

Joe Banister Trial Day 5 Monday June 20, 2005

Day 5 started off at 9am with agreement on the jury instructions. All the attorneys had gotten together and agreed to the jury instructions, but the judge wanted to go through them all and talk about some. There was some discussion between the judge and Jeff Dickstein where Jeff wanted jury instruction #20 to stay - (Since there was no external interference with the IRS, there was no impeding them). The judge got angry and said Jeff was getting defensive about keeping this in. The judge said "don't get defensive with me - I am trying to help you. OK fine we will leave it the way it is."

Next the judge asked if all attorneys agreed on the jury form. They agreed to Jeff's version of the jury form. The judge wanted to see if Jeff wanted the individual "overt acts" listed on the jury form and Jeff said no - I don't need to go there.

Next Jeff made a formal objection to three jury instructions being eliminated:

- 13 about the first amendment right to free speech
- 14 about the people's right to petition for redress of grievances
- 17 saying just because Joe was a CPA he should not be presumed to know the law

The judge gave his formal reasons for taking these three instructions out. On instructions 13 and 14, the judge said he did not want the jury to determine 1st amendment or free speech rights, the court should determine free speech rights. On the 17th instruction, he did not need to say #17 because Joe is presumed innocent and he did not need to say Joe was not presumed to know the law. The judge called this a double negative. "It is not necessary for the court to negate a negative", he said.

Next the judge asked Jeff if he had additional arguments for the Rule 29 and Jeff said he did not have additional arguments for it. The judge said he would let the jury get the case and rule on the Rule 29 after the jury had reached a verdict.

The judge asked the prosecution how much time they will need for closing arguments and they said 2 hours! They also said they would need 1 hour for rebuttal. When the judge asked Jeff how much time he would need he said originally he thought one hour and he thought that the government would need 40 minutes. But now that he sees that the government is planning to take 2 hours he told the judge he did not know how much time he would need - it would be based on what the government said in its closing.

The judge said that if they finish by 3pm he would read the jury the instructions. If they are not done by 3pm then he will read the instructions Wednesday. He wants them to finish closings before 3pm so he can read the jury instructions that afternoon.

We will start at 9:30 am Tuesday with the jury hearing the closing arguments and then jury instructions. Fast and pray tonight.