent of the document 5661.

21 **MR. SCHULZ:** Thank you.

22 **MR. HANSEN:** Question 286. Is it true that the Privacy Act and the Paperwork Reduction  
23 Act notices currently used by the IRS provides that the information provided in the preparation of a

1 tax return can go to the Justice Department who prosecutes criminal cases against the filers of such  
2 tax returns?

3 **MR. BECRAFT:** The Privacy Act notice does contain that information.

4 **MR. HANSEN:** Question 287(a). Is it true that the United States Attorneys' Bulletin, April  
5 1998 edition, contained an article written by Joan Bainbridge Safford, Deputy United States  
6 Attorney, Northern District of Illinois, entitled: "Follow That Lead! Obtaining and Using Tax  
7 Information in a Non-Tax Case," hereafter referred to as "Follow That Lead"?

8 **MR. BANISTER:** I have viewed the document and it is similar to documents that I used to  
9 read all the time. As an investigator there would be memorandums and tips, for lack of a better  
10 word, on how to go about investigating people, how to gather evidence, how to make sure that if  
11 the government went after somebody that they're going to win. And one of the ways was to have  
12 people from the Department of Justice, the attorneys and prosecutors, inform the agents on how  
13 best to conduct their investigation and gather evidence.

14 **MR. BECRAFT:** Ms. Safford prosecuted Bill Benson.

15 **MR. SCHULZ:** Are you familiar with this document, MR. Becraft?

16 **MR. BECRAFT:** I know who Ms. Safford is. And I was informed this is an article she  
17 authored.

18 **MR. HANSEN:** Question 287(b). Is it true that the article states the following: "In any  
19 criminal case where financial gain is the prominent motive, tax returns and return information can  
20 provide some of the most significant leads, corroborative evidence and cross-examination material  
21 obtainable from any source"?

22 **MR. BECRAFT:** It's in the article.

23 **MR. HANSEN:** Question 287(c). Is it true that the article states the following. "In even the

1 most straightforward fraud case the usefulness of tax returns should be apparent. The tax return  
2 information provides a statement under penalty of perjury, which may either serve as circumstantial  
3 evidence of the target misrepresentation of his economic status or as helpful cross-examination  
4 material. Disclosure of tax returns may also provide critical leads and impeachment material"?

5 **MR. BECRAFT:** That's correct.

6 **MR. HANSEN:** Question 288. Is it true that the Disclosure, Privacy Act and Paperwork  
7 Reduction Act Notice set out in IRS Form 1040 Instruction Booklet states the following: "We may  
8 disclose the tax information to the Department of Justice to enforce the tax laws, both civil and  
9 criminal, and to cities, states, the District of Columbia, U.S. Commonwealths or possessions, and  
10 certain foreign governments to carry out their tax laws"?

11 **MR. BANISTER:** That is correct. I have certainly seen that in the booklet. I might just add  
12 there might be people out viewing in America saying where can I get the material to understand  
13 these concepts and these laws and you don't realize the wealth of information that is contained in  
14 that 1040 Instruction Booklet that's mailed to tens of millions of people every year. There's some  
15 powerful information in there that even myself as a CPA preparing hundreds and hundreds of tax  
16 returns never paid any attention to. But I believe perhaps that's what the government expects.  
17 People don't pay attention to what's in those booklets and they also don't pay attention to the rights  
18 that they may be waiving and the documents that they may be signing under penalty of perjury. It is  
19 a serious, serious matter. And I can tell you that every investigation that I ever did, one of the first  
20 things I would do is order up the tax returns previously filed by not only to the target of my  
21 investigation but the witnesses and everyone around it.

22 **MR. HANSEN:** Did you ever request tax returns of the jurors who heard the case as well or  
23 investigate the jurors?

1           **MR. BANISTER:** In my own personal experience the people I investigated had pled guilty  
2 so there was never a trial.

3           **MR. HANSEN:** Did you ever hear of an occasion where the jurors were requested to  
4 provide their social security numbers and then investigated prior to the jury selection voir dire  
5 process?

6           **MR. BANISTER:** To tell you the truth I imagine MR. Becraft has probably seen that in  
7 person up close.

8           **MR. BECRAFT:** There used to be a section of the Internal Revenue Code 6103(h)5, it has  
9 now been repealed out of that section. But in the past it provided that in tax cases you could submit  
10 to the IRS some questions about each juror. In the past before the Hashmota case in the 9th Circuit  
11 back about '86, '87, maybe '88, the Hashmota case dealt with that issue; can a defendant get the IRS  
12 to provide information about certain jurors. In that case the 9th circuit said yes the statute provides  
13 that. So once the Hashmota case came out immediately, you know, everybody in the defense camp  
14 in the tax movement started submitting their 6103(h)5 motions and, of course, that would naturally  
15 result in a delay in the trial. You know, the government would have to go out and if you got a panel  
16 of say 48 people that you're going to be bringing in -- or it could be a lot more than that. But the  
17 judge would order the IRS to report back to the parties involved in the case or their attorneys,  
18 answer these questions about these jurors. It would typically get back a response, you know, with  
19 an X, you know, yes this party has been audited or this party has been investigated otherwise. And  
20 that created such a big problem that I think by 1995 or 1996 Congress repealed that provision in  
21 6103(h)5. Now neither side has access to that information regarding jurors.

22           **MR. SCHULZ:** Thank you. So it is the testimony of the panel that tax returns are used by  
23 the IRS to develop civil and criminal cases against the filers of the tax returns?

1           **MR. BANISTER:** Absolutely.

2           **MR. SCHULZ:** MR. CHAPPELL?

3           **MR. CHAPPELL:** That is correct, they do use them for that.

4           **MR. SCHULZ:** Mr. Becraft?

5           **MR. BECRAFT:** Absolutely.

6           **MR. SCHULZ:** And you agree that tax returns of a filer are used as evidence against the  
7 filer in both civil and criminal income tax cases?

8           **MR. HANSEN:** Question 290.

9           **MR. SCHULZ:** And that is question 290, yes.

10          **MR. BECRAFT:** You couldn't make out a tax evasion case based on a filed return unless  
11 you did so.

12          **MR. SCHULZ:** Is it true that the United States Supreme Court has held that a Fifth  
13 Amendment privilege exists against requiring a person to admit or deny he has documents which  
14 the government believes is related to the federal income tax?

15          **MR. HANSEN:** Question 291.

16          **MR. CHAPPELL:** Yes.

17          **MR. SCHULZ:** MR. Becraft?

18          **MR. BECRAFT:** Yes.

19          **MR. SCHULZ:** What case are you relying on for your answer?

20          **MR. BECRAFT:** Doe. "United States against Doe." They created the active production  
21 rule, which I believe is on the screen right now.

22          **MR. SCHULZ:** Do you admit that the Fifth Amendment provides an absolute defense to  
23 tax crimes?

1           **MR. BECRAFT:** It's a case that says so. If MR. Bodine would flip it up on the screen.

2           **MR. SCHULZ:** You need to cite the case. 292.

3           **MR. BECRAFT:** I think we have both Heise and Garner as exhibits.

4           **MR. SCHULZ:** Is there a particular part?

5           **MR. BECRAFT:** It's yellowed.

6           **MR. SCHULZ:** Do you want to read it?

7           **MR. BECRAFT:** "The Supreme Court has held that the Fifth Amendment privilege against  
8 compulsory self-incrimination that validly exercises a defense to a Section 7203 prosecution." 7203  
9 deals with prosecution for willful failure to file an income tax return.

10           **MR. SCHULZ:** So any taxpayer has the same right to quote "take the fifth" on an income  
11 tax charge or case as MR. Leigh (phonetic) had before Congress who was asking him questions  
12 about his procedure -- dealings on the Enron matter?

13           **MR. BECRAFT:** The Supreme Court says so.

14           **MR. BANISTER:** I might add that during my investigation and learning things I think I  
15 should have known a lot sooner, but was not trained or educated, but the Bill of Rights, which  
16 includes the Fifth Amendment, wasn't put there for criminals, it was put there for people like you  
17 and me. It was to prevent the government from doing exactly what it does today. And it may be an  
18 elementary thing for people who have gone to law school, or maybe not unfortunately anymore, but  
19 for me it was something that I didn't consider or put as much importance to as I should have. And  
20 it's something that I certainly run my life by now. I'm not a criminal and I don't hang out with  
21 criminals, but I sure am glad that my Fifth Amendment rights are there as the rest of the Bill of  
22 Rights and the rest of the Constitution.

23           **MR. SCHULZ:** Would you agree or do you agree that the United States Court of Appeals

1 for the 10th Circuit took the position in "U.S. v. Conklin" that the filing of an income tax return, a  
2 form 1040, is not compelled and, therefore, the principle that no one may be forced to waive their  
3 Fifth Amendment rights in order to comply with the law is not applicable to federal income tax  
4 returns?

5 **MR. HANSEN:** Question 292(a).

6 **MR. SCHULZ:** 292(a). Did the Court of Appeals --

7 **MR. BECRAFT:** If I denied that could we pull it up?

8 **MR. SCHULZ:** Well, if we had access to West Law. It's an unpublished decision.

9 **MR. BECRAFT:** So it's not an exhibit?

10 **MR. SCHULZ:** I think it is -- it's not. It's an unpublished decision. The court did hold, did  
11 they not --

12 **MR. BECRAFT:** Yes.

13 **MR. SCHULZ:** You've spoken with MR. Conklin?

14 **MR. BECRAFT:** Yes.

15 **MR. SCHULZ:** Have you ever been able to see the decision?

16 **MR. BECRAFT:** I think I have in the past, yes.

17 **MR. HANSEN:** MR. Becraft, do you have any idea why the court might want to make this  
18 case unpublished?

19 **MR. BECRAFT:** I have a whole lot of personal conclusions I've reached about  
20 unpublished cases.

21 **MR. HANSEN:** Please speculate.

22 **MR. BECRAFT:** Theoretically, you know, within the last -- you know, since I've been  
23 practicing law the number -- you know, just the sheer volume of the documents -- you know, like

1 the federal reporting system -- fully half of the volume of federal reporters is now only the year  
2 1981. So between let's say the 1840s and 1850s all the way up through 1981 -- that's a long period  
3 of time -- since about 1981 we've doubled the shelf space that's devoted to the cases that sit on the  
4 bookshelf. One of the reasons why the courts say that they want unpublished opinions is if a case  
5 raises nothing important, if it's an issue that's already been previously decided, they will come out  
6 with an unpublished opinion. I have seen cases that were I thought important that should be  
7 published and were not.

8 **MR. SCHULZ:** In your opinion, in the Conklin case the court held, did it not, that the Fifth  
9 Amendment does not apply in the case of 1040 forms -- the filing of tax returns because it's not --  
10 the filing of 1040 forms is not compelled. It's not required. It's not compelled. It's not compelled  
11 testimony.

12 **MR. BECRAFT:** The Fifth Amendment was raised in that issue. In that case. And the  
13 court, in response to an issue that MR. Conklin raised -- I wish we had the case here so we could  
14 see the language. But the court, in my view, in recalling what I've seen in the past, made a  
15 statement to the effect that the filing of a return did not constitute something that would be  
16 protected by the Fifth Amendment because it was not a compelled disclosure. (Discussion off the  
17 record.)

18 **MR. BECRAFT:** Well, if that's the case I would like to go ahead and get it and read it.

19 **MR. SCHULZ:** You can lift it off and come back to the microphone.

20 **MR. BECRAFT:** This is a quote from the case. "The Fifth Amendment privilege protects  
21 against compelled testimonial communications." There's nothing extraordinary about that. But  
22 there was -- into the opinion there was statements to the effect that what was on a tax return was  
23 not compelled.

1           **MR. SCHULZ:** So if it's not compelled it's voluntary?

2           **MR. BANISTER:** That would be the conclusion I would draw.

3           **MR. SCHULZ:** Would a reasonable man conclude from that decision by the Federal Court  
4 of Appeals, 10th Circuit, one step removed from the United States Supreme Court, that a filing of  
5 Form 1040 -- the filing of an income tax return is a voluntary step, a voluntary matter, it's not  
6 compelled?

7           **MR. BANISTER:** The comment I would make is coming back to the rights card that I  
8 would have to use to read to people, I found it odd, even though I couldn't expound upon it like an  
9 experienced attorney, but to tell someone that I was speaking with that "I cannot compel you to  
10 answer any questions or to submit any information" is pretty clear.

11           **MR. SCHULZ:** What would happen -- it's speculation, of course, but what would happen if  
12 that was a published decision? What would happen if that was published in all the reporters in all of  
13 the -- available to attorneys all over the country and to citizens and taxpayers all over the country, if  
14 they had access -- if the access to that case was not denied by the judiciary and they had access to  
15 that case, a case which said -- which had a Federal Court of Appeals saying plainly filing of a 1040  
16 tax return is not compelled. In other words, it's voluntary. What might be -- just speculate please.  
17 What might be the reaction? What might be the impact of such a decision?

18           **MR. BECRAFT:** It's self-evident.

19           **MR. BANISTER:** Personally, another thing I noticed during my investigation was that the  
20 agency is very selective about what information that it shares with the agents. I'm sure John Turner  
21 can agree with that. Having an unpublished decision is the perfect excuse for the government to say  
22 well, it's not published. I mean we didn't even know it existed. But to have a published decision,  
23 something that can be accessed on West Law or some computer search system, I think it would

1 present to the government the predicament of having to comment on it and provide guidance on it.

2 **MR. SCHULZ:** Is it safe to say, MR. CHAPPELL, that because it was a decision by the  
3 Federal Court of Appeals, that a panel of three judges participated in that decision? Is that a safe  
4 assumption; that three judges issued that decision? If the decision came from the Federal Court of  
5 Appeals out of the 10th Circuit, that more than likely it was a decision by a panel of three judges?

6 **MR. CHAPPELL:** That is a very common Appellate procedure, of course. And the panel  
7 of three judges speaks for the court although you may move for reconsideration by the full court.  
8 But you have that opinion on the books. Being unpublished, I find it useless to ignore it myself.

9 **MR. HANSEN:** MR. Banister, I have a question for you. Have you ever heard of a  
10 concept called plausible deniability as applied to the Internal Revenue Service? And what does that  
11 mean to you?

12 **MR. BANISTER:** Plausible deniability would mean to me that the excuse is readily  
13 available that I didn't know. I didn't know that what I was doing was wrong. I didn't know that I  
14 was violating people's rights. I just didn't know.

15 **MR. HANSEN:** Can citizens use that as an excuse for violating the tax laws?

16 **MR. BANISTER:** Well, first of all I don't think they would be violating a law. But I don't  
17 see why it's a one way street out there. It should be a two way street. I prefer two-way streets  
18 myself.

19 **MR. HANSEN:** Would it appear in the case of Conklin, because the decision to not publish  
20 the case, that there may be collusion between the courts and the Internal Revenue Service in  
21 perpetuating an instance of plausible deniability to maintain the illusion of income tax liability?

22 **MR. BANISTER:** It simply wouldn't surprise me at all because throughout my entire  
23 career with the IRS and since leaving, if there's something that reinforces or supports the IRS'

1 position you can't keep from hearing about it. But if there is something that indicates that the IRS  
2 isn't 100 percent effective in their enforcement you can search forever trying to find it and won't.  
3 They bury it.

4 **MR. HANSEN:** We read earlier the Internal Revenue manual Section 4.10.7.2.9.8 where  
5 the --

6 **MR. BECRAFT:** What?

7 **MR. HANSEN:** Where the Service in its own Internal Revenue manual said that it could  
8 only cite Supreme Court cases to apply to multiple taxpayers. However, in this particular case if the  
9 government did not cite this case or if the government was successful in prosecuting this man, if it  
10 did not cite this case, then would it be -- if it did cite this case would it be violating it's own  
11 regulations, the Internal Revenue Manual as far as -- I mean if it was successful and it cited this  
12 case, whereas if it was unsuccessful and it didn't cite this case would it be violating that section of  
13 the Internal Revenue manual in terms of only referring to the Supreme Court decisions?

14 **MR. BANISTER:** Well, if I'm reading your question to say does not publishing a case help  
15 plausible deniability, absolutely. And that has to be a policy decision. There has to be people in this  
16 town who are making those kinds of decisions or helping judges to make those kinds of decisions  
17 or deciding what the American people will be fed and what they will not be fed as far as the income  
18 tax goes.

19 **MR. HANSEN:** Who would be responsible for making sure that they did publish the cases?  
20 That's directed at either one of the three of you.

21 **MR. BECRAFT:** Well, the courts would be the ones that make the decision about  
22 publication or non-publication.

23 **MR. HANSEN:** Is there anyone above the Appellate level that -- for instance, if the

1 Supreme Court only hears one percent of the cases could they ever have a hope of correcting a  
2 remedy like that where cases are going unpublished? You know, the errors of --

3 **MR. BECRAFT:** I don't know why we're belaboring this point about published decisions  
4 or not. Here recently within the last two years there was a great battle that went on in the judiciary  
5 when someone came and made the argument, and the courts bought it for a while, that unpublished  
6 decisions were unconstitutional. It violated due process I think.

7 **MR. HANSEN:** Well, do they violate the First Amendment? I mean, if you come up with a  
8 claim against the government under the First Amendment, right to petition the government and  
9 they don't publish the case, aren't they really suppressing your free speech so that it can't be heard  
10 by a larger audience?

11 **MR. BECRAFT:** Broadly speaking, if you don't publish the decision it means that -- the  
12 reason why you do publish decisions is so that people can read the decisions and learn. And the  
13 converse is also true, the reason why you do not publish the decision is so that the people will not  
14 learn.

15 **MR. BANISTER:** If I could provide another example. And Larry could probably jump in  
16 on this because I believe he was the defense attorney with the Lloyd Long case. I believe it  
17 happened in 1993. And that's when I began my career as a special agent. And I didn't hear about  
18 that case until, oh, somebody named Devvy Kidd told me about it. Now, you would think that an  
19 IRS Criminal Investigation Division special agent is supposed to be up on the latest trials, and if  
20 someone is acquitted -- was he acquitted?

21 **MR. BECRAFT:** Yes.

22 **MR. BANISTER:** If someone was acquitted of the charge of failure to file, I would think  
23 that a law enforcement person in the IRS should know about that. But strangely enough that case

1 was never filtered through the memorandum system. And I find that to be a similar type situation  
2 where the IRS and the Department of Justice and the taxing apparatus makes policy decisions about  
3 what the American people will learn about how the tax is administered.

4 **MR. SCHULZ:** And what the special agents and those revenue collection agents will learn  
5 about those decisions as well.

6 **MR. BANISTER:** That's right. And it really comes back to the plausible deniability that  
7 MR. Hansen was talking about.

8 **MR. SCHULZ:** It might affect the morale of the service?

9 **MR. BANISTER:** Yes. I can tell you that if I had heard about the Lloyd Long case -- and I  
10 started in November of 1993 -- if I had heard about it in say February of 1994, it wouldn't have  
11 taken me until February of 1999 to resign.

12 **MR. SCHULZ:** Is it true that the Supreme Court --

13 **MR. HANSEN:** Question 293.

14 **MR. SCHULZ:** That the Supreme Court has held that if one wants to assert the Fifth  
15 Amendment to an issue pertaining to a federal income tax return one must make that claim on the  
16 form itself?

17 **MR. BECRAFT:** That's what the Sullivan case says.

18 **MR. SCHULZ:** A rhetorical question --

19 **MR. BECRAFT:** We have it up on the screen I believe. Yeah, Sullivan. If the form of  
20 return provided calls for answers that the defendant was privileged from making he couldn't raise  
21 the objection in the return, he could not on that account refuse to make any return at all. So the  
22 Supreme Court of the United States is saying here if you're going to be filing that return and there  
23 is a question on there that could possibly incriminate you then you assert the Fifth Amendment on

1 the face of the return.

2 **MR. BECRAFT:** MR. Becraft, is this an infringement on Fifth Amendment protections;  
3 that U.S. Supreme Court decision? Does that represent an erosion of our Fifth Amendment rights?

4 **MR. BECRAFT:** In my view I do not think because -- in this particular situation you had  
5 the government use the returns against him and he was trying to say oh, this was compelled and the  
6 Supreme Court said no, no, you in essence waived your Fifth Amendment right when you got to a  
7 particular question on the return --

8 **MR. SCHULZ:** Fair enough.

9 **MR. BECRAFT:** And that's the reason why a lot of people --

10 **MR. SCHULZ:** So -- pardon me for interrupting.

11 **MR. BECRAFT:** Go ahead.

12 **MR. SCHULZ:** But the defendant in that case would have been better off had he not filed  
13 at all?

14 **MR. BECRAFT:** Probably, yeah.

15 **MR. SCHULZ:** And took the Fifth.

16 **MR. BECRAFT:** Right.

17 **MR. HANSEN:** But how could he claim that he was taking the fifth without indicating it  
18 on the tax return?

19 **MR. BECRAFT:** That's the reason why the Fifth Amendment tax return starting back in  
20 '75, '76, particularly after the Garner case came out -- the Garner case came out in '76. You know,  
21 the people involved in the tax movement, those that were pursuing the Fifth Amendment issue, you  
22 started seeing a whole bunch of people start filing Fifth Amendment return and, of course, they  
23 answered every question on the face of the return objection Fifth Amendment and, of course, they

1 would have supporting materials with the return.

2 **MR. SCHULZ:** Okay. Do you admit that if one claims Fifth Amendment protection on an  
3 income tax form that act can result in criminal prosecution for failure to file income tax returns,  
4 income tax evasion or conspiracy to defraud?

5 **MR. HANSEN:** Question 294.

6 **MR. BECRAFT:** Yes, and the very people that were back in the late '70s and early '80s  
7 filing Fifth Amendment tax returns pursuant to Garner and Sullivan were prosecuted and I  
8 represented some of those.

9 **MR. SCHULZ:** So your answer is yes and you rely on which case?

10 **MR. BECRAFT:** Garner and Sullivan. Oh, but in reference to you can be prosecuted, the  
11 practical experience -- and I think the Walldack (phonetic) case.

12 **MR. SCHULZ:** Could you call that up, MR. Bodine?

13 **MR. BECRAFT:** There you go. For the years 1982, 1983, 1985 and 1986 defendant filed a  
14 1040 Fifth Amendment return which contained only his name, signature, a figure for income tax  
15 withheld, asterisks at the numbered lines in lieu of any information and the following statement.  
16 And this means specific exception is made under the Fifth Amendment, United States Constitution.  
17 Of course, the people that were filing those Fifth Amendment tax returns were prosecuted for  
18 failure to file a return even though they had.

19 **MR. HANSEN:** And when they did that did the lower courts below the Supreme Court  
20 have to contradict the rulings of the Supreme Court in order to reach that conclusion and to  
21 prosecute those individuals?

22 **MR. BECRAFT:** I say my view is this: When the Supreme Court sits up there and says  
23 assert the Fifth Amendment on the face of the return when the courts come out and say the Fifth

1 Amendment constitutes a barrier -- a defense to Section 7203 prosecution and then you come along  
2 and you do precisely that and you still get prosecuted. Is that not the horns of a dilemma.

3 **MR. HANSEN:** But the dilemma is created because the Supreme Court says one thing and  
4 the district and the appellate courts say another thing and they're entirely in conflict and the only  
5 reason they never reach closure and agreement is because the Supreme Court denies the writ of  
6 certiorari, the appeals, from the appellate courts to correct the situation because they basically turn  
7 the other way?

8 **MR. BECRAFT:** It is not only in this area, there's a number of areas where you have these  
9 conflicts much like you have in the area regarding the Fifth Amendment.

10 **MR. HANSEN:** Question 295(a). Is it true that the Paperwork Reduction Act Notice set out  
11 in IRS Form 730 states that you must file Form 730 and pay the tax on wagers under Section  
12 4401(a) if you are in the business of accepting wagers, or conduct a wagering pool or lottery?

13 **MR. BECRAFT:** I looked at Form 730 last week, it says that.

14 **MR. HANSEN:** Question --

15 **MR. BECRAFT:** We have it on the screen right now. If you go down it's on page 2. I was  
16 certain that that was in yellow but it's not. But in any event right up here you can see on the screen  
17 under "Privacy Act" and "Paperwork Reduction Act Notice" you can see that all of these agencies  
18 in reference to all of their forms provide that type of information. They comply with the law.

19 **MR. HANSEN:** Thank you. Question 295(b). Is it true that the notice states the following:  
20 "Certain documents related to wagering taxes and information obtained through them that relates to  
21 wagering taxes may not be used against the taxpayer in any criminal proceeding. See Section 4424  
22 for more details"?

23 **MR. BANISTER:** I can just comment that, again, while I was doing my investigation I ran

1 into this kind of language and I thought wow! Gamblers sure get a lot of protection and advanced  
2 warning compared to the average American out there filing a 1040 form.

3 **MR. SCHULZ:** Do you admit that the form states this, MR. Becraft?

4 **MR. BECRAFT:** I would like to see the document on the screen, MR. Bodine. It was lined  
5 at one time in yellow.

6 **MR. SCHULZ:** Section 4424.

7 **MR. BECRAFT:** Can I have the screen moved up some? Under this part right here says  
8 "Disclosure" -- you've got the bolded part in the first half of page 2 it says here "Disclosure of  
9 Information on Wagering Taxes." And let me read what the form or the instructions to the form has  
10 to say. "Except for administering or enforcing Internal Revenue taxes, neither the Treasury  
11 Department or any of its employees may disclose documents, records or information obtained  
12 through them that a taxpayer supplies in connection with wagering taxes. Also certain documents  
13 relating to wagering taxes and information obtained through them that relates to wagering taxes  
14 may not be used against the taxpayer in any non-tax criminal proceeding." That's in Section 4424.

15 **MR. SCHULZ:** Thank you.

16 **MR. HANSEN:** Question 296. Is it true that in 1997, 5,335 tax audits resulted in criminal  
17 investigations of those tax filers?

18 **MR. BECRAFT:** The document that we have, Exhibit 99, Tax Facts, says as much.

19 **MR. SCHULZ:** Thank you.

20 **MR. HANSEN:** Question 297. Is it true that Judge Learned Hand stated that: "Logically,  
21 indeed, he -- that is the taxpayer -- is boxed in a paradox for he must prove the criminatory  
22 character of what it is his privilege to suppress just because it is criminatory. The only practicable  
23 solution is to be content with the door's being set a little ajar, and while at times this no doubt

1 partially destroys the privilege, nothing better is available"?

2 **MR. CHAPPELL:** I believe that is correct. I have to tell you I'm not able to hear all of the  
3 language you quoted, but what I heard resonates and I believe it is correct.

4 **MR. SCHULZ:** MR. Becraft, can you answer the question?

5 **MR. BECRAFT:** Yes. I believe Weisman may be on the screen at this time. And the  
6 yellowed part says as much.

7 **MR. HANSEN:** Question 298. Is it true that the Constitution is the supreme law of the  
8 land?

9 **MR. BECRAFT:** Unquestioned.

10 **MR. HANSEN:** And what does that mean?

11 **MR. BECRAFT:** The Constitution says it's the supreme law of the land.

12 **MR. HANSEN:** Does that mean it supercedes all statutes and regulations that implement  
13 those statutes?

14 **MR. BECRAFT:** Absolutely.

15 **MR. SCHULZ:** And does it supersede Supreme Court decisions?

16 **MR. BECRAFT:** Yes.

17 **MR. SCHULZ:** If those decisions are repugnant to any portion of the Constitution is the  
18 Constitution -- does it reign supreme?

19 **MR. BECRAFT:** The Constitution is supposed to reign supreme.

20 **MR. HANSEN:** Question 299. Is it true that the American people do not have to tolerate an  
21 income tax system in which the federal government requires a citizen to give up any constitutional  
22 rights under any circumstances?

23 **MR. SCHULZ:** Were you able to hear the question, MR. CHAPPELL?

1           **MR. CHAPPELL:** Would you kindly repeat it a little louder for me, Bob?

2           **MR. SCHULZ:** Would you admit that the American people do not have to tolerate an  
3 income tax system in which the federal government requires a citizen to give up any constitutional  
4 rights?

5           **MR. CHAPPELL:** Yes, I do agree emphatically.

6           **MR. SCHULZ:** Thank, you Panel. What we've done here is prove that there is no income  
7 tax exception to the Fifth Amendment's guarantee of the People's unalienable right not to be  
8 compelled to be a witness against themselves. Thank you, Panel.

9           **MR. HANSEN:** And we have shown that there have been efforts by the courts to conceal  
10 occasions where that requirement was honored.

11           **MR. SCHULZ:** I would like to call MR. Becraft and --

12           **MR. BANISTER:** Bob, could MR. CHAPPELL make another comment?

13           **MR. SCHULZ:** Yes, in just a moment. Ms. Jackson. Yes, MR. CHAPPELL.

14           **MR. CHAPPELL:** Bob, I simply wanted to make this comment. I recognize that there is  
15 certainly an erosion of Fifth Amendment rights involved in administering the income tax system.  
16 And I recognize that there is this conflict as Larry described it here a few moments ago. My own  
17 experience in using the Fifth Amendment has been in a much different context; that representing  
18 clients who filed so-called Fifth Amendment returns, I have not had such clients. But my own  
19 experience has been in dealing with people like MR. Banister who I encountered as special agents  
20 or were investigating clients for criminal tax fraud or willful tax filing. I found it very useful on a  
21 number of occasions to simply invoke a Fifth Amendment and refuse to cooperate with  
22 investigative special agents from the Criminal Investigation Division. Refused to give them  
23 indictments that they were requesting, refused to allow my client, who was then the target of that

1 investigation, to cooperate with them, to sit down and talk with them, to be interrogated by them.  
2 And what you will often find as a practitioner is the IRS desperately needs your client and his  
3 testimony in order to make their case or they frequently need the documentation in your client's  
4 possession in order to make their case. They often do not have sufficient evidence to make the case  
5 that they want to make and they know they need to make in order to forward a case to the  
6 Department of Justice and hope that it has the strength to be proven in court beyond a reasonable  
7 doubt without the information in your client's possession. And I have found on several occasions  
8 that in invoking the Fifth Amendment can be very effective in either stopping, derailing,  
9 sidetracking or otherwise prolonging the criminal investigation.

10 **MR. SCHULZ:** Thank you very much, Panel. Ms. Jackson, could you join MR. Becraft.  
11