

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA) DOCKET NO. 1:08-CR-55
))
 vs.) VOLUME IV
))
KATHY RAY WAHLER, EDWARD))
WILLIAM WAHLER, and LEWIS))
VINCENT HUGHES,))
))
 Defendants.))
_____)

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE RICHARD L. VOORHEES
UNITED STATES DISTRICT COURT JUDGE
NOVEMBER 17, 2009

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1 TUESDAY MORNING, NOVEMBER 17, 2009

2 THE COURT: Okay. Are the parties ready to bring
3 the jury in?

4 MS. ROSE: Yes, sir, the government is ready.

5 THE COURT: Okay. May we have the jury, please.

6 (Jury entered the courtroom.)

7 THE COURT: Good morning, members of the jury.

8 THE JURY: Good morning.

9 THE COURT: As you know, we were hearing evidence on
10 the defense side.

11 You may call your next witness.

12 DEFENDANT EDWARD WAHLER: Okay. The defense calls
13 Walker Todd.

14 WALKER F. TODD,

15 being first duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY DEFENDANT EDWARD WAHLER:

18 Q. Mr. Todd, would you please state your name for the
19 record, sir.

20 A. Yes. My name is Walker F. Todd. And I live near
21 Cleveland, Ohio.

22 Q. Okay. Would you share with the jury your resume and
23 professional background, please.

24 A. Right. The relevant part of my background for this case
25 is that I worked for 20 years for the Federal Reserve Banks of

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1 New York and Cleveland. I was a legal officer at the Federal
2 Reserve Bank of New York. I was a legal officer and an
3 economic research officer at the Federal Reserve Bank of
4 Cleveland. I left the Federal Reserve in 1994. And I've been
5 active more in economic research than in legal issues since
6 then.

7 Most recently I've been employed by the American
8 Institute for Economic Research in Great Barrington,
9 Massachusetts, and among other things we supervise courses on
10 money and banking.

11 Q. Thank you. I believe it was agreed with the prosecution
12 that we would have you make some introductory statements.
13 Would you care to do that.

14 A. Yes. This is not my first appearance as an expert
15 witness in trials of this nature. I would guess that I have
16 testified in about 15 to 20 criminal or high level civil cases
17 relating to issues not unlike this, and we found over the
18 years it's useful for the jury to make an early statement.

19 What I'd like to do would be to couch the testimony as a
20 statement about what is money. What are the origins of money.
21 Theories about money and how they relate to the modern
22 American banking system. And then secondly, to deal with
23 questions about what these defendants believed about money and
24 banking. And then the third phase would be questions about is
25 there a gap between what they believed and what I'm going to

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1 assert for you the reality of money and banking is and was
2 their belief reasonable. And the prosecution, of course, will
3 have its own set of questions about this. But that's what I
4 intend to do if that's agreeable.

5 MR. ODULIO: Your Honor...

6 THE COURT: Yes.

7 MR. ODULIO: Most of that is agreeable with the
8 government. We'd ask the witness not comment on the
9 reasonableness of the asserted belief.

10 THE COURT: Well, we'll take that up --

11 MR. ODULIO: I think that's a question for the jury.

12 THE COURT: We'll take that up if there's an
13 objection.

14 MR. ODULIO: Yes, sir.

15 THE WITNESS: Right. And I agree and understand
16 that it is not my duty; rather, it's the court's or the jury
17 to opine on the reasonableness of these beliefs.

18 THE COURT: Yes, sir. And on exactly what a
19 defendant believed at a certain time.

20 THE WITNESS: Correct. Exactly. They will be
21 asking me questions about, say, a particular theory of money
22 and my role, I think, has to be to explain how that theory
23 does or does not relate to classical standard beliefs about
24 money and banking.

25 Well, what is money? That's the oldest question

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1 really in the whole field of economics. Economics is a term
2 that was defined by the Greek philosopher Aristotle in the
3 middle of the 4th century BC. He thought money represented
4 demand. It was a store of the things you could buy in the
5 future in exchange for present transactions and goods and
6 services.

7 Later, let's say in the 18th century, the foremost
8 writer about economics then was a Scottish philosopher named
9 Adam Smith; and his book, "The Wealth of Nations," is great
10 reading for those who are inclined to read 18th century
11 documents, which I confess I am. But he would have said,
12 rather, that money is more a store of value on the supply side
13 of the equation. That is, if I have money, I can use it to
14 satisfy my demands in the future.

15 A general definition is that money is something
16 that's both a store of value and it's a unit of exchange. In
17 that store of value function, it serves as a unit of account.
18 The unit of exchange traditionally was gold or silver, coin or
19 bullion. And the U.S. currency was created around 1792 when
20 Congress passed a statute that defined the currency as a
21 dollar; and the dollar, in turn, was defined as so many units
22 of gold, and a ratio was prescribed for the convertibility of
23 gold into silver at a fixed ratio.

24 But basically, if you follow that line of thinking,
25 money would be a unit of exchange, this dollar, and it would

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1 have a certain weight in gold or silver.

2 In parallel, and not to be ignored, is this money of
3 account concept. I might borrow, say, a hundred dollars from
4 you. But as modern banking practices evolved, you might not
5 actually reach in your pocket and hand me a hundred dollars.
6 You might hand me a check for a hundred dollars drawn on your
7 account at a bank, and I can take your check and deposit it in
8 my account and get a value for it from my bank. So I borrowed
9 a hundred dollars and I owe it back to you, but as between the
10 two of us, it's a unit of account matter as opposed to a unit
11 of exchange matter.

12 And so these terms are going to come up throughout
13 this testimony: What's a unit of account? What's a unit of
14 exchange?

15 And the third set of concepts about money that's
16 relevant would be inside money versus outside money. The
17 founding fathers dealt with a world in which it would be fair
18 to say that money was something that existed by custom and
19 tradition among the people. You can ask when did people start
20 using gold or silver, for example, as monetary units? When
21 did that happen? The answer goes back to the beginning of
22 time. There's a story in the, I think it's the 23rd chapter
23 of Genesis where Abraham buys a tomb that he brawned for his
24 wife Sarah who had died and he weighs out silver when he buys
25 the tomb. They brought out a balance scale and he put silver

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1 on the balance scale, and the silver he paid out was probably
2 bullion of some kind, but it was of a fineness that was
3 generally accepted by merchants in the marketplace.

4 So it goes back a very long way this use of money,
5 modern forms of money. But they had money at the time. The
6 people had money. Abraham had it. No king had given him
7 money. So the founding fathers would put it that the people
8 have money and the government through taxation tries to get it
9 from you. That's the classical theory of money.

10 There's a competing utilitarian view of money that's
11 also probably the most widespread belief about money today and
12 that is that the government is the sole source of authority on
13 money. Something is not money unless the government says it
14 is.

15 I happen to be just old enough to have known
16 personally some of the original drafters of the Uniform
17 Commercial Code when I was a young lawyer in New York and I
18 had discussions with them about this issue. I said when you
19 were debating the Uniform Commercial Code, what did you guys
20 think about the origin of money? And the answer was the code
21 was drafted so as to give validity to the
22 government-must-define-it school of thought that's valid under
23 the code.

24 But if you read the official comments carefully in
25 the UCC, Uniform Commercial Code -- by the way, this thing was

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1 drafted in the 1950s. That's when this came to -- but anyway,
2 the draftsmen said we clearly want to recognize the older,
3 classical theory of money. Money is that which exists by
4 custom and tradition and we don't want to exclude money
5 classically defined from the code. So it's sort of a
6 two-stage analysis. Stage one money is what the government
7 says it is. But stage two still exists in the background:
8 Money is that which the people by custom and tradition have
9 adopted as money.

10 Now, how does banking fit into all of this? And
11 this will be the last part of this introductory part of the
12 talk. The idea of banks has always been controversial in
13 western European societies and in the United States from the
14 beginning. When the Constitution was written, there were only
15 four banks in existence in the United States and they were all
16 north of the Potomac River. Because of this people from the
17 southern and western states were always skeptical about
18 whether banks were central to the existence of the people.
19 Could they get along without them? The State of Texas was the
20 most extreme example of that view. Until 1905 or so, the
21 State of Texas Constitution prohibited banking inside the
22 state of Texas. You couldn't be a banker inside Texas. They
23 used currency notes that they brought in from out of state.
24 They used gold, they used silver, they used cattle and other
25 things.

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1 So that's one view: There shouldn't be any banks.

2 Andrew Jackson from my native state of Tennessee was
3 one of those fellows who didn't like banks very much, and he
4 said let it be a warning to you. But if you dig out a \$20
5 bill, you see the picture of Andrew Jackson on a Federal
6 Reserve Note, paper money. And there were two things Andrew
7 Jackson hated in life: Central banks and paper money. So you
8 have to be careful about the way you live because after you're
9 gone, you may be honored in the thing you hate the most. So
10 you have to be careful about that.

11 On the flipside, during the Civil War, Abraham
12 Lincoln said, you know, we, the union, are running up monster
13 debts to fight this war and we don't quite know how we're
14 going to pay for it. His Treasury secretary, Salmon Chase,
15 who later became chief justice of the Supreme Court. Chase
16 was originally a lawyer in Cincinnati. He drafted the -- or
17 compiled the first Ohio Code, the Ohio Revised Code. It was
18 originally something that Chase put together. And he was a
19 bit of an expert on banking. He was later governor of the
20 State of Ohio and then a U.S. senator before joining Lincoln's
21 cabinet.

22 And he was the Treasury secretary and he went to
23 Lincoln and said let's charter a new system of banks called
24 national banks and they will be allowed to issue currency
25 notes sort of like our modern Federal Reserve Notes. But in

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1 return for the privilege, they will have to buy government
2 debt as we, the Treasury, issue it. So the reserves against
3 the currency would be the debt that the banks have purchased.
4 Okay. And the system worked reasonably well for about 50
5 years after the war. For a variety of reasons we won't get
6 into, in the period roughly 1907 to 1913, it was decided that
7 we needed a new, stronger form of central bank and that's when
8 the Federal Reserve was created.

9 But in the first 20 years of the Fed's existence
10 from 1913 to 1933, there were at least four competing currency
11 systems still equally valid in the United States: gold
12 certificates, silver certificates, national bank notes, and
13 Federal Reserve Notes. And your grandpa knew the difference
14 among them and which was better to hold than the other thing.
15 And you might even encounter commercial obligations, drafts,
16 bills of exchange, banker's acceptances, and the like. And
17 your grandpa knew the difference among these things.

18 But since 1933 there's only been one standard form
19 of currency, Federal Reserve Notes. And the silver
20 certificates were pulled out in the '60s. There's only a
21 little bit of Treasury currency still in circulation.

22 So basically, if you ask anyone what's money today.
23 Whip out a dollar bill from your pocket. It's a Federal
24 Reserve Note and it says it's a legal tender.

25 Okay. If you go down to the Fed and you say what

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1 can I get in exchange for my note? Can I get gold or silver,
2 for example? The answer is no. All we'll give you is one
3 crisp, shiny, new Federal Reserve Note.

4 So what is the backing for these Federal Reserve
5 Notes, the legal tender paper? And the backing is the taxing
6 power of the United States. Federal Reserve Notes under the
7 Federal Reserve Act are defined as a full faith and credit
8 obligation of the United States. So that means that should
9 there be a default in payment of Federal Reserve Notes, the
10 government has the right to raise taxes to fully back the
11 notes and their -- I won't get into the technicality of how
12 that backing is done, but there is still a residual form of
13 backing of Federal Reserve Notes in the Fed's accounting
14 system today.

15 So anyway, with that I'll stop the main line of the
16 presentation and I'll be glad to answer any questions either
17 side has about it, but go ahead and proceed with the
18 questioning.

19 Q. Thank you, Mr. Todd.

20 So based on your discussion, what is a dollar?

21 A. A dollar is a unit of account that also is a unit of
22 exchange. For most people today the dollar is basically a
23 unit of account. But originally, it was intended to be a unit
24 of exchange, something that was defined as so many grains,
25 minor weight, or so many grams of gold or silver in whatever

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1 the statutorily defined ratio was. But a dollar is a unit of
2 account, but it's also a unit of exchange.

3 Q. What is a bill of credit?

4 A. A bill of credit is a promissory note typically issued by
5 a governmental entity that would promise to pay value to the
6 bearer or the holder in -- at some future date. Usually bills
7 of credit were issued for a short term, 30, 60, 90 days. The
8 most recent public example of a bill of credit were the
9 warrants that Governor Schwarzenegger ordered issued in
10 California to pay the state's bills while the state did not
11 have a budget approved. And so that -- and my father told me
12 that in the depression he was paid this way as a school
13 teacher by some of the local school districts that didn't have
14 money.

15 So the bill of credit or the warrant just says I, the
16 Municipality of Statesville, will pay to the holder a hundred
17 dollars 60 days after the date of issue, whatever. And that's
18 a bill of credit.

19 Q. And are bills of credit by states authorized in the
20 Constitution?

21 A. No, the constitutional framers decided to prohibit the
22 states -- well, let me put it this way. They cannot issue
23 bills of credit that are required to be accepted as a legal
24 tender. States can issue bills of credit, municipalities can
25 too, but they just can't be made a legal tender.

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1 Q. Okay. Thank you. Did the Committee of Style deny this
2 authority to the federal government?

3 A. I believe you're referring to the Committee of Style
4 drafting the Constitution --

5 Q. Yes.

6 A. -- right?

7 And my opinion is that the committee did not deny this
8 power to the Constitution -- to the federal government.
9 The -- the particular account of that part of the debate
10 showed that the framers did not want to tie the hands of the
11 federal government during an emergency. I think there was a
12 standing assumption that in normal times, only gold and silver
13 would be a legal tender. But in an emergency, if the federal
14 government felt it had to issue paper currency, they were to
15 be allowed to do so.

16 The states, however, could not issue a paper currency and
17 call it a legal tender.

18 Q. Okay. So are we in an emergency now?

19 A. Well, I suppose we are in the sense that we have legal
20 tender out there, legal tender paper. What happened was the
21 Emergency Banking Act of March 9th, 1933, it's still in
22 effect. It's never been repealed.

23 And so I have a friend in Colorado who's a bit of an
24 expert on these things and he says we're now in the 76th year
25 of the emergency regarding legal tender. But when does the

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1 emergency end?

2 Q. Okay. You've mentioned the Emergency Banking Act of
3 March 9th, 1933. Is there anything else that would have been
4 indicative of the government becoming insolvent on or about
5 that date?

6 A. The main thing that happened that's relevant was the Gold
7 Reserve Act of January 30th, 1934. Under the Gold Reserve
8 Act, the president was authorized to devalue the dollar
9 against gold within a certain prescribed statutory limit. And
10 in effect, President Roosevelt wound up ordering the Treasury
11 secretary to devalue gold down to -- the dollar against gold
12 down to about 59 cents on the dollar versus its prior value.
13 So it was a little bit over a 40 percent devaluation.

14 Q. So can you give a professional opinion as a conclusion of
15 whether or not the United States went bankrupt?

16 A. Objectively measured, you would say that that was an
17 insolvency, a bankruptcy because you had to settle your
18 previous debts for 60 cents on the dollar, in effect. Legally
19 it was not so defined, but an economist would say, yes, that
20 was a bankruptcy.

21 Q. Okay. Thank you. Can you pay a debt with a Federal
22 Reserve Note or only discharge a debt?

23 A. If I understand the question properly, I believe the
24 answer is that you discharge a debt by tendering a legal
25 tender note. The question of is it full payment and ultimate

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1 satisfaction, this has been a matter of some debate. Depends
2 on the various state formulations of the Uniform Commercial
3 Code, but in New York, which is sort of the common standard,
4 the view would be that you have in fact satisfied the debt by
5 offering the legal tender note equivalent in value to whatever
6 the thing was that was being transacted on any particular day.
7 It usually comes up in foreign exchange agreements in New
8 York.

9 Q. Are the people of the nation now a surety for the U.S.
10 debt?

11 A. I suppose you could say that in a roundabout way. It
12 gets back to that point I made about full faith and credit. A
13 Federal Reserve Note or U.S. public debt, these are full faith
14 and credit obligations of the United States. And what that
15 means is that the taxing power of the government backs that
16 promise so that if the debt cannot be paid any other way, the
17 government can raise taxes to pay it.

18 Q. The creditors of the United States, whoever they are, do
19 they -- would they have any claim to other than taxes? Say
20 the actual physical assets or property of the nation?

21 A. My opinion is that a foreign creditor has no direct claim
22 on physical property owned by private citizens. Whether they
23 would be able to assert a claim on the national parks, for
24 example, or any other public property of the United States,
25 that's another story. It would be the middle case. I would

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1 argue that they do not, but the European view of the matter is
2 they would probably assert that they do. And as for a claim
3 to the future labor of the citizens of the United States, I
4 think they would say the government has a duty to raise taxes
5 enough to pay their debts.

6 Q. As an economist, is it right to be able to mortgage our
7 future without our consent? I mean, how does that power come
8 about? What's the exchange?

9 MR. ODULIO: Objection. Relevance, Your Honor.

10 THE COURT: Sustained.

11 Q. Okay. What was the rate of inflation generally between
12 1789 and 1933?

13 MR. ODULIO: Same objection, Your Honor.

14 THE COURT: Overruled.

15 A. The tables began around 1792 with the second inauguration
16 of George Washington as president. And in 1933 the purchasing
17 power of the dollar was the same as it was when George
18 Washington was sworn in that second time. It's largely
19 because the dollar had been linked one for one to the gold
20 standard and it still was on gold in 1933.

21 The pattern historically is that in an inflation, the
22 dollar's value will drop some. In a war, the dollar would
23 drop some. But in a recession, the dollar's value would
24 recover above par. And on the whole, the dollar came out
25 about the same as where it was, purchasing power the same from

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1 beginning of the republic until 1933.

2 Q. And since?

3 A. Since '33, I think the factor of inflation now is about
4 14, meaning that a 1933 dollar is worth about 7 cents.

5 Q. Okay. What causes this devaluation of the money?

6 A. Basically, printing money causes inflation. Milton
7 Friedman said it best when he said that inflation is
8 everywhere and at all times a monetary problem. It's the
9 quantity of money in circulation versus the supply of goods
10 and services that determines the inflation rate.

11 Q. Okay. A promissory note for a mortgage was placed into
12 evidence. What is the source of funding in a home mortgage?

13 A. If I understand your question properly, you're asking
14 what is the real source of the money that's in play in a
15 mortgage exchange when a borrower obtains a mortgage from a
16 bank. And it's a two-stage process.

17 Stage one is the borrower signs a promissory note at the
18 bank and under modern fractional reserve banking, the bank
19 does not actually have to have money in the bank deposits
20 equal to the value of what it is paying out under the mortgage
21 note. The bank typically would take the note and pledge it or
22 sell it to some other entity. Or if it's a pledge, at the
23 Federal Reserve or at the federal home loan bank of its
24 district. So the bank would recover its monetary value that
25 way.

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1 The bank, however, in a modern transaction typically
2 gives you a check for the value of the mortgage or a check
3 will be drawn on itself as a rule or it will advance a credit
4 to the previous mortgage holder on the property extinguishing
5 your debt.

6 So what the bank has done is it issues its own credit to
7 pay off prior debts, but it does not obtain money other than
8 by taking your promissory note and pledging it to somebody
9 else.

10 Q. Does the bank create money out of thin air?

11 A. Under a fractional reserve banking system, that is in
12 effect what happens. The Federal Reserve requires the bank to
13 maintain about 10 percent of any deposit -- demand deposit in
14 reserve. So the rate of expansion is about nine to one so
15 that when the bank discounts your promissory note at the
16 Federal Reserve, 10 percent of that is real money and the
17 other 90 percent is thin air money, as you would put it.

18 Q. So every mortgage is inflationary.

19 A. It is potentially inflationary. The inflation comes in
20 when more mortgages are issued than the real underlying demand
21 for housing. Once you get the supply of money expanding
22 beyond what the real demand is, then the inflation kicks in.

23 Q. Does this 90 percent or 9X or this money out of thin air
24 become an obligation of the United States?

25 A. It becomes an obligation of the United States in a

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1 roundabout way because when the bank pledges the note at the
2 Federal Reserve, your borrower's mortgage note pledged at the
3 Fed, the bank that did the borrowing from the Fed has the
4 right to withdraw what the Fed is paying in Federal Reserve
5 Notes, currency. And those notes are an obligation of the
6 United States.

7 Q. Okay. Does this meet the constitutional requirement for
8 an appropriation by Congress to take on debt?

9 A. Legally I think the wisdom of the system would say yes, I
10 think the obligation has been met. Whether economically this
11 is true is another story.

12 Q. Why does the Redemption debt discharge process stay alive
13 for so long in this country or why has it?

14 A. Okay. My usual story on that question is something like
15 this. There's this theory I first encountered in the western
16 states. It's called Redemption theory. And the essence of it
17 is that everybody is credited with a certain value attached to
18 his name or social security number at the Treasury when you
19 are born. And in effect, you have a lifetime earnings
20 expectation, and let's say that was \$600,000, average citizen,
21 and that you have a right to go borrow against that value at
22 the Treasury.

23 The origin of this theory, as near as I can tell, is
24 Canadian social credit theory. This is an idea that was born
25 on the prairies of western Canada and became widely popular up

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1 there in the early part of the 20th century. By mid century,
2 the social credit party controlled the Parliament, so the
3 provinces of the prairies in Canada. And eventually those
4 ideas trickled down into the northern high plains states. So
5 if you traveled in Montana, Wyoming, North Dakota in the last
6 30 years or so, you would probably encounter some variation of
7 this theory.

8 But as regards to the United States, there is no basis
9 for this theory. That's been propagated by people who think
10 that there are secret Treasury accounts linked to your social
11 security number, for example, but near as I can tell, these
12 theories are all bogus. But they are -- their origin is, I
13 think, wishful thinking about applying Canadian social credit
14 theory down here in the United States.

15 Q. Do the American people have a claim against the
16 government for pledging their property in terms of their
17 earnings against the national debt?

18 A. That's what the Constitution is all about. It lays out
19 the terms of the agreement between the people on the one side
20 and the government on the other. I would not myself go so far
21 as to say that the American people have a claim against the
22 government because of running up a national debt. I think
23 it's a moral problem. I think it's a monetary problem. It's
24 a fiscal problem. And I think government can misbehave in
25 running up debt for improper schemes.

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1 Whether the person -- the public has a personal remedy
2 against the government for doing that, that's a whole
3 different ball game. There's all kinds of cases, theories,
4 lines of law typically related to Federal Court Claims Act,
5 for example, that would lay out how you go about pursuing a
6 claim against the government. But generally speaking, it's --
7 I think there is a Supreme Court case about 20 years ago that
8 expressed it pretty well saying, regrettably, your remedy here
9 is at the ballot box. You have to change the politicians.
10 There's no private remedy against the government for these
11 sorts of things.

12 Q. You've already addressed that the banking emergency is
13 still in force. You've written on the corporatization of the
14 United States, and I think you brought one of your books here.

15 A. Uh-huh.

16 Q. How is that significant?

17 A. I think what you mean is is the United States, the
18 government, a body corporate? Is it a corporation? The
19 answer, I think, is yes, the U.S. is a form of corporation.
20 But a corporation in the general sense means originally a
21 voluntary agreement of citizens to create some entity that
22 will survive their personal lives, their private lives, their
23 material lives, and would have certain rights, property rights
24 in particular that would be peculiar to that corporate entity.
25 The United States is such a corporation. That's what the

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1 Constitution is all about ultimately, and before it the
2 Articles of Confederation. It is a body corporate.

3 Q. How about national associations, GSE's, are they
4 extensions of that corporate charter?

5 A. National associations, meaning like national banks?

6 Q. Yes, sir.

7 A. Yes. National banks under the old National Bank Act of
8 the Civil War era, they were corporations chartered by
9 Congress. So they were certainly bodies corporate.

10 And what was the last one you asked about?

11 Q. GSE's, even the Federal Reserve.

12 A. Government sponsored enterprises, that's a -- GSE, that's
13 a modern term of art. But the Federal Reserve also is a
14 corporation chartered by Congress just like the old national
15 banks. In fact, the original Federal Reserve charters came
16 from the Comptroller of the Currency just as though the Fed
17 were a standard national bank.

18 But modern government sponsored enterprises typically
19 were created during the 1930s and -- more recent ones too, of
20 course, but they're a little bit different. But some of them
21 are corporate entities separate from the United States.
22 Fannie Mae and Freddie Mac, for example, originally were such
23 bodies, but they've been brought back into the fold. And
24 Fannie Mae and Freddie Mac doesn't quite have full faith and
25 credit status but it's getting close.

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1 Q. Didn't the Committee of Style have a specific vote on
2 giving Congress the power to incorporate?

3 A. I'm sorry, I missed the first part of your question.

4 Q. Didn't the Committee of Style that we mentioned earlier
5 have a specific vote on giving Congress the power to
6 incorporate?

7 A. Yes. Again, I think you're referring to the
8 constitutional framers Committee of Style. Did they vote on
9 the power to incorporate? And yes, they did. The power to
10 incorporate lost on a vote of the states eight to three. But
11 this issue was revived, then, in 1791 by Alexander Hamilton
12 with his proposal to create a central bank, the First Bank of
13 the United States and the Supreme Court case of *McCulloch*
14 *versus Maryland*. In 1819 Justice Marshall, Chief Justice
15 Marshall ruled that the implied powers of the Constitution
16 give Congress the power to create national bank charters. And
17 all modern corporations essentially are descended from those
18 corporations and that ruling.

19 Q. Well, but as a constitutional scholar, the states
20 withheld that. How can the Supreme Court give the federal
21 government something the states specifically withheld?

22 A. I think the fair reading of that would be that the
23 Supreme Court found another route to accomplish what was being
24 asked apart from the specific vote at the constitutional
25 convention. Once again, you can ask whether this is proper,

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1 but it's legal.

2 Q. Is there any gold in Ft. Knox?

3 A. It's -- I've not seen it. The last audit was in a
4 partial audit in the late 1970s. People periodically ask for
5 an audit at Ft. Knox. I remember the auditor's maxim that
6 physical assets that remain in one place uninspected for too
7 long tend to disappear. So I personally would advocate an
8 audit, but so far the bills in Congress that are being
9 considered about auditing the Federal Reserve do not yet
10 include an audit of Ft. Knox. But I did send a letter to a
11 relevant congressional staffer last week asking that a
12 Ft. Knox audit be added to the Fed audit bill.

13 DEFENDANT EDWARD WAHLER: Thank you. Just a moment.

14 (Defendants conferred.)

15 DEFENDANT EDWARD WAHLER: Okay. I yield to
16 Mr. Lewis.

DIRECT EXAMINATION

17 BY DEFENDANT HUGHES:

18 Q. Mr. Todd, what's the difference between a BOE, bill of
19 exchange, and a closed account check?

20 A. As I understand the question, a check drawn on a closed
21 account at a bank, it is in form a bill of exchange because a
22 check is a bill of exchange, so legally the form is the same.
23 It's what happens that is different. The closed account check
24 won't go anywhere. A bill of exchange might go somewhere.
25

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1 Q. Is the bank liable when it fails to follow instructions
2 printed on a check?

3 A. Okay. Here you have to parse narrowly the standard
4 instructions that a bank knows it has to comply with with an
5 ordinary form bill of exchange or a draft or a check.

6 Nonstandard instructions go into a separate chain of
7 collection. When I was at the Federal Reserve, we had two
8 sets of collection. We called one cash collection. That was
9 standard form items. And noncash collection. And that would
10 be, for example, bills of exchange with documents attached or
11 bills of exchange that had nonstandard instructions on them.
12 So it was just a separate channel of handling.

13 Q. Okay. If a check is made out to two people, say John and
14 Henry, and only John signs and cashes the check, what is the
15 bank's liability if Henry doesn't get his share of the check
16 from John?

17 A. Okay. There the bank might be liable to Henry because --
18 the second person in your example. The story is that if a
19 check is made out payable to John and Henry, then in theory,
20 both signatures are required for cashing that check. But if
21 the bank pays out John or Henry, then either one could cash
22 the check. But in the example you gave me, it was John and
23 Henry, so the bank should be liable to Henry for failure to
24 honor the instruction.

25 Q. Okay. In your role as an examiner for the Federal

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1 Reserve, would you have determined that the bills of exchange,
2 which are Exhibits B and C in this case, to have been valid?

3 A. Well, I've been shown some exhibits before, but I don't
4 know which. If you were referring to bills of exchange of the
5 sort that I was shown by both the prosecution and the defense
6 prior to the testimony, I would have rejected them. My -- I
7 wasn't officially an examiner of the Fed. I was a lawyer and
8 an economist. But one of my legal duties was I was the
9 discount windows lawyer. So whenever strange documents came
10 into the bank, I would be called over to the discount window
11 to look at them and decide whether we were going to take them
12 or not. And so I would have been called to look at these
13 instruments if they had shown up at the Federal Reserve and I
14 would have rejected them. But remember that I am an expert
15 and I see a lot of these documents and I can quickly detect
16 nonconforming things. Some cases a layman might be fooled;
17 other cases he might not.

18 Q. What kind of notification would have been returned to the
19 maker of the instrument that they were not valid?

20 A. Okay. At the Federal Reserve, we would have charged back
21 the account of the bank that gave us that instrument. There
22 are some cases where the instruments came in and there was no
23 bank identifiable who could be charged, in which case they
24 just came to rest at the Fed until we dealt with it.

25 But typically if an instrument comes in and isn't paid or

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1 can't be paid, you charge it back up the chain of collection.
2 So the Fed would go back to Bank of America, for example, and
3 say that check you gave us was no good, give us our money
4 back. And then Bank of America in turn would go to whoever
5 gave it the check and say the check was no good, give us our
6 money back, and the chain of collection would be reversed.

7 Q. Okay. What is a setoff account?

8 A. A setoff account is actually common practice
9 traditionally in banking. Under the common law, persons
10 engaged in a business of banking would have asserted a right
11 of setoff against other assets of an obligor that came into
12 their possession once something that was a primary instrument
13 to the banker was not paid.

14 An illustration would be suppose you had an account at
15 Bank of America and you overdrew the account by, say, \$10,000,
16 and then you take the next airplane for Venezuela never to be
17 seen again. What is the bank going to do? And the answer is
18 suppose a trailing paycheck for you, your boss still owed you
19 money, paycheck comes into that account, but it's \$10,000
20 overdrawn. The bank would set off the money you owe it
21 against that paycheck that suddenly came in to its possession.

22 In New York under the New York banking law, there is a
23 banker's right of setoff that is spelled out in the banking
24 statute. The practice is similar in every state and the
25 Federal Reserve has certain rules about it. But the governing

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1 law, the original law was the New York law and some states
2 will have something similar. Others won't. But anyway,
3 setoff works that way. It's a -- in New York it's a statutory
4 right. In another state it might be a common law right of the
5 banker to try to recover from any new asset that shows up on
6 account of a previously existing debt.

7 Q. Okay. Could you speak a little bit to the theory of why
8 we might have thought that it works and would be legal for us
9 to use.

10 MR. ODULIO: Objection to that, Your Honor.

11 THE COURT: Overruled.

12 MR. ODULIO: May we be heard on that?

13 THE COURT: Yes.

14 Members of the jury, we'll take a morning break at
15 this time. You may step out and we'll call for you in about
16 10 or 15 minutes.

17 (Jury exited the courtroom.)

18 THE COURT: All right. You may be heard.

19 MR. ODULIO: Your Honor, we would just object --
20 note our objection to this line of testimony. The
21 government's position is that Rule 704(b) is applicable in
22 this area in that the question is seeking to elicit from an
23 expert witness an opinion concerning the mental state or
24 condition of the defendant as to whether or not the defendant
25 did or did not have the mental state constituting an element

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1 of the charged offense. As the court is aware --

2 THE COURT: You may have misunderstood the question.
3 It was apparently carefully worded to ask whether -- whether
4 it's -- in essence, whether anyone could have had a reasonable
5 belief that that exchange might have worked, that setoff might
6 have been proper. Didn't ask what the state of mind of these
7 defendants was.

8 MR. ODULIO: I thought he said we, Your Honor.

9 DEFENDANT HUGHES: What I said was would he speak to
10 the theory that we might have looked at that would cause us to
11 think that these were proper and legal.

12 DEFENDANT EDWARD WAHLER: You need to make it
13 general. Don't talk about us.

14 DEFENDANT HUGHES: All right. Can I reword it?
15 Would you speak to the theory of why people would think that
16 this works and is legal.

17 THE COURT: That would be fine.

18 DEFENDANT HUGHES: Okay.

19 THE COURT: Any objection to that?

20 MR. ODULIO: We would, Your Honor, just because of
21 the potential confusion of the jury. I think, Your Honor,
22 they're trying to elicit, again, the notion of whether or not
23 this belief is reasonable. I think it's ultimately -- that's
24 an ultimate issue for the jury to consider in making a
25 determination under its verdict, whether or not, number one,

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1 the belief is held in good faith. And, you know, a component
2 of that certainly, Your Honor, is whether or not it's
3 reasonable. So I don't think the testimony of the witness
4 would be appropriate there. Certainly the defendants could
5 draw that inference as the government can make an inference.
6 But neither party should be allowed to elicit that kind of
7 testimony.

8 THE COURT: Well, I don't think it's confusing to
9 the jury. The witness has been testifying all along about
10 realities and also certain theories and commented on it, and
11 that's essentially what he's being asked to do here. So as
12 long as your question is properly worded, the objection is
13 overruled.

14 MR. ODULIO: Thank you, sir.

15 THE COURT: We'll take a ten minute break.

16 (Brief recess at 11:35 a.m.)

17 THE COURT: May we have the jury, please.

18 And I would ask the witness to return.

19 (Witness resumed the witness stand.)

20 (Jury entered the courtroom.)

21 THE COURT: All right. To pick up where we were,
22 would you ask your question again, please.

23 DEFENDANT HUGHES: Yes, sir.

24 WALKER F. TODD

25 DIRECT EXAMINATION (Cont'd)

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1 BY DEFENDANT HUGHES:

2 Q. Mr. Todd, would you speak to the theory of why people in
3 the public might think these sorts of things would work and
4 why they would think they would be legal.

5 A. I'm assuming you are referring to instruments of the type
6 that I was shown before testifying.

7 Q. Yes.

8 A. Yes. It's my experience -- remember that I am an expert
9 and so I could fairly quickly decipher these instruments as
10 something that looked real or not. But I have seen many of
11 these instruments in the past where they were pretty well
12 done, fairly easily calculated, I think, in their form to
13 deceive the layman or to make someone who didn't understand
14 fully what they were, not realize what they were and take them
15 at face value. There's been many instances where these things
16 have been taken at face value, either by a merchant or into
17 the banking system, for example.

18 The problem always arises in the chain of collection
19 where they come to rest because ultimately there's no way they
20 can be redeemed, but I suppose you have to be a chain of
21 collections expert to know that there's no way it can be
22 redeemed at the end of the day. If you floated an instrument
23 into the chain of collection, how do you know what's going to
24 happen to it unless you have some line of expertise in that
25 area.

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1 Q. Would you say that on the part of the people, that it was
2 ignorance or criminal intent?

3 MR. ODULIO: Objection to that, Your Honor.

4 THE COURT: Sustained.

5 Q. Okay. Let me ask the question a different way, then.
6 Given that there seemed to be only about a dozen marketers --
7 I'm going to use that term because I can't think of any other
8 thing to call them -- people who go around giving seminars,
9 teaching people that this is legal and proper, why would you
10 speculate that either the Federal Reserve or the Treasury or
11 the OCC doesn't come out with some type of highly visible
12 public statement that these particular people are teaching
13 fraudulent information?

14 MR. ODULIO: Objection to that, Your Honor.

15 THE COURT: Overruled.

16 A. Okay. This is actually, I think, a very good question.
17 That is, has the Treasury been as proactive as it should be,
18 the Fed the same way, in trying to offset the effects of the
19 disinformation campaign that's out there. And I do think the
20 defense raises a good point in the sense of are there seminars
21 and other educational things happening out there that might
22 mislead the public into thinking there was validity in these
23 instruments and, yes, these things exist. You can find
24 countervailing testimony on the internet by searching, if you
25 Google a seminar for Treasury warrants or comptroller

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1 warrants, for example, you might find somebody saying, well,
2 no, they don't work.

3 But the real question is what does the Treasury do? What
4 does the Federal Reserve do? They issue circular notices when
5 a new type of instrument surfaces in the collection system.
6 But unless you're a banker, I'm not sure how thoroughly you'll
7 see that. I think there are some classes of merchants who are
8 particularly tied closely to the banking system, like car
9 dealers, for example, who would get and regularly read these
10 circular notices on the Treasury's or Fed's website. But most
11 people don't spend their days reading Treasury check
12 collection notices. So it is a fair question.

13 But if you Google the Fed's website, which I do daily,
14 you -- you have to look pretty hard to find guidance on what's
15 wrong with instruments in the check collection system. And I
16 haven't tried it on the Treasury's website lately, but I think
17 it's a little easier to find over at the Treasury, but
18 definitely not at the Fed.

19 (Defendants conferred.)

20 DIRECT EXAMINATION

21 BY DEFENDANT EDWARD WAHLER:

22 Q. Of the instruments you saw come in and reviewed or that
23 you're aware of by any means, were they all prosecuted?

24 MR. ODULIO: Objection, Your Honor.

25 THE COURT: Sustained.

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1 Q. As a constitutional scholar having studied the
2 Constitution, would this activity constitute a form of protest
3 under the First Amendment?

4 MR. ODULIO: Objection to that, Your Honor.

5 THE COURT: Sustained.

6 DEFENDANT EDWARD WAHLER: Okay. This should be
7 Government's Exhibit 164 so it should already be in evidence
8 so everybody can see it, right?

9 Q. Can you see that now, Mr. Todd?

10 A. It just came up.

11 Q. Okay. This is one of the documents that has been
12 presented into evidence. You'll notice the verbiage up at the
13 upper right in bold. Does that mean anything to you?

14 A. As an expert I would say no, it's inconsistent. It's a
15 hallmark of these instruments, by the way, the original ones
16 that I first saw 15 years ago. I said the person who drafted
17 them had some knowledge of what was happening regarding
18 banking and money, but it sort of veers off into unforeseen
19 terrain. So it's as though they were drafted by someone who
20 wasn't quite in his right mind as he was drafting it, but had
21 a great deal of technical knowledge.

22 So I would say that's sort of -- the boldfaced thing at
23 the top and the paragraph 1 statement of facts that I'm being
24 shown here has language that's inconsistent with what you
25 would normally expect, okay.

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- 1 I was an expert on banker's acceptances, for example.
2 Probably considered the leading expert on banker's acceptances
3 in the entire U.S. government when I was at the New York Fed.
4 And that second sentence there really blows me away. Said,
5 "Acceptance in the form of a banker's acceptance or national
6 bank note." They're not the same thing at all, and anyone who
7 is familiar with banker's acceptances would know that. But if
8 you're a layman, could you define what is a banker's
9 acceptance? So there are problems with the language that way.
- 10 Q. Okay. So if -- here we find more recitations of law --
- 11 A. Uh-huh.
- 12 Q. -- specific to setting up the definition of legal tender,
13 correct? Subtitle --
- 14 A. Yes, the definition from Title 31, key point being
15 Federal Reserve Notes are -- national bank notes are legal
16 tender.
- 17 Q. And I think as you stated as testimony, the one sentence
18 there, "This official definition for legal tender was first
19 established in HJR 192 in 1933." That is a correct statement,
20 correct?
- 21 A. Yes, it was done by a joint resolution in 1933, right.
- 22 Q. And then at the end of the sentence, "Notes of national
23 banks, legal tender, both backed by the credit of the nation,"
24 that's a correct statement?
- 25 A. Yes, and that is correct. Separately provided in the

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1 Federal Reserve Act that Federal Reserve Notes are full faith
2 and credit obligations of the United States.

3 Q. Then below that, the quote, "From HJR 192 that abrogated
4 the gold clause," do you recognize that?

5 A. Yes.

6 Q. Okay.

7 A. The gold clause -- well, basically, by June of '33, the
8 federal government was denying its obligation to pay out gold
9 even on previously issued bonds of the United States promising
10 payment in gold. And the Supreme Court later upheld the right
11 of the government to do that.

12 Q. Okay. There was an executive order demanding the people
13 turn in their gold. Was that constitutional?

14 A. It was held to be legal. Whether it was proper is
15 another story. But it was later sustained as a matter of law.
16 I have personal objections to it and I view it as improper,
17 but -- and I was glad when the private right to own gold was
18 restored in 1974. But the -- the rulings of the Supreme Court
19 are consistent on this that the right of the executive to
20 suspend gold in the circumstances was correct.

21 Q. Due to emergency.

22 A. Due to emergency powers.

23 Q. The lower section deals, I believe you'll see, with
24 Title 12 and the number of repealed laws.

25 A. Yes.

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1 Q. And the quote down from money and banking, "Today
2 commercial banks no longer issue currency." I don't know what
3 the --

4 A. Uh-huh.

5 Q. Then it says commercial banks don't, correct?

6 A. Yes. Right, national bank notes were the last form of
7 circulating currency that was issued by any commercial bank,
8 in that case national banks, but that ended in 1933.

9 Q. Okay. Thank you. This is where we need your expert
10 input. UCC4-105.

11 A. Yes.

12 Q. Says what?

13 A. "Bank means a person engaged in the business of banking."

14 Q. Okay. Seems reasonably easy to understand. How about
15 the next one.

16 A. Right. "The term bank also includes any person engaged
17 in the business of banking."

18 Q. And the next one.

19 A. "Bank means any person engaged in the business of
20 banking."

21 Q. So we've got some consistency here. And then Black's Law
22 Dictionary definition of banker.

23 A. Right. It's anyone, including a private person, who is
24 engaged in the business of banking without being incorporated.

25 Some statutes or legal systems call these people private

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1 bankers and the like. And this is consistent with that older
2 story I was telling you about in the 1950s when the draftsmen
3 were doing the New York version of the Uniform Commercial Code
4 and they said who is a banker. And for purposes of the law,
5 they said we have to use the broad definition of banker,
6 meaning anyone who does this business as opposed to particular
7 banks or bankers licensed by the state or by the federal
8 government. Under the common law anyone could be a banker,
9 but state laws were later enacted restricting the privilege of
10 banking to certain defined classes of individuals,
11 partnerships, corporations.

12 The National Bank Act allowed individuals or partnerships
13 or associations to be national banks until 1933 when the
14 government provided an inducement under the old reconstruction
15 finance corporation to banks to go ahead and incorporate
16 because that way you could sell preferred stock to this
17 government rescue entity, the RFC. If you were just an
18 individual, you couldn't sell preferred stock in yourself.

19 Q. Okay.

20 A. So that was -- that was the background of this whole
21 distinction between a banker as a person on one side and a
22 bank as some specifically licensed entity on the other side.

23 Q. Okay. But the last sentence of that where it says,
24 "while a private banker is a person engaged in banking without
25 having any special privileges or authority from the state."

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1 A. Yes.

2 Q. That's still a good definition, is it not?

3 A. (No response.)

4 Q. Black's Law Dictionary?

5 A. Yes. Yes, that's right. It's the common -- all Black's
6 is doing here is restating the common law definition of a
7 banker.

8 Q. Okay. And then the next sentence where it says "Banking
9 is partly."

10 A. "Banking is partly and optionally defined as a business
11 of issuing notes for circulation or negotiating bills." The
12 classical traditional definition of banking is issuing notes
13 intended to circulate as money payable on demand.

14 Q. Okay. And then where it says banker's note, defines
15 banker's note as.

16 A. It says, "A commercial instrument resembling a bank note
17 in every particular except it's given by a private banker or
18 an unincorporated banking institution."

19 Q. That's consistent with what we've seen so far, correct?

20 A. Yes. Once again, that's just allowing private persons to
21 engage in this business of banking.

22 Q. Okay. Let's go to the next page, then. Have to drag you
23 through this to...

24 All right. Basically, the first big paragraph there
25 forms the conclusion of this document. If you would please

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1 analyze that for us. Starts with "therefore" right at the
2 top.

3 A. "Therefore, as noted above, the legal definitions
4 relating to legal tender" -- do you want me to analyze it or
5 read it?

6 Q. Well, probably read it for the jury and then comment on
7 it, please.

8 A. "The legal definitions relating to legal tender have been
9 written by Congress and maintained as such to be both
10 exclusive, where necessary, and inclusive, where appropriate,
11 to provide for the inclusion of the principals, sureties,
12 prime creditors, and holders in equity over the United States,
13 who, since 1933, have collectively and nationally constituted
14 a national bank or a national banking association."

15 This is preliminary language that's basically saying who
16 are the persons authorized to organize a national bank, and
17 let's talk about their rights regarding the legal tender
18 privilege.

19 And then it continues, "So a national bank with a right
20 as stated in the instrument to issue as legal tender notes on
21 the full faith and credit of the United States." They're
22 cleaning up the language. In '33 the statute was changed to
23 substitute this modern phrase full faith and credit where
24 previously it said obligations of the United States and so on.

25 And it continues. It says these -- under the old

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1 statutory definition, a national bank's organizer or principal
2 was a surety for the obligations, currency and credit as a
3 remedy for equity interest recovery over U.S. corporate public
4 debt due to them.

5 This is all related to that older system where national
6 banks were allowed to issue notes serving as currency, but in
7 return they had to back those notes with purchases of U.S.
8 government obligations. And those obligations are what's
9 being talked about in this older statutory language here in
10 the second half of the statute.

11 Q. Okay. Do you see there where it says the Fourteenth
12 Amendment?

13 A. In the bottom middle of the page, yes. The Fourteenth
14 Amendment provides "no person shall be deprived of property
15 without due process of law."

16 Q. Correct.

17 A. Right.

18 Q. And then the next sentence after that.

19 A. It says, "The courts have long ruled to have one's
20 property legally held as collateral or surety for a debt even
21 when he still owns it and still has it is to deprive him of it
22 since it is at risk and could be lost for the debt at any
23 time."

24 Q. So this --

25 A. And --

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1 Q. You've made the comment that the government has pledged
2 our future earnings which are our property, is it not? I
3 mean, our -- we have the property --

4 A. Yes, in the broad economic sense, your future earnings
5 stream would be deemed your property, yes.

6 Q. Okay. So we have had that pledged, and is this not
7 saying that that is a form of deprivation? That we're not --
8 they can't do it without due process of law under the
9 Fourteenth Amendment?

10 A. I think it's generally recognized in law that you cannot
11 state a claim on future earnings of a private individual
12 without due process of law. That he has to sign a contract or
13 something to that effect.

14 Q. Okay.

15 A. So, yes.

16 Q. So by this definition, the American people have become
17 sureties for the national debt, correct?

18 A. A portion of their earnings may be taxed away. That's --
19 that's the sense in which the people would stand as a surety
20 for the national debt. It is that you know that taxes would
21 have to increase at some point to pay off or pay down the
22 debt.

23 Q. Okay. So the little -- where it starts, quote, Sureties
24 compelled.

25 A. Uh-huh.

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1 THE COURT: Well, I think you're going to have to
2 make a comment to advise the court where you're going with
3 this because otherwise you're just going over miscellaneous
4 phrases from a miscellaneous document.

5 DEFENDANT EDWARD WAHLER: And, sir, that's the
6 problem.

7 THE COURT: And you're not showing -- you're not
8 showing how it might apply to this case.

9 DEFENDANT EDWARD WAHLER: I'm trying to get at the
10 point in the document where -- all this foundation is being
11 laid before the conclusion.

12 THE COURT: Well, you better move it quickly, then,
13 because otherwise I'm going to cut it off.

14 DEFENDANT EDWARD WAHLER: Okay.

15 Q. The question was asked earlier, and I think we've come
16 around to it, are we sureties? And you basically said a
17 portion of our earnings is surety; is that correct?

18 A. Future earnings.

19 Q. Future earnings would have been pledged as a surety to
20 the national debt.

21 A. And my answer there is in the broad general sense we are
22 sureties for the national debt. As a legal matter, there are
23 two categories of thinking about public debt traditionally.
24 The prior tradition that was abandoned by the formation of the
25 Constitution was no future Congress can be bound by an act of

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1 the present Congress. And so it was decided based on 17th
2 century English practice that evolved then that we would
3 establish that regarding public debt, a commitment can be made
4 by a present Congress or parliament that binds a future
5 Congress or parliament and that commitment would be, in this
6 case, backed by a taxing power. The taxes would stand as
7 sureties. But if you talked to insurance lawyers or lawyers
8 experienced in guarantys, I think they would say what they --
9 what is meant by surety here is the general sense and not any
10 technical legal term as binding you, saying aha, now you are a
11 legal surety for this public debt over here. I think that
12 would be a stretch. It would be beyond the settled
13 understanding of the term.

14 I understand how you could conclude that a person is a
15 surety for the public debt, but I think it's a
16 misinterpretation.

17 Q. Okay.

18 (Defendants conferred.)

19 BY DEFENDANT EDWARD WAHLER:

20 Q. Would it be reasonable on the part of a layman -- you're
21 the expert. The people in general are not -- to conclude they
22 are a surety for the national debt and would have a right of
23 redress?

24 A. On the first part, would -- reading this language, would
25 you be able to conclude that you're a surety for a debt -- for

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1 the public debt? Yes, I can see how laymen would read that
2 and draw that conclusion.

3 And if you're saying, well, what is the remedy there?
4 The issue is -- again, I think it was *Lucas versus South*
5 *Carolina Coastal Commission* in 1988, a Supreme Court decision,
6 where basically the ruling is if you don't like what's being
7 done in your name, your only remedy is to go to the ballot box
8 and throw the rascals out.

9 The problem is if you see a provision of law being
10 violated or law -- or the Constitution, do you have as a
11 citizen a private remedy against the United States for that
12 wrong? And I believe it is settled law that you do not have a
13 private remedy unless you can state a claim under the Federal
14 Tort Claims Act or something to that effect.

15 DEFENDANT EDWARD WAHLER: No more questions. Thank
16 you.

17 THE COURT: Cross examination.

18 MR. ODULIO: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. ODULIO:

21 Q. Good afternoon, Dr. Todd.

22 A. Good afternoon.

23 Q. You were just asked a series of questions about
24 Government's Exhibit 164. Do you recall that?

25 A. Yes.

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1 Q. And you were shown various passages in isolation of
2 purported legal authority.

3 A. Yes.

4 Q. Take a look at paragraph 1 there.

5 A. Uh-huh.

6 Q. And I'll ask you whether or not anything that you were
7 presented would support the assertion being made there in
8 paragraph 1 concerning this purported tender offer or banker's
9 acceptance or the use of a national bank note to pay...

10 A. Well, that -- that whole second sentence is something
11 that to an expert would have been a red flag warning that this
12 is not a regular instrument in form. You would want to ask
13 further questions about who drafted it and why, things of that
14 sort.

15 In the first sentence, you would have to know some
16 particulars that are not self-evident on the instrument, like
17 what are these account numbers, for example. But other than
18 that, the first instrument is not necessarily a red flag. It
19 would be a -- particular account number information would be a
20 red flag, but the second sentence is the red flag to the
21 expert.

22 Q. How about the use of a national bank note? Anything that
23 you read and was presented in direct examination would support
24 the use of a national bank note --

25 A. No --

WALKER TODD - CROSS

1 Q. -- to pay --

2 A. Go ahead, I'm sorry.

3 Q. To pay a Countrywide home loan on January 15th of 2004?

4 A. No, the use of national bank notes for this purpose would
5 have ended in 1933.

6 MR. ODULIO: Your Honor, may I approach the witness?

7 THE COURT: Yes.

8 Q. Show you, sir, what's in evidence there as Government's
9 Exhibit 110.

10 A. Yes.

11 Q. It's also on your monitor. That's styled a Bill of
12 Exchange, is it not?

13 A. Yes, in the upper left it says Bill of Exchange.

14 Q. And this instrument -- first of all, are you familiar
15 with it?

16 A. I saw this prior to testimony today, yes.

17 Q. And my question to you, sir, is this instrument is
18 purporting to draw money from a Treasury direct account, is it
19 not?

20 A. Yes.

21 Q. And if I were to tell you that the direct Treasury
22 account listed there is not valid, what would your opinion be
23 on the legitimacy of this instrument, Government's 110?

24 A. Well, if the account number is not a valid number, there
25 are still other red flag warnings in this top half of the

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1 instrument. The idea of calling John Snow the trustee at the
2 Department of the Treasury would have been a red flag right
3 there. John Snow was the secretary of the Treasury at the
4 time. And it says, "Prepaid exchange item. Process through
5 the TT&L account by FedWire."

6 TT&L is a banker's jargon term for Treasury tax and loan
7 accounts and these are not things that laymen would ordinarily
8 be involved in. It's a way for private businessmen to make
9 federal tax payments. You can go down to a Federal Reserve
10 member bank and make a payment of taxes for the credit to the
11 Treasury's account. Alternatively, the Treasury will deposit
12 money back in the banking system using these accounts,
13 Treasury tax and loan or TT&L accounts. But this is something
14 that happens only between bankers on the one hand and the
15 Treasury on the other hand. So that for a private person to
16 say, oh, go debit the TT&L account, this would be deemed a
17 nonsense instruction.

18 Q. All right. So do you have an opinion on whether or not
19 this is fictitious? I take it your view is it is.

20 A. Would I have taken this if I were at the Fed do you mean?

21 Q. Correct. Yes, sir.

22 A. Yes. No, I would not. I would have kicked this
23 instrument out.

24 Q. And in fact, you're familiar with these kinds of
25 instruments, are you, in your work with the Fed; isn't that

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1 right, sir?

2 A. Yes.

3 Q. And you testified earlier that these so-called bills of
4 exchange began to circulate in the upper midwest.

5 A. In the high plains states originally. The Rocky Mountain
6 west starting in the early 1990s to mid '90s. The claims
7 started piling up at Federal Reserve Banks. That's when they
8 first came to the notice of the Fed and the Treasury that
9 there might have been more than just isolated incidents, but
10 at the time we wondered if there was some kind of concerted
11 attempt to tie up the payment system.

12 Q. And the Montana Freemen, for example, would be a subset
13 of that?

14 A. That's right. Ultimately, we think this was traced back
15 to the activities of the Montana Freemen who seem to have been
16 ground zero in the origination and circulation of these types
17 of instruments.

18 Q. And again, your testimony is you're familiar with them
19 and the related scheme. Is there an underlying antigovernment
20 or antilawyer sentiment related to these kinds of schemes?

21 A. Certainly for the Montana Freemen there was both of the
22 elements you described, both antifederal government and
23 antilawyer. The Montana Freemen refused on principle to
24 cooperate with their defense attorneys or with their expert
25 witness.

WALKER TODD - CROSS

1 Q. All right. I'm going to ask you, you're familiar with a
2 Treasury direct account or a direct Treasury account as styled
3 here, sir?

4 A. Yes.

5 Q. Isn't it true that you cannot use a Treasury direct
6 account to write checks to third parties, for instance, to pay
7 off the clerk of the superior court or make a mortgage payment
8 or a car payment?

9 A. Yes, this is correct. What you're describing would
10 amount to using the Treasury direct account as like a checking
11 account at a bank, but it is not intended for that. It's
12 usually just the device through which an individual citizen
13 may buy and sell securities from the Treasury. If you want to
14 buy a Treasury bill, for example, it would be credited into
15 your Treasury direct account. When you sell the security or
16 if it matures and you fail to roll it over, there would be
17 cash in the account.

18 Q. Okay. And Dr. Todd, these bills of exchange really
19 relate to -- and you've testified about the Redemption. It
20 relates to an assertion that HJR 192 somehow allowed
21 individuals to trade their birth certificates in for millions
22 or hundreds of millions of dollars; is that right?

23 A. Yes, a variation of the theme. And economists would say
24 it's only worth 625,000, but that's right.

25 Q. Okay. And in fact, in the line of questioning you were

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1 asked on direct examination about sureties, does that relate
2 to this notion that you just discussed about redeeming your
3 birth certificate?

4 A. Yes. I believe that the surety concept as described
5 there is related to the, what we were calling Redemption
6 theory and that spinoff from Canadian social credit theory.

7 Q. And does HJR 192 have anything to do or give individuals
8 the ability to use their birth certificate to get an account
9 for hundreds of millions of dollars?

10 A. No, not to my knowledge, no.

11 Q. And you've seen language that used HJR 192 and the UCC in
12 conjunction to purportedly open these accounts; is that right?

13 A. Yes, I have seen that in other cases, yes.

14 Q. Okay. HJR 192 was enacted in 1933; is that right?

15 A. Yes.

16 Q. And I think you testified on direct that the UCC wasn't
17 widely accepted or codified until the 1950s; is that right?

18 A. Yes. In fact, the graduation speaker at my law school
19 graduation was the original draftsman of the UCC. Her name
20 was Soia Mentschikoff, and she started working on the project
21 in 1949.

22 Q. Okay. So Ms. Mentschikoff wouldn't have -- certainly
23 wouldn't have contemplated the use of the Uniform Commercial
24 Code to trade your birth certificate in to open a direct
25 Treasury account as reflected in 110.

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1 A. Right. That would have been deemed nonsense.

2 Q. All right. Let's take a look at 162, sir, which is in
3 evidence. I'm going to direct your attention, I think, to the
4 back of the page.

5 A. The back, right.

6 Q. Again, do you have a view based on your experience
7 concerning the legitimacy of this purported payment?

8 A. Yes. This is a payoff demand. Right. The language
9 is -- on this -- the top half of this instrument is basically
10 just a hodgepodge of legal phrases that seem to have been
11 slapped together disjointedly. So "this note is legal tender
12 for all debts public and private," for example, that's the
13 language that appears on currency notes, dollar bills.

14 The phrase "accepted for value" and "returned for value,"
15 "discharge and closure of the accounting," to an expert this
16 would have no meaning. We would say we don't know what this
17 means.

18 "Issued under the authority of U.S. Code as a legal
19 tender offer national bank note," well, again, there's the
20 reference to the out-noted national bank notes which have not
21 been around since '33.

22 And the conjunction -- or the reference to HJR 192, I
23 believe HJR 192, that's House Joint Resolution 192 which
24 declared Federal Reserve Notes legal tender. That may have
25 been the resolution that suspended the circulation of national

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1 bank notes. So the two could be related that way. But it has
2 nothing to do with a current commercial transaction.

3 Q. Any kind of expertise needed, sir, to determine that this
4 is not a valid instrument when the entity you sent it to
5 rejects it?

6 A. Would you need expertise to reject this, is that
7 essentially what you're asking?

8 Q. I'll withdraw the question.

9 A. Okay.

10 Q. Let's take a look at Government's 32. Do you see that,
11 sir?

12 A. Yes.

13 Q. If -- and this just looks like a check drawn on a Bank of
14 America account payable to Countrywide for 323,915 and some
15 dollars. Do you see that?

16 A. Yes.

17 Q. If this check was drawn on either a closed account or an
18 account that did not have funds in it, what would happen to
19 this check?

20 A. Do you mean if it came into the Federal Reserve?

21 Q. Yes, sir.

22 A. Yes. It would be rejected for a variety of reasons.
23 First, it has a handwritten certified number in the upper
24 left. That would be deemed highly irregular. And the real
25 question is who has authority to certify a check. Only a

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1 banker does. And there are various statutes that deal
2 particularly with the effect of certifying a check.

3 It says "FedWire Only" stamped on the check. So a banker
4 would be puzzled by this because you'd say it's a check but
5 why am I being told to run this through FedWire?

6 Then you have the legend that's stamped on the lower
7 right: "Attention U.S. Treasury direct prepaid item," et
8 cetera, "private pass through account." Again, to my
9 knowledge, no such accounts exist. Or if they do, they're not
10 available for payments by third -- payments to third parties.

11 Let's see. "Electronic funds transfer only. Do not send
12 to bank printed on check." That would be, again, a most
13 irregular instruction because when you see a check, the only
14 thing you're supposed to do is present it back to the bank on
15 which it was drawn and here is language telling us do not
16 present to that bank. So it's inconsistent with the
17 fundamental nature of the instrument.

18 Q. Okay. Any of the stamps on here magically make -- would
19 magically make this check work if there weren't any money in
20 this related account or if it was closed?

21 A. No. I think the initial instinct of a banker seeing this
22 check would be to try to present it on to that account and he
23 would learn that the account has been closed and so he would
24 then begin the process of reversing any value paid for the
25 check back up the chain of collection. He would just reverse

WALKER TODD - CROSS

1 the process of collection that it had come into.

2 Q. You were also asked questions on direct examination about
3 fractional banking. Do you recall that?

4 A. Yes.

5 Q. Any of your answers relating to fractional banking, would
6 that support this Redemption scheme?

7 A. No. No. Fractional reserve banking is entirely related
8 to the question of what percentage of reserves, if any, are
9 required to be held against currently demand deposits in the
10 banking system.

11 Q. This --

12 A. And the rate of expansion of money that's related to it.
13 But that has nothing to do with the collection of instruments.

14 Q. Does fractional banking have anything to do or -- have
15 anything to do with negating someone's promise to pay a
16 promissory note signed in conjunction with a mortgage?

17 A. No, I would say it does not.

18 Q. Has no effect at all on that person's obligation to pay
19 back the mortgagor.

20 A. No. You might encounter a particular case where the note
21 called for payment in a certain form, but by and large, the --
22 as long as all that is being exchanged is bank credit, then
23 one's obligation is to pay back to the bank the value of the
24 credit advanced.

25 Q. Let's take a look at Government's 137. Do you have that

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1 in front of you, sir?

2 A. I do. Do I have that one or only on the screen? Wait,
3 yes, I do. I do. I see it. Okay.

4 Q. And again, you looked through this document prior to your
5 testimony today; is that right?

6 A. Yes.

7 Q. And this is styled Notice of International Commercial
8 Claim Administrative Remedy.

9 A. Yes.

10 Q. And it's purportedly being made by Edward William Wahler
11 and Kathy Ray Wahler to Kelly King, d/b/a President, BB&T
12 Bank.

13 A. Yes.

14 Q. Is this a valid mechanism to resolve a dispute you might
15 have with a bank?

16 A. Probably not in the sense that it looks like a document
17 that would have a mix of legal and accounting concepts
18 embedded within it, but I don't think it has any monetary
19 value attached to it. It appears to be drawn under the
20 reference to International Commercial Claim. There's a whole
21 line of questionable financial instruments that supposedly are
22 drawn under International Chamber of Commerce, ICC,
23 documentation. And this may have been somehow intended to
24 conform to understanding -- it's about the International
25 Chamber of Commerce, but to my knowledge there is no such

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1 thing as an International Commercial Claim Administrative
2 Remedy.

3 Q. And would a bank's failure to respond to a document like
4 this result in a liability to the bank?

5 A. Would a bank receiving this therefore automatically have
6 a liability based on the fact of receipt? And the answer is
7 no.

8 Q. You were also asked questions, sir, about whether or not
9 the Fed or the Treasury has been proactive concerning
10 informing the public about these scams and schemes.

11 A. About these -- uh-huh.

12 Q. Do you recall that?

13 A. Yes.

14 Q. Show you what's on your monitor as Government's Exhibit
15 249, which has been admitted into evidence. Do you see that?

16 A. Not yet.

17 Q. Bear with us here.

18 A. Okay. Yes. This is 249. And it's an alert from the
19 Comptroller of the Currency regarding fraudulent debt
20 elimination schemes, yes.

21 Q. I'm going to turn your attention --

22 A. Right. And it's addressed by the Comptroller of the
23 Currency who's the administrator for national banks to
24 national banks, state banks, et cetera, and bank examiners and
25 the like.

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1 Q. And certainly, sir, there have been other alerts issued
2 like this by the OCC and related authorities especially after
3 this Freeman --

4 A. Yes.

5 Q. -- episode that you just testified about.

6 A. Yes.

7 Q. Okay. And again, in pretty plain English it says that
8 these kind of Redemption schemes are fraudulent; is that
9 right?

10 A. Yes.

11 Q. And in fact, it's styled Fictitious Debt Elimination
12 Schemes in the description there.

13 A. That's correct.

14 Q. Dr. Todd, you were contacted only recently by the
15 defendants for your testimony in this matter; is that correct?

16 A. Yes. The first inquiry was Friday, I believe.

17 Q. And sir, you're appearing here and collecting a witness
18 fee in connection with or -- or a fee in connection with
19 your -- the testimony, the expert testimony you're providing
20 today; is that right?

21 A. Yes.

22 Q. And who is paying the fee? Or let me rephrase that.

23 THE COURT: Sustained.

24 Q. Okay. What is your fee?

25 A. I believe it is \$2,500 plus my expenses of travel.

WALKER TODD - CROSS

1 Q. Okay. Would you accept your payment in the form of
2 Government's Exhibit 110 if it was tendered to you?

3 THE COURT: Sustained.

4 MR. ODULIO: Just a moment, Your Honor.

5 THE COURT: Yes, sir.

6 (Government counsel conferred.)

7 MR. ODULIO: Thank you, Your Honor.

8 THE COURT: Any redirect within the scope of cross?

9 DEFENDANT EDWARD WAHLER: Yes. We're trying to find
10 a document, if you'll just...

11 (Defendants conferred.)

12 DEFENDANT EDWARD WAHLER: Your Honor, is it possible
13 to break for lunch so we can try and find some documents and
14 get our act together, if you don't mind?

15 THE COURT: All right. But any redirect has to be
16 within the scope of cross examination.

17 DEFENDANT EDWARD WAHLER: Okay. Thank you.

18 THE COURT: We'll take our lunch break, members of
19 the jury. Please remember the usual instructions. Keep an
20 open mind about the case. Don't discuss it. Thank you.

21 JUROR: What time are we supposed to be back?

22 THE COURT: It would be a good idea if we all know
23 that. That would be -- let's try 2 o'clock.

24 (Lunch recess at 12:45 p.m.)

25 TUESDAY AFTERNOON, NOVEMBER 17, 2009

WALKER TODD - REDIRECT

1 THE COURT: May we have the jury, please

2 (Jury entered the courtroom.)

3 THE COURT: All right. The jury is with us.

4 DEFENDANT EDWARD WAHLER: Would the government put
5 Exhibit 249 back up, please.

6 MR. ODULIO: What page?

7 DEFENDANT EDWARD WAHLER: It's the OCC alert, right?
8 I guess the top of it to start with.

9 WALKER F. TODD

10 REDIRECT EXAMINATION

11 BY DEFENDANT EDWARD WAHLER:

12 Q. Mr. Todd, I think we -- the "To" section of this
13 document, who did that indicate this document was addressed
14 to, please?

15 A. This document of the OCC alert from the Comptroller of
16 the Currency is addressed to the chief executive officers of
17 national banks, state banking authorities, the Federal Reserve
18 system, the FDIC, the state bank supervisors, the deputy
19 comptrollers, that's the people that work for him, the
20 assistant deputy comptrollers, district counsel, and all
21 examining personnel. That, again, would be all people
22 involved in the Office of the Comptroller of the Currency.

23 Q. Okay. Would all of them also be considered fairly
24 sophisticated in the banking system?

25 A. They either are or should be, yes, to hold the positions

WALKER TODD - REDIRECT

1 that they do.

2 Q. And still, they needed to see a document like this to be
3 noticed of this situation; is that correct?

4 A. Well, it was addressed to them, let's put it that way,
5 yes.

6 Q. Okay. Based on either OCC alerts or any knowledge you
7 have, has this activity subsided?

8 A. The particular activity that is described there was
9 essentially bonds for discharge of debt, bills of exchange,
10 due bills, Redemption certificates, and the like, and the date
11 on this was from '03, December of '03, and I believe that the
12 activity peaked maybe a year or two after that and then it has
13 subsided since then. But yes, it has subsided by now.

14 Q. So would you say there's a lag, then, for information
15 like this before it possibly gets out to the public?

16 A. That has been my experience, yes.

17 DEFENDANT EDWARD WAHLER: Okay.

18 (Defendants conferred.)

19 REDIRECT EXAMINATION

20 BY DEFENDANT HUGHES:

21 Q. Would a layman reading this OCC alert necessarily know
22 exactly what was meant by fictitious instruments here?
23 Because one of the things it talks about is bill of exchange
24 and obviously there are plenty of legal bills of exchange.

25 A. Uh-huh.

WALKER TODD - REDIRECT

1 Q. So if a layman had this, how would he know what kind of
2 bill of exchange this alert had to do with?

3 A. They would have to read the rest of the document. It may
4 be spelled out which entities are involved with the bills of
5 exchange that are suspect. But I think your point is a valid
6 one, that if you say watch out for due bills and bills of
7 exchange, those are or may be valid instruments elsewhere in
8 commerce. So it's only a particular subset that they are to
9 watch out for, and then it would be a question of is adequate
10 notice available in this document here to tell people which
11 ones to watch out for.

12 DEFENDANT HUGHES: Okay. Thank you.

13 DEFENDANT EDWARD WAHLER: I have no further
14 questions.

15 MR. ODULIO: Your Honor, no further questions from
16 the government.

17 THE COURT: All right. You may step down.

18 THE WITNESS: All right. Thank you.

19 (Witness stepped down.)

20 DEFENDANT HUGHES: Do we need to say that he's
21 excused at this point?

22 THE COURT: If there's no objection, he'll be
23 excused. Thank you.

24 THE WITNESS: Thank you, Your Honor.

25 DEFENDANT HUGHES: Okay. I didn't know if we needed

1 to do that or not.

2 THE COURT: Just as well, thank you. Yes, we did
3 so.

4 DEFENDANT HUGHES: Thank you.

5 We're having a little discussion. Give us one
6 moment.

7 THE COURT: Yes, sir.

8 The jury may be at ease. That means you may stand
9 and stretch, chat with one another, but not talk about the
10 case.

11 (Defendants conferred.)

12 DEFENDANT KATHY WAHLER: Your Honor, I am ready to
13 take the stand to testify --

14 THE COURT: All right.

15 DEFENDANT KATHY WAHLER: -- on behalf of myself.

16 THE COURT: If you'll step forward.

17 KATHY WAHLER,

18 being first duly sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 THE WITNESS: My name is Kathy Wahler. I am the
21 wife of Edward Wahler. Defendant in this case.

22 I am taking the stand to tell my story. You guys
23 have heard all of everything here. All about instruments.
24 All about seminars, teachings, all of that. As I told you in
25 the beginning that you would find that I am a housewife,