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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

Case No. 5:06-cr-22-Oc-10GRJ

January 29, 2008
Ocala, Florida

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WESLEY TRENT SNIPES,
EDDIE RAY KAHN and
DOUGLAS P. ROSILE,

Defendants.

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TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE WM. TERRELL HODGES,
SENIOR UNITED STATES DISTRICT JUDGE, and a Jury

Appearances of Counsel:

For the Government:

Mr. Robert E. O'Neill
Mr. M. Scotland Morris
Mr. Jeffrey A. McLellan

For Defendant Snipes:

Mr. Robert G. Bernhoft
Mr. Robert E. Barnes
Ms. Linda G. Moreno
Mr. Daniel R. Meachum
Ms. Kanan B. Henry

1 Appearances of Counsel (continued):

2 For Defendant Kahn:

3 Mr. Michael William Nielsen, standby counsel

4 For Defendant Rosile:

5 Mr. David Anthony Wilson

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Reported by: Dennis Miracle, Official Reporter, and
 Kelly Owen McCall, Freelance Reporter

P R O C E E D I N G S

(Jury absent.)

THE COURT: Thank you. Be seated, everyone. Good morning.

Marshal Rivera? Where is Marshal Rivera?

Good morning, Marshal Rivera.

THE DEPUTY MARSHAL: Good morning, Your Honor.

THE COURT: Did you have occasion to speak to Mr. Kahn this morning about his desire to come or not to come to court?

THE DEPUTY MARSHAL: Yes, Your Honor. I spoke to him first thing this morning, and he said that he was not going to be participating.

THE COURT: All right. Thank you.

THE DEPUTY MARSHAL: You're welcome, Judge.

MR. O'NEILL: Your Honor, I'm not sure -- he also -- Mr. Kahn, through counsel, filed a declaration of petitioner this morning, which is a mandatory judicial notice per Federal Rules of Evidence 201(d), notice of non consent, non assent, non acknowledgement, non intent to appear, and demand slash motion to strike and dismiss claims, just for the record.

THE COURT: All right. I haven't seen that. Just a minute.

(Pause.)

THE COURT: Mr. Morris, I take it you're ready to

1 proceed with closing when the jury's seated?

2 MR. MORRIS: Yes, Your Honor.

3 THE COURT: All right. I have asked the clerk to
4 distribute to counsel copies of the final draft of the jury
5 instructions carrying into effect all of the decisions that
6 were made at the charge conference. The only thing that you
7 may not have seen are two pages that I have inserted
8 immediately preceding the instruction on the conspiracy
9 offense, which are introductory -- the introductory pages
10 drawn from the pattern instructions of the circuit.

11 Madam Clerk?

12 THE DEPUTY CLERK: Yes.

13 THE COURT: I'm informed that Mr. Kahn filed a
14 pleading earlier this morning.

15 THE DEPUTY CLERK: Okay.

16 THE COURT: Will you find it and print it for me,
17 please?

18 THE DEPUTY CLERK: Sure.

19 (Pause.)

20 THE COURT: All right. This has not yet been
21 assigned a document number, Madam Clerk?

22 THE DEPUTY CLERK: That's correct.

23 THE COURT: All right. I'm holding, in any event,
24 what appears to be a pleading entitled Mandatory Judicial
25 Notice or Declaration of Petitioner, filed this morning by

1 Mr. Kahn. And to the extent that it seeks relief, it's
2 denied.

3 Seat the jury, please, Marshal.

4 (Jury present.)

5 THE COURT: Thank you. Be seated, please, members
6 of the jury, and good morning to you. You have been very
7 prompt and, once again, I appreciate it.

8 As you heard yesterday morning when you were excused
9 for the day, you heard all parties announce rest signaling the
10 end of the presentation of testimony and evidence for your
11 consideration in this case.

12 As I explained then and had earlier in the
13 proceedings, I believe, that leaves two things to be
14 accomplished this morning and today before the case would be
15 submitted to you for your deliberations upon your verdicts.
16 The first of those two remaining phases will be the
17 summations, or closing arguments, of the lawyers, after which
18 I will then, secondly and lastly, instruct you or explain to
19 you the rules of law that govern this case and that you will
20 apply to the facts as you find them from the evidence in
21 reaching your verdict.

22 In just a moment I will first recognize Mr. Morris
23 who will speak to you and make the opening portion of the
24 closing argument, or summation, in behalf of the
25 United States.

1 When he has finished his remarks, I will then
2 recognize Mr. Barnes who will speak to you and make closing
3 argument, or summation, in behalf of the defendant Mr. Snipes.

4 When Mr. Barnes has finished his remarks, I will then
5 recognize Mr. Bernhoft who will make additional remarks, or
6 closing arguments or summation, in behalf of Mr. Snipes.

7 And when Mr. Bernhoft has finished his argument, I
8 will then recognize Mr. Wilson who will speak to you and make
9 summation in behalf of his client, the defendant Mr. Rosile.

10 When Mr. Wilson has completed his remarks, I will
11 then recognize Mr. O'Neill who will have the opportunity to
12 speak to you and make what is known as a rebuttal argument in
13 behalf of the United States. That will then complete the
14 summations of counsel.

15 The United States proceeds first and last in the
16 making of argument or summation, just as it proceeds first in
17 the presentation of testimony and evidence because, as you
18 were told already and will be told again as a part of my final
19 instructions, the law does place the burden of proof or burden
20 of persuasion on the United States.

21 I anticipate that with our usual recesses and
22 stopping for lunch that most of the day, if not all of the
23 day, will be taken up by the summations of counsel, so I ask
24 that you relax, pay attention, as I know you will, and we will
25 hear together their summations now.

1 And as I just indicated, we will, of course, be
2 pausing at convenient times and places during their arguments
3 to take our usual recesses and a break for lunch at lunchtime.

4 Mr. Morris, you may address the jury.

5 MR. MORRIS: Thank you, Your Honor.

6 May it please the Court, counsel.

7 Ladies and gentlemen of the jury, on behalf of my
8 colleagues, I want to thank you for your attentiveness
9 throughout this trial. I can say that it has truly been an
10 honor and a privilege to represent the United States of
11 America in this case.

12 As the Judge has said, this is the point in the case
13 when we're at closing argument. The closing arguments are an
14 opportunity for the attorneys to review the evidence with you
15 and to discuss what the evidence shows.

16 Before I start doing that, I'd like to talk a little
17 bit about how you evaluate the evidence in this case and the
18 burden of proof that's on the government. Then I would like
19 to discuss the charges in the Indictment, the elements of each
20 of those crimes, and the evidence that supports each of those
21 elements.

22 When I'm done the defense attorneys will have a
23 chance to make their arguments. And as the Judge said,
24 finally Mr. O'Neill will have an opportunity to speak to you
25 as well, because the United States does have the burden of

1 proof in this case.

2 After closing arguments have been concluded, the
3 Judge will give you a set of instructions, and I'd like to
4 touch on just a few of those instructions at this time
5 regarding how you evaluate the evidence and the burden of
6 proof.

7 The evidence in this case consists of testimony of
8 witnesses and documents that have been received in evidence.
9 You have heard the testimony of the witnesses yourself. You
10 have had a chance to see many of the documents, and the
11 documents you haven't had a chance to see will be available to
12 you as part of the record when you're making your
13 deliberations.

14 Now, one of the most basic and important
15 instructions that the Court will give you is that when you
16 consider the evidence, you must make deductions and reach
17 conclusions which reason and commonsense lead you to make.

18 The Court will instruct you that there are two
19 different types of evidence: direct evidence and
20 circumstantial evidence.

21 Direct evidence is the testimony of one with actual
22 knowledge of a fact, such as an eyewitness. For example, in
23 this case Ken Starr, Ron Starr, Michael Canter, Carmen Baker
24 all testified about their interactions with defendants Kahn
25 and -- defendant Snipes and Kahn. And Charis True and Amie

1 Huse testified about defendant Rosile's relationship with ARL
2 and Eddie Kahn.

3 Circumstantial evidence is proof of a chain of facts
4 and circumstances tending to prove or disprove any fact in
5 dispute. Now, much of the evidence in this case, including
6 the financial records, correspondence to and from the IRS, and
7 other documents would fall into this category.

8 The Court will instruct you that you should not be
9 concerned about whether the evidence is direct or
10 circumstantial, and you may give whatever weight you deem
11 appropriate to both types of evidence.

12 As the Court has indicated before, the burden of
13 proof is on the United States to prove each of the defendants
14 guilty beyond a reasonable doubt with regard to each count
15 that they are charged with.

16 However, the United States does not need to prove
17 the defendants guilty beyond all possible doubt. That would
18 be an impossible burden.

19 A reasonable doubt is a real doubt based upon reason
20 and commonsense after careful and impartial consideration of
21 all the evidence in this case.

22 Now I would like to talk about the charges in the
23 case and the evidence. I would like to start a little bit out
24 of order and start with Count Two first. Then I'll go to
25 Count One and then Counts Three through Eight.

1 Now, you may recall that Count Two is making a false
2 claim against the United States, and that falls under
3 Title 18, United States Code, Sections 287 and Section 2.

4 I would like to summarize that charge in the
5 Indictment for you at this time. In summary, Count Two
6 charges that on or about April 11, 2001, in Lake County, which
7 is in the Middle District of Florida, and elsewhere, that
8 defendant Snipes, Kahn and Rosile did knowingly make and
9 present, cause to be made and presented, and aid and abet the
10 making and presentation of a false, fictitious and fraudulent
11 claim for payment against the IRS, specifically a 1997 amended
12 tax return, or Form 1040X, for defendant Snipes claiming a tax
13 refund in the amount of \$7,360,755 knowing that the claim was
14 false, fictitious and fraudulent.

15 Now, there are three elements that the United States
16 must prove for this crime, and they are up there on the screen
17 for your viewing.

18 The first element is that the defendant knowingly
19 presented to an agency of the United States a false or
20 fraudulent claim against the United States as charged in the
21 Indictment.

22 The second element is that the false or fraudulent
23 aspect of the claim related to a material fact, and the third
24 element is that the defendant acted willfully and with
25 knowledge of the false or fraudulent nature of the claim.

1 Let's talk about the first element. The first
2 element, again, is that the defendant knowingly presented to
3 an agency of the United States a false and fictitious claim
4 against the United States as charged in the Indictment.

5 In this case defendant Snipes presented a false and
6 fraudulent 1997 Form 1040X amended tax return to the IRS
7 seeking a refund of taxes in excess of \$7 million. The claim
8 was false and fraudulent because it was based on the frivolous
9 861 argument or 861 position. The Court will instruct you
10 that this argument has no legal merit.

11 A certified copy of the return is in evidence as
12 Government's Exhibit 64-1, and the original return itself is
13 in evidence as Government's Exhibit 64-2. You've seen that
14 1040X for 1997 a number of times throughout this case.

15 The handwriting analysis of Mr. Lesnevich, which was
16 stipulated to by the defendants, establishes that defendant
17 Snipes signed the return as the tax preparer claiming the
18 refund, and defendant Rosile prepared the tax return.

19 The return is dated April 11, 2001, and the IRS
20 receipt stamp shows it was received by the IRS on April 14,
21 2001, which establishes that the return was made and presented
22 to the IRS on or about those dates.

23 Now, the Court will instruct you that it is not
24 necessary to show that the government agency was, in fact,
25 deceived or misled by the false claim. Therefore, it is

1 irrelevant in this case that the United States and the IRS
2 specifically did not get fooled and issue a refund to
3 defendant Snipes. The claim was still false and fraudulent.

4 Now, let me talk a little bit about aiding and
5 abetting. As you heard me say a few moments ago, the charge
6 is brought under Title 18, United States Code, Section 287 but
7 also references Section 2 of Title 18. Section 2 is the
8 aiding and abetting statute.

9 The Indictment charges that defendants not only made
10 and presented a false claim but also caused it to be made and
11 presented and aided and abetted the making and presentation of
12 that claim.

13 Now, the Court will instruct you that if the acts or
14 conduct of an agent, employee or other associate of a
15 defendant are willfully directed or authorized by the
16 defendant, or if a defendant aids and abets another person in
17 the commission of a crime, then the law holds the defendant
18 responsible for the conduct of that other person just as
19 though the defendant personally engaged in such conduct.

20 Now, that's a mouthful. But, in other words, what
21 it means is that if a defendant directs or authorizes another
22 person to commit a crime, or if the defendant aids and abets
23 in the commission of that crime, then that defendant is guilty
24 as well.

25 Now, there are two things that have to be shown for

1 aiding and abetting to apply: First, that the defendant
2 willfully associated in some way with the crime and, second,
3 that the defendant willfully participated in it.

4 In this case the testimony of Charis True and Amie
5 Huse as well as numerous seized documents that are in evidence
6 clearly establish that defendant Kahn ran American Rights
7 Litigators, or ARL, and oversaw and approved everything that
8 went on at ARL, including the preparation and filing of these
9 frivolous 861 returns.

10 Indeed, the evidence establishes that defendant Kahn
11 had an agreement with defendant Rosile regarding the
12 preparation of 861 returns and how compensation for those was
13 going to be split.

14 Further, you'll recall that when Ron Starr and
15 Michael Canter testified, they testified that they had a
16 telephone conversation with defendant Kahn and that defendant
17 Kahn advocated the 861 argument on behalf of defendant Snipes.

18 So even though defendant Kahn's name and signature
19 are not on the 1997 Form 1040X, he is accountable for it under
20 the law because he directed, authorized and aided and abetted
21 in the preparation and filing of that false claim.

22 Now let's move to the second element, which is that
23 the false or fraudulent aspect of the claim related to a
24 material matter.

25 The Court will instruct you that a misrepresentation

1 is material if it relates to an important fact as
2 distinguished from some unimportant or trivial detail and has
3 a natural tendency to influence or was capable of influencing
4 the decision of the department or agency in making a
5 determination about the claim.

6 In this case the claim for the refund is based
7 entirely on this bogus 861 argument. Thus, the false and
8 fraudulent aspect of the claim is extremely material because
9 it relates directly to the reason that the refund is being
10 sought and the entire amount of the refund being sought. So
11 materiality is clearly established here.

12 The third element is that the defendant acted
13 willfully and with knowledge of the false and fraudulent
14 nature of the claim.

15 Now, the Court will define for you the terms knowing
16 and willful as they are used in this count and other counts in
17 the Indictment.

18 Knowing means that the act was done voluntarily and
19 intentionally and not because of mistake or accident.

20 Willfully means that the act was committed
21 deliberately or was an intended violation rather than one that
22 is accidental, inadvertent or negligent.

23 Remember that in considering the evidence you are to
24 make deductions and reach conclusions which reason and
25 commonsense lead you to make.

1 Now, let's look at evidence with regard to defendant
2 Snipes and his willfulness and his knowledge. Ron Starr
3 testified that, after communications with defendant Snipes,
4 that he wanted them to stop filing tax returns and wanted to
5 assert this 861 position; that he researched the 861 argument
6 and he very readily determined that it had absolutely no legal
7 merit.

8 Ken Starr testified that he had an hour and a half
9 conversation with defendant Snipes where he made it abundantly
10 clear that this 861 position was frivolous, that there was no
11 basis in law for it, that this idea that you could try to get
12 a refund based on 861 and that you could stop filing tax
13 returns was ridiculous. That's what he told defendant Snipes
14 in no uncertain terms.

15 And what was defendant Snipes' reaction? Ken Starr
16 said his reaction was, You think you're always right. In
17 fact, defendant Snipes was so defiant about this advice that
18 Ken Starr had to fire him as a client.

19 Now, defendant Snipes' defiance of his respected
20 long-term advisors, who are tax lawyers and CPAs and who very
21 clearly told him this position was ridiculous, clearly
22 demonstrates that defendant Snipes acted willfully and with
23 knowledge of what he was doing.

24 With regard to defendants Kahn and Rosile, they
25 prepared and filed hundreds of 861 returns for American Rights

1 Litigators clients, and you heard evidence that only a few of
2 those slipped through the cracks at the IRS and actually
3 generated a refund. So they were on notice that the IRS would
4 not honor these bogus claims except by accident.

5 With regard to defendant Rosile, there are at least
6 two sets of correspondence from the IRS that put him on notice
7 that the 861 argument was frivolous and baseless before he
8 prepared the 1997 Form 1040X for defendant Snipes.

9 And if we could show now Government's Exhibit 60-2
10 at Bates number DR-05038? This is the notice from the IRS
11 dated January 17, 2001, about three months before the 1997
12 Form 1040X; and this is a notice from the IRS regarding the
13 1999 tax return for Eileen Rosile based on the 861 argument.

14 What does it say in the notice? "Your claim has no
15 merit or basis."

16 So three months before defendant Rosile prepared
17 defendant Snipes' amended return, he was on notice from the
18 IRS that this was -- had no merit and no basis.

19 Second, if we could go to Government's Exhibit 61-2,
20 Number DR-05348? This is a letter dated April 19, 2001, from
21 Douglas Rosile. And you'll notice that he says he's writing
22 on behalf of the above-captioned taxpayers -- that's the
23 Harmses -- to protest the fact that three previous letters to
24 the infernal revenue service related to a balance due have
25 been ignored. "One of those was my letter" -- that is,

1 defendant Rosile's letter -- "of February 27, 2001."

2 And in that letter, which is in evidence, he was
3 again put on notice that the IRS told him that the returns had
4 no basis. The 861 claim had no basis in fact. So right
5 before he prepares Snipes' 1997 Form 1040X in April 2001, he
6 again has confirmation from the IRS that this is a bogus
7 claim.

8 Now, with regard to all three of the defendants,
9 Mr. Snipes' ARL client file has a copy of a 1996 Form 1040X
10 for defendant Snipes which he signed on April 19, 2000.
11 That's Government's Exhibit 87-5.

12 So this is a return for a refund based on the 861
13 position being prepared one year before the subject of
14 Count Two, the 1997 claim. And we know it was filed with the
15 IRS because Snipes' client file has a copy of a letter from
16 the IRS dated June 1, 2000, responding to it. That's
17 Government's Exhibit 87-6.

18 This is a letter from the IRS, and it references the
19 1996 Form 1040X that was filed by defendant Snipes. What does
20 the first paragraph say? "We have determined that the
21 information you sent is frivolous, and your position has no
22 basis in law. Claims such as yours have been considered and
23 rejected repeatedly as without merit by the Federal Courts,
24 including the Supreme Court of the United States."

25 So about ten months prior to filing the 1997 Form

1 1040X that's the subject of Count Two, the defendants are on
2 notice that such 861 claims are frivolous and have no basis in
3 law.

4 And then if that weren't enough evidence of
5 willfulness, ladies and gentlemen, consider the jurat on the
6 1997 Form 1040X. You've seen several times throughout the
7 case that it was altered to read "under no penalties of
8 perjury."

9 If, as the defense has suggested throughout this
10 trial, this was just a legitimate attempt to try to take a
11 position contrary to Treasury regulations, why would the
12 defendants have altered the jurat?

13 The bottom line is the defendants knew the 861
14 position was frivolous when they presented the tax return.
15 There was no dispute over some technical tax issue. There was
16 no mistake as to what the law was. The defendants knew what
17 the law was; they just don't like the law. The defendants are
18 tax protesters who knowingly and willfully disobeyed and
19 disregarded the law.

20 Now I would like to address the issue of venue. In
21 opening statements and throughout the case, defendant Snipes'
22 attorneys have made a big deal about the issue of venue. That
23 is whether the charges have properly been brought here in this
24 judicial district, the Middle District of Florida.

25 And this issue really relates primarily to Counts

1 Three through Eight, which we'll get to, the failure to file
2 counts. However, for the sake of thoroughness, let's review
3 the evidence of proper venue for Count Two.

4 Now, numerous facts establish that the return, the
5 1997 Form 1040X, was prepared at the offices of ARL in
6 Mount Plymouth, which is in Lake County, which is in the
7 Middle District of Florida.

8 We know that the 1997 Form 1040X for Snipes was
9 prepared by defendant Rosile, and we know, based on the
10 testimony of Charis True and Amie Huse, that defendant Rosile
11 prepared 861 returns at the offices of ARL, which is in
12 Mount Plymouth at the time.

13 And there's the copy of the 1997 Form 1040X found in
14 defendant Snipes' ARL client file, which was seized from the
15 ARL offices. That's Government's Exhibit 87-13.

16 Then there's the electronic version of the
17 attachment to the Form 1040X that was, again, found during the
18 seizure of the computers at ARL's offices, and numerous facts
19 establish that the return was mailed by ARL from
20 Mount Plymouth.

21 First, if we could go to Government's Exhibits 64-2
22 and Exhibit 99-2?

23 Okay. At the top is Government's Exhibit 64-2.
24 This is the envelope that the 1040X for 1997 was mailed in.
25 It's in evidence.

1 Down at the bottom is Exhibit 99-2, which is an
2 invoice from Pitney-Bowes that was found during the execution
3 of the search warrant and is in evidence.

4 Now, the postage meter stamp on the envelope in
5 which the return was mailed has the same meter number as the
6 meter listed on the Pitney-Bowes invoice.

7 Further, the envelope shows that it was mailed from
8 zip code 32776, which is the zip code for Mount Plymouth, and
9 the envelope was postmarked -- you can't quite see it there,
10 but I think you saw it before -- from the Mid Florida Mail
11 Center. So there's no question that the 1997 Form 1040X was
12 prepared and mailed from Mount Plymouth in Lake County, in the
13 Middle District of Florida. Venue is clearly proper in the
14 Middle District of Florida for Count Two.

15 Now I would like to move on to Count One, which is
16 the conspiracy to defraud the United States, in violation of
17 Title 18, United States Code, Section 371. I would like to
18 summarize the Indictment. I believe you'll have a copy of the
19 Indictment provided to you by the Judge.

20 Count One is a rather lengthy charge, and I would
21 like to summarize that for you as briefly as I can. It
22 charges that from in or about 1999 through October 2006, which
23 is when the Indictment was returned, in Lake and Orange
24 Counties, which are in the Middle District of Florida, and
25 elsewhere, Wesley Snipes, Eddie Kahn and Douglas Rosile

1 knowingly and willfully conspired with each other and with
2 others to defraud the United States by impeding, impairing and
3 obstructing the lawful governmental functions of the IRS in
4 computing, assessing and collecting income taxes.

5 The Indictment alleges that there are several ways
6 or what's called manners and means in which the defendants
7 attempted to defraud the United States. First, defendant
8 Snipes, Kahn and Rosile attempted to make it appear as if
9 defendant Snipes had no liability for federal income tax when,
10 in fact, he did.

11 Second, defendant Snipes, Kahn and Rosile attempted
12 to obtain refunds of income taxes previously paid by defendant
13 Snipes to which he was not entitled through the filing of
14 fraudulent amended tax returns based on the so-called 861
15 argument.

16 Third, that defendant Snipes and Kahn presented
17 bogus bills of exchange, or BOEs, to the Treasury in purported
18 payment of defendant Snipes' tax obligations.

19 And, fourth, that defendant Snipes stopped filing
20 income tax returns and, fifth, that defendant Snipes stopped
21 withholding payroll taxes from the employees of his loan-out
22 company.

23 So the conspiracy is focused on the efforts of the
24 defendants to defraud the IRS with regard to defendant Snipes'
25 taxes.

1 The Indictment also alleges numerous overt acts that
2 the defendants committed in furtherance of the conspiracy, and
3 I'll review those with you.

4 But first, let's discuss the elements of Count One.
5 There are four elements for Count One the United States must
6 prove. The first is that two or more persons in some way or
7 manner came to a mutual understanding to try to accomplish a
8 common and unlawful plan as charged in the Indictment.

9 Second, that the defendant, knowing the unlawful
10 purpose of the plan, willfully joined in it.

11 Third, that one of the conspirators during the
12 existence of the conspiracy knowingly committed at least one
13 of the methods or overt acts described in the Indictment.

14 And, fourth, that such overt act, or overt acts, was
15 knowingly committed at or about the time alleged in an effort
16 to carry out some object of the conspiracy.

17 Let's move to the first element. The first element,
18 again, is that two or more persons in some way or manner came
19 to a mutual understanding to try to accomplish a common and
20 unlawful plan as charged in the Indictment.

21 The Court will instruct you that a conspiracy is
22 simply an agreement or a partnership in criminal purposes. In
23 order to establish a conspiracy offense, it is not necessary
24 for the government to prove that the members of the conspiracy
25 had entered into any kind of formal written agreement, nor is

1 it necessary to prove that the members had planned together
2 all of the details of the scheme or the overt acts that the
3 Indictment charges.

4 Also, it is not necessary to prove that the
5 conspirators actually succeeded in accomplishing their
6 unlawful plan. So in this case whether or not the defendants
7 actually succeeded in defrauding the United States is
8 irrelevant; what is relevant is whether there was an agreement
9 and an attempt to defraud the United States by impeding,
10 impairing and obstructing the mission of the IRS.

11 The Court will also instruct you that a person may
12 become a member of a conspiracy without knowing all of the
13 details of the unlawful scheme and without knowing who all the
14 other members were.

15 So in this case, to convict defendant Snipes of
16 conspiracy, it is not necessary for the government to prove
17 that defendant Snipes knew all of the details of defendant
18 Kahn and Rosile's 861 scheme, for example. And to convict
19 defendant Rosile of conspiracy, it is not necessary to prove
20 that he knew everything that defendants Kahn and Snipes were
21 doing.

22 Now, a conspiracy does not have to be carried out in
23 secret. In opening statements Mr. Bernhoft used the word
24 "secret" when describing the conspiracy at least four times by
25 my count.

1 Listen carefully when the Court instructs you about
2 the law regarding conspiracy. You will not hear the word
3 "secret" in those instructions. Secrecy is not a requirement
4 for a conspiracy. Conspiracies are about agreement.

5 So what evidence is there of an agreement to defraud
6 the IRS in this case? I'd like to recite for you, kind of, in
7 a timeline fashion a number of acts that occurred throughout
8 the course of the conspiracy that show what the agreement was,
9 and we'll go back later when we talk about the overt acts and
10 actually show some of these documents that support these
11 events.

12 In January of 2000, defendant Snipes pays defendant
13 Kahn a consulting fee. Two months later, in March 2000,
14 defendant Snipes joins American Rights Litigators.

15 Ron Starr and Michael Canter testified that in March
16 of 2000 defendant Kahn had a telephone conversation with
17 Ron Starr and Michael Canter and argued that Snipes was not
18 subject to the income tax based on the 861 argument.

19 A month later, in April 2000, defendant Snipes sent
20 the 1996 Form 1040X to the IRS based on the 861 argument.
21 Again, we know that it was received by the IRS because of the
22 letter we just saw back from the IRS saying "your claim has no
23 basis."

24 Carmen Baker testified that in June of 2000 there
25 was a meeting at defendant Snipes' house in California. She

1 attended to. Eddie Kahn gave a seminar to defendant Snipes
2 about his tax protester theories, including the 861 argument.
3 That after the meeting things changed at Amen RA, defendant
4 Snipes' loan-out company. He stopped withholding taxes from
5 his workers' pay, and he sets up Kimberlyte Production
6 Services, a new loan-out company.

7 And she testified that defendant Kahn visited the
8 offices of American Rights Litigators at least twice and had
9 meetings with defendant Snipes and others.

10 That in October of 2000, defendant Snipes failed to
11 file his 1999 tax return and never files again.

12 In November of 2000, American Rights Litigators
13 prepares and Snipes submits a \$1 million bill of exchange, or
14 BOE, with an IRS payment voucher.

15 A couple of months later, in January of 2001, they
16 prepare and submit a \$12 million bill of exchange with an IRS
17 payment voucher.

18 A couple of months later, in March of 2001, the
19 evidence shows that at least at that point, if not earlier,
20 there was an agreement between defendant Rosile and American
21 Rights Litigators.

22 With regard to the preparation of 861 returns, we
23 could show Government's Exhibit 94-3. This was taken off of
24 the computer system, and it shows what the agreement is.
25 You've also heard testimony and other evidence about this

1 fee-splitting arrangement between Douglas Rosile and American
2 Rights Litigators.

3 In April of 2001 defendant Kahn sent an email to
4 defendant Snipes offering to prepare a determination letter.
5 You've heard about that.

6 The same month, April 2001, defendant Snipes renews
7 his ARL membership and pays for a determination letter
8 request.

9 In April 11th of 2001, the 1997 Form 1040X based on
10 the 861 argument is submitted.

11 A few months later, in October of 2001, powers of
12 attorney with ARL on behalf of defendant Snipes send letters
13 to the IRS asserting that defendant Snipes is not required to
14 file income tax returns.

15 In March of 2002, defendant Snipes renewed his
16 American Rights Litigators membership.

17 In September 2002, American Rights Litigators
18 prepared and Snipes submitted a \$1 million bill of exchange
19 with an IRS payment voucher.

20 And then in March of 2003, defendant Snipes renewed
21 again his American Rights Litigators membership.

22 Now, all of these acts show that there was an
23 agreement between defendant Snipes and defendant Kahn to try
24 to defraud the IRS in a variety of ways, the manners and means
25 that we talked about earlier, all with regard to defendant

1 Snipes' taxes, and that defendant Rosile joined in the
2 conspiracy for the purpose of preparing and submitting Snipes'
3 1997 Form 1040X.

4 Now, clearly, ladies and gentlemen, defendant
5 Rosile's involvement in the conspiracy was more limited than
6 defendant Kahn and Rosile's -- I'm sorry -- defendant Snipes
7 and Kahn; but the Court will instruct you that if a person, a
8 defendant, has a general understanding of the unlawful purpose
9 of the plan and knowingly and willfully joins in it on one
10 occasion, that is sufficient to convict that defendant for
11 conspiracy even though the defendant did not participate
12 before and even though the defendant played only a minor role.

13 So even though the evidence shows that defendant
14 Rosile's involvement in the conspiracy was limited to the
15 preparation and filing of that 1997 Form 1040X, that is
16 sufficient for him to be part of the conspiracy in this case.

17 The second element of the conspiracy is that the
18 defendant knowingly -- I'm sorry -- the defendant, knowing the
19 unlawful purpose of the plan, willfully joined in it.

20 Let's look at the evidence for this willfulness
21 element. Now, all of the evidence with regard to willfulness
22 that I reviewed with you with regard to Count Two, the 1997
23 false claim, is applicable to the conspiracy as well, because
24 the conspiracy takes into account or subsumes that charge as
25 well. So the advice and warning from Starr & Company to

1 Mr. Snipes, that's evidence of willfulness on Mr. Snipes' part
2 as well for this count, the conspiracy.

3 There's the IRS notices to defendant Rosile,
4 willfulness evidenced for him. The IRS's rejection of the
5 1996 Form 1040X, evidence of willfulness. The altered jurat;
6 again, evidence of willfulness as it goes to the conspiracy.

7 In addition, with regards to defendants Kahn and
8 Snipes, there's the bogus bills of exchange, or BOEs, prepared
9 by ARL and sent to the Treasury on behalf of defendant Snipes.

10 Now, the bills of exchange in defendant Snipes' ARL
11 client file and electronic versions of the ARL -- electronic
12 versions of the non ARL's computer system establish that
13 American Rights Litigators produced the bills of exchange that
14 were submitted to the Treasury by defendant Snipes.

15 Mr. Lesnevich's handwriting analysis, which the
16 defendant stipulated to, establishes that defendant Snipes
17 signed the bills of exchange. Charis True, Bianca Menenez and
18 Amie Huse testified that American Rights Litigators produced
19 bills of exchange for clients and that the purpose of them was
20 to discharge debts, and in particular debts to the IRS.

21 You may recall that Charis True admitted that they
22 were supposedly payment to the IRS, and you may recall that
23 Amie Huse eventually came to realize that Eddie Kahn was a,
24 quote, scam artist, end quote, and that the production of
25 bills of exchange, quote, didn't seem right, end quote.

1 Now, ladies and gentlemen, if defendants Kahn and
2 Snipes really believed that Snipes didn't have to pay income
3 taxes based on this 861 position, why would they prepare and
4 submit bills of exchange in purported payment of his tax
5 liability?

6 Next, if we could show Government's Exhibit 87-11?
7 This is the affidavit of incompetency that was found in
8 Mr. Snipes' ARL client file. It goes through and it lists all
9 these things that supposedly defendant Snipes doesn't
10 understand.

11 What's the purpose of this document except to try to
12 set up some type of defense saying, I don't know, I don't
13 understand, I can't possibly understand whether I have to file
14 a tax return or not? What's the purpose of this document?
15 The attempt to set up a defense shows knowledge of the
16 consequences and a desire to try to avoid them.

17 With regard to defendant Snipes, Special Agent Lalli
18 and Graf testified that they tried to serve American Rights
19 Litigators -- I'm sorry -- tried to serve Amen RA, defendant
20 Snipes' loan-out company, with subpoenas in the fall of 2003.
21 What was the response? Sandra Farrier threw them back at the
22 agents, threw them on the lawn.

23 And then what happened? If we could show
24 Government's Exhibit 139?

25 Shortly after the subpoenas were served, Special

1 Agent Graf gets this letter from Wesley Snipes challenging his
2 authority to even investigate criminal activity.

3 And Government's Exhibit 140, not satisfied with the
4 first letter, a second follow-up letter, again challenging his
5 authority.

6 And you heard the testimony of Special Agent Tanya
7 Burgess who testified that this, sort of, correspondence is
8 commonplace among tax protesters. And in her particular case,
9 she received such correspondence after she had tried to serve
10 defendants in her case with subpoenas.

11 And there's Government's Exhibit 106, which is
12 correspondence from Mr. Snipes dated December 4, 2006. Now,
13 I'll talk about this more in a little detail later. But
14 defendant Snipes, in this lengthy document -- and it's in
15 evidence; you saw portions of it during the trial, but it's in
16 evidence; you can read it if you like -- but in this document
17 it's very clear that defendant Snipes was not asking
18 questions; he's arguing with the IRS.

19 With regard to defendant Kahn and his willfulness,
20 if we could show Government's Exhibit 85? This is a letter
21 from the Office of Chief Counsel in Washington, D.C., for the
22 Internal Revenue Service, and it's dated in 1982.

23 In this letter -- you heard portions of it read to
24 you, and it's available in evidence -- it states in no
25 uncertain terms that there's an obligation to file an income

1 tax return to pay your taxes. As early as 1982 defendant Kahn
2 was clearly on notice of the basic requirements we all know
3 and we all understand. You make income, you file a tax
4 return, you pay your taxes. He knew about it back in 1982 at
5 least.

6 If we could show Government's Exhibit 73? You saw
7 this come into evidence, and you saw part of it read. This is
8 a flyer for an Eddie Kahn tax seminar in 2002. What does it
9 say at the very top? What's the selling point? "Do you fear
10 the IRS? If you fear a public servant, then he is not your
11 servant but rather your master."

12 Ladies and gentlemen, Eddie Kahn isn't trying to
13 help people with tax problems; he's trying to get people to
14 resist the IRS.

15 Then you heard testimony and an email from Eddie
16 Kahn to his landlord, Mark Patterson, and that testimony and
17 document established that, after the search warrant was
18 executed at the offices of American Rights Litigators, shortly
19 thereafter Eddie Kahn flees the country, goes to Panama, and
20 had to be brought back through work with the Panamanian
21 authorities after the Indictment was filed.

22 Now, if defendant Kahn thought that what he was
23 doing was perfectly legal, why would he flee the country?

24 Then with regard to defendant Rosile and his
25 willfulness, if we could look at Government's Exhibit 92?

1 This is the letter in the -- the signature, you may recall,
2 was blacked out when it was found during the search warrant,
3 but at the top the letterhead shows that it's from Affordable
4 Accounting and Tax Services. And you heard testimony from
5 Special Agent Lalli and you saw other documents, I believe,
6 that clearly show that Affordable Accounting and Tax Services
7 is Douglas Rosile.

8 And what does he say in this letter that he's
9 writing to Eddie Kahn? "I can assure you I hate the IRS."
10 That is Douglas Rosile's motivation in this case. That's his
11 intent. He's a tax protester, just like Eddie Kahn, just like
12 defendant Snipes.

13 So, ladies and gentlemen, there's abundant evidence
14 of willfulness for all three defendants.

15 Now let's move on to the third and fourth elements.
16 They relate to the overt acts. The third element is that one
17 of the conspirators, during the existence of the conspiracy,
18 knowingly committed at least one of the methods or overt acts
19 described in the Indictment.

20 And the fourth element is that such overt act was
21 knowingly committed at or about the time alleged in an effort
22 to carry out or accomplish some object of the conspiracy.

23 The Court will instruct you that an overt act is any
24 transaction or event, even one which may be entirely innocent
25 when considered alone, but which is knowingly committed by a

1 conspirator in an effort to accomplish some object of the
2 conspiracy.

3 Now I would like to go through the overt acts in
4 this case and show you or briefly discuss the evidence that
5 supports each of these overt acts. And they are listed in the
6 Indictment.

7 The first overt act is that on or about January 8,
8 2000, defendant Snipes paid defendant Kahn a consulting fee.
9 The evidence for that comes from Government's Exhibit 4-1.
10 This was shown to you during the trial. It's a check for
11 \$2,000 from Wesley Snipes to Eddie Kahn for a consulting fee.

12 The next overt act is on or about March 2, 2000,
13 defendant Snipes joined American Rights Litigators by
14 submitting a membership application and paying a membership
15 fee. That's Government's Exhibit 87-1.

16 The next overt act is that in or about March 2000
17 defendant Snipes had a telephone conversation with his
18 long-time tax advisors regarding tax positions promoted by
19 defendant Kahn. You heard testimony from Ken Starr about
20 that.

21 The next overt act is that in or about March 2000
22 defendant Kahn had a telephone conversation with defendant
23 Snipes' tax advisors -- that is, Starr & Company -- in which
24 defendant Kahn asserted that defendant Snipes was not subject
25 to income tax based on the 861 position. Again, you heard

1 testimony from Ron Starr about that.

2 If we could see Government's Exhibit 87-5? The next
3 overt act is that on or about April 19, 2000, defendant Snipes
4 signed and caused to be sent to the IRS a fraudulent amended
5 income tax return Form 1040X for 1996 making a false claim in
6 the amount of \$4 million and change based on the 861 argument.

7 And then if we could see Government's Exhibit 87-6?
8 Again, this is the letter from the IRS referencing the tax
9 period ended 1996 and saying in no uncertain terms "we have
10 determined the information you sent is frivolous, and your
11 position has no basis in law," showing that the 1996 claim was
12 received by the IRS.

13 The next overt act is that in or about June 2000
14 defendant Kahn traveled to California, gave a private seminar
15 at defendant Snipes' house to defendant Snipes and others
16 regarding the 861 position and other tax positions. And you
17 heard testimony from Carmen Baker about that.

18 The next overt act is that sometime after the
19 meeting in California, defendant Snipes had a discussion with
20 a worker at his loan-out company -- that is, Carmen Baker --
21 about not withholding taxes from the pay of loan-out workers.
22 Again, you heard testimony from Carmen Baker about that.

23 The next overt act is that on or about June 28,
24 2000, defendant Snipes had a telephone conversation with one
25 of his tax advisors -- that is, Ken Starr -- in which

1 defendant Snipes tried to persuade Ken Starr to handle his tax
2 matters in accordance with this 861 argument. Again, you
3 heard testimony from Ken Starr about that telephone
4 conversation.

5 The next overt act -- if we could see Government's
6 Exhibit 87-7? -- is that on or about June 29, 2000, one of
7 defendant Snipes' power of attorney representatives sent a
8 letter on his behalf to the IRS, to an IRS employee that had
9 previously issued a letter informing defendant Snipes that his
10 1996 Form 1040X claim for refund had been rejected as
11 frivolous. There's the letter, and the letter concludes by
12 threatening to seek the termination of the IRS employee and
13 requested payment of the refund with interest.

14 The next overt ability is that on or about
15 October 17, 2000, defendant Snipes executed an affidavit of
16 incompetence. That's Government's Exhibit 87-11.

17 The next overt act, on or about November 30, 2000,
18 defendant Snipes caused to be sent to the Secretary of
19 Treasury a fictitious bill of exchange in the amount of
20 \$1 million, Government's Exhibit 118. You've seen that
21 before.

22 The next overt act is similar. On or about
23 January 18, 2001, they send in the \$12 million bogus bill of
24 exchange, Government's Exhibit 119. You've seen that before.

25 Then if we could show Government's Exhibit 87-16?

1 The next overt act is on or about April 6, 2001. Defendant
2 Kahn sent -- caused to be sent to defendant Snipes an
3 electronic mail or email message, and there was evidence that
4 showed that that address there -- the addressee, the Chinaka
5 at Media One dot net, that that's defendant Snipes' email
6 address.

7 And in that email defendant Kahn informs defendant
8 Snipes that the IRS had sent a letter requesting that
9 defendant Snipes file his '99 income tax return, offering a
10 response letter that they could prepare for a fee which would
11 involve seeking a determination letter and advising defendant
12 Snipes that if he sought such a determination letter, he
13 wouldn't have to file any tax returns until he received the
14 determination letter.

15 The next overt act is that on or about April 11,
16 2001, defendant Snipes renewed his ARL membership and paid to
17 seek the determination letter, Government's Exhibit 87-17.

18 And the next exhibits, 64-1 and 64-2, you've seen
19 many times; this is the 1997 form 1040X for defendant Snipes
20 which defendant Rosile prepared and signed, and Snipes signed
21 and caused to be sent to the IRS.

22 If we could see Government's Exhibit 87-20? The
23 next overt act is on or about June 29, 2001, one of defendant
24 Snipes' power of attorney representatives sent a letter on
25 behalf of defendant Snipes to the IRS requesting a

1 determination letter regarding defendant Snipes' status as a
2 taxpayer.

3 The next exhibit is 87-26. That supports the overt
4 act that on or about October 1, 2001, a power of attorney sent
5 a letter on behalf of defendant Snipes to the IRS asserting
6 that defendant Snipes was not required to file tax returns.

7 The next overt act is supported by Government's
8 Exhibit 87-28. That overt act is that on or about October 15,
9 2001, a power of attorney with ARL sent a letter on behalf of
10 defendant Snipes to the IRS asserting that defendant Snipes
11 was not required to file any tax returns until he received a
12 determination letter.

13 If we could move to Government's Exhibit 87-29?
14 That supports the next overt act, which is on or about
15 October 29, 2001, another American Rights Litigator power of
16 attorney, acting in behalf of defendant Snipes, sends
17 another -- another letter on behalf of him to the IRS
18 asserting that defendant Snipes is not required to file income
19 tax returns until he receives a determination letter.

20 If we could go to Government's Exhibit 87-31? The
21 next overt act is that on about March 2, 2002, defendant
22 Snipes renews his American Rights Litigators membership.

23 If we could go to Government's Exhibit 117? The
24 next overt act involves defendant Snipes signing and causing
25 to be sent to the Secretary of the Treasury a fictitious bill

1 of exchange in the amount of \$1 million together with an IRS
2 payment voucher. Government's Exhibit 117, something you've
3 seen before, it supports that overt act.

4 We're getting near the end.

5 The next overt act is supported by 87-42. That
6 overt act is that on or about March 24, 2003, defendant Snipes
7 renewed his American Rights Litigators membership.

8 Then if we can go to Government's Exhibit 139?
9 That's that on or about November 3, 2003, defendant Snipes
10 sent the letter that you've just seen recently to the -- to
11 Special Agent Graf.

12 Government's Exhibit 140 supports the final overt
13 act in the conspiracy -- that on or about January 17, 2004,
14 defendant Snipes signed and sent another letter to Special
15 Agent Graf challenging his authority to engage in a criminal
16 investigation.

17 So each and every overt act in the conspiracy has
18 been proved up in this case.

19 Now I would like to talk briefly about venue with
20 regard to Count One. The evidence shows that the conspiracy
21 count was centered around the activities of defendants Kahn
22 and Rosile and other ARL people working on behalf of defendant
23 Snipes. Most of these activities took place at the offices of
24 ARL, which is in Lake County.

25 In addition, defendant Snipes had his legal

1 residence in Windermere, which is in Orange County, both of
2 which are in the Middle District of Florida.

3 Although some of the overt acts and some of the acts
4 in furtherance of the conspiracy took place in other places
5 like California or New York, there are more than enough acts
6 and overt acts in Lake County and Orange County to confer
7 venue in the Middle District of Florida.

8 Now let's move on to Counts Three through Eight, the
9 failure to file counts, which are brought pursuant to Title
10 26, United States Code, Section 7203. You'll have the
11 Indictment to look at when you deliberate, but I'll summarize
12 the Indictment for you.

13 For the years 1999 through 2004, defendant Snipes,
14 who was a resident of Windermere, in Orange County, in the
15 Middle District of Florida, had gross income substantially in
16 excess of the minimum filing requirements established by law
17 for each such year and was, therefore, required to file an
18 income tax return on or before the applicable filing
19 deadlines. However, defendant Snipes willfully failed to file
20 income tax returns for such years.

21 There are three elements for these violations. The
22 first element of failure to file is that the defendant was
23 required by law or regulation to make a return of his income
24 for the taxable year charged.

25 The second element is that the defendant failed to

1 file a return at the time required by law. And the third
2 element is that the defendant's failure to file the return was
3 willful.

4 Let's look at the first element. Again, that's that
5 the defendant was required by law or regulation to make a
6 return of his income for the taxable year charged. This is
7 for each of the years 1999 through 2004.

8 Revenue Agent Stich, who was the last witness in the
9 government's case, presented his analysis of defendant Snipes'
10 gross income for the years 1999 through 2004. His summary
11 charts were received into evidence, and they were not
12 challenged.

13 The underlying documents supporting his analysis are
14 in evidence, the bank and financial records and other
15 documents. This evidence shows that defendant Snipes had
16 millions of dollars in income for each of the years that have
17 been charged in the failure to file counts.

18 And Agent Stich testified about the filing
19 thresholds that were applicable to defendant Snipes. Filing
20 thresholds range from somewhere around \$7,000 up to around 15-
21 or \$16,000. And the Court will instruct you that these are
22 the proper thresholds.

23 Agent Stich testified that, based on defendant
24 Snipes' income, he was clearly required to file income tax
25 returns for the years 1999 through 2004.

1 Now, the second element is that the defendant failed
2 to file a return at the time required by law. You heard
3 testimony from Paul Crowley with the IRS who testified that he
4 conducted a search of the IRS records and determined that
5 defendant Snipes did not file an income tax return for any of
6 the years 1999 through 2004.

7 Now, with regard to those ridiculous filing
8 statements and affidavit forms that you heard about,
9 especially with Shauna Henline, she testified that those are
10 frivolous documents, and they do not constitute tax returns
11 because there's no financial information on them.
12 Furthermore, they weren't even submitted on time.

13 Now, the third element is that the defendant's
14 failure to file was willful. Ladies and gentlemen, every
15 American knows that if you have income, you've got to file a
16 tax return, report what your income is, your deductions, your
17 expenses, and pay your taxes. Everybody knows that.
18 Defendant Snipes is no different.

19 Let's look at defendant Snipes' filing history. If
20 we could show that chart? Across the top you'll see the years
21 1993 through 1998. And it's a little bit hard to see, but you
22 can see that the top box is "adjusted gross income." You can
23 focus on just the top. Adjusted gross income for each year,
24 taxable income for each year, tax liability paid. These are
25 all the years that he was with Starr & Company. Every year he

1 files a tax return and pays taxes when he's with Starr &
2 Company.

3 Now, in 1998, he has a loss for tax purposes. And
4 you heard some insinuations that maybe Starr & Company lost
5 money for him, but you heard Ken Starr's response. Starr &
6 Company didn't lose money for him. Wesley Snipes was making a
7 documentary that year, and his business lost money but his
8 investments made money. Nonetheless, for tax purposes there
9 was a tax loss.

10 But in each of those years 1999 through -- I'm
11 sorry -- 1993 through 1998, he files tax returns. He pays his
12 taxes.

13 Then down at the bottom we have the counts in
14 question here, 1999 through 2004. There's the total income,
15 millions of dollars, minimal filing threshold, clear
16 obligation to file tax returns.

17 Now, with regard to defendant Snipes' willfulness as
18 well, not just his own filing history that tells him you've
19 got to file tax returns, you've got to pay your taxes, he was
20 warned explicitly by Ken Starr in an hour and a half
21 conversation. Ken Starr told him this 861 position was
22 ridiculous. He told him that there was just no way that
23 Wesley Snipes could avoid filing income tax returns. He had
24 to file.

25 Ladies and gentlemen, I can't think of stronger

1 proof of willfulness than to be told by a competent tax
2 professional you've been dealing with for years that you've
3 got to file tax returns, and then you decide, No, I don't like
4 that advice.

5 And you heard from Carmen Baker. When she heard
6 defendant Kahn's seminar out in California at Wesley Snipes'
7 house, she immediately thought it was a scam. When she asked
8 questions and told Kahn and Snipes that she didn't believe
9 what she was hearing, what was defendant Snipes' reaction?
10 Kicked her out of the meeting, took her notes, took the
11 materials that had been handed out.

12 Then you heard how she described that when she was
13 back in New York Wesley Snipes came into the offices of
14 Amen RA, pulled her aside and had a conversation with her.
15 And Wesley Snipes told her, "In order for me to make you rich,
16 Carmen, you've got to play along with the game." That's what
17 Carmen Baker testified.

18 What other evidence of willfulness is there? Well,
19 Carmen Baker testified -- and Revenue Agent Stich's analysis
20 supports -- that there was no separation of business and
21 personal income -- I'm sorry -- business and personal expenses
22 at Amen RA or Kimberlyte after Amen RA -- after he separated
23 from Starr & Company.

24 Wesley Snipes treated his corporations like they
25 were his personal piggy banks. They paid all kinds of

1 personal expenses through his corporations. He even went so
2 far as to buy a four or five million dollar house with funds
3 from his corporation.

4 What else? Well, this non filing position based on
5 the 861 theory -- even when you read some of the gibberish
6 that's in these documents describing the 861 theory, the
7 people that are advocating this 861 position, they say that
8 it's -- it regards individuals. Well, Kimberlyte Production
9 Services, a C-corporation, never filed income tax returns.
10 Amen RA, an S-corporation, after Wesley Snipes left Starr &
11 Company, didn't file any tax returns anymore. So what's the
12 reason for not filing corporate tax returns? It can't be
13 based on the 861 argument.

14 And then there's a number of exhibits that you've
15 seen before, notices from the IRS regarding Wesley Snipes'
16 1999 tax returns not being filed. The IRS asked him four
17 different times in notices dated May 19, 2001; September 3,
18 2001; October 4 -- I'm sorry -- October 1, 2001; and
19 October 29, 2001 -- Government's Exhibits 87-19, 87-25, 87-26,
20 and 87-29 -- four notices regarding his 1999 income tax -- we
21 haven't received it. Please file it. He doesn't. Again,
22 there's the bills of exchange.

23 If he doesn't have to file tax returns and pay his
24 taxes, why send in bills of exchange purporting to pay your
25 tax liability?

1 You recall those filing statements in affidavit form
2 that were sent to the Fraudulent Return Program? Shauna
3 Henline testified about them. When you go back in the jury
4 room, look at them. You've seen them before. They list the
5 very Internal Revenue Code sections that require you to file
6 an income tax return. They repeatedly reference Form 1040.
7 Wesley Snipes knew what a 1040 was. Those documents refer to
8 the law that obligates you to file an income tax return. He
9 knew what was required; he just didn't want to do it.

10 And then in 2004 -- if we could show Government's
11 Exhibit 137-2? -- Shauna Henline testified about this
12 frivolous correspondence response. Remember, her computer
13 records showed that this response letter -- although this is
14 just a generic form -- that a response letter just like this
15 was sent out to Wesley Snipes. She testified that it would
16 have gone to Wesley Snipes as well as any powers of attorney.

17 In 2004, the evidence shows that this letter was
18 sent out to him telling him in no uncertain terms, "This stuff
19 you're sending in, it's frivolous." Yet he persists in not
20 filing tax returns.

21 Now let's discuss venue with regard to Counts Three
22 through Eight, which the defense has made a big deal about in
23 their opening and throughout this case. The defense
24 apparently believes that venue for these counts, the failure
25 to file counts, is not proper in the Middle District of

1 Florida because defendant Snipes had houses in California and
2 New Jersey and used some other addresses besides the
3 Windermere, Florida, address during the years about 2000
4 through 2005.

5 Now, it's certainly true that Wesley Snipes had
6 other houses in other places -- California, New Jersey --
7 besides just the house in Windermere, Florida. So at least
8 some of the failure to file counts, perhaps, could have been
9 brought in other jurisdictions. But the issue isn't whether
10 the charges could have been brought somewhere else possibly;
11 it's whether the charges are appropriate and proper here in
12 the Middle District of Florida. Just because they could have
13 been brought somewhere else doesn't mean that venue is
14 improper here.

15 The simple fact is that if somebody has multiple
16 residences, there could be multiple places where failure to
17 file counts could be brought.

18 In this case the United States chose to bring the
19 failure to file counts with the other counts here in the
20 Middle District of Florida. Now, no doubt if the
21 United States had brought the failure to file counts in some
22 other jurisdiction, they would have complained about that.

23 Let's review the evidence showing that venue is
24 proper in the Middle District of Florida, in Orange County.

25 If we could go to Government's Exhibit 1-2 and 1-3?

1 You'll recall near the beginning of the case that
2 these are certified records from the Florida Department of
3 Motor Vehicles showing Wesley Snipes' driver's license
4 records, and what these things show is that he listed on his
5 driver's license the address of 9711 Deacon Court in
6 Windermere, Florida, as his address since at least 1997, and
7 that as recently as 2004 he renews his Florida driver's
8 license with that same address. That same driver's license is
9 good through 2010.

10 So that's what he puts on his driver's license,
11 2004, he has an opportunity -- if he's living somewhere else,
12 he could have gotten his driver's license in New Jersey,
13 California. But what does he do? He renews it in Florida.

14 Then you heard about the Blade contracts -- I won't
15 show them right now -- Government's Exhibits 71-1 and 71-3.
16 You'll recall that each of those contracts were worth about
17 \$10 million plus to Wesley Snipes. On each of those
18 contracts, what's the address that he uses for \$10 million
19 contracts? 9711 Deacon Court, Windermere, Florida.

20 Then if we could show Government's Exhibit 58? This
21 is the power of attorney form dated March 2004. If we could
22 go to the top? What does Wesley Snipes put as his address
23 when he's corresponding with the IRS? "Here's my residence,
24 IRS: 9711 Deacon Court, Windermere, Florida," in 2004.

25 And if we could show Government's Exhibit 2-5? This

1 is the contract -- I'm sorry, not the contract -- this is the
2 amended complaint that Wesley Snipes and that Swiss entity
3 filed against New Line Cinema. He's suing New Line Cinema and
4 other people. And this is filed in August of 2005. And you
5 saw, when we referred back about 50 pages or so, there's a
6 signature section, you recall Wesley Snipes signs it under
7 penalty of perjury. He says, I know and understand everything
8 in this document. I'm signing it under penalties of perjury.
9 It's filed in U.S. District Court in California under penalty
10 of perjury.

11 What does he state down there in one of the first
12 sections? "Plaintiff Snipes is a natural person and is a
13 citizen and resident of the state of Florida."

14 Ladies and gentlemen, to believe that defendant
15 Snipes' residence is not in Windermere, that he's not a
16 resident of Florida, you have to believe that Wesley Snipes is
17 a liar and that he perjured himself in this document filed in
18 Federal Court. It's that simple. Either his residence is as
19 it says in this document, or he perjured himself. He can't
20 have it both ways.

21 And then there's the Orange County land records,
22 Government's Exhibits 2-1 through 2-4. In May of 2005
23 defendant Snipes publicly declares through four documents that
24 you saw and that are in evidence that his Windermere house is
25 his predominant and principal house through multiple filings.

1 The Court will instruct you that a person's legal
2 residence is the permanent, fixed place of abode which one
3 intends to be his residence and to return to it despite
4 temporary residences elsewhere or absences. That's the legal
5 definition of "legal residence" that the Court will instruct
6 you on.

7 If we could look at Government's Exhibit 2-4? If we
8 look down at the bottom, please? This is filed with regard to
9 9711 Deacon Court, Windermere. If we could blow up the last
10 paragraph down at the bottom, please?

11 What does he say in this document filed in the
12 Orange County land records -- and you'll see it just above --
13 9711 Deacon Court, Windermere, Florida, which house I
14 recognize and intend to have and maintain as my permanent
15 home, port and natural de jure domicile. And if I have or
16 obtain another house, or houses, in some other national, state
17 or states, I hereby declare that the above-described house in
18 the Florida republic constitutes my predominant and principal
19 house and that I intend to continue in it permanently as such.

20 He couldn't have expressed any clearer that
21 Windermere, Florida, was his legal residence, ladies and
22 gentlemen.

23 Now, the Court will instruct you that the burden of
24 proof regarding venue is a less stringent standard. It's
25 proof by a preponderance of the evidence, not beyond a

1 reasonable doubt. The evidence we just reviewed is way more
2 than sufficient to show that Wesley Snipes' legal residence
3 was in Orange County.

4 So, indeed, the evidence shows that we've not only
5 met our burden but -- but venue for the failure to file counts
6 is not only proper in the Middle District of Florida, but it's
7 the most appropriate place that the charges could have been
8 brought.

9 Now, one of the tactics employed by experienced
10 defense attorneys is to try to put someone else on trial other
11 than their client, and that's what the lawyers for defendant
12 Snipes did in their opening statement and throughout this
13 case. They have tried to put the IRS on trial. Ladies and
14 gentlemen, the IRS isn't on trial; the defendants are.

15 When you retire for your deliberations, the Judge is
16 going to give you instructions, and he's also going to give
17 you verdict forms. There isn't going to be a verdict form for
18 the IRS.

19 Now, the burden of proof, as we've said before, is
20 on the United States. It remains with the United States. The
21 defendants in this case do not need to prove anything to you.
22 But the lawyers for defendant Snipes made a number of claims
23 in their opening statement and throughout the case about what
24 the evidence would show, so it's important to examine just
25 what the evidence really does show.

1 Mr. Meachum, at the beginning of his oral
2 argument -- the opening statement, said that defendant Snipes
3 has never, ever been a tax protester. Well, there's a
4 frivolous correspondence that we've talked about in 2004 that
5 went to the fraud -- fraudulent -- fraudulent -- FRP section
6 with Shauna Henline. There was the correspondence challenging
7 Special Agent Graf's authority to investigate criminal
8 activity.

9 And then there's Government's Exhibit 106. If we
10 could show that, please? Mr. Meachum claims defendant Snipes
11 has never, ever been a tax protester. If we could go to Bates
12 Number WS-16361? And if we could focus on -- go down, please,
13 to the paragraph that begins, "My question is this."

14 My question at this point is: Does the IRS help non
15 taxpayers, such as myself, in not complying with the laws they
16 are clearly not subject to and provide them with equal
17 protection of the laws?

18 If we could go to WS-16364? If we could look at
19 Paragraph 15 near the top?

20 What does defendant Snipes say in here? The reason
21 for filing this is to provide a, quote, jury entertainment
22 package, end quote, that is part of my IRS administrative
23 record.

24 Can we go down to the bottom, please? On the very
25 bottom part, what does he say? Warning: Pursuit of such a

1 high-profile target will open the door to your increased
2 collateral risk resulting from the exposure of substantial
3 substantive material issues in dispute and governmental
4 illegal activities contained in the administrative record but
5 hidden from the general public and/or the jury. Does that
6 sound like tax protester rhetoric to you?

7 If we could go to WS-16369, at the very top -- very
8 top paragraph? It's a little hard to read, but it starts off:
9 You cannot find a qualified judge. All judges must be
10 physically present on territory under the exclusive
11 territorial jurisdiction of the United States. And if they do
12 not meet the qualifications, they are guilty of a high
13 misdemeanor and not only must recuse themselves from the case
14 but can also become de facto officers whose judgments are void
15 when properly challenged. He's challenging the authority of
16 Federal Judges. I could go on, but I won't. You'll have the
17 document. You can review it if you want.

18 Mr. Meachum said that Mr. Snipes has never, ever
19 been a cheat. Well, Tom Coudriet testified that defendant
20 Snipes put his Florida house in his corporation name -- and
21 you'll see it's only -- it's only in his name for about a
22 year -- to hide it from his ex-wife because they were going
23 through a divorce.

24 Carmen Baker testified that defendant Snipes got a
25 \$500,000 loan from William Morris Company based on the false

1 representation that it was for business purposes when, in
2 fact, it was to help pay for the house that he was going to
3 live in in New Jersey.

4 It was said that Mr. Snipes asked questions because
5 he wanted to do the right thing. With his millions of dollars
6 in income, why didn't he just hire legitimate lawyers and CPAs
7 rather than tax protesters?

8 You were told in opening statements a lot of things
9 about his background, including that defendant Snipes was
10 almost killed in 9-11. We heard no evidence of any of that.

11 You were told that this case was about breaches,
12 broken confidences and unethical practices. There was no
13 evidence of that.

14 Mr. Bernhoft said that Mr. Snipes was intending to
15 comply with the law by asking the IRS questions. If he wanted
16 to comply with the law, all he had to do was hire an
17 accountant to prepare his tax returns, file his tax returns,
18 and pay his taxes.

19 It was said that defendant Snipes supposedly wanted
20 to go through the civil tax process. You have heard a lot
21 about that especially during the case, questions about why
22 weren't the civil tax processes followed. Again, all he had
23 to do was file his tax returns, and then he could have gone
24 through the civil tax process.

25 But when you file a false claim for refund and you

1 stop paying taxes, you stop filing your tax returns
2 altogether, yeah, you're going to run the risk of criminal
3 investigation, and the IRS civil process doesn't apply.

4 Mr. Bernhoft said that Mr. Snipes, quote, wasn't
5 hiding, end quote. If that was the case, why didn't he comply
6 with the subpoenas to produce records for Amen RA if he had
7 nothing to hide?

8 It was said that Mr. Snipes, quote, wasn't debating.
9 Just look at all that frivolous correspondence in the record
10 and you say -- tell me if he wasn't debating the IRS.

11 It was said that Mr. Snipes stands ready to file and
12 pay now. So why hasn't he by now?

13 You heard about venue, and Mr. Bernhoft represented
14 in opening statement that the evidence would show that Wesley
15 Snipes never lived in Windermere and that his grandmother
16 lived at the house in Windermere. There's no evidence of
17 that.

18 And even if she did live at his house for some
19 point, it doesn't change the fact, as we just saw very
20 clearly, it was his legally declared residence, his legally
21 declared domicile.

22 Mr. Bernhoft mentioned a number of times in opening
23 statement that Mr. Snipes was not part of some secret
24 conspiracy. That's not what's alleged in the Indictment, and
25 that's not what the Court will instruct you. You won't hear

1 the word "secret." It's not a requirement of a conspiracy
2 that it be done in secret.

3 You heard a number of allegations in opening and
4 throughout the case about Starr & Company. Ken Starr clearly
5 refuted all of those baseless allegations. There's no
6 evidence to support any of this mud slinging.

7 Mr. Bernhoft claimed that Starr & Company didn't
8 fire Snipes. Ken Starr's testimony was clear and believable.
9 You can take a look at the letter that he sent to Mr. Snipes
10 the next day.

11 Now, in opening statement Mr. Bernhoft claimed that
12 defendant Snipes relied on the advice of attorneys and CPAs at
13 American Rights Litigators. The Court will instruct you that
14 good-faith reliance on the advice of an attorney can negate
15 willfulness, but the Court will instruct you that there are
16 several requirements for someone to have acted in good faith
17 in this way. The first requirement is the defendant consulted
18 in good faith with an attorney who the defendant considered
19 competent. So the first point to be made is that only
20 attorneys count, not CPAs or other people.

21 No evidence -- there's no evidence that defendant
22 Snipes actually consulted with an attorney, merely that he
23 signed up with American Rights Litigators and had some of
24 their attorneys send letters to the IRS as a power of attorney
25 challenging the IRS, but no evidence of actual consultations

1 with an attorney.

2 And there's no evidence as to the competence of the
3 American Rights Litigators attorneys or that defendant Snipes
4 considered them to be competent.

5 The second requirement for this good-faith reliance
6 is that defendant made a full and accurate report to the
7 attorney of all material facts. And I think you've seen in
8 evidence a couple of times this letter where defendant Snipes
9 asserts that he sent all his books and records to American
10 Rights Litigators. You heard, though, that the agents
11 thoroughly searched all of the records found at the offices of
12 American Rights Litigators, and they didn't find any books or
13 records pertaining to Mr. Snipes for the years 1999 and
14 beyond.

15 Now, you can't have full and accurate reporting
16 concerning tax matters without providing books and records.

17 And then the third requirement is the defendant
18 acted strictly in accordance with the advice given by the
19 attorney. There's been no evidence as to whether defendant
20 Snipes strictly followed any advice he might have been given
21 or not. The evidence simply does not support any kind of
22 good-faith reliance on the advice of an attorney by
23 Mr. Snipes.

24 Mr. Bernhoft said that the advisors -- use his term
25 "advisors" -- at American Rights Litigators opened up the tax

1 books for defendant Snipes for the first time in his life, and
2 they explained the law to him. Strangely, though,
3 Mr. Bernhoft also said that Snipes filled out that affidavit
4 of incompetence because he didn't understand the law. That
5 seems contradictory, doesn't it?

6 Both in opening and during the trial the defense has
7 tried to make a point about defendant Snipes requesting a
8 determination letter. This determination letter wasn't about
9 some complicated business transaction or some arcane tax issue
10 that he genuinely needed an answer to. It sought a
11 determination about whether he's a taxpayer or not. This is
12 clearly a frivolous request. You saw the evidence that came
13 in. The IRS responded to that request, told him, "We don't
14 issue determination letters about frivolous stuff like that."

15 Again, in opening and during the trial the defense
16 made a point about this MFR-01 code that's in his master file,
17 tried to insinuate that Mr. Snipes believed this code to mean
18 that, ah-ha, because this code is in his master file, he
19 doesn't have to file a tax return. Well, several IRS
20 witnesses explained that such a code is for internal purposes
21 at the IRS, and it simply means that in the past somebody has
22 used a paid preparer or has filed electronically or for some
23 other reason they are just designated as somebody that the IRS
24 doesn't have to mail out a package to, save the government and
25 the taxpayers money and postage in producing all these forms.

1 They don't have to send them out to the taxpayer. That's all
2 that means.

3 There was also mention of the IRS shredding some of
4 the frivolous correspondence that defendant Snipes sent in in
5 2004. Well, Shauna Henline explained that this sometimes
6 happened when there's duplicative correspondence that they get
7 in the fraud referral program. If somebody has made some
8 frivolous argument or claim and they keep getting more and
9 more of the same thing, sometimes they shred it. There's
10 nothing sinister going on here.

11 You saw how many original documents there were with
12 the fraud referral program. The IRS wasn't trying to get rid
13 of this stuff.

14 All of this stuff I just mentioned is just an
15 attempt on the part of defendant Snipes' attorneys to turn
16 your attention away from the defendant.

17 This case is not about what the IRS did or didn't
18 do; it's about what the defendants did.

19 Ladies and gentlemen, I respectfully submit to you
20 that the evidence in this case is overwhelming. The evidence
21 in this case proves beyond a reasonable doubt that defendant
22 Snipes, Kahn and Rosile filed a false, fraudulent claim for
23 refund based on defendant Snipes' 1997 taxes and conspired
24 together to defraud the IRS.

25 The evidence also proves beyond a reasonable doubt

1 that defendant Snipes willfully failed to file income tax
2 returns for the years 1999 through 2004 despite clearly having
3 an obligation to do so.

4 Ladies and gentlemen, nobody likes paying taxes -- I
5 mean, nobody -- but paying taxes is the price we pay to live
6 in a civilized society. And it's the law, and nobody is above
7 the law. That's what this case is really all about: three
8 men who believe that they are above the law when it comes to
9 taxes. They are not above the law. Tell them that. Find
10 them guilty as charged. Thank you.

11 THE COURT: All right. Members of the jury, that
12 brings us to the middle of the morning. Let's pause for a
13 midmorning recess.

14 (A recess was taken.)

15 (Jury present.)

16 THE COURT: Thank you. Be seated, please, members
17 of the jury.

18 As stated previously, I will, in just a moment,
19 recognize Mr. Barnes, who will now speak to you and make final
20 argument or summation on behalf of his client, Mr. Snipes.

21 Mr. Barnes' allotted time may well take us into what
22 would usually have been our lunch period during the course of
23 the trial, so don't be concerned about that. We will, of
24 course, pause for lunch when he has finished his remarks and
25 we should listen attentively, as I know you will.

1 Mr. Barnes, you may address the jury.

2 MR. BARNES: Thank you, Judge.

3 Good morning. There is one issue in this case. And
4 I heard some talk about defense lawyer tactics.

5 There is also occasionally government lawyer
6 tactics. One of those is to only read some of the jury
7 instructions that you will receive from the Judge and not all
8 of the jury instructions that you will receive from the Judge.

9 The most important one you will receive from the
10 Judge will be what is a conspiracy to defraud? It is a
11 conspiracy to defraud by deceitful means; by deceit, trickery
12 or craft.

13 Then you will see it talks about the fraudulent
14 claim, Count Two. What is that about? Also, it's about
15 fraudulent intent, intent to deceive, a specific bad purpose
16 to disobey the law.

17 Then you will see instructions on what is called
18 willfulness and on good faith. And, again, you will see
19 instructions about specific bad purpose to break the law,
20 specific bad purpose to disobey or disregard the law, and
21 whether or not Mr. Snipes acted with a specific intent to
22 deceive the IRS.

23 That's what is at issue here: Did Wesley Snipes act
24 with a specific intent to deceive the IRS?

25 Now, the government prosecutor mentioned that the

1 word "secret" is not in with the word "conspiracy" in the
2 Judge's instructions. That's true.

3 There are some other words that are also not in the
4 Judge's instructions. "Frivolous" is not listed as a crime.
5 Frivolous is not fraud. Being a protester is not a crime.
6 This is, after all, still the United States of America.

7 Not only that, you will see that disagreement with
8 the IRS is not a crime. You will see that disagreement with
9 the IRS is not deception of the IRS, is not fraud of the IRS.

10 You will see that the -- all of the jury
11 instructions are clear, that this case is about Wesley Snipes'
12 criminal intent: Did he act with a specific bad purpose to
13 disobey and disregard the law? Did he act with an intent to
14 deceive? That's the issue.

15 The issue is not whether or not he disagreed with
16 the IRS or disliked the IRS or sent documents they consider
17 frivolous or silly. There is no conspiracy of frivolity or
18 silliness that's being alleged here. What's being alleged is
19 a conspiracy to deceive, conspiracy to defraud, fraudulent
20 intent, bad purpose.

21 What did Wesley Snipes actually do? And I heard the
22 government talk about: How does the IRS's reaction or the
23 IRS's failure to do almost any of their basic tasks in this
24 case on the civil part of the process, how does that relate to
25 Mr. Snipes' intent?

1 It is because he thought he was engaging the IRS,
2 and going through the process and procedures to get answers
3 and resolution from the IRS, to see whether his tax position
4 or the tax position that he was advised or given by attorneys
5 or CPA's or other individuals was correct.

6 The fact that they didn't follow those procedures is
7 significant and relates to his criminal intent.

8 Just ask some basic questions -- and I agree with
9 the government prosecutor as to one thing: Use your common
10 sense. Tax frauds and people out to deceive the IRS do not
11 write lots and lots and lots and lots of letters to the IRS,
12 telling them they are not paying taxes, telling them they are
13 not filing returns, and telling them why.

14 Tax frauds and people out to deceive the IRS in a
15 conspiracy to deceive the IRS or to defraud the IRS do not ask
16 for conferences, appeals and hearings in a public court.

17 Tax frauds, people out to deceive the IRS, people
18 out to trick the IRS, people out to take something from the
19 IRS that they think is the IRS's, is not theirs, do not ask to
20 be audited.

21 Probably the most unusual thing that Mr. Snipes did
22 during these entire proceedings -- and there are various
23 things he did that you may consider bizarre or crazy or
24 politically wrong. That's not what he is on trial for. He
25 was asking to be audited by the IRS.

1 Now, throughout the process -- the prosecutor didn't
2 distinguish between the civil stage and the criminal stage.
3 Remember during the first part of this process Mr. Snipes is
4 in the civil stage, where he has civil rights and civil
5 remedies. He openly, publicly and honestly engages the IRS
6 again and again and again. He asks them: What law makes me
7 liable for the tax? What form am I legally obligated to file?
8 Do you owe me money or do I owe you money? Routinely and
9 repeatedly. He even, ultimately, asked to be audited.

10 Then they come and knock on his door just about two
11 years into this process, and say: You are under criminal
12 investigation. All of your civil rights are now gone. All of
13 your civil remedies are now gone. Now what you have is you
14 have criminal rights.

15 What are those rights? Right not to produce any
16 documents; right to stay silent; right not to give financial
17 information to the IRS. What Mr. Snipes does on both sides
18 and stages of this process is try to protect his rights the
19 best he can.

20 Now, what is Mr. Snipes not doing? It was talked
21 about how Mr. Kahn fled. Mr. Snipes doesn't flee. He stays
22 right here in the United States of America. He doesn't try to
23 flee. He doesn't try to deceive. Instead, he continues to
24 try to engage.

25 The one letter the government likes to talk about is

1 that letter from December 2006 in which you see some anger and
2 some frustration, some irritation, and a bunch of ideas. Some
3 of the ideas are credible, some of them are not.

4 Again, when is that letter sent? That is after this
5 case is already over, after the indictment has already been
6 brought. Did he say some things that he regretted? Of course
7 he did, as any American would.

8 But why did he feel that frustration or anger? And
9 if saying something out of frustration or anger was a crime,
10 we would all spend some time at the local jail or Federal
11 prison. It's not.

12 What is a crime is a conspiracy to defraud, a
13 conspiracy to deceive; filing a claim you believe will deceive
14 the IRS that's false and fraudulent; acting willfully with a
15 specific bad purpose and criminal intent to deceive the IRS.

16 Let's -- you know, the -- as you walk in every day
17 downstairs, at the entryway and when you exit every day, you
18 see on the top right-hand corner by the security station
19 something called "Charters of Freedom." And they include
20 documents like the Declaration of Independence and the United
21 States Constitution.

22 As someone who grew up in a small town south, I
23 appreciate this courthouse and enjoy seeing that as I walk in
24 and walk out.

25 Now, why is it significant and why does it matter?

1 One, those documents are documents about cherished rights,
2 including the right to trial by jury of 12 people to decide
3 your criminal intent and your criminal activity; whether what
4 you did you thought was criminal when you did it; whether when
5 you did it, you thought it was illegal to do it; whether when
6 you did it, you were acting to deceive someone and defraud
7 someone.

8 Remember disagreement is not deception; frivolous is
9 not fraud.

10 What else is in those Charters of Freedom? Or who
11 created those Charters of Freedom? It was a bunch of people
12 in a little, small brick, red brick building in Philadelphia,
13 Pennsylvania back at the end of the 18th century, people
14 around talking about ideas at the time that were considered
15 sort of kooky, a little bit crazy about taxes, about law,
16 about rights, rights today we teach all of our children in
17 America in our civics lessons in our educational classrooms
18 for our children across the country.

19 So remember that. And so when you read the Judge's
20 instructions, you may not like or agree with some of them, but
21 I respect the fact that you took an oath to follow them.

22 And if you wonder why would did those instructions
23 say those things, why is it that mere failure to file a return
24 is not a crime; why is it that mere failure to not pay tax is
25 not a crime; why is there this requirement to have an intent

1 to deceive someone, an intent to defraud someone, an intent to
2 lie to someone, an intent to trick someone, it's because of
3 those ancient rights and liberties that protected ideas that
4 were considered unfavorable or unpopular in the past.

5 So let's go to some of what the jury instructions
6 actually say. This is something you have heard the Judge say
7 over and over throughout the case, but I want to repeat it
8 here.

9 The indictment or formal charge against any
10 defendant is not evidence of guilt. Indeed, every defendant
11 is presumed by law to be innocent. The law does not require a
12 defendant to prove innocence or to produce any evidence at
13 all. And if a defendant elects not to testify, you cannot
14 consider that in any way in your deliberations. The
15 government has the burden of proving the defendant guilty
16 beyond a reasonable doubt; and if it fails to do so, you must
17 find the defendant not guilty.

18 Today is election day in the State of Florida, but
19 the place where our vote really matters most is when we sit as
20 individual jurors. So when you deliberate and you make a
21 decision and you find the government has not met that burden,
22 then assert your rights and protect your rights, and do so
23 accordingly.

24 Now, what is this "beyond a reasonable doubt"
25 standard. Proof beyond a reasonable doubt, therefore, is

1 proof of such a convincing character that you would be willing
2 to rely and act upon it without hesitation in the most
3 important of your own affairs. If you are convinced that the
4 defendant has been proved guilty beyond a reasonable doubt,
5 say so. If you are not so convinced, say so.

6 What's a good example of what does that mean, before
7 we can point the finger of guilt and call a man a criminal for
8 his intent and his actions?

9 There is a classic Alfred Hitchcock story in which a
10 man comes home and he tells his buddy he's been beaten up
11 badly by some people down the street. His buddy is enraged.
12 His buddy says: Let's get him back. So he hops in the car
13 and he runs out to try to track him down.

14 And his buddy, who is still upset, still
15 traumatized, says: Oh, yeah, that's him right there. That's
16 the guy who did it. So his buddy jumps out, goes down, beats
17 him up, gets back in the car, drives a little further.

18 Then all of sudden, his buddy says: Oh, no, no, no,
19 it wasn't that guy. It's that guy, it's that guy. That's the
20 one. So his buddy jumps out again, chases him down and beats
21 him up, and gets back in the car. He is going to protect his
22 friend, protect his pal.

23 But then he drives a little further, and his buddy
24 says: Oh, no, it's that guy. Oh, no, it's that guy. Oh, no,
25 it's that guy. And he realizes he beat up innocent people.

1 Beyond a reasonable doubt is knowing without
2 hesitation that you can point the finger at a man and call him
3 a criminal. That's what beyond a reasonable doubt is.

4 Now let's go to what some of the elements in the
5 charges are in this case. Now, this was -- you heard talk
6 about an unlawful plan, what the conspiracy was. But there
7 was a part of it that the government left out.

8 Title 18 United States Code, Section 371, makes it a
9 Federal crime or offense for anyone to conspire or to agree
10 with someone else to defraud the United States or any of its
11 agencies.

12 To defraud the United States means to interfere with
13 or obstruct one of its lawful government functions by deceit,
14 craft or trickery.

15 Disagreement with the IRS is not a conspiracy to
16 defraud. Resisting the IRS is not a conspiracy to defraud.
17 Not producing documents when you are told you have a right not
18 to produce those documents once you are under criminal
19 investigation is not a conspiracy to defraud.

20 What you are being asked is whether or not
21 Mr. Snipes agreed and criminally intended and joined others in
22 an unlawful plan to use deceit, craft or trickery in the way
23 in which he engaged the IRS.

24 Now let's go to the second count. Here you will see
25 certain words again and again, and they are called false,

1 fraud, false, fraud, false, fraud, fraudulent intent.

2 The government claims that when Mr. Snipes signed
3 his 1997 refund claim that he knew that what he was saying was
4 untrue as a factual matter. Remember a legal theory is not a
5 fact.

6 Did he, in fact, disclose the fact of what his legal
7 basis of his position was? Yes, he did. And we will go
8 through each aspect of that.

9 The actual return shows that, first, he put -- it
10 will say in the income section, it will say twice, it will
11 say: If you are making changes, explain the changes in this
12 other section. In that other section, it explains the
13 changes. It says pursuant to this 861 theory.

14 Not only that, you would go to the next page, and
15 page three says: 8275R4 -- you saw it over and over again
16 throughout the trial -- we know that our position is contrary
17 to your interpretation of these regulations. Full open
18 disclosure. No deceit, no false, no fraud. Fully disclosed
19 why and how and what position he was asserting. There was no
20 material fact that was lied about.

21 But he goes another step further. He attaches
22 another page in which there is a whole long letter explaining
23 the position, and asking for a court hearing if the IRS
24 disagrees.

25 Next there is even more attachments, which include

1 regulations and the actual sections being referenced.

2 Finally the government suggests that somehow it is
3 an additional act of fraud for Mr. Snipes to go in and say:
4 Look, I don't know if my accountant is right or not. I'm not
5 sure. They tell me they are right. They show me refund
6 checks that show me they are right. They show me regulations
7 and statutes that they say mean what this supposedly means.
8 But I'm not sure, so I am going to say I can't sign under
9 penalty of perjury. I can't certify for certain that it's
10 true or accurate.

11 They say that is an additional act of fraud and an
12 intent to deceive the IRS? Frivolous? Fine. Frivolous isn't
13 fraud.

14 Now, let's go to the issue of willfulness and good
15 faith. The word "willfully," as that term is used in the
16 indictment or in these instructions, means that the act was
17 committed voluntarily and purposely with the specific intent
18 to do something the law forbids; that is with bad purpose
19 either to disobey or disregard the law.

20 You also heard talk of good faith. Let's go to that
21 part of the Judge's instructions.

22 Good faith is a complete defense to the charges in
23 the indictment since good faith on the part of the defendant
24 is inconsistent with intent to defraud or willfulness, which
25 is an essential part of all the charges.

1 The burden of proof is not on the defendant to prove
2 good faith. Of course, since the defendant has no burden to
3 prove anything, the government must establish beyond a
4 reasonable doubt that the defendant acted with specific intent
5 to defraud or willfulness as charged in the indictment.

6 Similarly, with regard to the issue of fraudulent
7 intent, one who expresses an honestly held opinion or an
8 honestly formed belief is not chargeable with fraudulent
9 intent, even though the opinion is erroneous or the belief is
10 mistaken. And, similarly, evidence which establishes only
11 that a person made a mistake in judgment or an error in
12 management or was careless does not establish fraudulent
13 intent.

14 On the other hand, an honest belief on the part of
15 the Defendant that a particular transaction was sound and
16 would ultimately succeed would not, in and of itself,
17 constitute good faith as that term is used in these
18 instructions if, in carrying out that venture, the defendant
19 made -- knowingly made false, fraudulent representations to
20 others with a specific intent to deceive them.

21 That's what this case was about: In Wesley Snipes'
22 letters and correspondence to the IRS, did he do so with the
23 specific intent to deceive them? When he asked for an audit,
24 was he doing it with the specific intent to deceive them?
25 When he asked for a determination letter to explain what his

1 tax status was, was that with a specific intent to deceive
2 them? When he asked for answers and conferences and appeals
3 and hearings, was that -- in public courts, in public
4 proceedings, was that with a specific intent to deceive them?

5 That's how the IRS procedures matter. That's how
6 the IRS protocols matter. That's why what the IRS did or
7 didn't do mattered, because it matters to Mr. Snipes' intent.
8 It is not a tactic. It goes right to the heart and soul of
9 this case.

10 And let's talk briefly about what some of those
11 procedures were as it was explained to Mr. Snipes. You heard
12 about Publication No. 1, "Your Rights as a Taxpayer." It was
13 the one many IRS employees had either just skimmed or some of
14 them didn't even know about it.

15 Why does that matter? Because it goes to explaining
16 what really happened here. Mr. Snipes is trying to engage the
17 civil system. He has unusual beliefs, odd beliefs, different
18 beliefs, but that's okay. Frankly, that's American.

19 What's unusual is that Mr. Snipes is asking for
20 audits, asking for appeals and hearings and conferences, and
21 directly telling the IRS: I'm not paying tax, I'm not filing
22 returns, and here's why, and here's the answers I want, and
23 here is the procedures I want.

24 So let's look at what those procedures were. The
25 IRS mission, this is what Mr. Snipes is told: Provide

1 America's taxpayers top-quality service by helping them
2 understand and meet their tax responsibilities and by applying
3 the tax law with integrity and fairness to all.

4 He assumes that if he is wrong, the IRS will be very
5 anxious to tell him he is wrong, to say: Here is the law that
6 requires you to file and pay.

7 Now, you heard some testimony finally at the end
8 that that law was 6012. Well, actually it's six-thousand and
9 twelve. "6012" just sounds better. So in the middle of that
10 big book over there, it's somewhere in there.

11 Now, you heard the prosecutors say: How could
12 Mr. Snipes say that they showed him some law; and after he
13 looked at it, he got confused?

14 If you tried to read this law, it's the quickest and
15 easiest way to go crazy that exists. This is a -- just ask
16 all the IRS witnesses. None of them had read the law. Were
17 they all lying? Were they all committing perjury?

18 How is filing an affidavit with the IRS, telling
19 them: I don't understand what all of this means, is an overt
20 act of conspiracy to defraud and deceive.

21 What else does the IRS tell Mr. Snipes? They say:
22 You have the right to know why we are asking you for
23 information, how we will use it, and what happens if you do
24 not provide requested information.

25 Remember all those computerized letters he got?

1 What do they say on them over and over again? Do they say you
2 have to file? There is some talk that identified a statute?

3 They don't identify any statute. They say: If you
4 are required to file, send it in. If you are not, let us
5 know.

6 Each time, Mr. Snipes' lawyers respond. They say:
7 We don't believe he is. Here is why. Here is the declaration
8 letter -- the determination letter we are looking for.

9 And then the IRS says -- sends another computerized
10 notice, saying: We haven't heard from you. Why haven't we
11 heard from you? They say: Well, yeah, we responded last time
12 and we are responding again.

13 And then they send another notice, saying: Well,
14 you never responded, so we are going to do backup withholding
15 and take 30 percent of all the money in certain accounts.

16 That was not an engagement which gave Mr. Snipes the
17 answers he was seeking. By no means is that evidence of a
18 criminal intent to deceive the IRS.

19 The IRS knew from 1999, back in 2000, 2001 that he
20 wasn't filing returns, that he wasn't paying tax, and why and
21 how. That's why they were sending those notices. They just
22 decided not to follow their regular procedures and give him
23 the same rights that they promise every American.

24 And what does it say about appeals and judicial
25 review? Does it say disagreement is a crime? It says: If

1 you disagree with us about the amount of your tax liability or
2 certain collection actions, you have the right to ask the
3 appeals office to review your case. You may also ask a court
4 to review your case.

5 That's what Mr. Snipes asked for. How is that an
6 intent to deceive, a conspiracy to deceive, an act of
7 fraudulent intent, a willful act with bad purpose of specific
8 criminal intent?

9 They also say: You can request an audit/
10 examination by interview. If we notify you that we will
11 conduct your examination through a personal interview or you
12 request such an interview, you have the right to ask that the
13 examination take place at a reasonable time and place that is
14 convenient for both you and the IRS.

15 That's what Mr. Snipes did while he is in the civil
16 part of the process. They refused him that opportunity. They
17 refused him that chance. The only time they issue summonses
18 and subpoenas for documents is when they plan to use it
19 against him in a criminal prosecution. And all he does is
20 assert the same rights that Special Agent Lalli told him he
21 had not to produce documents while he is under criminal
22 investigation.

23 There's some talk about why he hadn't filed and
24 paid. Ask Doug Rosile. After he was given the criminal
25 rights warning, he went and filed all back returns, paid all

1 tax. Yet he stands here today indicted, and that evidence is
2 being used against him. That's why he is in the Catch 22 that
3 Mr. Snipes is in.

4 You saw a flow chart that explained the various
5 procedures that Mr. Snipes expects to receive as this
6 progresses along in the civil part of the process.

7 And what does it say? It says you can agree and
8 arrange to pay. You can ask for a notice of deficiency so
9 that you can file a petition with tax court. You can pay the
10 tax and file a claim for refund.

11 He does variations of all of these things. He is
12 just following the IRS's procedures, protocols and forms to
13 try to get resolution of the questions that he has, to see
14 whether his position is correct or incorrect.

15 That's not an intent to deceive. That's not an
16 intent to defraud. That is not willful bad purpose, intent to
17 disregard or disobey the law. He is trying to follow the law.

18 And what does it say? You see all of these things
19 where it's okay to have -- correspondence starts here.
20 Disagreement with findings. Disagreement is okay. Then there
21 is an IRS response. It's okay to disagree with the response.
22 It talks about examination or inquiry of return. It is okay
23 to ask for an audit.

24 And it goes further. You can request an appeals
25 conference. If there's a disagreement with findings, you can

1 go further. Then there is a preliminary notice. And then
2 there's another appeals conference. They recognize that
3 disagreement will happen. And they are not saying that in any
4 way, just because it's frivolous or meritless or baseless or
5 happens to be dead wrong, that somehow it's fraudulent or
6 criminal or deceptive.

7 Then there is the refund procedures. Now, there was
8 talk about how a '96 refund claim was filed. We don't
9 actually have the '96 refund claim from the IRS. All we have
10 is what was in the ARL file. Why is that? What happened to
11 that '96 return?

12 The way the process is supposed to work is you file
13 a claim for refund, there is consideration by the IRS, then
14 there is a preliminary notice.

15 So that first letter that says: We think you are
16 frivolous and dumb, and that's it. Well, that's a preliminary
17 notice. He is now entitled to the next part of the process,
18 which is a request for an appeals conference. Then there is
19 the appeals conference. And then there is a formal notice of
20 disallowance, if you're still in disagreement. And if there's
21 still a disagreement, it can go on to U.S. district court.

22 His lawyer -- the letter that his lawyer sent back,
23 said the person who talked about it being frivolous, was: You
24 are not following due process here. He has a right to various
25 procedures and rules here. You are not being fair. And if

1 you keep violating his rights, then we're going to seek an
2 action about whether you are violating his rights and breaking
3 the rules.

4 That's not criminal. That's not deceptive. That's
5 not fraudulent. That is an attempt to assert his rights, seek
6 his rights, assert his remedies and seek his remedies.

7 You saw this letter many times throughout the trial
8 proceedings. This was the request made on Mr. Snipes' behalf
9 by Attorney Baxley for a determination letter as to whether or
10 not he was made liable for the individual income tax.

11 It is undisputed he never received an answer. It's
12 undisputed he never received an audit. It's undisputed he
13 never received a conference, a hearing or appeal. That is not
14 acting with intent to deceive with bad purpose or intent to
15 defraud.

16 Now, you heard the government talk about Mr. Starr's
17 testimony. What did Mr. Starr actually say? Mr. Starr said:
18 I disagree with you, Wes. We agree to disagree. I think you
19 are ridiculous, you're dumb, you're stupid.

20 If disagreement with Mr. Starr was a crime, his own
21 kid would probably be in prison. Something tells me a lot of
22 people disagree with Mr. Starr.

23 But what did he actually say in writing? Did he
24 say: This is criminal, Wes? He knew exactly what Wes was
25 going to do. He wasn't going to file, he was going to seek an

1 opinion letter, and he knew he was going to file 861 refund
2 claims.

3 Did he say: Don't do it. It's criminal,
4 fraudulent, it's bad? No, he didn't think there was any
5 problem with that.

6 Here is what he says. I asked him at the bottom --

7 THE COURT: Excuse me, Mr. Barnes. I am not sure
8 what that purports to be, but I don't think it is in evidence.

9 MR. BARNES: Oh, no. It is just a transcript, Your
10 Honor.

11 THE COURT: Well, the rule precludes that. The jury
12 will not be receiving transcripts, you will recall.

13 MR. BARNES: That's true.

14 THE COURT: You may argue the matter, but it should
15 not be displayed in that form.

16 MR. BARNES: I asked him whether he was familiar
17 with issuing letter opinions on legal matters or tax matters
18 for clients by the IRS.

19 He said that he, himself, refused to do that for any
20 client, but he said a letter opinion is normally, if there is
21 a certain state of facts that you want a private opinion with
22 the IRS, you give the statement of facts, you present it to
23 the IRS, and they will give you an opinion back as to whether
24 or not there is validity to the stand that you are taking.

25 Can we go to Government's Exhibit 69.

1 This is the letter he sends to Mr. Snipes on
2 June 29th. And look at what he will say at the bottom of the
3 letter.

4 And what he says is that -- he basically wishes him
5 good luck with his new strategy. He knows what his new
6 strategies are. He doesn't say: This is criminal. This is
7 fraudulent. You can't do this.

8 What does he say? He says he disagrees with his tax
9 positions, but then he says: I consider you a close friend
10 and hope --

11 Could we blow up that last bottom section.

12 -- and hope the course you have chosen proves to be
13 valid and effective.

14 He knows that Mr. Snipes is going to seek opinion
15 letters, not file returns or pay tax, and that he's going to
16 file 861 refund claims. He says: I hopes it works, but you
17 can find out from the IRS whether you're right or wrong,
18 whether I, Ken Starr, am right, or you, Wesley Snipes, are
19 wrong.

20 That's what he tells him. He doesn't tell him this
21 is criminal. This is fraudulent. This is with a bad purpose,
22 to specifically violate the law. That's what "willfulness"
23 is.

24 Also, remember the testimony of Mr. Canter. I asked
25 Mr. Canter: Did you tell Mr. Snipes that filing an 861 refund

1 claim would somehow be a conspiracy or fraudulent? No, not at
2 all.

3 That's what they actually said at the time. That's
4 what they admitted on the stand.

5 Now let's go to the 1040X, which is the basis of
6 Count Number Two. Notice what it says above income and
7 deductions. It says: Use Part II on page two to explain any
8 changes. Under (B), net changes, it, again, says: Explain in
9 Part II the net change.

10 He lists all the amounts he previously reported.
11 They are all precisely accurate. He lists the change.

12 The question is whether did he disclose to the IRS
13 what the basis of that change request was.

14 There is Part II, explanation of changes. Amount
15 previously reported not from a taxable source per this 861
16 position.

17 He fully discloses the fact that he is asserting
18 this 861 legal theory. The fact that it doesn't have merit,
19 the fact that it may be frivolous is not fraud, it's not
20 deception. There's no intent to deceive. It is full
21 disclosure.

22 But he goes further. He attaches a regulation
23 disclosure statement that says: Use this form. Only disclose
24 items or positions that are contrary to Treasury regulations.

25 He is saying: I know you disagree with this. I am

1 letting you know up front that you disagree with this. This
2 is disclosure; not deception.

3 And just in case all of that wasn't enough --
4 putting it in Section II, putting an attachment again with
5 8275R -- he does another attachment that explains again the
6 return is being filed on the basis of this IRS regulation,
7 which identifies taxable sources, and that they believe the
8 taxable sources exclude the moneys he did receive from being
9 taxable.

10 They ask, if the IRS disagrees, please schedule a
11 hearing pursuant to due process, a hearing that never takes
12 place.

13 That's not all. Then they attach the various
14 regulations that they're basing it upon, which lists various
15 foreign income from small places like Guam and other places.
16 So they identify the regulation itself and attach it to the
17 form.

18 Then there is another attachment explaining one more
19 time that it is the 861 position is the basis for the change,
20 in fact. The illegal position is full asserted, fully
21 disclosed. No deception.

22 Just in case that wasn't enough, they attach another
23 document with more disclosure, more explanation of the
24 position. In case that wasn't enough, another document with
25 more disclosure of the position.

1 No deception here. This is disclosure; not
2 deception. Frivolous is not fraud.

3 They even attach documents from the Congressional
4 record from the Senate which they believe supports their
5 interpretation.

6 This was not a conspiracy or aiding, abetting to
7 deceive the IRS in filing a knowingly false or fraudulent
8 claim willfully. It was an attempt to engage the IRS, to try
9 to go through the IRS appeals procedures and processes, and
10 see who was right.

11 Each party would have their day in court. Whoever
12 won, won. Mr. Snipes knew if he lost, he would have to have
13 interest, he would have to have penalties, he would have to
14 pay fees. But he wanted to go through that process and see
15 what would happen, see if he was right or see if he was wrong.
16 That's not a crime to defraud and deceive.

17 And you also heard testimony -- Mr. Morris talked
18 about various things that were previewed or predicted. And it
19 is often difficult to know what exactly will happen at a
20 trial.

21 But what is true is that certain things were
22 government documents that the government knew about that they
23 talked about in opening.

24 Do you remember hearing about bogus checks,
25 filled-in payment vouchers? There were no checks. They were

1 letters, written like letters, looked like letters, typed like
2 letters, mailed like letters, sent like letters, signed like
3 letters.

4 There were no bogus checks at all. Remember Bianca
5 Menezes was on the stand. And I asked her -- showed her what
6 Mr. Snipes had sent in, and said: Are you going to take that
7 down to the bank and try to cash it as a check? She said: Of
8 course not.

9 Not only that, you also heard that he filled in the
10 payment vouchers. There was a suggestion again in close that
11 that was the case, that he put in these big amounts and filled
12 them in and then didn't attach anything to them.

13 They were blank, big fat zero, nothing, nada.

14 Let's look at them. Right there is where you enter
15 the amount you are paying by check or money order. Any amount
16 listed? Nothing is listed. Zero is listed.

17 The next we have this letter, certified receipt.
18 It's addressed like a letter, even has the little re section.
19 "Dear Mr. Summers."

20 Do you want to know why it reads like a letter and
21 looks like a letter and feels like a letter? Because it is a
22 letter, not a check.

23 Here is some more of these payment vouchers. What
24 amount is filled in? Zero.

25 He tells the head guy, the big head honcho himself,

1 the Secretary of Treasury: Fill it in if I am entitled to
2 money or fill it in if I'm entitled to pay. You decide.

3 But what he does, he sends him a letter, and says:
4 I can't fill this in because I don't know. That's what he
5 does.

6 And was the Secretary of Treasury deceived by this?
7 You heard from the government's own expert. He wasn't
8 deceived by any of this. There was no deception because there
9 was no intent to deceive. No one could be deceived by a blank
10 payment voucher pretending he is paying when there is zero in
11 there.

12 Next payment voucher: Nothing, blank, big zero.

13 Next payment voucher, top right-hand corner: Blank,
14 nothing, big zero.

15 Next payment voucher: Blank, nothing, big zero in
16 the money category.

17 Now, you heard the testimony of Charis True, who, if
18 the government's theory is correct, is also a big conspirator
19 involved in a conspiracy to deceive and defraud the IRS, all
20 those three secretaries who got up there.

21 What did the secretaries say about a scam? She said
22 she thought Eddie wasn't servicing people in the correct way,
23 that Mr. Kahn was no longer keeping his promises to his
24 clients; not that she had been part of a five-, six-year
25 conspiracy to defraud and deceive by writing lots and lots and

1 lots and lots of letters to the IRS.

2 It was open. It was public. It was honest. It may
3 have been protest. Protest is not criminal. It may have been
4 disagreement. Disagreement is not criminal. It may have been
5 frivolous. Frivolous is not fraud.

6 The government says even that's an overt act of
7 conspiracy, to tell the IRS in advance, to give them advance
8 notice: I have lawyers and accountants involved in this, but
9 I have no idea what all of that means. There is just no way
10 to do so.

11 Advanced notice, that's what it was. It is not an
12 intent to deceive. It is telling them up front: I don't
13 know. I can't understand all of this. I want you guys to
14 provide the answers, you to provide me the appeals and remedy
15 process on the civil side.

16 And how do the national office respond to his
17 request? Remember, he sends the letters to the national
18 office of the IRS, the national chief counsel, their number
19 one lawyer.

20 How do they respond? They say they don't issue such
21 letters.

22 You heard from Mr. Starr that those letters and
23 opinions are possible. They send in letters, citing
24 regulations and procedures, and said it was possible. They
25 say: We can't answer your question. We're sending it down to

1 the local office.

2 Why does this matter? It is not just IRS
3 misconduct. This isn't an attempt to shift blame. This is
4 about what Wesley Snipes' intent was, why was he doing what he
5 was doing.

6 Was he doing what he was doing because he thought it
7 was illegal with an intent to deceive the IRS, to defraud the
8 IRS, in bad purpose, to disobey the law? Or is he trying to
9 follow their legal procedures to get answers to his questions?
10 Is he honest and open in engaging the IRS and asking the
11 questions that he has?

12 Now, you heard some talk from Mr. Morris that these
13 computer notices sent a statute telling him he had to file.
14 Let's look at what it actually says.

15 This is Government's Exhibit 87-25. This entire
16 letter, there is not single reference to a single statute
17 requiring him to file or pay. None. It doesn't exist.

18 What does it say instead? It says: If you think
19 you are not required to file this return, please explain why.

20 You saw all the response letters, response letter
21 after response letter after response letter, which he paid
22 money for from an attorney, saying: This is why, this is how.
23 We have a letter from the IRS commissioner saying it is
24 voluntary, that you don't have to file and pay.

25 You heard Charis True testify to that. You heard

1 Charis True testify that she believed Eddie Kahn was a very
2 sincere individual. Maybe he was, maybe he wasn't. But
3 remember you are judging Mr. Snipes for his intent, not any
4 mistake or any failure or any bad act of anybody else.

5 Here is a copy of one of those letters, where it
6 says in the second paragraph: In your letter, you state that
7 if my client is not required to file a return to explain why.
8 According to the director of the Internal Revenue Service
9 center in Philadelphia, the law does not require individuals
10 to file a Form 1040.

11 If this director is incorrect, please provide me
12 with the public law that requires my client to file a Form
13 1040. Upon receipt, I will advise my client to fill out and
14 submit a Form 1040.

15 There is no response to this question ever.
16 Instead, the IRS says: You never responded to any of our
17 questions. We kept sending you notices about whether --
18 asking you whether you are required to file or not, and you
19 never sent us any response back, so now we are going to do
20 backup withholding on 30 percent of your pay. That's what
21 they do.

22 Again, does he think it's criminal intent to be
23 seeking these answers? Is he acting with an intent to deceive
24 them? Or is he trying to engage them?

25 You might wonder what was happening with all that

1 correspondence. Is it the case that the IRS is saying he
2 didn't respond because somebody is not keeping the
3 correspondence?

4 What do we know? We know that the IRS was
5 destroying Mr. Snipes' documents. We don't know how many were
6 destroyed. We only know of at least some that were destroyed
7 by their own computer files, but we know they were destroyed.

8 Remember what Shauna Henline said? She said that
9 even asking the IRS for an audit or even asking the IRS to
10 tell the taxpayer, tell the individual whether they are liable
11 for a tax and what form they have to file, even that is
12 considered frivolous if it has a stamp on it, a stamp that
13 just says: Please keep this in my master file so every agent
14 and person in the IRS can know I sent this and have it be part
15 of the public record for the IRS.

16 How is it an intent to deceive to want the IRS to
17 keep all of your records and correspondence? Why was that
18 significant? Why was that important? Because when the
19 people -- when they started sending him responses, they acted
20 like he hadn't sent responses, because his letters apparently
21 were disappearing.

22 The special agent admitted he didn't know and hadn't
23 reviewed any of the processes or any of the requests
24 Mr. Snipes had made in terms of an audit or an appeal request
25 or a hearing request or an answer or determination letter

1 before he said: You, Mr. Snipes, are now under criminal
2 investigation. Your civil rights and remedies are gone.

3 You saw some reference to this July 13th, 2004
4 letter that was sent. So you see one letter in June of 2000
5 that says: We think something you sent was frivolous. His
6 lawyer responds to that, waits for the next stage of the
7 process. The next stage of the process never happens.

8 The next letter sent that says anything about legal
9 matters is July of '04, after Mr. Snipes is already under
10 criminal investigation, after he's been told he has a right
11 not to produce documents, during a stage in which producing
12 documents can only be used against him, not used for him to
13 resolve the matter civilly, because the civil rights and civil
14 remedies are over.

15 Now, supposedly, it gets sent on July 13th, 2004,
16 but let's look at what else is happening on July 13th, 2004,
17 according to the IRS's own records.

18 See there at the bottom, the last two entries,
19 July 13th, 2004, it says: Frivolous correspondence destroyed,
20 sent to Deanna Bone, has Z freeze on account.

21 The next thing: Frivolous mail sent to Cynthia.
22 Notice of material facts.

23 And then there is another page entry on that same
24 day: Frivolous correspondence destroyed. Sent to Deanna
25 Bone.

1 How do they explain this? They admitted you can't
2 be destroying frivolous documents if there's a Z freeze on the
3 account. Somebody, who supposedly is sending a letter of
4 July 13, 2004, that also doesn't exist -- they just have a
5 computerized form of it, they have no copy of it; a criminal
6 investigation, but kept no copy of it; the criminal
7 investigator, who is supposed to control communications and
8 contact, didn't testify that he knew anything about it.

9 Supposedly, the person who sends that is the same
10 person who is selectively putting some documents in classified
11 trash and other documents over to the criminal investigator.

12 So in that whole civil part, that first two years,
13 Mr. Snipes is trying to engage the system, get answers. He is
14 open, public and honest about his beliefs.

15 Note the government talks a lot about that one
16 letter in December of '06, after he is indicted. That letter
17 wasn't sent during this two-year civil period. There he is
18 trying to engage, find out, find out what the deal is.

19 Michael Canter said there was nothing criminal or
20 fraudulent about going through this process. Ken Starr wished
21 him good luck with his new strategy and new procedures and
22 finding out whether he can get answers. ARL says he can get
23 these answers this way. IRS publications say he can get his
24 answers this way. IRS flow charts say he can get these
25 answers this way.

1 And then all of sudden, there is a (knocking): Your
2 civil rights are over. Your civil remedies are over. You are
3 now under criminal investigation. Now your rights have
4 changed. When you give us documents --

5 They are not here to reach a civil resolution. This
6 is a case that should have been in civil court, but now it's
7 in criminal court because of what happened that day in May of
8 2002.

9 They tell Mr. Snipes he has a right to remain silent
10 and he has a right not to produce any documents.

11 You heard Mr. Morris talk about, well, he is
12 resisting subpoenas. Once again, resisting is not a crime.
13 It is obstructing by deceit, craft or trickery that's a crime.

14 But, secondly, what did Special Agent Lalli tell
15 him? He told him he had a right not to produce documents. He
16 simply asserts that right. He simply protects that right.

17 Now, does he also continue to engage the IRS? Yeah.
18 A real tax fraud, a real tax cheat, he probably hops on the
19 plane and disappears, you never see him again. He stays right
20 here in the United States, stays right here the whole time to
21 stand trial.

22 Not only that, he starts doing more research, coming
23 across more ideas, and so he starts sending more letters. Are
24 some of those ideas kooky, crazy, looney? Sure. Kooky,
25 crazy, looney is not a crime to deceive or defraud the IRS.

1 It is not with a bad purpose to disregard or disobey the law.

2 He is trying to engage them, stay involved with
3 them, say: Look, I'm here. I want to do something, but I am
4 in this Catch 22. If I file the return and pay the tax that
5 you think I should pay, if you do think I should pay it, then
6 you are going to use that against me in a criminal
7 prosecution. But if I don't, you will use that against me in
8 a criminal prosecution.

9 And that's not the first Catch 22 he was in.
10 Remember all the way back in the civil part of the process, he
11 was told: Well, we will answer your question about whether or
12 not you are required to file a return as soon as you file a
13 return.

14 How hard would it have been for the IRS to say:
15 Here is the statute. Do what the -- you've got to do what
16 Agent Stich did at the end of the case. How difficult would
17 that have been?

18 How hard would it have been for the special agent to
19 say: It's Treasury Delegation Order 10-150; two paragraphs,
20 done. But he chose not to.

21 Instead, you start to see the frustration build.
22 But what you don't see is deception; what you don't see is
23 defrauding; what you don't see is someone trying to violate
24 the rights or break the law. It's someone trying to follow
25 the law, protect their rights.

1 There was talk of what -- of Carmen Baker. What
2 happened with Carmen Baker? She disagrees with him. She goes
3 to his house, hears about his tax views, and tells him right
4 in front of his friends and family: I think you are an idiot
5 and it's ridiculous. So apparently she -- according to her
6 story, he gets upset and tells her to leave.

7 Disagreement is not deception. What does he do? He
8 gives her more bonuses, pay raises, more power, more
9 authority. He respects her right to disagree with him. He
10 doesn't do anything harmful or bad.

11 Once he gets back, and he says: I don't believe
12 that there is any law that requires anyone to file or pay,
13 stuff he has already told the IRS, waiting for responses from
14 the IRS, she calls the IRS. They already know about Mr.
15 Snipes' beliefs because he's told them over and over and over
16 again.

17 And she says she disagrees with him some more. What
18 does he actually do? Keeps her around, gives her bonuses,
19 gives her pay raises, gives her -- you know, she talked about
20 being a single mom. He gives her a Mercedes C230. That's
21 what he does; not the act of a criminal conspirator out to
22 deceive or defraud anybody. He respected her right to
23 disagree.

24 After the case was over, she apparently has some of
25 his documents. They subpoena her. Now, how does she have his

1 documents after she's left his employ, she didn't really
2 explain. Maybe she took them, whatever. He says: That's a
3 violation of the confidentiality agreement. You shouldn't
4 have done that. I have certain rights. Special Agent Lalli
5 gave me those rights not to produce document.

6 She complies. What does he do? Nothing. He
7 doesn't do anything bad. Pays off the Mercedes, let's it go,
8 because he respects people's right to agree and disagree.

9 He is trying to engage the system, work with the
10 system, deal with the system, interact with the system.

11 Now, at the end of the process, is he frustrated,
12 agitated, exacerbated, says things he regrets? Anybody would.
13 But that's what happens when you have been run through the
14 ringer for eight years, in which you didn't get the chance to
15 get a real answer and a civil resolution to what should have
16 been a civil case.

17 It was sort of the IRS's version of a movie from
18 Mr. Snipes: "Catch 22: Anything You Do Will Be Used Against
19 You."

20 So why do we have these laws that say you have to
21 have deception, that disagreement is not a crime, that
22 frivolous is not a fraud, that being -- disliking the IRS is
23 not a crime? If it were, half of America would probably be in
24 prison.

25 Why is it we have those laws? We have those laws

1 for the same reason we have those Charters of Freedom
2 downstairs. We have them because we make sure that there is a
3 difference between civil cases and criminal cases.

4 Remember, no matter what your verdict is, if you
5 acquit Mr. Snipes, he will probably spend the next 20 years
6 working for the IRS. They can collect all the penalties and
7 interest they want to. That is not what the case is about.

8 It's about whether or not Mr. Snipes acted with
9 criminal intent. Is he a fraudster? Did he act to deceive
10 the IRS with a specific bad purpose to break the law? Or was
11 he trying to comply with the law and work within the law?

12 Not long ago, during an age in which power and
13 authority were not questioned, a bunch of people got on a
14 boat. Most of them were considered kooks, crackpots, loons,
15 weirdos, and they landed at a place called Plymouth Rock. Had
16 all kinds of unusual ideas about the Bible, had all kinds of
17 unusual ideas about politics, all kinds of unusual ideas about
18 power, taxes and law, too.

19 But those people ultimately were the founders of who
20 we are as Americans. The liberty to ask questions; the
21 liberty to believe in what you want to believe; the liberty to
22 even be crazy on occasion; the liberty to challenge and
23 question your government; the liberty to engage your
24 government, these liberties are American liberties, distinctly
25 and definitively American.

1 We used to fight over the meaning of those books.
2 It led to wars and bloodshed. That's why we don't do that any
3 more. We respect each parties' right to agree to disagree.
4 Disagreement is not deception. Disagreement is not fraud.

5 Protesters don't get put in the prison in America.
6 The liberty to believe what you want, the liberty to ask
7 questions and expect answers, the liberty to engage your
8 system, these are distinctly and definitively American
9 liberties, as much as the people who crafted those documents
10 that sit in those Charters of Freedom right downstairs when
11 they drafted them in Philadelphia.

12 The Liberty Bell may be cracked in Philadelphia, but
13 it can still be heard in Ocala. Not guilty all counts.

14 THE COURT: All right. Thank you, members of the
15 jury. It is the lunch hour. Let's recess for lunch until
16 1:30.

17 (The luncheon recess was taken.)

18 (Jury present.)

19 THE COURT: Thank you. Be seated, please, everyone.
20 Mr. Bernhoft, you may address the jury.

21 MR. BERNHOFT: Thank you, Your Honor. Ladies and
22 gentlemen of the jury, it's my privilege -- and all the people
23 over here who have cared about this case from the very
24 beginning -- it's our mutual privilege to represent Wesley
25 Snipes in this case.

1 Now, Mr. Barnes got right into the elements of the
2 offense and the core issues that this case presents. I wanted
3 to backtrack just a little bit and sincerely thank you all for
4 paying attention to the case. You have been a very attentive
5 jury. We appreciate that. This case is about testimony and
6 evidence. You've paid attention. Many of you have taken
7 notes. And we're grateful for that, and I know the
8 government's grateful for that, and the Court and everybody
9 over here, and Mr. Snipes as well.

10 We also realize how inconvenient it is to be jurors.
11 And in my view, it's probably the highest service that we can
12 perform in this country, because without people like you who
13 are going to deliberate fairly, conscientiously and justly,
14 these controversies between the United States and the IRS and
15 men such as Mr. Snipes can't be resolved. So we thank you for
16 that.

17 Now, when Mr. Morris from the prosecution came up
18 and talked about venue -- and I'm going to turn right to venue
19 because we haven't discussed that yet from our perspective --
20 he said that venue in this case would be proper -- could be
21 proper in a whole bunch of different places, and that the
22 government could have brought this case in a number of
23 different locations.

24 Now, Mr. Morris' legal position has no merit. It
25 doesn't have any merit. And that's not a crime, and

1 Mr. Morris is thankful for that.

2 The fact is -- and we're going to go to the jury
3 instructions right away -- there's only one place -- and it
4 has nothing to do with anybody complaining -- there's only one
5 place that this case can be brought, and that's where
6 Mr. Snipes makes his permanent home -- and we're going to go
7 right to the jury instruction -- so there weren't multiple
8 choices for the government. The law requires that this case
9 be brought with respect to Counts Three through Eight in only
10 one place.

11 I'll wait for the lights to be dimmed here. I
12 appreciate your patience.

13 This is the venue instruction that the Court will
14 give upon the conclusion of summation arguments by the counsel
15 for the various parties. This is how it reads: "There is an
16 issue in this case as to whether the government has
17 established what is known as proper venue in this court with
18 respect to Counts Three through Eight of the Indictment, the
19 failure to file charges against Mr. Snipes. The Sixth
20 Amendment to the Constitution of the United States protects
21 certain fundamental rights of any defendant in a criminal
22 case. One of the things the Sixth Amendment to the
23 Constitution says is that the accused shall enjoy the right to
24 a trial in the state and district wherein the crime shall have
25 been committed." And that's the Constitution of the

1 United States.

2 "This creates what is called a proper venue for the
3 charging of any criminal offense, and it requires the
4 government to prove, as alleged in the Indictment, that the
5 charged offense, or offenses, were committed in the Middle
6 District of Florida.

7 "In that respect you are instructed that both Lake
8 and Orange Counties, among others, are within the Middle
9 District of Florida.

10 You are further instructed that proper venue with
11 respect to Counts Three through Eight respectively lies in the
12 district of the defendant Snipes' legal residence, and the
13 term legal residence means the permanent, fixed place of abode
14 which one intends to be his residence and to return to it
15 despite absences or temporary residence elsewhere."

16 And one thing that we'll discuss in a bit -- and the
17 prosecution has pointed to certain documents that it urges you
18 show residence in Windermere, Florida. Now, legal residence
19 is a term of art, like a lot of those terms of art in the
20 Internal Revenue Code and the Treasury regulations.

21 And you'll recall that Revenue Agent Stich, the
22 government's tax computation witness, testified that taxpayers
23 and the IRS disagree all the time about what those words mean,
24 and they are in these legal terms of art, these phrases. He
25 even testified that people within the IRS disagree. But

1 "legal residence" is one of those terms of art.

2 "Legal residence" can have a different meaning for
3 contract law, for several -- for federal civil litigation. It
4 has a lot of different meanings. But for this case, that's
5 what it means, and that's what the Court will instruct you.
6 "Legal residence" means the permanent, fixed home of Wesley
7 Snipes between 2000 and 2005.

8 I want to talk a little bit about the live testimony
9 that we heard on this venue issue. Now, you'll recall that
10 Mr. Coudriet, a government witness, came up. He was the
11 builder that originally built this home. And Mr. Coudriet
12 indicated that the home was purchased somewhere around 1993,
13 1994. He also testified that the home was vacant for two to
14 three years.

15 There's an interesting thing about venue, and that
16 is, if you want to figure out what a man or woman intends,
17 look at what they did. Look at what they did. And I would
18 submit to you that someone who builds a home to be his
19 permanent home where he and his wife and children live and put
20 their heads down at night -- it probably doesn't remain vacant
21 for two to three years.

22 But this issue of if you want to get inside
23 somebody's heart and mind and figure out what they intended --
24 and, of course, as Mr. Barnes has talked about, that is the
25 issue in this case that covers all of the counts in the

1 Indictment -- find out what they do. So this house is built.
2 It's purchased.

3 I want to touch on this issue that Mr. Morris
4 brought up in one of his arguments, and he said that, gosh,
5 you know, the corporations were buying these homes. Well,
6 you'll recall Mr. Starr's testimony. His testimony was that
7 none of these celebrities can buy homes in their own names.
8 They have security and privacy issues that you don't have, I
9 don't have. I don't have to worry about people finding out
10 where I live. Mr. Snipes did.

11 And Mr. Starr testified that it was absolutely
12 commonplace for people such as Mr. Snipes to purchase things
13 in a corporate name for the mere fact, the simple fact that he
14 doesn't want it publicly announced where he actually lives and
15 where his wife and children live.

16 And this is going to become important as we talk
17 about the venue issue, but there was nothing spooky or
18 sinister about a corporation purchasing the home in 1993,
19 1994.

20 Now, Mr. Coudriet also testified -- and this is
21 critical -- that he never saw Mr. Snipes there. He went over
22 there quite often. And when he went over there, after the
23 period in which the home was vacant for two or three years,
24 the only person he saw was a woman who he assumed to be
25 Mr. Snipes' grandmother, or mother, fishing on the dock. He

1 never saw Mr. Snipes there. That's the live testimony of the
2 builder of the home, Mr. Coudriet.

3 Now, even Carmen Baker -- she testified upon direct
4 questioning and cross that Mr. Snipes lived in either New York
5 or California. And that was Carmen Baker's testimony.

6 Now, Special Agent Lalli took the stand, and he was
7 asked if he ever sought out Mr. Snipes in Windermere. He
8 said, Yeah, I went over there, and there was nobody home. And
9 we'll talk a little bit more about how the Special Agents
10 figured out where Mr. Snipes lived, and we'll talk about that
11 a bit.

12 Special Agent Lalli also testified that the 310 area
13 code is Los Angeles, and the 212 area code is New York.

14 Now, another thing that's interesting -- and I
15 talked to you about this in opening statement -- there's a lot
16 of talk about what's been said in opening statement. Let's
17 turn back to some of those things.

18 You know, where you make your permanent home is
19 where you do the little but important things that we all do
20 where we live. And in the entire government case-in-chief, in
21 all of the exhibits and testimony, there is not one single
22 area code or phone number, fax, cell phone, that has a Central
23 Florida area code. Not one. Not one single one.

24 Now, if you're like me, I've got my business phone
25 where I live; I've got my home phone where I live, and I've

1 got my cell phone where I live. Of course, there probably
2 could be exceptions. But when you're called upon to look at
3 the testimony and evidence, and you look at the evidence, not
4 one single area code of a phone number associated with
5 Mr. Snipes was in Central Florida.

6 Now, the government in its argument regarding venue
7 wants you to focus exclusively on a handful of documents out
8 of tens of thousands of pages of evidence apparently to the
9 exclusion of all of that other testimony and evidence. And as
10 the Court will instruct you, you're to weigh the total
11 evidence. Weigh the evidence, sift it, think about it, and be
12 fair about it, and please don't leave your commonsense behind,
13 because venue as to where Mr. Snipes made his permanent home
14 is a lot about commonsense and very little about the law in
15 terms of the facts that you will determine. It's the little
16 but important things we all do where we live.

17 The government hasn't produced any testimony and
18 evidence that Mr. Snipes lived in Florida, that his wife and
19 children lived there; that any of the things that we all do
20 where we live -- none of that.

21 So what we will do is we'll take a look at the
22 government documents in the case, their own exhibits, and just
23 take a peek at how that looks and what shows up there.

24 The first thing I wanted to do -- and you can do
25 this for yourself in the government's exhibits -- we went

1 through all of the exhibits in the government's case-in-chief,
2 and we calculated all of the references to New York,
3 California, Los Angeles and Marina Del Rey -- that's the
4 Marina Del Rey home that has been testified to that Mr. Snipes
5 lived at -- and those come out to 6,275 references.
6 California, 6,275.

7 And then we tallied up all of the Florida ones. And
8 just to be fair, we didn't count up just Windermere and
9 Orlando, but we did count up Florida as well. And there was
10 29 in Windermere, 145 in Orlando, and 782 in the state of
11 Florida. And what you had there is a total of 929.

12 So rough math, 929 out of 6,275 in the government's
13 exhibits in chief, you've got less than 15 percent of the
14 total references to addresses associated with Mr. Snipes that
15 are in Florida -- not just the Middle District, the entire
16 state.

17 The other thing that we did -- and just be patient
18 with me one moment, please. Thank you, Mr. Tollefson.

19 Permission to -- thank you, Judge.

20 In the government's case-in-chief, there was this
21 one principal corporate credit card account, American Express.

22 And by the way, there's nothing wrong with buying
23 personal items out of a business account, corporation account.
24 Revenue Agent Stich told you how in an audit that would all be
25 managed and taken care of and attributed as either income to

1 the individual or as a business expense.

2 But here's what we have. This is the principal
3 credit card account in the government's exhibits in chief.
4 And we spent a lot of time going through this stuff, and
5 you're welcome to go through this in the jury room. It's a
6 lot of material.

7 1999, we have 665 total charges to that account and
8 only 13 in Florida, four charges from the Middle District. Of
9 the total 665 charges in 1999 -- and that's Count Three of the
10 Indictment -- .6 from the Middle District of Florida. .6
11 percent.

12 And some of these are Framemaster, Sears, Roebuck.
13 Of the four out of 665 that came from the Middle District, you
14 see those there.

15 Now we go to the year 2000. 893 total charges of
16 which 12 were in Florida, only ten from the Middle District.
17 And of the 893 total charges, 1.1 percent came from the Middle
18 District of Florida. And, of course, these years match with
19 the counts in the Indictment.

20 1999, Count Three, the alleged willful failure to
21 file. Count Four, et cetera.

22 2001, 604 total charges, eight in Florida, five from
23 the Middle District. And you see this Flower Bucket again and
24 Sears, Roebuck in Winter Park. So in 2001, .8 percent of
25 these total credit card charges were from the Middle District.

1 And this comes from the government's case-in-chief and their
2 evidence and their exhibits.

3 2002, 484 total charges, ten in Florida, only five
4 from the Middle District. In 2002, 1.03 percent came from the
5 Middle District.

6 Year 2000, 893 total charges, 12 in Florida, ten
7 from the Middle District. In year 2000, of the total 893
8 charges, 1.1 percent from the Middle District.

9 A similar pattern replicates itself, continues in
10 2001, 2002, and 2003. In 2001, .8 percent. 2002, 1.03. In
11 2003, 1.08. I apologize, I went out of order there. 1999,
12 2000, '01, '02, '03.

13 Now, when we talked in opening statement about where
14 you make your permanent home is where you do the little but
15 important things where you live -- and you can write this
16 down. This is from Government's Exhibit 8, and it's part of
17 the documents from which this detail was derived. And it's
18 Bates number WS-14665.

19 It would be very time-consuming to look at the
20 entire massive data, but these documents here are from that
21 government exhibit. And the point I want to make and talk to
22 you about is what sort of charges were made and where they
23 were made. And what you'll find, based on these numbers, is
24 that pediatricians were paid, child doctors, dry cleaning,
25 Home Depot, grocery stores, Bed, Bath and Beyond, automobile

1 gas, oil, lube and filters. And the list just goes on and on.

2 And you will see these in New York, in California.

3 And, of course, you won't see many Florida charges, and you
4 won't see very many Middle District of Florida charges because
5 there were very, very, very few. On average, probably about
6 less than 1 percent.

7 The testimony and evidence shows -- the evidence in
8 the government's own case-in-chief is that Mr. Snipes was not
9 living in Windermere, Florida, that he never lived there, that
10 it was not his permanent home, that his wife and children did
11 not live there. And we know this because he didn't do any of
12 the things that people do where they live. All of this
13 massive detail comes from New York and Marina Del Rey and some
14 of it from New Jersey.

15 Now, I don't know about you, but I don't know how a
16 man or woman could live someplace and not do any of that
17 stuff. I don't know how they live without buying groceries.
18 I don't know how they live without buying gas. I just don't
19 know how that works.

20 This is actually the mountain of testimony and
21 evidence, specific documents that the prosecution apparently
22 wants you to ignore while regarding, apparently exclusively, a
23 handful of documents that come from 2003 and 2005.

24 And I'd like to take a look at a couple of those.

25 This is Government's Exhibit 2-5. And this is the document

1 that was admitted into evidence. And attorney Craig Alexander
2 talked about this litigation, this civil litigation, between
3 Mr. Snipes and New Line Cinema in a contract dispute.

4 Now, the first thing I'd like to point out -- and,
5 again, this is Government's 2-5 -- is the date on that -- and
6 that's August 22, 2005 -- and how this document can have
7 anything to do with where Mr. Snipes made his permanent home
8 between the years 2000 and -- 1999 and 2004 but leading into
9 2005, because the return filing deadline is unclear to me.

10 But let's take a look at the upper left-hand corner.
11 Mark H. Greenberg -- law office of Mark H. Greenberg,
12 San Francisco, California. We see on the document,
13 United States District Court, Central District of California.
14 And we've got another lawyer up there, Barton C. Germander,
15 Helmutt and Johnson, Eden Prairie, Minnesota, attorneys for
16 plaintiff, the Swiss Trust, and Wesley Snipes.

17 This document is a document drafted by attorneys for
18 specific use in federal civil litigation, and Mr. Snipes
19 signed it.

20 Now, the government has talked a lot about, on the
21 second or third page, how Mr. Snipes is listed as a resident
22 of Florida as a party. And in federal civil litigation, in a
23 civil complaint, you must list the parties, and you have to
24 state their residence.

25 And Mr. Morris' suggestion that somehow Mr. Snipes

1 committed perjury on this document is, frankly, preposterous
2 and scandalous.

3 There are different meanings to legal residence.
4 This is a document filed in a contract case in a federal civil
5 court. He's represented by lawyers. They draft the document.
6 He signs it, and it's filed.

7 Now, a couple of interesting things about a document
8 like this is that this sort of a filing is available to
9 anybody who wants to go down to the Clerk's Office and copy
10 it. It's also available on the Internet.

11 And it's reasonable to conclude that Mr. Snipes'
12 attorneys listed his residence for the purposes of this
13 litigation as Windermere precisely because he didn't live
14 there and, more importantly, because his wife and children
15 didn't live there.

16 You heard Mr. Starr testify about some of the unique
17 problems of high-profile individuals and celebrities. These
18 are problems I don't have and you all don't have. Nobody has
19 these problems, but they do have them. How many times has
20 that crazy woman broken into David Letterman's house? This is
21 real. This is an issue. And Mr. Morris mocks that.

22 So August 22, 2005, his lawyers draft a complaint.
23 He signs it. And that's one of these handful of documents
24 that the prosecution wants you to focus on to the exclusion of
25 tens of thousands of pages of evidence that demonstrate

1 clearly to the contrary. There's this little -- this little
2 molehill, five or six documents, and then there's this massive
3 mountain of evidence that Mr. Snipes didn't make his permanent
4 home in Windermere, Florida. And you're supposed to just draw
5 the veil, keep it behind the curtain, and apparently decide
6 the question of venue based on five or six documents filed in
7 this case.

8 I would submit to you that's unfair, and it simply
9 doesn't wash. Use your commonsense. Mr. Snipes did not live
10 in Windermere, Florida, for the periods at issue.

11 We don't have a lot of documents here, but I did
12 want to show you a few, because you're going to have the
13 opportunity to go through all of the evidence that's been
14 admitted by the Court and -- but a couple of them I thought
15 were noteworthy.

16 This is Government's 87-40, and this is from the
17 state of Florida Department of Revenue. Some of you may be
18 familiar with that organization. And right here it says -- I
19 will take my pen there, if I might -- there we are -- "the
20 taxpayer named above in the county of -- out of state -- is
21 indebted to the Department of Revenue, State of Florida," and
22 then down here it says, "Witness my hand and official seal,
23 out of state."

24 Now, speaking of the things that we all do where we
25 live, where we make our permanent home, some of them are

1 actually big things, and I would submit to you that one of
2 those things is getting married. And I know there's
3 exceptions, but most of us get married where we live, so our
4 friends and family can come without too much trouble.

5 And this is from Government's 34. This is the
6 marriage certificate. I'm going to zoom out on that. And it
7 says county of marriage is Bergen; place of marriage,
8 Hackensack City -- it's New Jersey -- November 29. This was
9 issued November 29; it was filed with the registrar on
10 March 18, 2003. So Mr. Snipes was married in Hackensack City,
11 New Jersey.

12 Some of the other documents -- and you'll note --
13 and you can go over this evidence yourself -- but of the
14 government exhibits that the government wants you to focus on,
15 these five or six documents, to the exclusion, apparently, of
16 the massive other evidence and testimony in the case --
17 Government's 1-1, 1-2, 1-3, 2-1, 2-2, 2-3, and a couple of
18 others -- those are the principal ones -- there's been talk
19 about this driver's license.

20 And as Special Agent Brian Tucker testified, the
21 very first witness called in this case, he examined the
22 records, and that license was issued -- I believe it was
23 March 1, 1978, when Mr. Snipes would have been about 17 years
24 old, and it had been renewed continuously. You can renew
25 those licenses by mail.

1 Also on the transcriptions of the driver's license,
2 it says that that driver's license is listed in the National
3 Registry of Driver's Licenses, because as we all know, you can
4 drive anywhere in the United States with a valid license from
5 any state.

6 And you can reasonably infer that it was simply
7 convenient for Mr. Snipes to continue to renew his Florida DL
8 in the mail.

9 Now, you'll recall we spoke briefly earlier on about
10 Special Agent Lalli attempting to go to Windermere to find
11 Mr. Snipes to interview him and to give him that advice of
12 rights personally, I suspect. No one was home. There was a
13 lot of no one at home, apparently, at the Windermere house,
14 kind of a funny thing for a permanent home.

15 But eventually the IRS Special Agents would want to
16 find out where Mr. Snipes made his permanent home, and they,
17 frankly, had no difficulty doing so.

18 You may recall the pictures of the home in
19 New Jersey that were introduced into evidence in the
20 government's behalf. You recall that picture, a side view.

21 I'm wondering if you can see that real well. One
22 moment, please.

23 (Pause.)

24 MR. BERNHOFT: Thank you. My colleague is telling
25 me to unhit the "freeze."

1 And you'll notice there on the bottom right-hand
2 corner -- of course, these pictures are being taken by people.
3 They are being taken by IRS Criminal Investigation Division
4 Special Agents. And that looks like the side view here and
5 the car from which the picture was taken. And there's another
6 front shot of the house. So that's the house in New Jersey.

7 Why are IRS Special Agents taking surveillance
8 photographs of Mr. Snipes' house? Sometimes they have to
9 perform an arrest. Of course, they didn't have to do that in
10 this case.

11 As Mr. Barnes talked about, Mr. Snipes is right here
12 in the flesh, like a man, standing trial facing these
13 accusations.

14 Now, the government wants to make a bunch of hay
15 with what Eddie Kahn did. That's -- you're not here to
16 call -- when I'm -- when -- with respect to Mr. Snipes, you're
17 called upon to determine his intent -- and the Court's
18 instructions will talk about this -- you are not to carry over
19 your intent deliberations from one defendant to another.
20 Mr. Snipes is supposed to be deliberated with respect to what
21 was in his heart and mind individually.

22 But the evidence has shown that Mr. Kahn did flee
23 and was taken back from Panama to the United States. That was
24 not the case with Mr. Snipes. And I recall that Mr. Morris
25 made the point of, if Mr. Kahn didn't think what he was doing

1 was illegal, then why did he leave the country? Well, based
2 on that logic, if Mr. Snipes felt he had done something wrong,
3 why is he here today? What's good for the goose is good for
4 the gander.

5 I want to make a couple of other brief comments, and
6 then I'm going to conclude. There was some talk about the 861
7 legal position and how that only had to do with Subtitle A
8 income taxes. Mr. Morris' legal position doesn't have any
9 merit.

10 The 861 regulations and their attendant published
11 regulations have to do with sourcing of income and what
12 constitutes taxable income, and it applies across the board to
13 individuals or corporations.

14 So the government wants to make the point that, what
15 did that have to do with the corporations? In Mr. Snipes'
16 view, it had everything to do with the corporations, because
17 it applies across the board, not just to Subtitle A income
18 taxes, ladies and gentlemen.

19 When you take a look fairly, conscientiously,
20 thoughtfully at the testimony and evidence regarding venue,
21 all of the live testimony from the witnesses -- Mr. Coudriet,
22 Ms. Baker, Special Agent Lalli, even attorney Alexander from
23 New Line Cinema -- and you take a fair look at all the
24 testimony and the evidence, I would respectfully submit to you
25 that the government hasn't come close to proving that it's

1 more likely than not that Mr. Snipes lived and made his
2 permanent home in Windermere, Florida, between 2000 and 2005,
3 and you must acquit on those counts.

4 Mr. Barnes was fairly comprehensive in surveying the
5 jury instructions regarding good faith, regarding intent to
6 deceive, to trick, to decline conspiracy, this conspiracy in
7 Count One, to use the old-fashioned words like artifice,
8 chicanery, all those old-fashioned words, so he's covered all
9 that stuff pretty well.

10 And then you look at intent. We talk about venue.
11 If you want to know what a man intended, then you really are
12 called upon to put yourselves in Mr. Snipes' shoes and really
13 take -- walk a mile in his shoes.

14 He occupies a pretty unique world that I don't
15 pretend to understand. I don't have those experiences. I am
16 not an artist. I'm not a terribly creative person. I don't
17 know what that's like. But I do know that his world in some
18 sense is a fictional reality where he is called upon -- and
19 this is the purity of his art -- not just to step into the
20 shoes of other characters or play roles but to become that, to
21 actually become it. And that's why we're amazed when we look
22 at the big screen with the great artists like Mr. Snipes and
23 in his art and we are amazed. That is a unique perspective.

24 And when you're deliberating on the good faith
25 instruction that the government did talk about in their

1 initial closing argument, and when we talk about willfulness
2 and intent to deceive, you are called upon to attempt to put
3 yourself in that man's shoes, in that man's position, and to
4 judge his intent. That is what this case is about.

5 There's been a lot of money floating around in the
6 courtroom, lots of money, but at base is whether he had a
7 specific intent to deceive or trick the IRS. And I submit to
8 you that any reasonable, fair, thorough review of all the
9 testimony and the evidence, putting aside any bias you might
10 have or some of the beliefs that you've heard, some of the
11 documents -- and ask yourself, what does somebody do who wants
12 to cheat, steal, hide and defraud the government? And I would
13 submit to you that they don't go right to the IRS and send
14 letter after letter after letter after letter after letter.

15 I mean, Mr. Snipes understood the risk. He filed
16 that 1997 1040X claim for refund and the 8275 attached form.
17 Think about that. Wesley Snipes, he's got a very high name
18 value. He's an American household name. His face is known
19 throughout the country by most people and throughout the
20 world. And he sends a claim for refund for \$7 million to the
21 IRS, puts his name on it, puts that 8275 disclosure, as
22 Mr. Barnes said, full disclosure of the legal position upon
23 which he was basing it -- would a reasonable person have
24 thought that he was going to get some attention? Sure, he
25 did. Somebody that wants to commit tax fraud does not notify

1 the IRS of their position on taxes, and the fact that they
2 don't file returns, and the fact that they're engaging CPAs
3 and lawyers to go directly to the IRS for answers, relying on
4 CPAs and lawyers for the process and the procedures.

5 And I thought Mr. Barnes made an excellent point
6 when he said, no, the IRS is not on trial here. That's
7 absolutely true. But why are we talking about these
8 violations of the civil procedures that he was entitled to?
9 Because it goes to his intent, and that's the core issue of
10 this case.

11 This is, as I spoke to you in opening statement, a
12 civil case, not a criminal tax case. This is not about
13 whether Mr. Snipes owes a bunch of money to the IRS, whether
14 the IRS can collect that money. Your verdict has no effect
15 whatsoever on the IRS's ability to pursue assessment and
16 collection of every single penny of tax dollars they believe
17 Mr. Snipes owes.

18 This is about Wesley Snipes and his intent. And on
19 that point the evidence is absolutely clear: You just don't
20 do what he did unless you're a true believer.

21 You know, at base that's what the IRS is really
22 upset about here, I would submit to you. He's a true
23 believer. Ken Starr talked about that from the stand. You've
24 got to be a true believer to engage the IRS like that. He's a
25 true believer.

1 We don't put protesters in prison. It is not a
2 crime to ask the IRS questions. It is not a crime to go to
3 the IRS for due process and the rights that all taxpayers are
4 entitled to. And it does matter that he was denied them.

5 We thank you for your time and attention in this
6 trial and in this case, and I respectfully submit to you that
7 when you go back and deliberate, you will return the only
8 verdict that a fair, conscientious and thoughtful review of
9 the testimony and evidence will permit when applying the
10 Court's instructions on the law, and that's not guilty on all
11 counts. I appreciate your time. Thank you.

12 THE COURT: Mr. Wilson, you may address the jury.

13 MR. WILSON: Thank you, Your Honor. May it please
14 the Court, counsel.

15 Ladies and gentlemen of the jury, as I previously
16 introduced myself during the opening statement portion of this
17 trial, I told you my name is David Wilson, and I am the
18 attorney for Douglas Rosile.

19 As you've been told, the closing argument stage of
20 the trial is the attorneys' opportunity to tell you what we
21 believe the evidence has shown and how that evidence relates
22 to the law that the judge is going to instruct you on.

23 Now, at this point in the trial a lot of lawyers
24 will try to come up with some sort of a catchy phrase or
25 something creative to tell you what that case is about, and

1 fortunately for you guys I'm not that creative.

2 But what I will tell you is this. I have a doctor
3 who tells me that I have to run on the treadmill, and I hate
4 running on the treadmill. And the only thing that makes 45
5 minutes of running bearable to me is my Ipod.

6 So last night I was on there running, trying to
7 think what this case is about, and a song came on that I had
8 completely forgotten I had downloaded, right after the Hannah
9 Montana song that my daughter downloaded. It was a song that
10 some of you may have heard. And it goes: You don't tug on
11 Superman's cape. You don't spit in the wind. You don't pull
12 the mask off the old Lone Ranger, and you don't mess around
13 with Jim. And I was thinking, there's something missing. Oh,
14 yeah. Whatever you do, don't ever question the IRS.

15 Now, during my opening statement I told you what I
16 thought the evidence would show in this case and what it
17 wouldn't. And I hope as you reflect back upon my remarks, it
18 has been pretty close.

19 When I said that there would be a huge amount of
20 evidence presented in this case and only a small portion of it
21 would apply to Mr. Rosile, that he was only making a cameo
22 appearance in this case, I think that that's been borne out.

23 I told you the evidence would show that Mr. Kahn had
24 a company called American Rights Litigators. This company
25 employed a number of people, including lawyers, Certified

1 Public Accountants and people who simply prepared tax returns.

2 Mr. Rosile was one of the latter.

3 Mr. Kahn would travel around the country, and he
4 would give seminars to audiences promoting various ways that
5 he contended individuals could successfully deal with the IRS.
6 He would sell videotapes of his lectures. He would sell
7 videotapes on his website.

8 He and his company offered to act as go-betweens
9 between his customers who had problems with the IRS and the
10 IRS itself. In fact, you learned that Mr. Rosile was one of
11 his customers, was one of the individuals who attended one of
12 his lectures, just like Mr. Snipes attended one of Mr. Kahn's
13 lectures.

14 Mr. Kahn had a research department and employees who
15 interacted directly with his customers. He had attorneys and
16 CPAs who acted as power of attorney to communicate with the
17 IRS on behalf of his customers. The evidence has shown that
18 Mr. Rosile was not one of these people.

19 Mr. Kahn's company, ARL, advocated a certain
20 position regarding the government's authority to impose and
21 collect income tax, referred to as the 861 argument you've all
22 heard about and I'm not going to go into.

23 You've also learned that there were thousands of
24 people, literally -- 4,000, I think -- who believed the
25 legitimacy of this position who became members of ARL.

1 Doug Rosile was a tax preparer who was hired by
2 American Rights Litigators on a part-time basis to prepare tax
3 returns for his customers that relied on this 861 argument.
4 We don't dispute that.

5 As you heard, Mr. Rosile would somehow get the
6 information necessary to prepare these returns. He would
7 prepare the return. He would give it back to ARL, and that
8 would be the end of it. That's it.

9 For that he would be paid a flat fee and a
10 commission based upon those returns that generated a refund.
11 Some did; some didn't. Some he got paid for; some he didn't.
12 That's what the evidence showed.

13 He rarely, if ever, had any contact with any of
14 ARL's clients. And as far as Mr. Snipes is concerned, there
15 is no evidence that's been presented to show that Mr. Snipes
16 nor Mr. Rosile had any direct contact with each other.

17 Let's talk about the amended tax return Mr. Rosile
18 prepared for Mr. Snipes, which is the reason we're here,
19 which, as Mr. Morris instructed you, told you during his
20 portion of this closing, was the act, the one act that
21 Mr. Rosile performed that the government contends brings him
22 into this conspiracy -- one act -- prepared one return.

23 You've seen it many times during this proceeding,
24 and you're going to have the opportunity to look at it again
25 when you go back to deliberate. The government's told you at

1 the outset of the case that the evidence would show that this
2 return was fraudulent and done with the intent to defraud the
3 Internal Revenue Service.

4 The government told you that Mr. Rosile conspired
5 with Mr. Snipes and Mr. Kahn to defraud the United States
6 government and the IRS, and I respectfully disagreed then.
7 And after sitting here and listening to the evidence, I
8 respectfully disagree today.

9 What the evidence did show was that Mr. Rosile
10 prepared this amended return and told the IRS exactly what he
11 was doing. He attached an IRS Form 8275-R that you have been
12 told about and you'll have the opportunity to look at, so I'm
13 not going to go into details. He attached supporting
14 documents to each return that he did, including the one that
15 he did for Mr. Snipes, which is the reason we're here, telling
16 the IRS, in essence, I'm preparing this return in accordance
17 with the IRS 861 argument. If you contend I'm wrong, I'm
18 requesting a hearing in front of a judge. That's it.

19 That's what I told you the evidence would show that
20 Mr. Rosile did and what he told the IRS that he was doing, and
21 that's what the evidence showed you in black and white.

22 Now, it's the filing of this specific return the
23 government contends serves as the basis of the offenses for
24 which Mr. Rosile stands charged. The government has described
25 the return as fraudulent and said that numerous court cases

1 have held it to be frivolous, and it was prepared with the
2 intent to defraud the IRS.

3 Ladies and gentlemen, please don't let the
4 government play hide the ball. The only source from which --
5 the only source from which you'll hear that these returns were
6 fraudulent in this courtroom is the Internal Revenue Service
7 and the gentlemen seated at this table right here. And,
8 ladies and gentlemen, that's nothing more than their opinion.

9 The Judge is going to give you what are called jury
10 instructions. Some of these have been reviewed with you. I
11 will talk about a few more of them in a few moments.

12 These instructions are a collection of the law that
13 you must apply to the facts in arriving at your verdict. It
14 is the law that you must apply without regard to any of the
15 laws that you heard about, that you know about, that you think
16 about. It's only the laws that the Judge gives you that you
17 must apply the facts to in this case in arriving at your
18 verdict.

19 I'll get into the instructions that I anticipate the
20 Judge is going to give you in a few minutes, but one thing you
21 will not hear from the Judge -- you will not hear -- is that
22 the 861 argument, or the 861 position, or whatever it's
23 referred to, is fraudulent as a matter of law. The Judge
24 will, however, tell you that the 861 argument is without
25 merit. There's a wide gulf between without merit and

1 fraudulent.

2 Now, as we know, the evidence that brings Mr. Rosile
3 into this case as described by Mr. Morris is the filing of the
4 one tax return, preparing one tax return for Mr. Snipes, but
5 you saw some other returns that Mr. Rosile did. And the
6 government contended that these other returns went to show his
7 knowledge or his intent or whatnot.

8 Who else did he prepare these returns for besides
9 Mr. Kahn's customers? His wife. You saw it. He talked about
10 it. It was up there. You saw the return that he prepared for
11 her. What man who intends to defraud the United States
12 government and who in the process actually tells them what
13 he's doing would throw his wife in harm's way? A man who is
14 mistaken, perhaps. A man who's intent on committing a
15 criminal offense? I don't think so.

16 Now, you can see in some of the letters that
17 Mr. Rosile wrote in which he proclaimed his dislike for the
18 Internal Revenue Service and some of its employees. Some of
19 it was in pretty strong language. That's not a crime. In
20 fact, anybody who is watching the presidential elections notes
21 that Mike Huckabee wants to abolish the Internal Revenue
22 Service. That's pretty strong.

23 I asked the main investigator in this case, Agent
24 Lalli, if in his 20 years of experience with the Internal
25 Revenue Service he found it not uncommon for individuals to

1 have some level of dislike for the Internal Revenue Service,
2 and he agreed. Mr. Rosile, unfortunately, lacks the ability
3 to express himself tactfully. That's not a crime.

4 Now, what Douglas Rosile is charged with -- and what
5 does the government have to prove in order for you to find him
6 guilty? As I said before, the Judge is going to provide you
7 with jury instructions that contain the law that you must
8 apply to the facts. And it's this law and this law alone that
9 you must consider.

10 In Count One of the Indictment Mr. Rosile is charged
11 with conspiracy or agreeing with someone else to defraud the
12 United States or one of its agencies. And I anticipate that
13 the Judge is going to instruct you that to defraud the
14 United States means to interfere with or obstruct one of the
15 lawful functions of the government by deceit, craft or
16 trickery. And you've heard those words before, but it's
17 important that you hear them again.

18 To defraud the United States means to interfere with
19 or obstruct one of its lawful government functions by deceit,
20 craft or trickery. In other words, Mr. Kahn, Mr. Snipes and
21 Mr. Rosile had to agree to interfere with or obstruct a lawful
22 government function by deceit, craft or trickery.

23 Let's break it down like a fraction. First, where's
24 the agreement? What evidence has the government presented to
25 you to prove the existence of an agreement among Mr. Snipes,

1 Mr. Rosile and Mr. Kahn to defraud the United States
2 government? What evidence has the government presented to you
3 to prove the existence of this agreement or a kind of
4 partnership in criminal purpose? None.

5 What has the government proved? It's proved that
6 Mr. Snipes attended a seminar of Mr. Kahn's whereby he became
7 a customer of American Rights Litigators. Mr. Rosile was a
8 tax return preparer who attended seminars of Mr. Kahn's
9 whereby he, too, became a customer of American Rights
10 Litigators, just like 4,000 other people.

11 Subsequently, and for a short time, Mr. Rosile
12 worked for ARL as a part-time tax preparer. That's all he
13 did.

14 I asked one of the government's own witnesses, the
15 government's own witnesses, Charis True, about Mr. Rosile's
16 relationship with American Rights Litigators, and she
17 testified that she didn't know that Doug Rosile ever worked
18 for ARL as an employee but that he worked independently, that
19 she didn't know exactly what he did there other than it was
20 something to do with tax returns; that he only came to the ARL
21 offices on occasion. And as far as the time frame in which he
22 was coming and going to ARL, it was just a few months.

23 Now, again, all the evidence about Mr. Rosile's
24 relationship with American Rights Litigators and functions
25 performed for the clients of ARL was outside of what the

1 government contends brings him into this conspiracy, and that
2 is one tax return that bears Mr. Snipes' signature.

3 The government called another one of Mr. Kahn's
4 employees, Bianca Meneses, who didn't even mention Mr. Rosile
5 in her testimony.

6 The government called Amie Hues who worked for
7 Eddie Kahn for four years, from 1999 to 2003; and she
8 testified for the government, identified Douglas Rosile as
9 someone who helped Eddie with tax returns. He asked whether
10 she knew what he did with returns, and she said she didn't
11 know. She didn't know what he did with the tax returns.

12 She testified that Doug was at the ARL offices only
13 on an occasional basis, and she was unaware of any other
14 responsibilities that Mr. Rosile had there besides assisting
15 Eddie with tax returns. And at some point in 2003, she began
16 to think of Eddie Kahn as a scam artist.

17 The government called Carmen Baker who worked for
18 Mr. Snipes and was present during several meetings between
19 Mr. Snipes and Mr. Kahn. She testified she never saw
20 Mr. Rosile at any of these meetings.

21 The government called Agent Crowley of the Internal
22 Revenue Service. Agent Crowley testified about an 861 tax
23 return Mr. Rosile prepared for his wife, Eileen, and a letter
24 that he wrote to the IRS Problem Resolution Office -- it seems
25 to be an oxymoron after all we've heard -- the IRS Problem

1 Resolution Office on her behalf. You saw the letter and the
2 tax return. They were up there on the screen. You're going
3 to have them back to look at when you deliberate.

4 He also testified about some other returns and
5 letters that Mr. Rosile wrote on behalf of a Mr. and Mrs.
6 Harms. And, again, when it comes to relevance and what this
7 case is about, Mrs. Rosile was not a member of ARL. The tax
8 returns that Mr. Rosile prepared for Mr. and Mrs. Harms do not
9 serve as the basis of the Indictment. The only activity that
10 serves as the basis of the Indictment is the alleged agreement
11 and Mr. Snipes' signing of the tax return with Mr. Rosile.

12 Those documents simply have nothing to do with this
13 alleged conspiracy. However, when you look at them, consider
14 this: In each document Mr. Rosile sends to the IRS, he tells
15 the IRS exactly what he's doing. He doesn't hide his purpose.
16 He doesn't pretend to be doing something he's not. He doesn't
17 fudge the numbers. He fully discloses to the IRS exactly what
18 he's doing.

19 And, secondly, in the letters that he sends to the
20 IRS that you see, he puts a little CC at the bottom, CC
21 Senator Graham, CC Senator Mack. Someone who intends to
22 defraud the government simply doesn't imply that they're going
23 to copy their senators on correspondences to the IRS to seek
24 their senators' assistance in defrauding the government.

25 The Indictment charges and alleges a specific,

1 finite conspiracy. Don't be fooled by all the extraneous
2 information that the government has thrown up in an attempt to
3 overwhelm you -- boxes and boxes and boxes of evidence on the
4 floor here. This case is about one document as it relates to
5 Mr. Rosile.

6 The government called Mr. Snipes' former tax
7 representatives from Starr & Company, none of whom mentioned
8 Mr. Rosile in their testimony.

9 And the government called Special Agent Lalli. One
10 of the things I want you to know about Agent Lalli is with
11 respect to the injunction that he testified about that
12 involves Mr. Rosile. You've heard about two injunctions. One
13 pertains to Mr. Rosile. You've seen the document. There's
14 one page that you've been presented, and you'll have it with
15 you.

16 When you look at it, ask yourself three questions.
17 First, when was this document filed? The answer is March 14,
18 2002. This was well after Mr. Rosile and Mr. Snipes signed
19 the tax return, the 1040X that brought us here today, well
20 after that.

21 Look at the document and ask yourself, what
22 relevance does that document have to the conspiracy, the
23 finite conspiracy between Mr. Snipes, Mr. Rosile and Mr. Kahn
24 that the government alleges existed? It doesn't have any
25 relevance.

1 The document contains no reference to American
2 Rights Litigators, Mr. Kahn, Mr. Snipes. The government
3 contends it shows that Mr. Rosile should have known the 861
4 argument was improper. Where does it say that? Look at it.
5 I don't see it, and my guess is you won't either.

6 But at any rate, it didn't occur until after
7 Mr. Rosile left ARL, so there's no way it could be
8 attributable to his state of mind or intent at any time prior
9 to receiving it, whenever that was.

10 Agent Lalli testified regarding a summary of 861
11 claim returns prepared by Douglas Rosile. You saw it. It was
12 a chart. And that's exactly what it was. We don't deny that.
13 We don't deny that Mr. Rosile prepared these returns.

14 And you'll find that every single one of them in the
15 boxes that you'll have, they all consistently contain the IRS
16 Form 8275-R and supporting documentation, fully disclosing to
17 the Internal Revenue Service what Mr. Rosile was doing. But,
18 again, all those documents, no matter how many hundreds there
19 are, have nothing to do with the reason why you're here today,
20 ladies and gentlemen. One document. Mr. Morris told you
21 that.

22 This Form 8275 is important. Look at it. You'll
23 see it. You've already seen it. It's been beat like a dead
24 horse.

25 The language that says "use this form only to

1 disclose items or positions that are contrary to Treasury
2 regulations" -- it specifically acknowledges the fact that
3 there are individuals who will file returns disputing the
4 validity of various Internal Revenue regulations. Obviously,
5 now, we now know what happens when somebody actually has the
6 gall to do so. But, again, full disclosure is not fraudulent.
7 It's not deceit. It's not craft. It's not trickery.

8 There was a summary of Section 861 claims paid out
9 or applied. You've seen this document. You'll have it with
10 you. We don't dispute that the Internal Revenue Service,
11 after reviewing them, determined some of these claims to be
12 proper and paid them.

13 Nor do we deny that Mr. Rosile was paid by ARL for
14 his services, and we don't deny that he wasn't paid on some
15 occasions for his services.

16 By the way, do you not find it strange that none of
17 the people that actually received these refunds are here in
18 this courtroom as a defendant, as a witness or in any
19 capacity? Not one.

20 There's testimony that ARL had some 4,000 clients.
21 Where are they? Not one of them stands charged in this
22 courtroom. And the government did not present even one of
23 them to testify in this case.

24 What efforts did the government undertake to recover
25 the refunds that they contend are fraudulent? We simply don't

1 know because the government chose not to tell you.

2 Where is Milton Baxley, the attorney?

3 Mr. Malatesta, the CPA? Thomas Roberts, the other CPA? We
4 don't know. Why not? Because the government chose not to
5 tell you. Ask yourself why. Why? To borrow a phrase from
6 Mr. Snipes that you heard testified about, very interesting.
7 Very interesting.

8 There are two letters that I want you to take note
9 of. One is the first letter sent by Mr. Rosile to Mr. Kahn,
10 and one is the last sent by Mr. Kahn to Mr. Rosile. You've
11 seen them both. And while both these documents are outside of
12 this alleged conspiracy and that one tax return that's brought
13 us here, they are important.

14 In the initial correspondence Mr. Rosile indicates
15 that he had seen one of Eddie Kahn's presentations, and he has
16 potential problems with the Internal Revenue Service that he
17 would like Mr. Kahn to help him with.

18 He identifies himself as an accountant, and he feels
19 that that reflects a lack of knowing what the law is. And
20 he's looking to Mr. Kahn for guidance after attending the
21 presentation.

22 He also wrote in that letter, "I hate the IRS."
23 Mr. Morris put it up there on the screen. They highlighted
24 it. Mr. Morris said that's his motivation. Ladies and
25 gentlemen, that's just his feelings: He hates the IRS.

1 That's not uncommon. You heard that. And as I said before,
2 he just simply lacks the ability to express himself in a
3 tactful way.

4 Agent Lalli testified regarding an agreement between
5 ARL and Mr. Rosile that apparently sets out the terms of
6 Mr. Rosile's working relationship with ARL. That is an
7 agreement to work for ARL, ladies and gentlemen. It's not an
8 agreement to commit a criminal act. It's not an agreement to
9 defraud the government. It's simply an employment-type
10 agreement.

11 It shows nothing more than a basic contract or
12 subcontractor relationship. It does not prove anything
13 sinister. It does not prove a conspiracy to defraud the
14 Internal Revenue Service.

15 And that document, by the way, wasn't signed by
16 Mr. Kahn, nor was it signed by Mr. Rosile. And so, quite
17 frankly, we don't even know if Mr. Rosile ever got a copy of
18 it. But for what it's worth, the document was put up there
19 and you saw what it was.

20 Speaking of agreement, the government called this
21 handwriting expert, and I asked this gentleman, when looking
22 at the tax return signed by Mr. Snipes and Mr. Rosile, if he
23 had performed an analysis on the date portion to ascertain who
24 put the dates on that 1040X tax return. And he said, no, he
25 had not.

1 I asked if he had the ability to analyze the ink on
2 the signatures to determine whether they were placed on the
3 return on the same date, and he said no.

4 The importance of this, again, is to show the
5 complete lack of evidence that Mr. Snipes and Mr. Rosile ever
6 met, ever spoke, or ever agreed on anything. All it shows is
7 there was a 1040X tax return that was completed adopting a
8 position that was contrary to an IRS regulation, using the
9 form specifically designated for that purpose signed by both
10 Mr. Snipes and Mr. Rosile, which brings me back to another
11 point regarding Agent Lalli's testimony regarding this
12 particular document. And this is important.

13 Mr. Barnes specifically asked Agent Lalli, if
14 someone is going to challenge total tax liability, then one
15 procedure to do so is to put zero on a 1040X, correct? Agent
16 Lalli responded -- and I quote -- I guess they could do that.
17 I don't know if that's the way to do it, but I guess they
18 could.

19 Ladies and gentlemen, he didn't say no, absolutely
20 not. That would be fraudulent. He said, But I guess they
21 could.

22 If the primary investigator tells you on a rope that
23 he doesn't know but guesses someone could do that, how can the
24 government say that for my client to do so constitutes a
25 crime?

1 And, again, remember, Agent Lalli is an extremely
2 experienced Internal Revenue Service criminal investigator who
3 has been on the job for 20 years.

4 Another important thing to remember about Agent
5 Lalli's testimony pertains to the dates Mr. Rosile was
6 affiliated with American Rights Litigators. And, again, this
7 is outside the scope of that one document, but it's important
8 because you have to know the whole picture.

9 During his direct examination, Agent Lalli stated
10 under oath that he believed Mr. Rosile was with ARL from
11 approximately April of 2001 through March or April of 2002.
12 But when I reminded him of his prior grand jury testimony in
13 Jacksonville and I asked him if he recalled telling the grand
14 jury then that Mr. Rosile concluded preparing tax returns for
15 Eddie Kahn in November or December 2001, what did he say? He
16 said yes. That's what he told the grand jury. And, remember,
17 the injunction wasn't the -- the action for the injunction
18 wasn't filed until March of 2002.

19 Previously I spoke with you regarding one of two
20 letters sent by -- sent between Mr. Kahn and Mr. Rosile, the
21 first of which was the introductory letter from Mr. Rosile to
22 Mr. Kahn introducing himself and indicating he would like to
23 speak with Mr. Kahn.

24 The second one is from Mr. Kahn to Doug Rosile. And
25 this is an important -- an important letter because it frames

1 the actual relationship between Mr. Rosile and American Rights
2 Litigators and demonstrates how ARL and Eddie Kahn perceived
3 the relationship between them and Mr. Rosile.

4 It described the payment arrangement and then said,
5 If you did not like that agreement, all you'd have to do is
6 say so. We simply would not have used you for this work. We
7 would have looked for another accountant who would have
8 appreciated the opportunity we were offering.

9 Doug Rosile was nothing more than an expendable tool
10 who could be easily replaced by American Rights Litigators.
11 That's a far cry from being a partner in criminal purpose as
12 the government wants you to believe.

13 The government presented you the testimony of
14 Kathleen Arth who is an IRS revenue agent from Fort Myers.
15 Agent Arth testified about the tax returns Mr. Rosile did for
16 his wife and did for Mr. and Mrs. Harms.

17 She testified about the letters he sent to the IRS
18 on their behalf. And, again, I want to point out that these
19 returns all contained the appropriately designated IRS Form
20 8275-R and fully disclosed to the IRS the theory put forth
21 therein. We never denied that.

22 And, again, those documents are outside the scope of
23 this one act that Mr. Morris told you that Mr. Rosile did that
24 brought him into this alleged conspiracy. But the government
25 wants you to see that there's a whole lot of stuff out there.

1 But what does it relate to?

2 It's important for you to realize that Agent Arth
3 had nothing to do with the case that's before this Court.
4 This case involves a specific alleged conspiracy between
5 Mr. Kahn, Mr. Snipes, and Mr. Rosile that culminated, as far
6 as Mr. Rosile is concerned, in his signing this one return.

7 Agent Arth had no involvement in this case at all.
8 She requested that he, Mr. Rosile, meet with her on another
9 matter. And true, he never showed up for the meeting that she
10 unilaterally set on September 11, 2001. Instead, he had an
11 attorney respond for him with a power of attorney.

12 And what did she do? She ignored the attorney and
13 sent Mr. Rosile a summons. Did she personally give it to him?
14 No.

15 More importantly is the following: If you recall
16 when I was asking her questions, Agent Arth, regarding this
17 1040X tax return, the one that he prepared for his wife -- and
18 we were discussing the documentation attached to it explaining
19 the fact that it was prepared pursuant to the 861 theory --
20 she said in response to my questions, I don't know I would
21 call it the theory, but that code section, you know, 861 is
22 cited as the explanation. And then this was attached to it,
23 and it's called Section 861, income from sources from within
24 the United States. So I don't know what their intent was when
25 they filed or when she filed it and Mr. Rosile prepared it.

1 Ladies and gentlemen, the United States bears the
2 burden of proving the intent of Mr. Rosile in this case. It
3 has the burden of proving that he acted willfully, which the
4 Judge will instruct you means that the act was committed
5 voluntarily and purposely with the specific intent to do
6 something the law forbids, that is, for bad purpose either to
7 disobey or disregard the law.

8 When that agent said, "I don't know what their
9 intent was when they did it," that negates the government's
10 case, because they have to prove intent. And if they don't
11 know intent, how can they prove it?

12 I'd like to address a few of the comments that my
13 colleague, Mr. Morris, made during his closing. He showed you
14 the Internal Revenue Service letter to Mr. Rosile regarding
15 his wife. You saw it. He put it up there on the screen, and
16 they highlighted that portion that said "your claim has no
17 merit or basis." And this was before the Snipes return, by
18 the way. "Your claim has no merit or basis." Yeah, where
19 does the word fraudulent appear on that document? It doesn't.
20 Take a look. "Your claim has no merit or basis." It doesn't
21 tell him that it's fraudulent.

22 There's a 1996 Form 1040X that was talked about and
23 discussed. It's unsigned by the preparer. This document
24 predated Mr. Rosile's relationship with American Rights
25 Litigators.

1 There is a 1996 letter that was written from the
2 Internal Revenue Service to American Rights Litigators that
3 the government talked about, and there's no proof that
4 Mr. Rosile actually saw this letter either.

5 Mr. Morris conceded to you that Doug Rosile's
6 involvement in this case was limited to the 1040X return for
7 Mr. Snipes. Don't forget that, ladies and gentlemen.

8 I would like to talk with you a little bit about the
9 instructions and the law that the Judge is going to give you.
10 Some of it has been reviewed before. But I want to touch on a
11 few portions of it. I'm not going to put it up on that thing
12 because it makes me dizzy looking at it.

13 You're going to get a copy of these you're going to
14 have to look at, to review -- to review, to read, to discuss
15 when you go back to deliberate. I'm going to basically read
16 some of them to you.

17 Mr. Morris just told you that the government -- the
18 government's burden of proof is a strict or heavy burden, but
19 it's not necessary that a defendant's guilt be proved beyond
20 all possible doubt. And that's true. It is only required
21 that the government's proof exclude any reasonable doubt
22 concerning the defendant's guilt.

23 It says, Proof beyond a reasonable doubt is proof of
24 such a convincing character that you would be willing to rely
25 and act upon it without hesitation in the most important of

1 your own affairs.

2 What, ladies and gentlemen, are the most important
3 of our own affairs? Paper or plastic? I don't think so.
4 Blue shirt, white shirt? No.

5 I was reading some legal documents and things that
6 other attorneys have used to describe items of personal
7 affairs that are so important that they would rise to this
8 level, and one of them had to do with taking a relative off of
9 life support. I would never go there, but, you know, it
10 occurred to me that these are the type of decisions that are
11 the most important of our own affairs, not decisions we make
12 on a routine basis day-to-day: Do I stop at the light or do I
13 just slow down? The most important of our own affairs that go
14 beyond simple decisions day-to-day that we make.

15 And you have to be convinced that the government has
16 proven each and every element of the offenses that these
17 individuals are charged with by evidence of such a convincing
18 character that you would be willing to rely and act upon it
19 without hesitation -- that means without thinking about it --
20 without hesitation in the most important of your own affairs.
21 And if they failed to do so, you must find the defendant not
22 guilty.

23 You must consider only the evidence that's been
24 admitted in this case, not anything that you heard outside,
25 not anything that you've seen outside or read outside, or

1 something that you know happened. Oh, I knew that happened,
2 but you didn't hear about it in this courtroom. If you didn't
3 hear it in this courtroom, it doesn't exist.

4 Count One of the Indictment -- and you're going to
5 have the Indictment, by the way. You're going to have it.
6 You're going to look at it. It's going to have a bunch of
7 stuff in there. It's going to have the offenses and some of
8 these overt acts that Mr. Morris related to you.

9 With regard to the conspiracy offense charged in
10 Count One of the Indictment -- this is a multi-count
11 Indictment, as you'll see.

12 Oh. Only two apply to Mr. Rosile, by the way. Only
13 two.

14 It's alleged that the defendants knowingly and
15 willfully conspired together to defraud the United States by
16 impeding, impairing, obstructing or defeating the lawful
17 government functions of the Internal Revenue Service in the
18 ascertainment, computation, assessment and collection of the
19 revenue. That's a whole lot of words, ladies and gentlemen,
20 but I haven't seen any evidence to show that that was done.
21 There's no agreement to do so. There are things that were
22 done, but doing things in the absence of an agreement don't
23 make a conspiracy.

24 Count Two of the Indictment charges each of the
25 defendants with the commission of what is known as a

1 substantive offense. The knowing and willful presentation of
2 a materially false, fictitious or fraudulent claim -- there's
3 that word "fraudulent" again -- fraudulent claim for payment
4 against the United States in the form of an amended federal
5 income tax return, Form 1040X, for defendant Snipes in the tax
6 year 1997.

7 It is a federal crime or offense for anyone to
8 conspire or agree with someone else to defraud the
9 United States. And, again, the magic words that you have to
10 know are that to defraud the United States means to interfere
11 with or obstruct one of its lawful functions by deceit, craft
12 or trickery.

13 We have a document and a theory that the Judge will
14 tell you is without merit. Without merit is not deceit. It
15 is not craft. It is not trickery. It simply means it's
16 without support. You know what the words mean. It doesn't
17 mean fraudulent, deceitful, trickery.

18 A conspiracy is simply an agreement or a kind of
19 partnership in criminal purpose in which each member becomes
20 the agent or partner of every other member. What has the
21 government proved, ladies and gentlemen? As I indicated
22 before, they haven't proved a partnership of criminal purpose.

23 They have proved three individuals who had an
24 interaction that resulted in a form being filed, a form that
25 showed everything that they were doing. They have not proved

1 any type of an agreement or a partnership among Mr. Snipes,
2 Mr. Rosile and Mr. Kahn.

3 The government must show beyond a reasonable doubt,
4 which we've already discussed, that two or more persons in
5 some way or manner came to a mutual understanding to try to
6 accomplish a common and unlawful plan as charged in the
7 Indictment. Again, that's the agreement. We know what they
8 did, but the government hasn't proved that they had the intent
9 to defraud the government.

10 And to say they did it and, because they did it, you
11 know, they have the intent to do it, the intent to defraud the
12 government, that's not proof, ladies and gentlemen. That's
13 speculation. And, again, speculation does not equate to
14 reasonable doubt -- proof beyond a reasonable doubt that the
15 defendant, knowing the unlawful purpose of the plan, willfully
16 joined in it -- joined it.

17 The government has failed to prove that there was an
18 unlawful plan agreed to by Mr. Rosile, Mr. Snipes and Mr. Kahn
19 in the preparation and filing of this 1040X tax return.

20 What evidence did they prove? What did they show
21 you? They showed that a tax return was prepared that the
22 government -- I'm sorry -- the Judge will tell you is without
23 merit. They have not proved that there was an unlawful
24 purpose to the plan. Meritless, yeah. Unlawful, no.

25 With respect to Count Two, it is a federal crime or

1 offense for anyone to knowingly make a false claim against any
2 department or agency of the United States, which is the
3 United States of America, the government, the Internal Revenue
4 Service.

5 The defendant can be found guilty of the offense of
6 making a false claim against the government only if all of the
7 following acts are proved beyond a reasonable doubt: that the
8 defendant knowingly presented to an agency of the
9 United States a false or fraudulent claim against the
10 United States as charged in the Indictment; that a false or
11 fraudulent aspect of the claim related to a particular fact;
12 and that the defendant acted willfully and with knowledge of a
13 false or fraudulent nature of the claim.

14 And the Judge is going to define what the words
15 "false" and "fraudulent" mean. A claim is false or fraudulent
16 if it is untrue at the time it's made and is then known to be
17 untrue by the person making it. An untruth is a lie. Untruth
18 is not meritless. The claim has to be untrue, false, at the
19 time it's made and then at that moment known to be untrue by
20 the person making it, not that they find out later -- at the
21 time -- and still the instruction is going to be that the 861
22 argument is meritless, not untrue.

23 The making of a false or fraudulent claim is not an
24 offense unless the falsity or fraudulent aspect of the claim
25 relates to a material fact. A misrepresentation is

1 material -- a misrepresentation, a lie, by the way -- a
2 misrepresentation is material if it relates to an important
3 fact as distinguished from some unimportant or trivial detail
4 and has a natural tendency to influence or was capable of
5 influencing the decision of the department or agency in making
6 a determination required to be made.

7 Again, a lot of words to say that if it had the
8 ability to influence the Internal Revenue Service in what they
9 do, then it's material.

10 What evidence was presented to you from that witness
11 stand up there, ladies and gentlemen? The Internal Revenue
12 Service has a funny box. Claims came in; they look at it.
13 861 argument, criminal cases, boom, into the funny box. And
14 then whatever happened down the line happened. There was no
15 evidence that these documents had a tendency to influence or
16 were capable of influencing the decision of the department in
17 making a determination required to be made -- which
18 determination required to be made, by the way, they never told
19 us.

20 Ladies and gentlemen, in order for you to find
21 Mr. Rosile guilty of the offenses with which he is charged,
22 the government must establish beyond a reasonable doubt that
23 Mr. Rosile acted with specific intent to defraud or
24 willfulness as charged in the Indictment.

25 There's been no evidence presented from that witness

1 stand that Mr. Rosile had acted with a specific intent to
2 defraud the government. He told them what he was doing every
3 step of the way.

4 With regard to the issue of willfulness, the
5 government has to prove it on behalf of Mr. Rosile, and they
6 haven't.

7 With respect and with regard to the issue of
8 fraudulent intent, one who expresses an honestly-held opinion
9 or an honestly-formed belief is not chargeable with fraudulent
10 intent even though the opinion is erroneous or the belief is
11 mistaken. Evidence which establishes only that a person made
12 a mistake in judgment or an error in management or was
13 careless does not establish fraudulent intent.

14 Ladies and gentlemen, you've heard from witnesses --
15 Charis True -- who testified that she believed in some of the
16 things that Mr. Kahn's company, organization, ARL, stood for.
17 What evidence has there been shown that Mr. Rosile did not
18 hold an honestly-held opinion, honestly-formed belief, that
19 this 861 theory was valid?

20 You've been told that it's meritless. And, again,
21 meritless is not fraudulent. Mr. Rosile was told in that
22 letter his position is without merit. That's not fraud. They
23 simply haven't proven the element of intent, particularly when
24 Agent Arth testifies, "I don't know what their intent was when
25 they did this."

1 The word willfully as that term is used in the
2 Indictment that you'll see or in the instructions that you're
3 going to have means that the act -- filling out this 1040X
4 return -- was committed voluntarily and purposely with the
5 specific intent to do something the law forbids, that is, with
6 the bad purpose either to disobey or disregard the law.

7 Ladies and gentlemen, you've heard those words over
8 and over again, and I won't belabor the point. The bottom
9 line is this: At the very, very, very worst, the government
10 has proven that Mr. Rosile signed a 1040X tax return that he
11 could or should have known, maybe, was meritless, lacked
12 merit.

13 The government has not proven to you that he signed
14 this tax return with the specific intent to do something the
15 law forbids. They haven't proven that he acted with the bad
16 purpose to disobey or disregard the law.

17 Meritless -- without merit -- isn't fraudulent.
18 Frivolous is not fraudulent. Fraudulent is fraudulent. And
19 the only words that contain fraudulent are coming from this
20 table right here, ladies and gentlemen, the government, the
21 IRS, not from the Judge.

22 Ladies and gentlemen, this has been a difficult case
23 to sit through and listen to. And as you've been told before
24 by Mr. Bernhoft and by Mr. Morris, those of us who work in
25 these types of situations appreciate your service. This is

1 among the most important things that we can do as citizens,
2 besides voting, serving our country, and being willing to
3 serve on a jury.

4 Mr. Rosile appreciates your patience and your
5 attention and your consideration. I appreciate your patience,
6 your attention and your consideration.

7 When you look at the law that the Judge is going to
8 give you, when you recall the facts that was presented by that
9 witness stand up there and you look at the documents, I have
10 no doubt that you'll use your best efforts to come to the
11 appropriate decision regarding Mr. Rosile's culpability, guilt
12 or innocence in this case.

13 And what Mr. Rosile is going to ask you to do is
14 simply to return in his case a fair verdict. A fair verdict
15 given the evidence, the facts and the law in this matter with
16 respect to Mr. Rosile as to Count One is not guilty and as to
17 Count Two is not guilty. Thank you very much.

18 THE COURT: All right. Thank you, members of the
19 jury. Let's pause now and take our afternoon break.

20 (A recess was taken.)

21 (Jury present.)

22 THE COURT: Thank you. Be seated, members of the
23 jury.

24 Mr. O'Neill, you may address the jury and make a
25 rebuttal argument.

1 MR. O'NEILL: Thank you, Your Honor. May it please
2 the Court.

3 Good afternoon, ladies and gentlemen. I've got good
4 news and bad news for you. The good news is I am the last
5 lawyer that's going to be talking that you will be subjected
6 to today. The bad new is His Honor has allowed me to talk
7 till 10:00 tonight.

8 Ladies and gentlemen, we have all heard the old
9 adage: But in this world, there are only two things that are
10 certain: Death and taxes. I looked that up because, you
11 know, we hear it all the time and we have always heard that.

12 So I looked it up during this case, and it was said
13 by Benjamin Franklin in 1789, quite some time ago, over 200
14 years ago. And nothing much has changed. In 200 years, you
15 know, this republic is 200 years older, and still death and
16 taxes. We would like to get rid of one of them at least,
17 sometimes two, but we can't.

18 Remember the testimony of Carmen Baker. Carmen
19 Baker said that she thought this was all a scam. Why?
20 Because we were taught from an early age that we have to pay
21 our taxes. That's what we have to do. Everybody knows that,
22 everybody except for these three defendants.

23 I want to go back about 30 years, actually, when
24 "Saturday Night Live" was on. I guess it still is. I don't
25 stay up that late anymore, but, you know, when you're younger,

1 you obviously do. About 30 years ago, Steve Martin was on
2 "Saturday Night Live." Probably a lot of people have seen it;
3 John Belushi, all the regular characters.

4 And Steve Martin had a number of skits. One was
5 that King Tut thing. But one I always remember, and it was
6 how to make a million dollars and not pay taxes. And he did
7 it as a comedian would. He said: First you make a million
8 dollars. And he went through that pretty fast, you know:
9 Just make a million dollars. And then second, when the IRS
10 comes after you, and says: Hey, you made a million dollars,
11 you didn't pay taxes, you say: I forgot.

12 Now, who would believe 30 years later life would be
13 imitating art?

14 What we have here is a person like Mr. Snipes, who
15 had the fortune of making so much money. And yet when it came
16 tax time, he said: I'm just not going to pay it. I am just
17 simply not going to pay it.

18 And that's what this case is about. In its essence,
19 it is about refusing to pay what's rightfully due the United
20 States government.

21 And let's talk about that for a second. And I won't
22 go into a lot of documents again. I know you are sick and
23 tired of seeing that.

24 But when you look at this case, you have Mr. Starr,
25 Mr. Starr Junior, Ronald Starr, telling Mr. Snipes, and

1 listening to Mr. Kahn, and saying: This position is
2 ridiculous. Once again, you don't have to pay taxes? You
3 have been paying taxes all these years. You have been paying
4 lots of taxes because you make lots of money.

5 But all of a sudden, you no longer have to, because
6 some guys down in the Ocala area of Florida, you know,
7 Mr. Kahn and some accountant working for him at that time,
8 Mr. Rosile, say: No; you don't have to pay it anymore, no.

9 Remember the old adage, too: If it's too good to be
10 true, it is. I mean, that was a Godsend, right? That's
11 great: I don't have to pay taxes anymore. Terrific. Case
12 closed. I'll go home.

13 But that is what they decided here. That's what
14 Mr. Snipes decided: I am not going to pay taxes anymore. And
15 he found Mr. Kahn, who said: Oh, absolutely, you don't have
16 to pay taxes. In fact, what we do is we have these so-called
17 lawyers and so-called accountants on staff, and they will file
18 these powers of attorney for you -- and I will talk about that
19 in a second -- and then we will just keep sending things to
20 the IRS, keep sending things to the IRS, and keep asking for
21 more information and more information, and keep sending these
22 frivolous documents, this gibberish over and over.

23 You know, you think about what was said in 1789 by
24 Benjamin Franklin, and think of some of the things said in
25 this case.

1 Exhibit 106, Mr. Snipes says: It is unlawful for
2 you to cite in your response any Federal court case to prove
3 your point in my case. I remind you that I am a non-resident
4 alien, non-taxpayer, not subject to Federal jurisdiction and
5 not engaged in a trade or business pursuant to 26 CFR, Section
6 1.872-2. Gibberish. It means nothing.

7 Or Government's Exhibit 74, said by Mr. Kahn:
8 Please be advised that I am no longer a 14th Amendment citizen
9 of the corporate United States, in parentheses United States
10 citizen, concurred with by the President of the United States.
11 I am solely a citizen of the Texas Republic and, therefore,
12 claim my sovereignty. Hence, I am no longer a juristic person
13 under your principle, the international banking system called
14 Federal Reserve. Again, gibberish.

15 Or Mr. Rosile in Government's Exhibit 60-2: The
16 letter signed by someone calling herself Ellen C. Bell is a
17 classic case of bureaucratci run-around and IRS stonewalling
18 by an incompetent employee. The letter is, parentheses, in
19 Clinton-speak, factually inaccurate. There was no claim for
20 refund, simply a regular 1040 return seeking a normal refund.
21 The service center invented, slash, fabricated, slash,
22 corrected and otherwise created a balance due without any
23 explanation or substantiation. It then wantonly, slash,
24 deliberately and maliciously refused to provide any
25 information, case law, statute or regulation to support their

1 position that your claim has no merit or basis.

2 That's what we are saying today in the 2000's, a far
3 cry from when Ben Franklin said we have to pay our taxes. I
4 said: If it's too good to be true, it is.

5 Counsel made much about deceit, craft and trickery.
6 And those are the words in there. Let's talk about that.

7 Is it not deceitful to file one frivolous claim
8 after the other, stating positions that are just contrary to
9 the law, make no sense? This isn't the case of maybe one
10 document being filed. You saw the bevy of documents, one
11 after the other, asserting these ridiculous positions,
12 positions that even counsel has said were odd, bizarre, crazy.

13 But you know what, I think about crazy and I think
14 about the guy walking down, you know, maybe someplace like in
15 the New England area, upstate New York, and no clothes in
16 January. That's crazy. That's something that hurts you.
17 That's harmful to you, the person.

18 But when you go and make a lot of money and save a
19 lot of money, I'm not sure that's crazy. That's more like
20 crazy like a fox. Is that something that's crazy? Or is it
21 clearly a purposeful thing to make money, to save and not pay
22 your taxes?

23 Craft; coming up with a complete system of just
24 engaging the IRS in form after form.

25 Remember what counsel said. All the IRS had to do

1 here was engage Mr. Snipes, just tell him, sure, just get a
2 couple hundred million taxpayers in this country and engage
3 them, set up appointments with them, you know, engage in their
4 correspondence and frivolous documentation.

5 Does that make sense to you, ladies and gentlemen?
6 If the IRS did that with every taxpayer in this country,
7 everything would grind to a halt. It just wouldn't work. As
8 Mr. Morris said, nobody is above the law, whether it be an
9 actor; an accountant, like Mr. Rosile; or Mr. Kahn, who runs a
10 taxpayer -- tax protesting organization. Nobody is above it.
11 We all have to file our taxes.

12 You know, much was made about this IRS tax code and,
13 you know, this book that is about a gazillion inches thick and
14 nobody has read it.

15 And, you know, through all our experiences and
16 common sense, there's a lot of instances where you might say,
17 well, I deserve an exemption here or a deduction there.

18 That's not what this case is about. This isn't
19 about the intricacies of the tax code. It is about knowing to
20 file your taxes.

21 You heard document after document, witness after
22 witness. If after there is a dispute, then a lot of other
23 things come into play; appeals and the processes and the like.

24 But at the beginning, in its essence, you must file
25 a tax return. You have to. That starts the ball running. If

1 you have got an issue with the IRS, file your tax returns and
2 bring on the fight. That's not what happened here. They
3 decided they weren't going to do it.

4 Trickery. How about trickery when you file an
5 amended tax return, the 1997 we have seen ad nauseam, with the
6 jurat "under no penalty of perjury"?

7 Now, when we showed it in court and we blow it up on
8 this nice machine for everyone to see, it is readily apparent.
9 But is it readily apparent to a bureaucrat stamping tax return
10 after tax return after tax return?

11 And Mr. Rosile, you know, Mr. Wilson got up, and
12 said: Oh, you know, it's only this one document. Well, there
13 is hundreds of 1040X's in the evidence right here, so -- and
14 they are all available for your perusal.

15 But all of those documents are available there and
16 you will see them. It worked a number of times. That was the
17 deceit here.

18 And when it worked, again, is it crazy? Or is it
19 that Mr. Rosile was going to make a lot of money? You saw --
20 you know, in this particular case -- I would like to go to
21 agreement next -- we even actually have an agreement written,
22 which is very unusual in conspiracy cases.

23 See, normally in a conspiracy, since the government
24 is not part of the conspiracy, we're looking from the outside
25 in, and we don't know what conversations occurred between the

1 parties. So the Court and the law allows us to prove it by
2 circumstantial evidence. So we are looking outside in.

3 But here there is even a document saying: We have
4 an agreement. I am going to file these returns. I am going
5 to do it on this 861 position, which is actually totally
6 meritless; but if it works, I'm going to make some dough on
7 this. I'm going to get some money. That's what Mr. Rosile
8 did.

9 And Mr. Kahn, Mr. Kahn is running this whole
10 operation. He is running the entire American Rights
11 Litigators, the purpose of which -- you have seen it time and
12 time again -- to defeat and frustrate the IRS.

13 Count One, the conspiracy count, is a -- and counsel
14 has talked about this at length. The government must show
15 agreement. The agreement is clear in this case, ladies and
16 gentlemen. Mr. Snipes joined ARL, joined Eddie Kahn, Doug
17 Rosile was doing the accounts there. They worked together,
18 the three of them in unison as a partnership in criminal
19 purposes, decided to defeat and frustrate the IRS in the
20 computation of the taxes. And they did it through craft,
21 deceit and trickery. Any more obvious example of this would
22 be hard to imagine.

23 You know, you have very good lawyers on the other
24 side making very good arguments. But legal argument, argument
25 by lawyers does not substitute for evidence. The only

1 evidence in this case, the only evidence came from witnesses
2 on the stand and documents here.

3 And I would like to make a note, Mr. Wilson said the
4 government witnesses, the government -- it is not the
5 government's witnesses, it is not defense witnesses. It is
6 witnesses. Because the government has to call those witnesses
7 interests that were there.

8 You know, a prosecutor in the Bronx years ago would
9 say in a -- whether it be a robbery case, a murder case, he
10 would say: You know, I wish my witnesses were priests, rabbis
11 and nuns.

12 But at 2:00 in the morning when a murder occurs at
13 138th Street and Brook Avenue, there are no priests, rabbis
14 and nuns on the street corner. You take your witnesses as you
15 find them. That's an axiom in the law.

16 Do you think the government would call a Charis True
17 as a witness? You saw that young gal. You saw all the young
18 gals that worked for ARL. They had been convenience clerks
19 for a little while, and now they were running this big
20 accounting agency.

21 Is that the way, in your common sense judgment, life
22 goes? Or did Eddie Kahn just recruit gals who had very little
23 life and business experience, and have them do his bidding;
24 generate these bills of exchange, generate these fraudulent
25 documents, these frivolous documents? Isn't that what

1 happened?

2 Counsel mentioned protest is not criminal,
3 disagreement is not criminal, frivolous is not fraud. I beg
4 to differ. And it is your decision that counts, not what he
5 said, not what I say.

6 But it is fraud. When you consistently in a pattern
7 file frivolous document after the other in an effort to
8 prevent yourself from filing taxes, so that the IRS doesn't
9 levy the taxes, so that the government doesn't get the taxes,
10 that is fraud, ladies and gentlemen. That is the essence of
11 fraud. That's why we're here.

12 Counsel talked about good faith and willfulness.
13 And, again, it's been read to you and I don't want to go into
14 it in great detail, but you will see it's laughable that
15 anybody would even mention good faith in a case like this.

16 Ask yourselves, again using your common sense and
17 good judgment, that would it be even remotely possible that
18 good faith is even applicable in this case? I am sure when
19 you read this, you're going to think: Well, what does that
20 have to do with this case, when Mr. Snipes is filing his
21 taxes, has a well-known tax attorney preparing it, and then
22 stops on a dime in '99, just stops on a dime.

23 And is told by that advisor: Whoa, whoa, whoa,
24 whoa, you better be careful here. That position is
25 ridiculous. You need to file your charges (sic). So much so

1 that he fires Mr. Snipes as a client.

2 You heard the mudslinging to use the term referenced
3 by Mr. Morris, about Mr. Starr. But, you know, they say
4 cross-examination is one of the greatest engines at arriving
5 at truth.

6 How was the cross-examination of Mr. Starr? Barely
7 there. He was not able -- defense counsel was not able to put
8 a lick on him. Why? Because it was just mudslinging.
9 Nothing, nothing in the evidence suggests there was a problem
10 with Ken Starr until this case, not up until 1999, 2000, when
11 he fires Mr. Snipes as a client in June of that year.

12 And they made much of the letter. The letter
13 doesn't say: Mr. Snipes, you are a tax cheat. If you follow
14 this line of reasoning purported by Mr. Kahn, you are going to
15 find yourself in jail.

16 Is that the kind of letter an attorney representing
17 him in business is going to write to him? Or is it going to
18 be much more muted: Hey, you know, you are on your own. You
19 pursue the kind of inquiry you want to do, pursue the course
20 of action you want to do. All I'm telling you is I am going
21 to no longer be on this account. We are going to get you
22 someone else.

23 Isn't that the way the business world works, using
24 your common sense? Is he going to put in the letter: Hey, by
25 the way, I think that's illegal and I may have to contact the

1 IRS?

2 You didn't hear any evidence he contacted the IRS.
3 Why would he? What's it in his interest? The IRS contacted
4 him as a witness to this case when we found out that he was a
5 previous tax advisor for Mr. Snipes.

6 But what it says in good faith is -- and it's very
7 important. You have heard a lot about lawyers and
8 accountants. It says whether the defendant acted in good
9 faith for the purpose of seeking advice concerning questions
10 about which the defendant was in doubt, and whether the
11 defendant made a full and complete report to the attorney, and
12 whether the defendant acted strictly in accordance with the
13 advice received are all questions for you, the jury, to
14 determine.

15 Is there any evidence in this record whatsoever that
16 he even ever talked to a lawyer at ARL about it, or that he
17 ever even talked to an accountant? Or when they did the
18 search warrant, were there any books and records found? None.
19 You heard that from Agent Lalli. Nothing. The kinds of
20 things you would normally --

21 You heard from Michael Canter, the very skittish
22 accountant working at Starr & Company. Michael Canter said,
23 you know, you go through all those documents.

24 You saw all the documents we had to bring into court
25 to prove the financial matters and the tax returns. They are

1 voluminous. That's the kind of stuff that a tax preparer puts
2 together.

3 Vacant. None of that at ARL. Why? They weren't
4 giving legal advice. They were filing these gibberish, these
5 documents over and over. Stall, stall, try to push the IRS
6 off so that nothing happens so you don't have to pay taxes.
7 That's what that is all about, ladies and gentlemen.

8 And so when you look at the good faith, is there any
9 good faith in this case? Absolutely not. It is probably
10 something you are going to come up with using your common
11 sense and good judgment, you are going to say: Where is the
12 good faith when you are told this position doesn't work? When
13 you are told: This is ridiculous. When you are told: Get
14 somebody else. Don't trust me. Get someone else.

15 Instead, you go to Eddie Kahn.

16 You know, counsel also made much about the fact that
17 this started civilly, that the IRS went after civil, and then
18 it became criminal. Of course, it became criminal at some
19 point.

20 Mr. Snipes doesn't file his taxes in 1999. Doesn't
21 file his taxes in 2000. Now we are getting to a stage. What
22 does he do? Bing, he files an amended return in 1997 with
23 Mr. Rosile to get back seven million dollars. That's a false
24 claim. That's Count Two in this charge.

25 At that point, it became criminal.

1 And the defense attorneys would argue that, what,
2 the IRS should not now pursue him? I mean, that's exactly
3 what they are paid to do. They are criminal agents. When it
4 becomes criminal, they do that.

5 So what they do is they read him his rights, saying:
6 Hey, it's now a criminal charge. You have the right not to
7 talk to us; very above-board, very evenhanded.

8 And so counsel will have you believe, after that,
9 Mr. Snipes was worried. He said: Gees, you know, I can't
10 file anything.

11 Well, ask yourselves, ladies and gentlemen: Did
12 that stop him from filing anything? Specifically, look at
13 128-1, 128-2, 139, 140, and 106. And I'm sorry I'm going so
14 quickly, but I'm trying to move fast.

15 All of those were filed afterwards. And what they
16 are, these are these manifestos, where he is saying: I don't
17 have to do this. I don't have to file taxes. What's your
18 authority?

19 When you read those, ask yourselves again, using
20 your common sense: Does that sound like a man intimidated by
21 the IRS, afraid to file things? Come on. That's ridiculous.

22 In fact, not only is he not afraid to file them,
23 he's filing what he claims is his tax returns, even though
24 they have nothing to do, and His Honor will instruct you,
25 these were not tax returns. They had no financial data in

1 them. But he is claiming they are. So he's still filing
2 away, filing away, engaging the IRS.

3 He does it. As Mr. Barnes told you, he even did it
4 after the indictment, saying: You better not come after a big
5 shot target like me because you're going to regret it. That's
6 what Mr. Snipes files.

7 Ask yourselves: Was he intimidated after meeting
8 with Agent Lalli? Was he intimidated? Or, using your common
9 sense, was this just part of what he says?

10 And look at those documents. He talks about juries
11 and trying to get a jury, and you won't be able to get a right
12 jury, and you won't be able to get a judge because the judge,
13 you know, is biased and has a conflict of interest. All
14 gibberish, all nonsense. And he continues to file it.

15 Mr. Barnes said Mr. Snipes was put through a ringer
16 for eight years. What ringer was he put through? He is the
17 one filing all of this. He is the one demanding all of these
18 things from the IRS. He is the one refusing to pay his taxes.

19 Was he put through the ringer or was the IRS put
20 through the ringer? Did he want special treatment for him,
21 special than any other taxpayer, when the rest of you all pay
22 your taxes and comply with the law? He didn't want to comply
23 with the law and he fought the IRS in that regard.

24 You also heard that he was caught in a Catch 22. A
25 very nice saying, very nice little catch phrase. The problem

1 with that is it was his own doing. All he ever had to do was
2 file his taxes.

3 He didn't do it. He purposely refused to do it. He
4 wantonly refused to do it. That is the very essence of the
5 definition of "willful." You purposely do something,
6 voluntarily do it with the purpose of doing a bad act,
7 something that the law forbids.

8 And what the law forbids here is the failure to file
9 your taxes when due. That's what the case is about.

10 Now, I want to mention venue because counsel went in
11 depth about venue. And only as to Counts Three through Eight.
12 There can be no plausible argument that there is not venue on
13 Counts One, the conspiracy, where everything occurred here in
14 Lake County in the Middle District of Florida, and Count Two,
15 where it was sent from Lake County in the Middle District of
16 Florida.

17 Counts Three through Eight, they say there is no
18 venue. They broke down the number of calls that come from
19 California, calls that come from Florida.

20 Once again, it is the evidence in this case, the
21 witnesses and the documents. The documents the government was
22 able to put forth for you only showed what? A driver's
23 license in Florida. Government did not introduce any other
24 evidence of any other driver's license. A homestead exemption
25 where? In the state of Florida. A home in the state of

1 Florida.

2 And then, you know, again, Mr. Bernhoft, a very fine
3 lawyer -- these are all very fine lawyers -- was able to say:
4 Well, you know, that affidavit in which he swears under oath
5 that he lives at Deacon Court in Windermere, Florida, you
6 know, it is for a different purpose.

7 Again, that's what Mr. Bernhoft said. It is sworn
8 under oath. And the government relied on that very promise or
9 statement under oath in affixing venue here.

10 You will hear -- Mr. Bernhoft very rightfully stated
11 there is a definition in here about where your permanent
12 residence is. And it is where your permanent abode is, even
13 if you leave, as long as you intend to come back and forth.

14 And Mr. Morris -- and I won't belabor the issue --
15 in his earlier closing told you that other exhibit, the one
16 where right on it, he says: I intend to make Windermere my
17 permanent home. It's in his words. He wrote that. And
18 that's why the government charged him here in the Middle
19 District of Florida.

20 There was no evidence of an address in New York.
21 There was all this talk that he lived in New York. Some of
22 the witnesses said, oh, yes, he lived in New York. We didn't
23 hear where.

24 Vandam was obviously Amen Ra's corporate offices.
25 We didn't hear anything about a place near the World Trade

1 Center. We heard about a place way up in 48th Street in
2 midtown, but we didn't hear that was his address.

3 We did hear about this house in New Jersey in 2003,
4 and we did hear that eventually became his residence.

5 Absolutely, up there he was spending a lot of time. But we
6 didn't hear it from before, because he didn't own that.

7 Remember, there was all those financial documents that: I'm
8 buying the house in New Jersey.

9 We also heard a lot about California, but we --
10 there was nothing that the government put in to indicate what
11 the house was in California, where it was, that he owned it.

12 So you have to limit yourself to the evidence that
13 was presented here, the documents and the witnesses.

14 I want to get off Mr. Snipes for a second and get to
15 Mr. Kahn. And please do not forget Mr. Kahn. As you heard
16 from him and from His Honor, he voluntarily absented himself
17 from the trial, which, as His Honor stated, is his right to do
18 so.

19 But he is still a defendant in this case and you
20 still must make a determination as to his guilt on these
21 charges. He is charged in Counts One and Two only, not Three
22 through Eight.

23 And, again, through the witnesses, through the
24 documents, the evidence against him is overwhelming.

25 And Mr. Rosile, Mr. Wilson just gave -- and I would

1 like to briefly touch upon him. Mr. Rosile said he only made
2 a cameo in this case. Well, even an actor who makes a cameo
3 appearance in a movie gets credit at the end. His Honor will
4 instruct you in these very instructions that even if you play
5 a minor role, as long as you play a role in the conspiracy,
6 you are as guilty as anybody else.

7 Is his role as big as Mr. Snipes or Mr. Kahn's? No.
8 But is he there? Yes. Is he filing these returns? Is he the
9 one signing them, putting them together, asserting this
10 ridiculous 861 position in an attempt to seek refunds? And
11 was it effective?

12 And, again, we can call it crazy. We can call it
13 odd. We can call it bizarre. Or we can call it: Hey, we are
14 trying to make some dough here. We are trying to make some
15 money. And that's what this is all about.

16 Mr. Rosile is financially motivated, too.
17 Mr. Snipes just doesn't want to pay taxes. Mr. Rosile wants
18 to make some money on these false returns and Mr. Kahn wants
19 to just perpetuate this tax protesting business that he has.

20 Mr. Wilson also talked about hiding the ball with
21 Mr. Rosile, and don't let the government hide the ball. Well,
22 that's sort of a strange argument because, since the
23 government has the burden of proof, we are the ones that have
24 to put the witnesses on, we have to put the documents on. So
25 it is pretty difficult for us to hide the ball.

1 But ask: Was Mr. Rosile, using your common sense,
2 hiding the ball when he very surreptitiously inserts "under no
3 penalty of perjury" in that 1040X for 1997?

4 And, again, Mr. Wilson mentioned just a couple;
5 Barbara Harms' returns, Eileen Rosile's returns. Look at the
6 200 other returns that are in evidence, all asserting the
7 1040X positions, all filed for ARL clients by Douglas Rosile
8 for pecuniary advantage.

9 Ladies and gentlemen, in this case, like all cases,
10 there is a presumption of innocence. And the lawyers have
11 talked about the presumption of innocence. And they are
12 right.

13 The burden is on the government beyond a reasonable
14 doubt to prove the defendants' guilt. And the defendants are
15 presumed innocent until you, the jury, determine we have
16 satisfied that burden.

17 And as I told you in opening, we must do that
18 through the introduction of evidence through the witnesses,
19 through the documents.

20 In this case, ladies and gentlemen, we proved this
21 case beyond all doubt. There is no doubt here that the
22 defendants are guilty. There is no doubt that Mr. Snipes
23 illegally joined in agreement with Eddie Kahn and Douglas
24 Rosile in order to defeat and defraud the IRS from computing
25 his taxes and putting together his taxes. That's what this

1 case is all about.

2 And on Count Two, it is very obvious the document
3 was filed, it was filed from ARL, Doug Rosile signs it, along
4 with Wesley Snipes, in order to try to get back seven million
5 dollars.

6 Think of what Mr. Rosile would have made on that,
7 according to his agreement with ARL. Think of the amount of
8 money he would have made.

9 And then on Counts Three through Eight, it is clear.
10 You look at the elements -- and I don't want to go over the
11 elements again with you. Mr. Morris did that very well in his
12 opening closing argument, where he went element by element.
13 You follow the elements, and the government has proved each of
14 those beyond a reasonable doubt.

15 And, again, that burden is not unique to this case.
16 It is in every courtroom in every state, in every Federal
17 level within this great country of ours.

18 Once we do that, once we sustain our burden of
19 proof, then that presumption of innocence comes off. And I
20 equated it in opening statement with a cloak, and many lawyers
21 do, and it sorts of covers a defendant.

22 In this case, by now that cloak is ripped, tattered
23 and torn, lying at their feet. There can be no reasonable
24 doubt that these three defendants are not guilty. Ladies and
25 gentlemen, I'm going to ask you in the name of the United

1 States of America to find each of the three defendants guilty
2 as charged: Mr. Snipes in Counts One through Eight; Mr. Kahn
3 for Counts One and Two; and Mr. Rosile for Counts One and Two.

4 And by your verdict, as Mr. Morris said, tell
5 everybody nobody is above the law. We are all required, as
6 Americans, to pay our taxes, to pay what's due.

7 We cannot set ourselves above the law and we cannot
8 embark on a course of conduct that just is designed to
9 frustrate, impede and defraud the revenue agency of our
10 country, the Internal Revenue Service.

11 That's what this case is about in a nutshell, and
12 these defendants are guilty. The evidence is simply
13 overwhelming. Thank you very much.

14 THE COURT: Thank you, members of the jury, for your
15 patient attention to counsel today, and that does complete the
16 summations of the lawyers.

17 And if you will bear with me for a few more minutes,
18 I think I will proceed now to instruct you on the applicable
19 law so that we can complete this proceeding this afternoon.

20 Members of the jury, it is now my duty to instruct
21 you on the rules of law that you must follow and apply in
22 deciding this case. When I have finished, you will go to the
23 jury room to begin your discussions, what we call your
24 deliberations.

25 It will be your duty to decide whether the

1 government has proved beyond a reasonable doubt the specific
2 facts necessary to find the defendant guilty of the crime
3 charged in the indictment.

4 You must make your decision only on the basis of the
5 testimony and evidence presented here during the trial, and
6 you must not be influenced in any way by either sympathy or
7 prejudice for or against the defendant or the government.

8 You must also follow the law as I explain it to you
9 whether you agree with that law or not and you must follow all
10 of my instructions as a whole. You may not single out or
11 disregard any of the Court's instructions on the law.

12 The indictment or formal charge against any
13 defendant is not evidence of guilt. Indeed, every defendant
14 is presumed by the law to be innocent. The law does not
15 require a defendant to prove innocence or to produce any
16 evidence at all. And if a defendant elects not to testify,
17 you cannot consider that in any way during your deliberations.

18 The government has the burden of proving a defendant
19 guilty beyond a reasonable doubt; and if it fails to do so,
20 you must find that defendant not guilty.

21 Thus, while the government's burden of proof is a
22 strict or heavy burden, it is not necessary that a defendant's
23 guilt be proved beyond all possible doubt. It is only
24 required that the government's proof exclude any reasonable
25 doubt concerning the defendant's guilt.

1 A reasonable doubt is a real doubt based upon reason
2 and common sense after careful and impartial consideration of
3 all of the evidence in the case. Proof beyond a reasonable
4 doubt, therefore, is proof of such a convincing character that
5 you would be willing to rely and act upon it without
6 hesitation in the most important of your own affairs.

7 If you are convinced that the Defendant has been
8 proved guilty beyond a reasonable doubt, say so. If you are
9 not convinced, say so.

10 Now, as I said earlier, you must consider only the
11 evidence that I have admitted in the case. The term
12 "evidence" includes the sworn testimony of the witnesses and
13 the exhibits admitted in the record. Remember that anything
14 the lawyers say is not evidence in the case. It is your own
15 recollection and interpretation of the evidence that controls.
16 What the lawyers say is not binding upon you.

17 Also, you should not assume from anything that I may
18 have said that I have any opinion concerning any of the issues
19 in this case. Except for my instructions to you on the law,
20 you should disregard anything I may have said during the trial
21 in arriving at your own decision concerning the facts.

22 In considering the evidence, you may make deductions
23 and reach conclusions which reason and common sense lead you
24 to make, and you should not be concerned about whether the
25 evidence is direct or circumstantial.

1 Direct evidence is testimony of one who asserts
2 actual knowledge of a fact, such as an eyewitness.
3 Circumstantial evidence is proof of a chain of facts and
4 circumstances tending to prove or disprove any fact in
5 dispute. The law makes no distinction between the weight that
6 you may give to either direct or circumstantial evidence.

7 Now, in saying that you must consider all of the
8 evidence, I do not mean that you must accept all of the
9 evidence as true or accurate. You should decide whether you
10 believe what each witness had to say and how important that
11 testimony was. In making that decision, you may believe or
12 disbelieve any witness in whole or in part.

13 Also, the number of witnesses testifying concerning
14 any particular dispute does not control. In deciding whether
15 you believe or do not believe any witness, I suggest that you
16 ask yourself a few questions:

17 Did the witness impress you as one who was telling
18 the truth?

19 Did the witness have any particular reason not to
20 tell the truth?

21 Did the witness have a personal interest in the
22 outcome of the case?

23 Did the witness seem to have a good memory? Did the
24 witness have the opportunity and ability to observe accurately
25 the things that he or she testified about?

1 Did the witness appear to understand the questions
2 clearly and answer them directly?

3 Did the witness' testimony differ from other
4 testimony or other evidence?

5 You should also ask yourself whether there was
6 evidence tending to prove that a witness testified falsely
7 concerning some important fact or whether there was evidence
8 that at some other time a witness said or did something or
9 failed to say or do something which was different from the
10 testimony the witness gave before you during the trial.

11 You should keep in mind, of course, that a simple
12 mistake by a witness does not necessarily mean that the
13 witness was not telling the truth as he or she remembers it,
14 because people naturally tend to forget some things or
15 remember other things inaccurately.

16 So if a witness has made a misstatement, you need to
17 consider whether it was simply an innocent lapse of memory or
18 an intentional falsehood. And the significance of that may
19 have to do with whether -- it may depend, rather, on whether
20 it has to do with an important fact or with only an
21 unimportant detail.

22 When knowledge of a technical subject matter might
23 be helpful to the jury, a person having special training or
24 experience in that technical field is permitted to state an
25 opinion concerning those technical matters.

1 Merely because a witness has expressed an opinion,
2 however, does not mean that you must accept that opinion. The
3 same as with any other witness, it is up to you to decide
4 whether to rely upon it.

5 In this case, you have been permitted to take notes
6 during the course of the trial, and most of you, perhaps all
7 of you have taken advantage of that opportunity, and have made
8 notes from time to time. You will have your notes available
9 to you during your deliberations, but you should make use of
10 them only as an aid to your memory.

11 In other words, you should not give your notes any
12 precedence over your independent recollection of the evidence
13 or the lack of evidence, and neither should you be unduly
14 influenced by the notes of other jurors. I emphasize that
15 notes are not entitled to any greater weight than the memory
16 or impression of each juror as to what the testimony may have
17 been.

18 Now, as you know, the indictment charges eight
19 separate offenses called counts. I will not read it to you at
20 length because you will be given a full copy of the indictment
21 for reference during your deliberations.

22 As you will see, Count One of the indictment, the
23 alleged conspiracy offense, contains allegations that were not
24 included in the abbreviated form of the indictment contained
25 in your jury books at the beginning of the trial.

1 With regard to the conspiracy offense charged in
2 Count One, it is alleged that the defendants knowingly and
3 willfully conspired together to defraud the United States by
4 impeding, impairing, obstructing or defeating the lawful
5 government functions of the IRS in the ascertainment,
6 computation, assessment and collection of the revenue.

7 Included in Count One are allegations of overt acts
8 that one or more of the alleged conspirators are charged to
9 have committed in furtherance of the conspiracy. I will
10 explain that more fully in just a moment.

11 Count Two of the indictment charges each of the
12 defendants with commission of what is known as a substantive
13 offense; namely, the knowing and willful presentation of a
14 materially false, fictitious or fraudulent claim for payment
15 against the United States in the form of an amended Federal
16 income tax return, Form 1040X, for the Defendant Snipes for
17 the tax year 1997.

18 Counts Three through Eight of the indictment,
19 respectively, charge the Defendant Snipes alone with the
20 offense of willfully failing to file an income tax return for
21 each of the tax years 1999 through 2004. I will explain the
22 law governing each of the alleged substantive offenses in a
23 moment.

24 First, however, as to Count One, you will note that
25 the defendants are not charged in that count with committing a

1 substantive offense. Rather they are charged with having
2 conspired to do so.

3 Title 18 United States Code, Section 371 makes it a
4 Federal crime or offense for anyone to conspire or agree with
5 someone else to defraud the United States or any of its
6 agencies.

7 To defraud the United States means to interfere with
8 or obstruct one of the lawful governmental functions by
9 deceit, craft or trickery.

10 A conspiracy is simply an agreement or a kind of
11 partnership in criminal purposes in which each member becomes
12 the agent of every other member.

13 In order to establish a conspiracy offense, it is
14 not necessary for the government to prove that all of the
15 people named in the indictment were members of the scheme, or
16 that those who were members had entered into any formal type
17 of agreement, or that the members had planned together all of
18 the details of the scheme or the overt acts that the
19 indictment alleges or charges would be carried out in an
20 effort to commit the intended crime.

21 Also, because the essence of a conspiracy offense is
22 the making of the agreement itself, followed by the commission
23 of any overt act, it is not necessary for the government to
24 prove that the conspirators actually succeeded in
25 accomplishing their unlawful plan.

1 What the evidence in the case must show beyond a
2 reasonable doubt is, first, that two or more persons in some
3 way or manner came to a mutual understanding to try to
4 accomplish a common and unlawful plan as charged in the
5 indictment;

6 Second, that the defendant, knowing the unlawful
7 purpose of the plan, willfully joined in it;

8 Third, that one of the conspirators during the
9 existence of the conspiracy knowingly committed at least one
10 of the methods or overt acts described in the indictment;

11 And, fourth, that such overt act was knowingly
12 committed at or about the time alleged in an effort to carry
13 out or accomplish some object of the conspiracy.

14 An overt act is any transaction or event, even one
15 that may be entirely innocent when considered alone, but which
16 is knowingly committed by a conspirator in an effort to
17 accomplish some object of the conspiracy.

18 A person may become a member of a conspiracy without
19 knowing all of the details of the unlawful scheme and without
20 knowing who all of the other members are.

21 So if a defendant has a general understanding of the
22 unlawful purpose of the plan and knowingly and willfully joins
23 in that plan on one occasion, that is sufficient to convict
24 that defendant for conspiracy, even though the defendant did
25 not participate before and even though the defendant played

1 only a minor part.

2 Of course, mere presence at the scene of a
3 transaction or event or the mere fact that certain persons may
4 have associated with each other and may have assembled
5 together and discussed common aims and interests does not,
6 standing alone, establish proof of a conspiracy.

7 Also, a person who has no knowledge of a conspiracy,
8 but who happens to act in a way which advances some purpose of
9 one does not thereby become a conspirator.

10 Now, you are instructed that documents characterized
11 as returns, but which contain no financial information are not
12 returns within the meaning of Title 26 United States Code,
13 Section 7203.

14 Also, there is no legal merit to the U.S. Sources
15 Argument or the Section 861 argument, claiming that the
16 Internal Revenue Code only imposes taxes on certain
17 foreign-based activities.

18 Title 18 United States Code, Section 287 makes it a
19 Federal crime or offense for anyone to knowingly make a false
20 claim against any department or agency of the United States.
21 You are instructed that the Internal Revenue Service is a
22 department or agency of the United States within the meaning
23 of that law.

24 The defendant can be found guilty of the offense of
25 making a false claim against the government only if all of the

1 following facts are proved beyond a reasonable doubt:

2 First, that the defendant knowingly presented to an
3 agency of the United States a false or fraudulent claim
4 against the United States as charged in the indictment;

5 Second, that the false or fraudulent aspect of the
6 claim related to a material fact;

7 And, third, that the Defendant acted willfully and
8 with knowledge of the false or fraudulent nature of the claim.

9 A claim is false or fraudulent if it is untrue at
10 the time it is made and is then known to be untrue by the
11 person making it. It is not necessary to show, however, that
12 the government agency was, in fact, deceived or misled.

13 The making of a false or fraudulent claim is not an
14 offense unless the falsity or fraudulent aspect of the claim
15 relates to a material fact. A misrepresentation is material
16 if it relates to an important fact, as distinguished from some
17 unimportant or trivial detail, and has a natural tendency to
18 influence or was capable of influencing the decision of a
19 department or agency in making a determination required to be
20 made.

21 The guilt of a defendant in a criminal case may be
22 proved without evidence that the defendant personally did
23 every act involved in the commission of the crime charged.
24 The law recognizes that ordinarily anything a person can do
25 for one's self may also be accomplished through direction of

1 another person as an agent, or by acting together with or
2 under the direction of another person in a joint effort.

3 So if the acts or conduct of an agent, employee or
4 other associate of the defendant are willfully directed or
5 authorized by the defendant, or if the defendant aids and
6 abets another person by willfully joining together with that
7 person in the commission of a crime, then the law holds the
8 defendant responsible for the conduct of that other person,
9 just as though the defendant had personally engaged in such
10 conduct.

11 However, before any defendant can be held criminally
12 responsible for the conduct of others, it is necessary that
13 the defendant willfully associate in some way with the crime
14 and willfully participate in it.

15 Mere presence at the scene of a crime and even
16 knowledge that a crime is being committed are not sufficient
17 to establish that a defendant either directed or aided and
18 abetted the crime. You must find beyond a reasonable doubt
19 that the defendant was a willful participant and not merely a
20 knowing spectator.

21 Title 26 United States Code, Section 7203 makes it a
22 Federal crime or offense for anyone to willfully fail to file
23 a Federal income tax return when required to do so by the
24 Internal Revenue laws or regulations.

25 The Defendant Snipes can be found guilty of that

1 offense as charged in Counts Three through Eight,
2 respectively, only if all of the following facts are proved
3 beyond a reasonable doubt:

4 First, that the defendant was required by law or
5 regulation to make a return of his income for the taxable year
6 charged;

7 Second, that the defendant failed to file a return
8 at the time required by law;

9 And, third, that the defendant's failure to file the
10 return was willful.

11 A single person under 65 years of age was required
12 to file a Federal tax return for the years 1999, 2000, 2001,
13 2000 and 2002 if he had gross income in excess of 7,050
14 dollars for 1999; 7,200 dollars for the year 2000; 7,450
15 dollars for the year 2001; and 7,700 dollars for the year
16 2002.

17 A married individual was required to file a Federal
18 income tax return for the year 2003 if he had a separate gross
19 income in excess of 3,050 dollars, and total gross income,
20 when combined with that of his or her spouse, in excess of
21 15,600 dollars, where both were under 65 years old.

22 A married individual was required to file a Federal
23 income tax return for the year 2004 if he had a separate gross
24 income in excess of 3,100 dollars, and a total gross income,
25 when combined with that of his or her spouse, in excess of

1 15,900 dollars, where both were under 65 years old.

2 Gross income includes compensation for services,
3 including fees, commissions and similar items, gains derived
4 from dealing in property, and income derived from business,
5 including interest, rents, royalties and dividends.

6 The defendant is a person required to file a return
7 if the defendant's gross income for any calendar year exceeds
8 the amounts given above, even though the defendant may be
9 entitled to deductions from that income in a sufficient amount
10 so that no tax is due. So the government is not required to
11 prove that a tax was due and owing or that the defendant
12 intended to evade or defeat payment of taxes; only that the
13 defendant willfully failed to file the return.

14 There is an issue in this case as to whether the
15 government has established what is known as proper venue in
16 this Court with respect to Counts Three through Eight of the
17 indictment, the failure to file charges against Defendant
18 Snipes.

19 The Sixth Amendment to the Constitution of the
20 United States protects certain fundamental rights of any
21 defendant in a criminal case. One of the things it says is
22 that the accused shall enjoy the right to a trial in the state
23 and district wherein the crime shall have been committed.

24 This creates what is called a proper venue for the
25 charging of any criminal offense and it requires the

1 government to prove, as alleged in the indictment, that the
2 charged offense or offenses were committed in the Middle
3 District of Florida. In that respect, you are instructed that
4 both Lake and Orange Counties, among others, are within the
5 Middle District of Florida.

6 You are further instructed that proper venue with
7 respect to Counts Three through Eight, respectively, lies in
8 the district of the Defendant Snipe's legal residence. And
9 the term legal residence means the permanent fixed place of
10 abode which one intends to be his residence and to return to
11 it, despite absences or temporary residence elsewhere.

12 On this issue of proper venue and on that issue
13 alone, you are instructed that the government's burden of
14 proof is somewhat less stringent than it is with respect to
15 all of the other matters the government must prove beyond a
16 reasonable doubt, as I have previously explained to you.

17 Specifically, the government must prove proper venue
18 that the alleged crime was committed within this district by a
19 preponderance of the evidence. A preponderance of the
20 evidence means evidence that is enough to persuade you that it
21 is more likely than not or more probable than not that the
22 alleged crime was committed within this district, as charged.

23 If the government has failed to establish proper
24 venue as to any of Counts Three through Eight by a
25 preponderance of the evidence, you must acquit the defendant

1 as to that count or those counts.

2 Good faith is a complete defense to the charges in
3 the indictment since good faith on the part of the defendant
4 is inconsistent with intent to defraud or willfulness, which
5 is an essential part of the charges.

6 The burden of proof is not on the Defendant to prove
7 good faith, of course, since the defendant has no burden to
8 prove anything. The government must establish beyond a
9 reasonable doubt that the Defendant acted with specific intent
10 to defraud or willfulness as charged in the indictment.

11 So with regard to the issue of willfulness, a
12 defendant would not be willfully doing wrong if, before taking
13 any action with regard to the alleged offense, the defendant
14 consulted in good faith an attorney whom the defendant
15 considered competent, made a full and accurate report to that
16 attorney of all material facts of which the defendant had the
17 means of knowledge, and then acted strictly in accordance with
18 the advice given by that attorney.

19 Whether the defendant acted in good faith for the
20 purpose of seeking advice concerning questions about which the
21 defendant was in doubt, and whether the defendant made a full
22 and complete report to the attorney, and whether the Defendant
23 acted strictly in accordance with the advice received are all
24 questions for you to determine.

25 Similarly, with regard to the issue of fraudulent

1 intent, one who expresses an honestly held opinion or an
2 honestly formed belief is not chargeable with fraudulent
3 intent, even though the opinion is erroneous or the belief is
4 mistaken. And, similarly, evidence which establishes only
5 that a person made a mistake in judgment or an error in
6 management or was careless does not establish fraudulent
7 intent.

8 On the other hand, an honest belief on the part of a
9 defendant that a particular transaction was sound and would
10 ultimately succeed would not, in and of itself, constitute
11 good faith as that term is used in these instructions if, in
12 carrying out that venture, the defendant knowingly made false
13 or fraudulent representations to others with the specific
14 intent to deceive them.

15 Now, you will note that the indictment charges that
16 the offense was committed on or about a certain date. The
17 government does not have to prove with certainty the exact
18 date of the alleged offense. It is sufficient if the
19 government proves beyond a reasonable doubt that the offense
20 was committed on a date reasonably near the date alleged.

21 The word "knowingly" as that term is used in the
22 indictment or in these instructions means that the act was
23 done voluntarily and intentionally, and not because of mistake
24 or accident.

25 The word "willfully" as that term is used in the

1 indictment or in these instructions means that the act was
2 committed voluntarily and purposely, with the specific intent
3 to do something the law forbids; that is, with bad purpose
4 either to disobey or disregard the law.

5 A separate crime or offense is charged against one
6 or more of the defendants in each count of the indictment.
7 Each charge and the evidence pertaining to it should be
8 considered separately. Also, the case of each defendant
9 should be considered separately and individually.

10 The fact that you may find any one or more of the
11 defendants guilty or not guilty of any of the offenses charged
12 should not affect your verdict as to any other offense or any
13 other defendant.

14 I caution you, members of the jury, that you are
15 here to determine from the evidence in this case whether the
16 defendant is guilty or not guilty. Each defendant is on trial
17 only for the specific offense alleged in the indictment.

18 Also, the question of punishment should never be
19 considered by the jury in any way in deciding the case. If a
20 defendant is convicted, the matter of punishment is for the
21 Judge to determine later.

22 Any verdict you reach in the jury room, whether
23 guilty or not guilty, must be unanimous. In other words, to
24 return a verdict, you must all agree. Your deliberations will
25 be secret. You will never have to explain your verdict to

1 anyone.

2 It is your duty as jurors to discuss the case with
3 one another in an effort to reach agreement, if you can do so.
4 Each of you must decide the case for yourself, but only after
5 a full consideration of the evidence with the other members of
6 the jury.

7 While you are discussing the case, do not hesitate
8 to re-examine your own opinion and change your mind if you
9 become convinced that you were wrong. But don't give up your
10 honest beliefs solely because the others think differently or
11 merely to get the case over with.

12 Remember that in a very real way you are judges,
13 judges of the facts, and your only interest is to seek the
14 truth from the evidence in the case.

15 When you go to the jury room, you should first
16 select one of your members to act as your foreperson. The
17 foreperson will preside over your deliberations and will speak
18 for you here in court.

19 Forms of verdict have been prepared for your
20 convenience. There are three verdict forms, one for each of
21 the three defendants in the case. Each verdict form is on a
22 single sheet of paper. It has at the top of the page, the
23 name of the court; underneath that, the style of the case,
24 showing the name of the particular defendant to whom that
25 verdict form applies. Each is entitled "Verdict."

1 And it then reads: We, the jury, find the Defendant
2 Eddie Ray Kahn blank as charged in Count One, blank as charged
3 in Count Two, "so say we all," to signify your unanimity, the
4 blank spaces being provided, obviously, for you to insert
5 either "guilty" or "not guilty" as to each count, according to
6 your unanimous determination. And there is a place for the
7 signature of the foreperson and a place for the insertion of
8 the date.

9 And, secondly, there is a verdict form with respect
10 to the defendant, Mr. Snipes. Reading the verdict: We, the
11 jury, find the Defendant Wesley Trent Snipes blank as charged
12 in Count One, blank as charged in Count Two, and so on, down
13 through Count Eight, with the declaration, "so say we all,"
14 again to signify your unanimity with respect to your verdict
15 as to each count, a place for the signature of the foreperson,
16 and a place for the insertion of the date.

17 And, of course, your finding of either guilty or not
18 guilty as to each count must be unanimous.

19 And then, finally, in the case of the United States
20 against Mr. Rosile: Verdict. We, the jury, find the
21 Defendant Douglas P. Rosile blank as charged in Count One,
22 blank as charged in Count Two, and so on. "So say we all,"
23 and a place for the signature of the foreperson, again, to
24 insert in each blank space your determination of either guilty
25 or not guilty, as the case might be, with respect to

1 Mr. Rosile.

2 You will take the verdict forms with you to the jury
3 room. And when you have reached unanimous agreement, you will
4 have your foreperson fill in the verdict form, date and sign
5 it, and then return to the courtroom.

6 If you should desire to communicate with me at any
7 time, please write down your message or your question and pass
8 the note to the marshal, who will bring it to my attention. I
9 will then respond as promptly as possible either in writing or
10 by having you reassembled in the courtroom so that I can
11 address you orally.

12 I caution you, however, with regard to any question
13 or message you might send that you should never tell me your
14 numerical division at the time.

15 Does any party wish to be heard further and
16 privately concerning any aspect of the Court's charge not
17 previously discussed?

18 MR. MORRIS: Not from the United States.

19 MR. BERNHOFT: No, Your Honor.

20 MR. WILSON: No, Judge.

21 THE COURT: All right. Thank you, counsel.

22 Then, members of the jury, that does complete the
23 Court's instructions to you as a matter of law -- on matters
24 of law, and in just a moment I am going to ask that you retire
25 to the jury room to begin your deliberations.

1 As quickly as she can conveniently do so, the clerk
2 will be gathering together to bring to you the exhibits that
3 have been received in evidence. You will also have a copy of
4 the indictment as described in the Court's instructions. You
5 will have the verdict forms that I have just explained to you
6 that you will use in deciding the case, and you will also have
7 copies of the Court's instructions to you on the law that I
8 have just delivered to you orally. All of those things will
9 be brought to you as promptly as the clerk can gather them
10 together.

11 Now, it's 4:30. I had promised all of you that we
12 would not work past 5:00 on any day, and I suggest to you that
13 you observe that limitation. I am sure that some of you have
14 relied upon the assurances you have been given that there
15 would be no overtime work. And I am also conscious of the
16 fact that this is election day and there may be some of you
17 who haven't yet taken advantage of the opportunity to go vote.

18 So my recommendation is that, when you retire to the
19 jury room, that you perhaps spend a few moments organizing
20 yourselves, perhaps electing your foreperson; otherwise,
21 commencing your deliberations, but then recessing for the day
22 at 5:00 to return tomorrow morning at 9:00 into the jury room
23 and recommence your deliberations at that time, and go forward
24 tomorrow.

25 Of course, at any time when any one of your number

1 is not present in the jury room, you must cease having any
2 conversations or discussions about the case; and to resume
3 your discussions, which is to say your deliberations, only
4 when all 12 of you have once again reassembled in the jury
5 room for purposes of going forward with your deliberations.

6 I would also remind you with emphasis, now that the
7 case is now submitted to you for your decision and your
8 deliberation upon your verdict, that you should continue to
9 avoid having any conversation or discussion about the case
10 with anyone other than the other members of the jury in the
11 jury room; and should continue to avoid over this evening or
12 any other recess we might have before your verdict is returned
13 reading any newspaper account or listening to or observing any
14 broadcast information about the case or anything on the
15 Internet concerning the case.

16 Now, Ms. Scruggs, Ms. Kalnins, Ms. Hardy and
17 Ms. Clark, I am going to ask the four of you, if you would,
18 please, to simply remain seated where you are there as the
19 remaining members of the jury retire in just a moment to the
20 jury room.

21 What was not announced at the time the jury was
22 seated, during the length of the case, as we anticipated it at
23 that time, the four of you were selected and seated as
24 alternate jurors. And now that the jury has been instructed
25 and is retiring to commence deliberations, it will not be

1 necessary for you to participate in those deliberations.

2 And I am going to ask you to just remain there for a
3 few moments. I have some other things to say to you, but I
4 will ask the other members of the jury, please, to now retire
5 to the jury room to commence your deliberations.

6 THE COURT SECURITY OFFICER: All rise.

7 (Jury excused from the courtroom at 4:35 p.m.)

8 THE COURT: Be seated, please, everyone.

9 Ladies, as I said a moment ago, you were selected as
10 alternate jurors in order to be present and available during
11 the trial of the case. If one of the members of the jury
12 previously selected should have become ill or had a family
13 emergency or something of the kind that prevented further
14 service, then each of you in sequence would have been
15 available to take the place of or substitute for that absent
16 member of the jury, and the case could go forward without
17 interruption.

18 As it turns out, in this instance, even though it
19 was a case of moderate length, we had no such casualty on the
20 jury, and it was not necessary, obviously, to ask any of you
21 to take the place of such a juror.

22 And now that the jury has been instructed and has
23 retired to the jury room to commence deliberations, it does
24 bring to a conclusion, under the rules, your service as
25 alternate jurors. And in just a moment, you will be excused

1 and discharged with no further obligation to report back again
2 or participate further in this trial. And, of course, given
3 the length of time that you have served during this trial, you
4 will be excused generally with no further obligation to be
5 called in or report for further service during this term for
6 which you have been summonsed.

7 I want to emphasize to each of you, however, that
8 just because as it turns out you will not be participating in
9 deliberations, that your contribution to the cause of justice
10 with respect to this case has been equal to any other member
11 of the jury because, as I just explained, had you not been
12 here, had there been some casualty on the jury, which is
13 common on a case that lasting several days or two weeks, as
14 this one did, this it, in all probability, would have been
15 necessary to declare a mistrial, only to have to start all
16 over again at some future date, with all of the time and
17 expense and emotional strain that goes with the trial of any
18 case to the lawyers and parties involved and the members of
19 the jury itself.

20 And so I hope you don't feel cheated in any way by
21 the fact that you will not be participating directly in the
22 decision-making process in this case because that would be not
23 be a fair characterization of the service that you have
24 rendered.

25 I hope you have also found that it has been an

1 interesting experience. And you will be receiving, I hope,
2 promptly from the clerk through the mail your per diem
3 compensation and expense reimbursement to which you are
4 entitled.

5 Now, from this time on -- pardon me -- you are no
6 longer bound by the instructions that you were previously
7 given about avoiding any discussion of the case. You are free
8 to discuss it with anyone you choose.

9 I would ask, however, in order to avoid the
10 possibility of some information getting to the deliberating
11 jury that might not be appropriate, that you avoid having any
12 comments about the case or discussion with anyone until you
13 have heard that the jury has returned a verdict or has
14 otherwise been discharged. And then you, of course, would be
15 free to discuss it, as I say, with anyone that you may wish.
16 But until then, I would appreciate it if you would simply
17 decline to make any comment to anyone.

18 Did any of you have any personal belongings in the
19 jury room?

20 (Alternate jurors indicating.)

21 THE COURT: Well, just step out this way then, if
22 you will, and the marshal will help you in retrieving them,
23 and you will be free to go.

24 You may keep your jury books, if you wish, or you
25 may leave them with the marshal and they will be destroyed.

1 No one will see any notes you may have made in them or
2 anything of that kind. That is entirely up to you. You may
3 take them with you or you may leave them here and they will be
4 destroyed.

5 Thank you very much for your service. You are now
6 excused and discharged.

7 THE COURT SECURITY OFFICER: All rise.

8 (Alternate jurors excused from the courtroom.)

9 THE COURT: Be seated a moment, please. I
10 anticipate, of course, counsel, that the jury will shortly be
11 leaving the building and will return tomorrow morning at 9:00
12 to go on with their deliberations.

13 I would like to request that there be some
14 representative from the government and the defense side with
15 respect to each party so that -- and who is authorized to act,
16 so that if and when the jury has a message, either a question
17 or an announcement that they are ready to return a verdict,
18 that we can assemble court without any delay.

19 If you are going to leave the floor and do wish to
20 be present personally when the jury must be addressed, let the
21 clerk know how you can be reached quickly, please, so that
22 there is no delay in assembling court.

23 Until we do receive some message from the jury, I
24 would not intend to form court again tomorrow, except --

25 Marshal Rivera, are you present in the courtroom?

1 THE MARSHAL: He just stepped out, Your Honor.

2 THE COURT: Instruct Marshal Rivera, if you would,
3 marshal, to once again communicate with Mr. Kahn early in the
4 morning.

5 Marshal Rivera.

6 MARSHAL RIVERA: Yes, sir.

7 THE COURT: If you would, please, continue to
8 communicate with Mr. Kahn, and inform him in the morning that
9 the jury has now been instructed and is retiring to deliberate
10 upon its verdict; and if he wishes to be present in court
11 while those deliberations are under way, in order to be in
12 court when the verdict is taken or a question is responded to,
13 that, of course, he is free and welcome to come.

14 MARSHAL RIVERA: Yes, sir.

15 THE COURT: And when we next assemble, I will ask
16 you to make a report.

17 MARSHAL RIVERA: Yes, Your Honor.

18 THE COURT: Thank you.

19 MR. BERNHOFT: Your Honor, may I ask a question,
20 please?

21 THE COURT: Surely, Mr. Bernhoft.

22 MR. BERNHOFT: Your Honor, due to the number of
23 attorneys and staff we have got, and investigators, I know
24 that some courts will put like a 10-, 15-minute rule on
25 reassembling in the court upon a note or a note of verdict.

1 Some are staying at the Hilton, some are staying at
2 a private home. Would it be appropriate if we could have a
3 15-minute rule on reassembling?

4 THE COURT: That is reasonable, Mr. Bernhoft, yes.

5 MR. BERNHOFT: Thank you, Judge. I appreciate it.

6 THE COURT: Just make sure, as I said, that the
7 clerk doesn't have any difficulty in communicating with you so
8 as to start that 15-minute clock running.

9 MR. BERNHOFT: Absolutely. We will take care of it.
10 Thank you, Judge.

11 MR. MEACHUM: Your Honor, may I ask for an amendment
12 to co-counsel's request for 15 minutes?

13 Yesterday one of the members of the defense team was
14 stopped by the police department trying to get here in 15
15 minutes. So what I would respectfully request, if we could be
16 given 30 minutes, so that we would be able to be here and not
17 detained.

18 THE COURT: Well, let's do it this way, Mr. Meachum.
19 If I receive any communication from the jury, it is my
20 intention to immediately communicate with counsel and perhaps
21 form court in order to deal with the matter on the record.

22 On the other hand, it may be a purely ministerial
23 matter, and I don't want to keep the jury waiting 30 minutes
24 while we let them know whether they can have another pencil or
25 piece of paper or paper clip or something. So I am going to

1 play that by ear.

2 Try to have somebody standing by that can be here
3 promptly, at least, with authority to act on what I will call
4 insubstantial matters.

5 MR. MEACHUM: Thank you, Your Honor.

6 THE COURT: When the jury says it has its verdict,
7 then 30 minutes, I think, would be reasonable.

8 MR. MEACHUM: Thank you, Your Honor.

9 THE COURT: Thank you all. This was, let me say, a
10 well-argued case.

11 We will recess until 9:00 in the morning and
12 thereafter until we receive some message from the jury.

13 (Court was adjourned.)

14 C E R T I F I C A T E

15 We hereby certify that the foregoing is an accurate
16 transcription of proceedings in the above-entitled matter.

17

18

19

20 -----
Dennis Miracle

Date

21

22

23

24

25 -----
Kelly Owen McCall

Date