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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 17, 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. Eddie Ray Kahn, pro se
4 Mr. Michael William Nielsen, standby counsel

5 For Defendant Rosile:

6 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: Good morning, everyone. Be seated, please.

MR. BERNHOFT: Good morning, Judge. Judge, if I might, I spoke to Mr. O'Neill, and we would like to invoke the rule.

THE COURT: All right. The rule regarding the sequestration of witnesses has been invoked. If there are any persons present in the courtroom, other than those presently seated inside the bar or inside the rail, it will be necessary that you withdraw and wait in the environs of the court while waiting to testify.

And witnesses while waiting to testify are admonished that they should have no conversation or discussions among or between themselves concerning any aspect of the case.

I will rely upon counsel from this point to see that the rule is observed.

(Defendant Kahn now present.)

THE COURT: Yes, Mr. Morris.

MR. MORRIS: Your Honor, pretrial, the Court had already ruled that our two case agents, Special Agent Lalli and Graf, would be excepted from the rule.

THE COURT: Yes.

1 MR. MORRIS: Thank you, Your Honor. And also our
2 summary witness, Revenue Agent Steward Stich, you also had
3 ruled would be allowed to remain, because he is a summary
4 witness, throughout the trial.

5 THE COURT: That's his sole function, will be as a
6 summary witness under the rule?

7 MR. MORRIS: A summary and expert witness, yes, Your
8 Honor.

9 THE COURT: All right. He too is excluded.

10 MR. MORRIS: Thank you.

11 THE COURT: Good morning, Mr. Kahn.

12 DEFENDANT KAHN: Good morning, Judge Hodges.

13 THE COURT: Yesterday when we recessed for the day,
14 sir, you had stated that you wished to waive your presence
15 here. Is that your feeling still?

16 DEFENDANT KAHN: Yes, it is.

17 THE COURT: Well, you understand that under Rule 43
18 of the Federal Rules of Criminal Procedure, as well as the
19 confrontation clause of the Constitution of the United States,
20 you have an absolute right to be present, if you want to be.

21 On the other hand, you also have the absolute right,
22 if you wish to do so, to waive your presence and be elsewhere.
23 You understand that?

24 DEFENDANT KAHN: I understand it.

25 THE COURT: And it is your election to waive your

1 presence and elect not to be here during trial?

2 DEFENDANT KAHN: Yes, sir. I feel that this is an
3 administrative court, you are an administrative judge; so,
4 therefore, I don't care to be here.

5 THE COURT: Okay. Understand that I am going to
6 honor your request and excuse you from this trial. But if at
7 any moment you change your mind, all you have to do is notify
8 the marshal and you will be returned to court.

9 DEFENDANT KAHN: Yes, sir.

10 THE COURT: All right. Mr. Kahn is excused,
11 marshal. You may withdraw him from the courtroom.

12 (Defendant Kahn absent.)

13 THE COURT: It is my intention, counsel, simply to
14 announce to the jury momentarily, when they are seated, that
15 Mr. Kahn has voluntarily elected to waive his right to be
16 present and is, therefore, not present.

17 Does anyone have any other or contrary suggestion?

18 MR. O'NEILL: No, Your Honor, the government has no
19 objection to that.

20 MR. BERNHOFT: Sounds perfect.

21 THE COURT: All right.

22 MR. WILSON: Your Honor, I'm sorry.

23 THE COURT: Yes, Mr. Wilson.

24 MR. WILSON: Obviously, this is kind of a novel
25 situation, at least as far as I am concerned. I don't know

1 whether the Court would like to also admonish the jury that
2 there can be no inference, one way or another, regarding his
3 absence.

4 THE COURT: That's appropriate, Mr. Wilson, and I
5 will add that to my statement.

6 MR. O'NEILL: For the record, the government has no
7 objection to that, Your Honor. We would join it.

8 THE COURT: Now, when we stopped, Agent Crowley was
9 on the witness stand. Is the government ready to proceed, Mr.
10 McLellan?

11 MR. McLELLAN: Yes, Your Honor, although -- the
12 government has done the redaction that was agreed upon of
13 Exhibit 58, the power of attorney.

14 THE COURT: All right.

15 MR. McLELLAN: After Exhibit 58, we were going to
16 seek the admission of the series of returns, which I believe
17 Mr. Wilson had an objection to. And the government is
18 prepared to argue admissibility at this point.

19 THE COURT: All right. Just a moment. Looking at
20 the government's exhibit list, I take it we're talking about
21 exhibits for identification 59-1 through, what, 64-2?

22 MR. McLELLAN: I believe that's the case, Your
23 Honor. I am not sure if that's -- those are the subject of
24 Mr. Wilson's objection.

25 THE COURT: What are your objections, Mr. Wilson, to

1 which exhibits and on what ground?

2 MR. WILSON: Well, Your Honor, with respect to
3 Exhibits 59-1 through 60-2, which represent tax returns that
4 Mr. Rosile prepared for himself, individually, and his spouse,
5 individually, we would object to those on the grounds of
6 relevance.

7 And to the extent that they were done outside the
8 parameters of his responsibilities as an employee or a -- an
9 employee of ARL, they would be 404(b).

10 Mr. Rosile was not an ARL client, nor was his wife.
11 He prepared his own tax returns, as he did for his spouse.
12 And I believe that that is outside the scope of the
13 conspiracy. It is no way in furtherance of the conspiracy,
14 and is not related to either the conspiracy or the other
15 charges in this case.

16 THE COURT: What is the government's purpose in
17 offering those particular exhibits, Mr. McLellan? Is there a
18 claim that there is anything unlawful or irregular about any
19 of them?

20 MR. McLELLAN: On the contrary, Your Honor. These
21 -- the government's general argument as regards the admission
22 of this whole series of returns to which Mr. Wilson objects,
23 the government's general argument is as to admissibility is
24 that these documents are direct evidence of willfulness on the
25 part of Mr. Rosile and should be admitted.

1 Specifically, these returns 59-1 through 60-1, they
2 are prepared by Mr. Rosile, they are done for Mr. Rosile,
3 himself, and, indeed, they are proper tax returns, so far as
4 the government can determine. And they show that Mr. Rosile
5 is able to prepare a proper income tax return without
6 resorting to this 861 argument when it suits his purpose.

7 Therefore, Your Honor, it shows knowledge of what a
8 proper return can be and is, therefore, evidence of
9 willfulness in respect of the 861 returns.

10 THE COURT: I haven't heard you argue, Mr. Wilson,
11 that there is anything that is inherently prejudicial with
12 respect to these returns. That is to say that they reflect
13 income or expenses from sources that would be potentially
14 prejudicial.

15 MR. WILSON: Well, Judge, I am not aware that there
16 is any information of that nature in these returns.
17 Mr. Rosile prepared 1040X's, amended tax returns for the ARL
18 members.

19 He did not prepare the 1040, the original 1040
20 returns for the members. These are original 1040 returns that
21 he did for himself.

22 THE COURT: Well, I understand that, but I am not
23 sure that is responsive to my question. It seems to me the
24 government has the better of that.

25 I am inclined to overrule the objection stated. If

1 it becomes apparent that these exhibits are in some way
2 prejudicial to the point of overbearing any probative value
3 under Rule 403, you can make it the subject of a motion to
4 strike.

5 MR. WILSON: Your Honor, may I be addressed on
6 another issue, please?

7 THE COURT: All right.

8 MR. WILSON: Okay. Your Honor, these documents are
9 identified by exhibit number. We have asked the government to
10 provide us with a cross-reference to the Bates number, so that
11 we are able to actually and quickly find these documents.

12 We have literally thousands and thousands of
13 documents. I have a disk that has these particular returns on
14 them. However, I am having a little difficulty finding them
15 quickly.

16 I was given a list, thankfully, by Mr. McLellan
17 yesterday that referred to Exhibits 61-1 through 63-6 with the
18 corresponding Bates numbers. However, I do not have the
19 corresponding Bates numbers to the Exhibits 59-3 through 60-2,
20 which may facilitate locating these, which I can certainly do;
21 however, it is going to take a little bit of time.

22 THE COURT: Well, the government exhibit list,
23 unless there are multiple pages to some of these, as there may
24 well be, is not especially lengthy, all things considered.

25 Does the government have hard copies of all its

1 exhibits, Mr. McLellan?

2 MR. McLELLAN: In various places, Your Honor.

3 THE COURT: Well, what do you say to Mr. Wilson's
4 request, which is made for the defendants under my prior
5 ruling, for Bates numbers with respect to all of the exhibits?
6 Is that available?

7 MR. McLELLAN: May I confer with co-counsel, Your
8 Honor?

9 THE COURT: Surely.

10 MR. McLELLAN: Your Honor, at this point the
11 government does not have a listing in format suitable to be
12 turned over to the defense. The government would propose to
13 put something together by tomorrow.

14 THE COURT: All right. Well, see if you can do
15 that. I think that's not an unreasonable request, and it
16 might help expedite matters. If your exhibit list can be
17 supplemented by Bates numbers with respect to each of these
18 exhibits, it might be helpful to everyone.

19 MR. McLELLAN: Yes, Your Honor.

20 THE COURT: All right. Well, I am inclined to
21 overrule the objection to those Exhibits 59-1, that sequence
22 as it relates to Mr. Rosile. And let's see if we can proceed.
23 The jury is waiting.

24 MR. WILSON: Excuse me, Your Honor. Judge, I'm
25 sorry. There are other exhibits which are the subject of this

1 discussion that run through 64-1 -- I'm sorry -- 63-6.

2 THE COURT: Well, make your objection in the
3 presence of the jury, and as the exhibit is identified,
4 Mr. Wilson, and I will pass on it.

5 THE COURT SECURITY OFFICER: All rise.

6 (Jury present.)

7 THE COURT: Thank you. Be seated, please.

8 Members of the jury, good morning to you. I
9 appreciate your promptness and I apologize for having kept you
10 waiting these last few minutes, but there have been a couple
11 of matters that I have been discussing with counsel which I
12 think will save us some time perhaps.

13 You will notice that Mr. Kahn is not present in the
14 courtroom. Mr. Kahn has elected to waive his presence here
15 during the trial, at least for the time being, as is his
16 right.

17 And I do instruct you that you should not draw any
18 inference, one way or the other, concerning guilt or innocence
19 of Mr. Kahn or anyone else simply because he has elected not
20 to be present during trial. And as he has been informed, if
21 he wishes to return at any time, that also is his right.

22 But in the meantime, we will proceed with the trial
23 of the case. Yesterday when we recessed, Mr. McLellan was
24 examining Agent Crowley, I believe. Where is Agent Crowley?

25 Good morning, Agent Crowley. As you are coming to

1 the witness chair, I remind you, sir, the oath you took
2 yesterday still applies. You understand?

3 THE WITNESS: Yes, I do, Your Honor.

4 THE COURT: Mr. McLellan, you may continue.

5 PAUL CROWLEY,

6 having been previously sworn, testified as follows:

7 DIRECT EXAMINATION (cont'd)

8 BY MR. McLELLAN:

9 Q Good morning, Mr. Crowley.

10 A Good morning.

11 Q I believe we were taking a look at Government's Exhibit
12 Number 58.

13 MR. McLELLAN: Could you please bring that up.

14 A That's correct.

15 Q Now, in Box 1 -- I'm sorry. What is this document?

16 A This is a Form 2848, power of attorney and declaration of
17 representative.

18 Q Okay. And taking a look at the second page of that
19 document, does it indicate a date that it was filed?

20 A It has a signature date on it of March 6th, 2004.

21 Q And who appears to have signed it?

22 A Wesley Snipes.

23 Q Okay. And taking a look at the first page of that
24 document in Box 1, does there appear under the taxpayer's name
25 an address?

1 A Yes, there does. The address is --

2 Q Would you please read the address?

3 A Sure; 9711 Deacon Court, Windermere, Florida.

4 Q Mr. Crowley, on the next exhibits, 59-1 through 60-1, do
5 you have those records?

6 A Yes, I do.

7 Q Okay. Could you identify them in sequence as to what they
8 are, indicating their exhibit number.

9 A 59-1 is a true copy of the original Form 1040, U.S.
10 individual income tax return for Doug Rosile, Senior for the
11 tax year 1997.

12 59-2 is a true copy of the original Form 1040, U.S.
13 individual income tax return for Doug Rosile, Senior for 1998.

14 59-3 is a true copy of the original Form 1040, U.S.
15 individual income tax return, captioned Doug Rosile, Senior
16 for 1999.

17 59-4 is a true copy of original form 1040, U.S. individual
18 income tax return, captioned Doug Rosile, Senior for 2000.

19 THE COURT: Maybe we can expedite this, Agent
20 Crowley. According to the papers I am looking at, Government
21 Exhibits 59-4, 59-5, 59-6, 59-7, 60-1 and -- well, no 60-1 --
22 are all the same forms, 1040 forms for Mr. Rosile for the
23 years 2000 through 2003, inclusive; is that correct?

24 THE WITNESS: Your Honor, for 59-5 to 59-7, they are
25 Form 1040's. However, 60-1 is a Form 1040X.

1 THE COURT: I understand.

2 THE WITNESS: They are for Doug Rosile.

3 THE COURT: When they are essentially identical
4 forms, let's see if we can't combine them in a sense to move
5 it along, Mr. McLellan.

6 MR. McLELLAN: Yes, Your Honor. The government
7 moves Exhibits 59-1 through 60-1 in the sequence we have
8 discussed, be received into evidence.

9 MR. WILSON: Judge, I would renew my prior
10 objection.

11 THE COURT: Indeed, the record will so reflect, and
12 I will now receive those exhibits in evidence.

13 BY MR. McLELLAN:

14 Q Now, Mr. Crowley, please take a look at Number 60-2. What
15 is that document?

16 A This is a true copy of an original copy of an original
17 Form 1040X, which is an amended U.S. individual income tax
18 return for Eileen Rosile for tax year 1999.

19 Q Okay. And taking a look at the paid preparer line, who
20 appears to have prepared this return?

21 A Douglas P. Rosile.

22 MR. WILSON: Your Honor, I'm sorry to interrupt.
23 However, I don't know if this document has been published or
24 not. I don't recall.

25 THE COURT: Not to my knowledge.

1 MR. WILSON: Okay. Thank you.

2 BY MR. McLELLAN:

3 Q And what is the date of the preparation, according to the
4 date next to the name Douglas Rosile?

5 A It's typed in September 15th, 2001.

6 MR. McLELLAN: Government moves that Government's
7 Exhibit previously marked 60-2 be received into evidence.

8 MR. WILSON: Objection; relevance, 404(b), without
9 prior notice.

10 THE COURT: I will overrule those objections, as I
11 did with respect to the previous exhibits for the same reason,
12 and receive them in evidence.

13 BY MR. McLELLAN:

14 Q Mr. Crowley, taking a look at the entries in the middle
15 part of this return, is there a --

16 MR. WILSON: Your Honor, I'm sorry. Can we have the
17 Bates number of that document, please?

18 THE COURT: Do you have it on the document before
19 you, Mr. McLellan?

20 MR. McLELLAN: It is DR-05016.

21 MR. WILSON: Thank you.

22 BY MR. McLELLAN:

23 Q Taking a look at the numbers in the middle of this return,
24 Mr. Crowley, what are the figures reflected in Column A,
25 generally speaking?

1 A These are taken from the original return that was sent in
2 to the IRS.

3 Q And taking a look at the figures reflected in Column B,
4 what are those figures, generally?

5 A These are the changes the taxpayer would like to make to
6 the original return.

7 Q And taking a look at Column C, what is the result as to
8 the income reflected now on the amended return?

9 A That would be Line 1. The correct amount would be zero,
10 or nothing.

11 Q Okay. And, similarly, what, at Line 10, is the effect on
12 the tax liability?

13 A That would be zero.

14 Q Directing your attention to Government's Exhibit or this
15 exhibit, 60-2, Bates Number DR-05051, this is a letter dated
16 January 29th, 2001. Do you see that there?

17 A Yes, I do.

18 Q Okay. And what's the letterhead on the letter?

19 A Douglas P. Rosile, 452 Glen Oak Road, Venice, Florida.

20 Q And to whom is it addressed?

21 A Internal Revenue Service, Problem Resolution Office,
22 Atlanta, Georgia.

23 Q Okay. And please read the first sentence of the letter.

24 A "The person to whom the attached letter was sent to is my
25 wife."

1 Q Okay. And please read the middle paragraph, starting with
2 "The letter."

3 MR. WILSON: Your Honor, I object. The document
4 speaks for itself.

5 THE COURT: Counsel is simply publishing the
6 exhibit. I will overrule that objection.

7 Which exhibit is this, Mr. McLellan?

8 MR. McLELLAN: It is 60-2.

9 THE COURT: All right. Go ahead.

10 A (Continuing.) "The letter signed by someone calling
11 herself Ellen C. Bell is a classic case of bureaucratic
12 runaround and IRS stonewalling by an incompetent employee.
13 The letter is, in Clinton-speak, factually inaccurate. There
14 was no claim for refund, simply a regular 1040 return seeking
15 a normal refund. The service center invented, fabricated,
16 corrected and otherwise created a balance due without any
17 explanation or substantiation. It then wantonly, deliberately
18 and maliciously refused to provide any information, case law,
19 statute or regulation to support their position that your
20 claim has no merit or basis."

21 Q Thank you, Mr. Crowley. Please read the second-last
22 paragraph of the letter.

23 A "I am further enclosing research from competent
24 professionals that supports the position taken by my wife. I
25 suggest you either refund her money or send a damned good

1 explanation as to why you are selectively administering the
2 law."

3 Q And who appears to have signed this letter?

4 A It appears to be Douglas P. Rosile.

5 Q Taking a look at Government's Exhibit previously marked
6 61-1, now, what is that?

7 A This is a copy of the original Form 1040, U.S. individual
8 tax return and administrative file, captioned Douglas R. Harms
9 for tax year 1997.

10 Q Okay. And is 61-2 for the same taxpayers, the same form
11 for 1998?

12 A Yes, that's correct.

13 Q Is 61-3 for the same taxpayers, the same form for 1999?

14 A Yes, it is.

15 Q Is 61-4 for the same taxpayers, the same tax form for
16 2000?

17 A Yes, it is.

18 MR. McLELLAN: The government moves that these
19 exhibits be received into evidence.

20 THE COURT: Any objection?

21 MR. WILSON: Objection to relevance, 404(b).

22 THE COURT: Who is shown as the preparer of these
23 returns, Agent Crowley, on the face of the exhibit, exhibits?

24 THE WITNESS: The one for 61-1, it appears to be
25 Douglas -- I can't read the last name, but it is Affordable

1 Accounting Tax Service.

2 THE COURT: All right.

3 THE WITNESS: Would you like me to go through the
4 rest of them, as well?

5 THE COURT: 61-2, -3 and -4.

6 THE WITNESS: 61-2 is Douglas P. Rosile, Rosile and
7 Herko Accounting.

8 61-3 has no paid preparer on the page I'm looking
9 at. Let me see if there is another internal -- there is no
10 other internal on that one.

11 And 61-4 is Douglas P. Rosile.

12 THE COURT: What's the relevance of 61-3, Mr.
13 McLellan?

14 MR. McLELLAN: Your Honor, there is a certain amount
15 of I guess you could call it intertwining of these tax files.
16 They contain not only returns, but correspondence to and from
17 the Internal Revenue Service.

18 THE COURT: Is it your contention that within 61-3
19 there is correspondence between Mr. Rosile and the IRS?

20 MR. McLELLAN: No, Your Honor.

21 THE COURT: I am inclined to sustain the objection
22 presently with respect to 61-3, and I will overrule the
23 objection and receive in evidence the other three exhibits.
24 61-1, -2 and -4 are received.

25 MR. McLELLAN: Thank you, Your Honor.

1 BY MR. McLELLAN:

2 Q Directing your attention, Mr. Crowley, to Exhibits 63-1
3 through 63-6, do you have those in front of you?

4 A Yes, I do.

5 Q Okay. What is Exhibit -- I'm sorry -- Number 63-1?

6 A This is a copy of a Form 941, employer's quarterly Federal
7 tax return, captioned Affordable Accounting Tax Service for
8 March 31st, 1997.

9 Q And, respectively, what are 62-3 through 62-6?

10 A These are also Form 941's, employer's quarterly Federal
11 tax return for different tax periods for the same, Affordable
12 Accounting Tax Service.

13 63-2 is for June 31st, 1997.

14 63-3 is for September 30th, 1997.

15 63-4 is for December 31st, 1997.

16 63-5 is for March 31st, 1998, and it also includes an
17 administrative file.

18 Q Taking, for example, a look at the document previously
19 marked 63-5, toward the middle of that document, do you see a
20 form 941C received at the Internal Revenue Service August the
21 10th, 2001?

22 It would be approximately eight pages in, Mr. Crowley.

23 A Yes, I do.

24 Q What is the name of the entity filing the return?

25 A Affordable Accounting Tax Service of Southwest Florida,

1 Incorporated.

2 Q And who appears to have signed as president?

3 A It appears to be Douglas P. Rosile.

4 MR. McLELLAN: The government moves that items
5 previously marked 63-1 through 63-6 for Affordable Accounting
6 Tax Service be received in evidence.

7 THE COURT: 63-1 through -6 is offered?

8 MR. McLELLAN: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. WILSON: Yes, Judge; relevance, 404(b), no prior
11 notice.

12 THE COURT: Well, I'll overrule those objections and
13 receive the exhibits in evidence. The relevance objection can
14 be made the subject of a motion to strike subsequently, if it
15 isn't connected up, Mr. Wilson. Those exhibits are received.

16 BY MR. McLELLAN:

17 Q Mr. Crowley, directing your attention to the middle of
18 that exhibit. It's Bates Number DR-06063. It's a letter from
19 Affordable Accounting Tax Service, dated July 23rd, 1998. Do
20 you see that letter?

21 A Yes, I do.

22 Q To whom is that letter addressed?

23 A Internal Revenue Service, Atlanta Appeals Office.

24 Q Okay. And what is the date of that letter?

25 A July 23rd, 1998.

1 Q And the subject of the letter?

2 A Penalty appeal.

3 Q Please read the text of the letter.

4 A "Dear Ms. Eberhart: The enclosed information is a
5 follow-up to my letter dated 6/23/98 and acknowledged by the
6 attached letter. The citations are precisely on-point with
7 what I believe you stole our money without due process. I am
8 contacting Senators Mack and Graham with this information and
9 hope that they will continue to monitor the matter. We will
10 expect a full refund. Sincerely yours, Douglas P. Rosile.

11 Q A little later in that exhibit, at DR-06077 there is
12 another letter on Affordable Accounting Tax Service
13 letterhead.

14 A I have that.

15 Q Okay. To whom is that letter addressed?

16 A Internal Revenue Service, Penalty Appeals Coordinator.

17 Q And what is the date of that letter?

18 A June 23rd, 1998.

19 Q Okay. And please read the text of the letter.

20 A "Dear sirs: This letter is a formal request for a further
21 consideration; specifically, a refund of the money seized from
22 our account without due process to satisfy a penalty on the
23 above-captioned form. I have made three previous requests for
24 proof that there is any statute and implementing regulation
25 that mandates withholding from any domestic citizen. I now

1 feel we are simply being given the runaround by the IRS and
2 the matter is being passed around from one idiot to another.

3 "If, in fact, no such statute exists, then we did
4 something voluntarily, namely withhold taxes, that we are now
5 being penalized for. Either refute the information enclosed
6 or refund the moneys. Sincerely yours, Douglas P. Rosile."

7 Q Mr. Crowley, directing your attention to government's
8 exhibits previously marked 64-1, 64-2, what is Exhibit 64-1?

9 A 64-1 is a true copy of the Form 1046 -- I'm sorry --
10 1040X, amended U.S. individual tax return for Wesley Snipes
11 for tax period 1997.

12 And 64-2 is the original 1040X for 1997 for Wesley Snipes.

13 MR. McLELLAN: Your Honor, the government moves that
14 these exhibits be received into evidence.

15 MR. BARNES: No objection, Your Honor.

16 THE COURT: It's received.

17 BY MR. McLELLAN:

18 Q Taking a look at Exhibit 64-2, whose name is at the top of
19 that return?

20 A Wesley Snipes.

21 Q And with what Social Security number?

22 A [REDACTED]

23 Q Was that form received at the Internal Revenue Service?

24 A Yes, it was.

25 Q How do you know that?

1 A There are several stamps here from the Internal Revenue
2 Service. The first stamp is the round stamp that's in black
3 ink, received at the Andover IRS center on April 14th, 2001.

4 Q Okay. And do you see any additional stamps?

5 A Yes, there are. There's another stamp just to the lower
6 left of that, which is off the screen, that says Statute,
7 April 18, 2001. Then just above it a little to the right is a
8 red stamp, saying Received May 8th, 2001 FRP.

9 Q Okay. And what does "FRP" mean?

10 A Frivolous Return Program.

11 Q Okay. Taking a look at Line 1 of that document, what's
12 the adjusted gross income reflected in Column A?

13 A 19,238,192 dollars.

14 Q Okay. And taking a look at Line 1 in Column B, what is
15 the net change reflected in this return?

16 A 19,238,192 dollars.

17 Q And for Column C, what does that reflect as the correct
18 amount?

19 A Zero.

20 Q Taking a look at Line 6 for tax, what does Column A
21 reflect as the original amount for tax?

22 A 7,363,236 dollars.

23 Q And what is the net change reflected in Column B?

24 A 7,363,236 dollars.

25 Q And what does that leave for the correct amount?

1 A Zero.

2 Q Directing your attention to Line 22, what figure is
3 provided -- or I'm sorry. First of all, what does that line
4 reflect or indicate?

5 A That indicates the amount you want refunded to yourself as
6 a taxpayer.

7 Q And what figure is being requested here for a refund?

8 A 7,360,755 dollars.

9 Q Okay. Who appears to have signed as the taxpayer next to
10 "sign here"?

11 A It appears to be Wesley Snipes.

12 Q And who appears to have signed as the preparer?

13 A It appears to be Douglas P. Rosile.

14 Q Is there a date for each of those signatures?

15 A Yes. They are the same date of April 11th, 2001.

16 Q Okay. And what is the address given for the preparer?

17 A 452 Glen Oak Road, Venice, Florida 34293.

18 Q Taking a look at page two of the document, Part Two, there
19 is an explanation of changes to income, deductions and
20 credits. Do you see that there?

21 A Yes, I do.

22 Q Okay. What does it say there, as far as the explanation
23 is concerned?

24 A "Amounts previously reported not from a taxable source per
25 26 CFR 1.861-8(f)(1)." And then it continues on the next two

1 lines down, saying: "See attached."

2 Q Okay. Taking a look at page three, there is a form.

3 What's the caption on there?

4 A Of the form, it's a "Regulation Disclosure Statement."

5 Q Okay. And under Part Two, "detailed explanation," what
6 does it say?

7 A "Amount previously reported not from taxable source per
8 1.861-8(f)(1).

9 Q Okay. And taking a look at the fourth page, what does the
10 caption part of that page read?

11 A "Attachment to Form 1040/1040X for tax year 1997;" name,
12 Wesley Snipes; and a Social Security.

13 Q Okay. And what does the first paragraph of this
14 attachment say?

15 A "This return is being filed on the basis of the IRS
16 Regulation 26 CFR 1.861-8, which identifies all of the taxable
17 sources of income within the United States of America. As far
18 as I have been able to determine, none of the receipts of this
19 taxpayer came from any of these sources."

20 Shall I continue?

21 Q No, that's fine. Taking a look at the last page of the
22 exhibit, see an envelope?

23 A Yes, I do.

24 Q Okay. Focusing on the postage meter in the upper
25 right-hand corner, that mark there, can you make out a number

1 following where it says "PB"?

2 A Yes, I can. The number is 5521990.

3 Q Okay. And what is the date on that mark?

4 A Just below that on the next line is April 11th, 2001.

5 Q Does there appear to be a postal cancellation stamp on
6 there?

7 A Yes, there does.

8 Q Can you make out anything of --

9 A It appears to say "Mid-Florida."

10 Q And is there a date to the lower left of that?

11 A To the lower left there is a date of 4/14/2001.

12 Q Okay. And to where is this letter addressed?

13 A Internal Revenue Service, Andover, Mass., 05501.

14 Q Okay. Returning to the first page of the document and
15 focusing on the text above the signature, where it says "sign
16 here," please read the first five words.

17 A "Under no penalties of perjury."

18 Q Okay. In the Internal Revenue Service, what is the term
19 used for that type of a declaration that appears on returns?

20 MR. WILSON: Objection; lack of foundation,
21 predicate.

22 THE COURT: Overrule that.

23 If you know, you may answer, Agent Crowley. If you
24 don't, you should say so.

25 A It's known as the jurat.

1 Q Okay. Before this return, have you ever seen a
2 declaration like that?

3 A Not with the word "no" in there, no.

4 MR. McLELLAN: Begging the Court's indulgence. Your
5 Honor, I'm trying to locate Exhibit 61-1.

6 THE WITNESS: I have it here.

7 THE DEPUTY CLERK: Mr. McLellan? Thank you.

8 BY MR. McLELLAN:

9 Q Is this the -- is 61-1 the 1997 return package for Douglas
10 and Barbara Harms?

11 A Yes.

12 Q Do you see a 1997 Form 1040X in there, DR-05126? It's
13 about 20 pages in.

14 A Yes, I do.

15 Q Now, please take a look at the jurat above the signature.
16 Please read the first four words on that jurat.

17 A "Under penalties of perjury."

18 MR. McLELLAN: That's all for this witness at this
19 time, Your Honor.

20 THE COURT: Mr. Barnes, do you wish to
21 cross-examine?

22 MR. BARNES: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. BARNES:

25 Q Good morning, Mr. Crowley.

1 A Good morning.

2 MR. BARNES: Yes, ma'am, can you bring up 64-1. And
3 can we go to the third page.

4 This is the page Mr. McLellan did not ask you about.

5 Can you highlight the top, regulation disclosure
6 statement part. Thank you, ma'am.

7 BY MR. BARNES:

8 Q What does that say, Mr. Crowley?

9 A "Regulation Disclosure Statement. Use this form only to
10 disclose items or positions that are contrary to Treasury
11 regulations. For other disclosures, use Form 8275 disclosure
12 statement. See separate instructions."

13 Q Is that form colloquially called a "red flag" form to
14 highlight to the IRS that is this is a controversial position?

15 A I would not know that.

16 Q What was your prior employment? Have you always just been
17 a witness coordinator?

18 A No.

19 Q What's your employment history with the IRS?

20 A I have worked as an investigative analyst for the Internal
21 Revenue Service, as well.

22 Q What does an investigative analyst do?

23 A I reviewed returns for accuracy and compare them against
24 fraudulent returns.

25 Q How often did you see -- are you familiar with an 8275

1 regulation disclosure statement form?

2 A No, I am not.

3 Q So in your history of reviewing fraudulent returns, you
4 had never seen that form before?

5 A Potentially fraudulent returns, no, I have not seen this
6 before, not that I recall.

7 THE WITNESS: Could we go to the fourth page. Yes,
8 ma'am, could we highlight the second, third and fourth
9 paragraph.

10 BY MR. BARNES:

11 Q Could you read that please, Mr. Crowley.

12 A "Since according to 1.861-8(4), a taxable source must
13 first be determined before taxable income can be determined,
14 these receipts must therefore be exempt from Subtitle A taxes.
15 The calculations on the attached 1040 (1040X) form reflect
16 that position.

17 "Based on those calculations, there should be a complete
18 refund of all moneys paid in. Should the IRS disagree with
19 this position, please schedule an administrative law judge
20 review on this matter pursuant to the Administrative
21 Procedures Act 5 USC 556(d). The IRS, under the Freedom of
22 Information Act, has admitted that it is subject to the
23 Administrative Procedures Act. That being the case, the
24 courts have ruled in numerous cases that we would be entitled
25 to a fair trial administratively. Some of the rulings are

1 listed below."

2 MR. BARNES: Can we go to the next paragraph.

3 BY MR. BARNES:

4 Q Could you read that, where it starts "due process."

5 A "Due process in administrative hearings includes a fair
6 trial conducted in accordance with fundamental principles of
7 fair play and applicable procedural standards established by
8 law, and administrative convenience or necessity cannot
9 override this requirement."

10 Q In your experience with evaluating returns, how often does
11 someone request an administrative hearing in that language?

12 A That I don't know. When -- in my experience with
13 evaluating returns, when it cites case law or cases, they go
14 into a funny box area.

15 Q They go into -- Say that again.

16 A A funny box.

17 Q If they cite cases, they go into the funny box?

18 A That's correct.

19 MR. BARNES: Could we go back to the page one.

20 Thank you, ma'am. Could we go to the bottom. Could we
21 highlight the jurat. Just that one is fine.

22 BY MR. BARNES:

23 Q In your experience of evaluating returns that could be
24 fraudulent, did any of those returns tell the IRS upfront that
25 it was being filed under no penalties of perjury because the

1 individual was unsure of the position?

2 A I could not answer that.

3 MR. BARNES: Could we go to the top of the page.

4 Highlight the resident section.

5 BY MR. BARNES:

6 Q What city and state and ZIP code is listed there?

7 A New York, New York, 10022.

8 Q You mentioned earlier that this was sent to the Andover,

9 Massachusetts service center.

10 A That's correct.

11 Q Is the Andover, Massachusetts service center the place for
12 people to send returns who reside in New York City?

13 A Yes; as well as anyone in the country can also send them.
14 We will accept returns from anywhere in the country.

15 Q Sure.

16 MR. BARNES: Could we go to Exhibit 39-1.

17 BY MR. BARNES:

18 Q What address is listed in the city and state section for
19 that return?

20 A New York, New York, 10022.

21 MR. BARNES: Could we go to the bottom of the second
22 page. Could you highlight the very bottom.

23 BY MR. BARNES:

24 Q What date is listed for the return date filing?

25 A Well, the date that's listed for the signature there --

1 Q Next to the signature.

2 A -- will be October 14th, 1994.

3 Q Is that because -- does that happen when someone requests
4 an extension?

5 A Yes, it can happen. They haven't -- there is two
6 extension dates they have, the last one being October 15th.

7 MR. BARNES: Can we go to Exhibit 39-2. Could we go
8 to the top.

9 BY MR. BARNES:

10 Q What city and state is listed as the residence on that
11 form?

12 A Well, first off, I don't think this is necessarily listing
13 as the residence, but the city and state that's listed on the
14 form is New York, New York, 10022.

15 MR. BARNES: Could we go towards the bottom. Right
16 there. A little further down.

17 BY MR. BARNES:

18 Q Does that say -- can you read where that was mailed from?

19 A That would be a stamp that says where it was received, and
20 I can't read all of it from here.

21 MR. BARNES: Okay. Can we below up that.

22 BY MR. BARNES:

23 Q Can you identify where that was received?

24 A It looks like the Brookhaven service center in Holtsville,
25 New York.

1 Q Is that the service center that accepts returns from
2 people who reside in New York City?

3 A Yes, the people can send them there.

4 MR. BARNES: Can we go to Exhibit 39-3. Can we go
5 to the top.

6 BY MR. BARNES:

7 Q What city and state are listed under Mr. Snipes' name?

8 A New York, New York, with the ZIP of 10022.

9 MR. BARNES: And could we go to the stamp section.
10 And could we blow that up.

11 BY MR. BARNES:

12 Q And where is the service center that accepted that?

13 A Brookhaven service center, Holtsville, New York.

14 MR. BARNES: Can we go to the bottom of page two.

15 BY MR. BARNES:

16 Q Does that have a date next to the name of the CPA?

17 A Yes, it does.

18 Q What date is that?

19 A It appears to be September 24th, 1996.

20 Q And this would be if two extensions had been requested and
21 granted?

22 A I couldn't say if that's why it was that date, but -- I
23 mean, the date is when the preparer signed it. Why it's that
24 date, I couldn't tell you.

25 Q So you didn't do any searches for what extensions were

1 requested during this period of time when you were searching
2 the IRS files?

3 A Not that I recall, no.

4 MR. BARNES: Go to 39-5.

5 BY MR. BARNES:

6 Q What city and state is listed?

7 A New York, New York.

8 MR. BARNES: And could we go down to the stamp
9 section.

10 BY MR. BARNES:

11 Q Which service center was it received in?

12 A IRS in Brookhaven, New York.

13 MR. BARNES: And could we go to the bottom of page
14 two.

15 BY MR. BARNES:

16 Q What date is listed next to Mr. Snipes' and Mr. Canter's
17 name?

18 A It appears to be October 15th, 1998.

19 Q Does it appear that the dates are written in by the same
20 person?

21 A It's hard for me to tell. I couldn't tell from here.

22 MR. BARNES: Could you blow the dates up.

23 BY MR. BARNES:

24 Q Does it appear that whoever wrote the dates in was the
25 same person?

1 A Again, I am not -- you know, I'm not an expert. It
2 appears that they could be, but I am not an expert to know
3 what it is.

4 MR. BARNES: If we can go to 39-6.

5 BY MR. BARNES:

6 Q What city and state are listed for the 1998 return?

7 A New York, New York.

8 MR. BARNES: Could we go to the stamp section.

9 BY MR. BARNES:

10 Q Which service center received this return?

11 A IRS center at Brookhaven, Holtsville, New York.

12 MR. BARNES: Could we go to the bottom of the second
13 page.

14 BY MR. BARNES:

15 Q What date is listed next to Mr. Canter's name?

16 A 10/5/1999.

17 Q Is there any date listed next to Mr. Snipes' name?

18 A No, there is not.

19 Q Let's talk about how documents get filed with the IRS.
20 Some of the documents you reviewed included audit logs; is
21 that correct?

22 A That's correct.

23 Q And some of them included correspondence logs; is that
24 correct?

25 A That's correct.

1 Q And some of them included the individual master file
2 records; is that correct?

3 A I believe they did, yes.

4 Q What is the individual master file?

5 A Well, the master file is what we have on each individual
6 based on their Social Security number. That's how we keep
7 track of their file in the system.

8 Q What information is stored in that master file?

9 A Their name, their Social, their filing history, what they
10 have entered on their returns, and any work that we may be
11 doing in the Internal Revenue Service.

12 Q Are there things called transaction codes on an individual
13 master file?

14 A Yes, there are.

15 Q What is a transaction code?

16 A That's a code that tells those of us working in the
17 service center or anybody working for the IRS what may be
18 happening on the account.

19 Q What sort of things would be entered as transaction codes
20 on that account?

21 A Well, some of them would be a return coming in, payments
22 processed, as well as taxes assessed and notices, some
23 notices.

24 Q Would correspondence from the taxpayer to the IRS be kept
25 in the individual master file?

1 A No, not usually.

2 Q So the taxpayer's correspondence is not kept in the master
3 file?

4 A It does not come in and it's kept all in its own on the
5 master file. Somebody may read the correspondence, try and
6 decipher what's supposed to be going on with that information,
7 and then send it to somebody else who may work it.

8 When they do, if it's something that they are going to
9 work and complete some processes on, it would then be given a
10 locator number possibly, or it may be attached to the original
11 return.

12 Q Are you familiar with the term "notice of deficiency"?

13 A Yes.

14 Q What is that, from the IRS perspective?

15 A I have to remember. Deficiency is that you owe taxes and
16 we are sending you a letter saying you owe us money.

17 Q Is a notice of deficiency -- is there a transaction code
18 entered on an individual's master file to show that a notice
19 of deficiency was sent to the taxpayer?

20 A There should be, yes.

21 Q Do you know what a notice of disallowance is?

22 A No, I do not.

23 Q What about -- what is the business master file?

24 A That's the same information, but for a business. If you
25 have an employer identification number, the business master

1 file would keep all the information for the business.

2 Q What is a Privacy Act transcript?

3 A I can't -- I do not know on that one.

4 Q Is there a -- does a taxpayer have a right to access their
5 information stored or kept with the IRS through the Privacy
6 Act? Are you familiar with that?

7 A The only thing I am familiar is that a taxpayer has the
8 right to request under the Freedom of Information Act
9 information on there.

10 Q And what is the IDRS?

11 A It is the integrated data retrieval system.

12 Q What is -- how does that work in your job?

13 A Well, that's all the databases that are available to us
14 are integrated, so I can request information from those
15 databases from my terminal.

16 Q What is an ERPL?

17 A I do not know.

18 Q Are you familiar with an IRS publication known as "Your
19 Rights As a Taxpayer"?

20 A I know that there is something of that, but I am not
21 familiar with it, no.

22 Q So you are not familiar with the publication "Your Rights
23 As a Taxpayer"?

24 A That's correct.

25 Q And you said you obtained the records that were requested

1 from you; is that correct?

2 A That's correct.

3 Q Did -- were -- the correspondence logs of Mr. Snipes, was
4 it requested that you obtain those records?

5 A They were actually attached with some of the returns.

6 Q Did you do a separate search for all of the correspondence
7 that Mr. Snipes sent in?

8 A Yes.

9 Q And you didn't find anything, except what you reported
10 today?

11 A I believe that's correct.

12 MR. BARNES: Okay. Can we go to defense -- I'm
13 sorry -- Government's Exhibit 87-2. Could you blow it up.

14 BY MR. BARNES:

15 Q Whose name is listed at the top of the letter?

16 A Wesley T. Snipes.

17 Q And what date is listed?

18 A 9711 Deacon Court -- I'm sorry. You said the date.

19 Q Yeah, you can list that.

20 A All right. 9711 Deacon Court, Windermere, Florida, 34786.

21 Q And what date?

22 A March 3rd, 2000.

23 Q And who is it addressed to?

24 A Internal Revenue Service, Atlanta, Georgia 39901.

25 Q Could you please read that letter.

1 A "Enclosed please find a power of attorney from authorizing
2 those listed to serve as my attorney in fact regarding any IRS
3 matters that may arise. As you can see from the enclosed
4 affidavit of incompetence, I am unable to understand, much
5 less properly answer your questions, and therefore must insist
6 that you direct all inquiries to my attorneys in fact.

7 "Since I am in the process of sending or have already sent
8 my pertinent books and records to Mount Plymouth, Florida,
9 please transfer my file to the Maitland or Ocala, Florida
10 district serving Mount Plymouth, and direct all future
11 correspondence to 25525 SR 46, Suite Two, Mount Plymouth,
12 Florida, 32776.

13 "In the event it becomes necessary for the IRS agents in
14 Florida to meet with my attorneys in fact, they will have a
15 telephone number where I can be reached at the time to answer
16 any questions that my attorneys in fact may be unable to
17 answer."

18 MR. BARNES: Can you go to the bottom.

19 BY MR. BARNES:

20 Q Whose name is listed there?

21 A Wesley T. Snipes.

22 Q So in your search of the IRS correspondence logs and other
23 files, you didn't find this document?

24 A No.

25 MR. BARNES: If we could go to 87-10.

1 BY MR. BARNES:

2 Q Whose name is listed -- whose name and address is listed
3 at the top?

4 A Wesley T. Snipes, 9460 Wilshire Boulevard, Number 400,
5 Beverly Hills, California, 90212.

6 Q And what date is listed?

7 A September 26th, 2000.

8 Q And who is it addressed to?

9 A Internal Revenue Service, Fresno, California 93888.

10 Q And that's a different service center than the Atlanta,
11 Georgia service center?

12 A That's correct.

13 Q If a person has multiple residences, could different
14 service centers be engaged with that taxpayer?

15 A The different service centers are all able to receive
16 correspondence and filings, so --

17 Q They are also able to send stuff out; correct?

18 A That's correct.

19 Q Could you please read -- is this letter the same as the
20 letter that you just read?

21 A It does appear to be.

22 Q In the letters, the third sentence, does it reference an
23 enclosed affidavit of incompetence? Do you see that?

24 A "As you can see from the enclosed affidavit of
25 incompetence," yes.

1 MR. BARNES: Could we go to Exhibit 87-11.

2 BY MR. BARNES:

3 Q I have one question. How long have you been working for
4 the IRS?

5 A Since 1998.

6 Q Do you -- have you actually read the entire Internal
7 Revenue code book and regulations?

8 A No.

9 MR. BARNES: Could we highlight the top five.

10 BY MR. BARNES:

11 Q Yes. Could you read those first five sentences.

12 A "Affiant's name is Wesley T. Snipes.

13 "Affiant does not understand Title 26 Internal Revenue
14 code, and does not know if it applies to Affiant.

15 "Affiant does not understand Title 26 code of Federal
16 regulations, and does not know if it applies to Affiant.

17 "Affiant has never received a notice from the Internal
18 Revenue Service stating Affiant is a taxpayer.

19 "Affiant has never received a notice from the Internal
20 Revenue Service stating Affiant is liable for a particular
21 tax."

22 Q In your review of the documents, you didn't find this
23 document either?

24 A Not that I am aware of, no.

25 MR. BARNES: Could we go to 87-20.

1 BY MR. BARNES:

2 Q Could you read the top, the name, and then what his
3 designation is.

4 A Milton H. Baxley, II, lawyer.

5 Q And what date is this letter?

6 A June 29, 2001.

7 Q And who is it addressed to?

8 A Internal Revenue Service, 111 Constitution Avenue,
9 Northwest, Washington D.C.

10 Q Is that where the national office of the IRS is located?

11 A I believe so.

12 Q Is that where the national office of the chief counsel of
13 the IRS is located?

14 A That I couldn't answer. I don't know.

15 Q Could you read the -- on the right side, what is that at
16 the very top?

17 A RET Receipt Number 70993220001048618758.

18 Q Are you familiar with taxpayers and individuals sending in
19 documents by certified mail to the IRS?

20 A Yes.

21 Q Does that look like a certified mail receipt number?

22 A It appears to be.

23 Q Whose name is listed next?

24 A RE: Wesley T. Snipes.

25 Q And what's the Social Security number listed?

1 A [REDACTED].

2 Q And it has tax years '99 and 2000?

3 A That's correct.

4 Q Could you please read the letter, beginning: "Dear Sir or
5 Madam."

6 A I have a power of attorney for my client, copy enclosed,
7 and hereby request that you provide me with a determination of
8 tax status of Wesley T. Snipes for the years 1999, 2000. This
9 request is not intended to question or challenge the authority
10 of the service to enforce the code or collect information and
11 neither should it be construed as such."

12 Q Keep going.

13 A "My request is this: Please issue a letter of
14 determination as to whether or not my client was made liable
15 for the individual income tax return imposed by 26 USC 1 for
16 each of the above listed years."

17 Q Keep going.

18 A "I hereby request a copy of the findings of fact and
19 conclusions of law that you will use as a basis of your
20 determination pursuant to the Administrative Procedures Act;
21 specifically 5 USC 556(d). I ask for the determination letter
22 to be sent within 30 days of the date on this letter. If more
23 time is needed, please make a written request and it will be
24 granted."

25 Q Keep going.

1 A "Should your determination be that my client has been made
2 liable pursuant to 26 USC 6011 for any of the years in
3 question, this is also a request for a conference with you
4 pursuant to Section 8.02(7) to discuss your findings."

5 Q Keep going.

6 A "I have never asked for a determination or letter ruling
7 on these issues or ones similar to them for my client. I have
8 never asked for a determination or letter ruling and withdraw
9 it before a determination was issued."

10 Q And the next.

11 A "Enclosed is a check for 275 dollars, paid pursuant to the
12 schedule of user fees for the requested determination."

13 Q And the next.

14 A "If this is not a proper format for making this request,
15 please send that format with instructions to me. Please
16 respond within 30 days."

17 Q And what is at the very bottom in that box?

18 MR. BARNES: Could we blow that up.

19 BY MR. BARNES:

20 Q What does that say?

21 A "You are hereby put on notice that this letter must be
22 filed as a permanent part of client's IRS TDA/AIMS/IMF/23C
23 record. If such records have been deleted or substituted,
24 this demand still applies." Initial "MHB."

25 Q And in your search, you did not find this letter?

1 A I did not, no.

2 MR. BARNES: Could we go to 87-21.

3 BY MR. BARNES:

4 Q Whose name and what is his designation listed at the top?

5 A Brian D. Malitesta, CPA.

6 Q Let me ask you a question. Are you familiar with the term
7 "examination" in the IRS?

8 A Yes.

9 Q What is an examination?

10 A Well, the examination is when, for some reason, the
11 Internal Revenue Service thinks that we need to review the
12 information that you have and the information that we have,
13 because they don't seem to jive, so we maybe would do an exam.

14 Q Is another word for "examination" "audit"?

15 A I couldn't say another word for that, but "audit" has been
16 known to be similar.

17 Q Is one method of doing an audit doing it in person by
18 interview?

19 A I believe so. I am not an expert on that.

20 MR. BARNES: Could we blow up to who the letter is
21 addressed to.

22 BY MR. BARNES:

23 Q Who is the letter addressed to?

24 A Internal Revenue Service, Leila D. Richardson, Chief ACS,
25 Doraville, Georgia.

1 Q What is "ACS"?

2 A I don't know.

3 MR. BARNES: Could we blow up the right side.

4 BY MR. BARNES:

5 Q Does that appear also to have a certified return receipt
6 number?

7 A It does appear to, yes.

8 Q And whose name does this correspondence concern?

9 A Wesley T. Snipes.

10 Q And is that the Social Security number you listed earlier
11 in reviewing his returns?

12 A Yes.

13 Q And what does the subject say?

14 A "Request for examination interview."

15 MR. BARNES: Could we go to the substance of the
16 letter, starting with "I have power of attorney." Could we
17 blow that up, that first -- thank you.

18 BY MR. BARNES:

19 Q Could you start with "I have power of attorney."

20 A "I have power of attorney, POA, for Wesley T. Snipes
21 regarding Federal tax matters. I recently received your
22 letter LTR 2050 dated 5/19/01 referencing my client."

23 Q Could you continue reading.

24 A "In that there is a disagreement with the initial findings
25 by the IRS, I am requesting an examination interview pursuant

1 to 26 CFR 601.105(b)(2), and IRS Publication Number 1, 26 CFR
2 601.105(b)(2) states: Two, office examination."

3 I think that's an "i." "Adjustments by examination
4 division at service center. If the taxpayer requests an
5 interview to discuss the proposed adjustments, the case is
6 transferred to the taxpayer's district office. If the
7 taxpayer does not agree to proposed adjustments, regular
8 appellate procedures apply."

9 Q And what does it say in the next paragraph?

10 A "Before the appeals conference is held, there must be an
11 examination interview provided when requested as cited above.
12 IRS Publication Number 1 also affirms the right to this
13 interview. Regarding examination interviews, Publication
14 Number 1 states: By mail we handle many examinations. You
15 can request a personal interview with an examiner.

16 "By interview, if we notify you that we will conduct your
17 examination through a personal interview or you request such
18 an interview" -- I'm sorry -- "or you request such an
19 interview, you have the right to ask that the examination take
20 place at a reasonable time and place that is convenient for
21 both you and the IRS."

22 Q And what is the last paragraph.

23 A "The older Publication Number 1 included a flow chart,
24 copy attached, showing that upon disagreement with the initial
25 findings of the IRS, the first step of due process is the

1 examination interview.

2 "In that the IRS has presumed my client has a tax
3 liability, I am requesting an examination interview to
4 investigate and to determine whether or not there is a tax
5 liability. I ask that you respond to my requests for an
6 examination interview within 30 days."

7 Q And who is the letter copied to on the bottom? Do you see
8 that "C"?

9 A "C: Wesley T. Snipes."

10 MR. BARNES: Could we blow up the box.

11 BY MR. BARNES:

12 Q What does that box say?

13 A "You are hereby put on notice that this letter must be
14 filed as a permanent part of client's IRS TDA/AIMS/IMF 23C
15 record. If such records has or have been deleted or
16 substituted, this demand still applies."

17 Q When you did your search for records, you did not find
18 this document?

19 A That's correct.

20 Q And if the -- if someone in the IRS had shredded these
21 documents, then you would not be able to locate them; correct?

22 A That would be true.

23 MR. BARNES: Your Honor, this might be a good time
24 for the morning break.

25 THE COURT: All right. It's midpoint of the

1 morning, roughly. Members of the jury, let's pause for our
2 midmorning recess, 15 minutes.

3 (Short recess taken.)

4 (Jury present.)

5 THE COURT: Thank you. Be seated, members of the
6 jury.

7 All right. Mr. Barnes, you may continue.

8 MR. BARNES: Thank you, Your Honor.

9 If we can go back, ma'am, to Exhibit 87-21. This
10 would be Government Exhibit 87-21.

11 Can we go to the second page? Could you blow that
12 up?

13 BY MR. BARNES:

14 Q. Mr. Crowley, are you familiar with a -- with that -- have
15 you seen something like that document before?

16 A. I believe I have.

17 Q. And what is it?

18 A. It looks like it's part of a certified letter return
19 receipt.

20 Q. And who is the article addressed to?

21 A. IRS. L.D. Richardson.

22 Q. And does it have a received stamp?

23 A. Yes, it does, July 9, 2001.

24 Q. Is that an IRS received stamp?

25 A. Yes, it is.

1 Q. Do you see the number on the bottom?

2 A. The 7001 number, yes.

3 Q. Yes.

4 MR. BARNES: Could we go to Page 1, the top
5 right-hand corner?

6 BY MR. BARNES:

7 Q. Is that the same number?

8 A. I don't know if it's the same number. I would have to
9 look at them side by side. It appears to be, but I -- because
10 I'm seeing them -- I'm not seeing them side by side, I
11 couldn't say.

12 Q. Sure.

13 MR. BARNES: Could we go to Page 3?

14 BY MR. BARNES:

15 Q. Do you recognize that?

16 A. I think that's the other side of it, actually, going back
17 to the sender for the certified.

18 MR. BARNES: If we could go to Page 4? I think it's
19 WS-01473.

20 Could we turn that the other way? Could we blow up
21 the top left-hand corner?

22 BY MR. BARNES:

23 Q. Do you remember the letter referencing an IRS appeal chart
24 or IRS chart?

25 A. I remember it referencing a chart, yes.

1 Q. Can you read what the top left-hand side says?

2 A. "Income tax appeal procedure," and I believe it says "at
3 any stage."

4 Q. "At any stage"?

5 A. Correct.

6 Q. Go ahead.

7 A. "You can agree and arrange to pay. You can ask for a
8 notice of deficiency so you can file a petition with the Tax
9 Court, and you can pay the tax and file a claim for refund."

10 MR. BARNES: Could we go down to blow up the
11 right-hand side where it says "choice of action," right there?

12 BY MR. BARNES:

13 Q. Can you read what it says in that middle box?

14 A. You'll have to be more specific. I'm sorry, I --

15 Q. Right there.

16 A. Right there? I can't read that, no.

17 MR. BARNES: Could we blow that up?

18 BY MR. BARNES:

19 Q. Can you read it now?

20 A. It appears to be "choice of action."

21 Q. Okay.

22 MR. BARNES: Can we go back to that half?

23 BY MR. BARNES:

24 Q. What's the "choice of action" on the bottom?

25 A. The first words there say "pay tax, file claim for

1 refund."

2 Q. And what is the choice on the top?

3 A. "Do not pay tax, petition to Tax Court."

4 Q. Could you -- after it says "file claim for refund," what
5 does the next box say?

6 A. "Consideration of claim for refund."

7 Q. Does the chart appear to have on the bottom what the
8 taxpayer or citizen would do and the bottom how the IRS would
9 respond?

10 A. I don't know if that's how it's set up.

11 Q. Okay. And what does it say after "consideration of claim
12 for refund"? What's next?

13 A. "Preliminary notice."

14 Q. And after the preliminary notice, then what happens?

15 A. The next box says "request for appeals conference, written
16 protest when required."

17 Q. And what is the next box?

18 A. "Appeals conference."

19 Q. And what is the next box?

20 A. "Formal notice disallowance of claim."

21 Q. And what is the final box?

22 A. "U.S. District Court or Claims Court."

23 Q. You referenced a 1040X refund claim that had been filed?

24 A. Yes.

25 Q. In your review of the files, did you find any formal

1 notice disallowance of claim to Mr. Snipes?

2 A. No, I did not.

3 Q. Did you find any appeals conference for Mr. Snipes?

4 A. No, I did not.

5 Q. Did you find any request -- did you find any preliminary
6 notice to Mr. Snipes?

7 A. Not that I recall, no.

8 MR. BARNES: Can we go to the top box?

9 BY MR. BARNES:

10 Q. What does it say after "do not pay tax"?

11 A. "Petition to Tax Court."

12 Q. If the IRS issues a notice of deficiency, is that what
13 allows the taxpayer to go to Tax Court?

14 A. Yes.

15 Q. And what does it say next?

16 A. Well, to the right on the solid line it says "Tax Court."

17 Above it on the dashed line it says "appeals conference if
18 previously bypassed."

19 MR. BARNES: Can we go to Government Exhibit 87-23?

20 BY MR. BARNES:

21 Q. In your review of all of the IRS files, did you find any
22 notice of deficiency that was ever sent to Mr. Snipes?

23 A. Not that I recall.

24 MR. BARNES: Can we blow up the top section?

25 BY MR. BARNES:

1 Q. What name is listed at the top?

2 A. Milton H. Baxley, II.

3 Q. And what is his designation?

4 A. Lawyer.

5 Q. And to the left, what date and who is it addressed to?

6 A. July 25, 2001, Department of the Treasury, Internal
7 Revenue Service, Office of Chief Counsel, Mr. Roy Hirschhorn,
8 Assistant Branch Chief, Income Tax and Accounting, Washington,
9 DC 20224.

10 Q. Are you familiar with the Office of Chief Counsel for the
11 IRS?

12 A. I just know we have an office. That's all.

13 Q. He's the top lawyer.

14 A. I wouldn't know for sure.

15 Q. Okay.

16 MR. BARNES: Can we go to the right-hand side?

17 BY MR. BARNES:

18 Q. Does that also have a certified return receipt number?

19 A. It does appear to, yes.

20 Q. And whose name is it in reference to?

21 A. Wesley T. Snipes.

22 Q. And is that the same Social Security Number you've
23 identified previously as associated with Mr. Snipes?

24 A. Yes.

25 Q. And what does the subject say?

1 A. "Determination of status request, reply, CC colon IT and A
2 colon six."

3 Q. Does the IRS -- when they send out various letters or
4 correspondence, do they have various designations like that
5 for who to send back the letter to?

6 A. Yes, they would.

7 Q. Could you begin reading the letter from "Mr. Hirschhorn"?

8 A. This is to Mr. Hirschhorn.

9 Q. That is correct.

10 A. "Mr. Hirschhorn, I have power of attorney in federal tax
11 matters for Wesley T. Snipes. I am in receipt of your
12 response dated July 6, 2001. We did not submit an application
13 for permission to change my client's accounting period for
14 federal income tax return purposes. Therefore, the entire
15 content and focus of your letter are irrelevant and
16 nonresponsive to our letter requesting a determination or
17 status for Wesley T. Snipes from 1999 to 2000."

18 Should I continue?

19 Q. The next paragraph?

20 A. "We are resubmitting a copy of the original letter
21 requesting a determination of status and also the original
22 check pursuant to the fee schedule for determination letters.
23 We ask that you respond appropriately and provide my client
24 with a determination of status letter declaring his lawful
25 status regarding the individual income tax."

1 Q. And is it signed by someone?

2 A. It does appear to be.

3 Q. Who does it appear to be signed by?

4 A. It appears to be Milton H. Baxley, II.

5 Q. And who does the letter say it is being copied to?

6 A. Wesley T. Snipes.

7 Q. And the box in the bottom right-hand corner, does that
8 appear to be the same box that was on the former
9 correspondence?

10 A. Yes.

11 Q. In your review of the files, you didn't find this document
12 either?

13 A. Not that I recall, no.

14 MR. BARNES: Could we go to the second page? The
15 third page? There it is. Could we blow that up, the top?

16 BY MR. BARNES:

17 Q. Does this appear to be a letter from the IRS Office of
18 Chief Counsel?

19 A. Yes, it does.

20 Q. And what does it say -- does it appear to be addressed
21 to -- who does it appear to be addressed to?

22 A. Snipes, Wesley T., care of Milton N.H. Baxley, II, 25525
23 State Road 46, Suite 2, Mount Plymouth, Florida.

24 Q. And is there a top hand (sic) corner which says "refer,
25 reply to"?

1 A. Yes, there is.

2 Q. And is that similar to what was on the beginning of the
3 letter?

4 A. Yes.

5 Q. Can you read the letter from "Dear Sir or Madam"?

6 A. "We have received the enclosed application for permission
7 to change your accounting period for federal income tax
8 purposes and the check to pay a user fee for this change.
9 REVPROC 66 dash 50, 1966 dash 2, CB 1260 provides a procedure
10 whereby you may qualify to make the change automatically by
11 filling" -- "filing your application with your Service Center.
12 We are returning your check and the application so that you
13 may review REVPROC 66 dash 50 to determine whether you qualify
14 to make the accounting period change automatically."

15 Q. Does this -- so the first letter appears to be a response
16 to this letter?

17 A. It would appear to be.

18 MR. BARNES: Could we go to Government Exhibit
19 87-26?

20 BY MR. BARNES:

21 Q. Are you familiar with what's called a CP540 notice?

22 A. I'm familiar with some forms, but I can't say that I'm
23 familiar with all of them. We have way too many.

24 Q. Are there some letters that the IRS sends out to people
25 that are computer generated?

1 A. Yes.

2 Q. Is one of those notices a notice requesting information
3 about their return status?

4 A. That's correct.

5 Q. Are you familiar with what that letter looks like?

6 A. Yes.

7 Q. Is that letter -- and that letter is one of those letters
8 that's computer generated?

9 A. That's correct.

10 Q. Could you please see who the letter is addressed to?

11 A. Wesley Snipes, care of Milton H. Baxley, II, 25525 SR 46,
12 Suite 2, Mount Plymouth, Florida.

13 Q. Okay.

14 MR. BARNES: Could you blow up the first paragraph?

15 BY MR. BARNES:

16 Q. Read the first paragraph.

17 A. "According to our records, you have not filed your Form
18 1040 for the tax year 1999 and have not paid the amount of
19 tax, penalty and interest you owe on that form."

20 Q. Could you go down to the fourth -- I'm sorry -- the fourth
21 paragraph?

22 A. "If you think you're not required to file this return,
23 please explain why on the back of the tear-off stub at the
24 bottom of this letter and send it to us. If you are required
25 to file but have not done so, please, one, complete and sign

1 your tax form and attach any supporting schedules and
2 statements; two, attach your payment for any amount you owe;
3 three, attach the tear-off stub from the bottom of this notice
4 and, four, send all these items to the address shown at the
5 bottom of this notice."

6 MR. BARNES: Can we go to Page 2 of this exhibit?
7 Page 3? And blow up the top.

8 BY MR. BARNES:

9 Q. Who is the -- is this the same attorney Baxley at the top?

10 A. That's correct.

11 Q. And that box that's at the -- now put at the top, is that
12 the same box about --

13 MR. BARNES: Well, blow up the box, if you may.
14 Thank you.

15 BY MR. BARNES:

16 Q. What does the box say?

17 A. "You are hereby put on notice that this letter must be
18 filed as a permanent part of client's IRS TDA AIMS IMF 23-C
19 record. If such records has or have been deleted or
20 substituted, this demand still applies."

21 Q. Do you know what TDA is?

22 A. No, I do not.

23 Q. What about AIMS?

24 A. I just know those are areas in the IRS, but I don't know
25 what they are exactly for.

1 Q. Okay.

2 MR. BARNES: Could we go to the -- who it's
3 addressed to, first, on the right -- left-hand side?

4 BY MR. BARNES:

5 Q. Who is the letter addressed to?

6 A. Internal Revenue Service, Attention: Chief ACS, 4800
7 Buford Highway, Chamblee, Georgia.

8 Q. Does ACS stand for automated collection services?

9 A. I believe it does.

10 Q. And that is who would normally be listed as sending out
11 the computer-generated notice?

12 A. They would be one of the people.

13 Q. Thank you.

14 MR. BARNES: Could we go to the top right-hand side?

15 BY MR. BARNES:

16 Q. Does this also have a certified mail number?

17 A. It does appear to, yes.

18 Q. And does it also involve Mr. Snipes with his Social
19 Security Number?

20 A. Yes.

21 Q. And does the subject say CP540?

22 A. Yes, it does.

23 Q. And the CP540 is that notice we were referring to earlier?

24 A. I believe so.

25 MR. BARNES: Could we go to the beginning of the

1 letter?

2 BY MR. BARNES:

3 Q. Could you read from after "Dear Chief ACS"?

4 A. "I have power of attorney to act on behalf of Wesley T.
5 Snipes regarding federal tax matters with the Internal Revenue
6 Service. I am in receipt of your CP504 letter of September 3,
7 2001."

8 Q. Could you read the next paragraph?

9 A. "In your letter you state that if my client is not
10 required to file a return to explain why. According to the
11 director of the Internal Revenue Service Center in
12 Philadelphia, the law does not require individuals to file a
13 Form 1040. If this director is incorrect pursuant to 5 U.S.C.
14 556(d), please provide me with the Public Law that requires my
15 client to file a Form 1040. Upon receipt of a copy of that
16 law, I will advise my client to fill out and submit a Form
17 1040."

18 Q. Can you read the last paragraph?

19 A. "My intention is to assist you in this matter. I will
20 advise my client to pay in full any tax claim due upon your
21 timely proof of claim."

22 MR. BARNES: Can we go to the bottom of the letter?

23 BY MR. BARNES:

24 Q. Does that have Mr. Baxley's signature?

25 A. Yes, it does appear to.

1 Q. Does it enclose the POA and the other correspondence?

2 A. It does.

3 MR. BARNES: Can we go to Government Exhibit 87-27?

4 I'm sorry. 87-28.

5 BY MR. BARNES:

6 Q. Does this also appear to be a letter from attorney Milton
7 Baxley?

8 A. Yes.

9 Q. Does the box appear to be the same box you read
10 previously?

11 A. It does appear to be.

12 MR. BARNES: And can we blow up the left-hand side?

13 BY MR. BARNES:

14 Q. What does that say?

15 A. Internal Revenue Service, Attention: Chief ACS, Atlanta,
16 Georgia.

17 MR. BARNES: And can we blow up the right-hand side?

18 BY MR. BARNES:

19 Q. Does that have also a certified receipt?

20 A. It does appear to.

21 Q. And does it also involve Mr. Snipes and his Social
22 Security Number?

23 A. Yes.

24 Q. And what does the subject line say?

25 A. "Determination of status request."

1 MR. BARNES: Could we go to the beginning of the
2 letter?

3 BY MR. BARNES:

4 Q. Could you begin reading where after "Dear Chief ACS"?

5 A. "I have power of attorney regarding federal tax matters
6 for Wesley T. Snipes. I have received your CP540 of 10-1-01
7 and 10-13-01 regarding my client."

8 Q. That's the same CP540 computer-generated notice we talked
9 about earlier?

10 A. I believe so. I can't -- I don't have the documents right
11 here to say they are.

12 Q. Sure. Keep reading where it says "this letter."

13 A. "This letter is express notice that I have submitted a
14 request in behalf of Wesley T. Snipes for a determination
15 letter regarding their status for tax purposes. Enclosed is a
16 copy of that letter."

17 Q. And keep reading.

18 A. "The Internal Revenue Manual at Section 1.2.1.11.2, policy
19 statement P-11-23, approved 6-14-67, states in part, one,
20 rulings and determination letters in general. Rulings and
21 determination letters are issued to individuals and
22 organizations upon written request whenever appropriate in the
23 interest of wise and sound tax administration as to their
24 status for tax purposes and as to the tax effect of their acts
25 or transaction prior to their filing returns or reports as

1 required by the revenue laws, emphasis added."

2 Q. And keep reading.

3 A. "According to the cited policy statement, my client is not
4 required to file any returns or reports prior to the receipt
5 of determination of status letter from the IRS as Wesley T.
6 Snipes could not possibly know what forms or returns, if any,
7 would be applicable to him until the determination is
8 received. Therefore, I request that further correspondence
9 and collection activity cease until the IRS has issued its
10 determination of status letter for my client. Compliance with
11 policy statement P-11-23 will ensure due process for my
12 client."

13 Q. And it's also signed by attorney Baxley?

14 A. That's correct.

15 Q. And it includes an enclosure of the copy of the
16 declaration letter request made previously?

17 A. Determination letter request, yes.

18 MR. BARNES: Go to Government Exhibit 98-2.

19 BY MR. BARNES:

20 Q. By the way, are you familiar with the Internal Revenue
21 Manual?

22 A. I am familiar with just small portions of it. It's a
23 large --

24 Q. Big book?

25 A. Very.

1 Q. Not as big as the Internal Revenue Code and regulations
2 but still big?

3 A. Correct.

4 Q. What is it, in general?

5 A. It tells us how to do our job in the IRS.

6 Q. Does this also appear to be another letter from attorney
7 Baxley?

8 A. That's correct.

9 Q. And is it similar to the same letter requesting a letter
10 of determination? Does this appear to be another -- another
11 letter along those same lines?

12 A. Well, his request is asking for a letter of determination,
13 yes.

14 Q. As to whether or not my client was made liable for the
15 individual income tax, correct?

16 A. That's correct.

17 MR. BARNES: Can we go to Government Exhibit 106?

18 BY MR. BARNES:

19 Q. Does that have a name and address at the top?

20 A. Yes, it does.

21 Q. Is it Wesley Trent Snipes and lists Marina Del Rey and
22 California?

23 MR. McLELLAN: Objection, Your Honor.

24 MR. BARNES: Okay.

25 BY MR. BARNES:

1 Q. Read it.

2 THE COURT: What's the objection, Mr. McLellan?

3 MR. McLELLAN: I don't believe this exhibit has been
4 received into evidence.

5 THE COURT: Is that part of Government Exhibit 106,
6 counsel?

7 MR. McLELLAN: Yes, Your Honor.

8 THE COURT: Mr. Barnes?

9 MR. BARNES: I believe it was part of what was
10 introduced yesterday as part of the rule of completeness under
11 Rule 106 grounds. I had it written down as being admitted,
12 but I may be incorrect.

13 THE COURT: Do you have Government Exhibit 106
14 before you there?

15 THE WITNESS: No, I do not.

16 THE COURT: Well --

17 MR. BARNES: I can skip that one for now,
18 Your Honor.

19 THE COURT: Go ahead, then. Pass it over. Go
20 ahead.

21 MR. BARNES: Government Exhibit 126-1.

22 BY MR. BARNES:

23 Q. Does this also appear to be a letter from CPA Brian
24 Malatesta?

25 A. Yes.

1 Q. And he was on earlier correspondence sent to the IRS,
2 correct?

3 A. That's correct.

4 Q. And this is a letter requesting an examination interview?

5 A. That's correct.

6 MR. BARNES: Can we go to Government Exhibit 126-2?

7 BY MR. BARNES:

8 Q. Does this appear to be the same CP540 notice that we
9 previously discussed?

10 A. I would not -- without putting them side by side, I
11 wouldn't know for sure, but it does appear to be a notice for
12 1040 for 1999.

13 Q. And it has the same language in the fourth paragraph: "If
14 you think you are not required to file this return, please
15 explain why on the back of the tear-off stub at the bottom of
16 this letter and send it to us"?

17 A. That's correct.

18 MR. BARNES: Can we go to Government Exhibit 126-3?

19 BY MR. BARNES:

20 Q. Does this appear to be a copy of the same CP540 notice?

21 A. Yes, it does.

22 Q. Does the IRS maintain multiple copies of such
23 correspondence on occasion?

24 A. If it's sent back and forth between the taxpayer, we
25 would.

1 Q. But in your review of what you saw, you didn't find any of
2 these documents?

3 A. Not that I recall, no.

4 MR. BARNES: Government Exhibit 127. Go to the top.

5 BY MR. BARNES:

6 Q. What address and name is listed at the top?

7 A. Wesley Trent Snipes, 4712 Admiralty Way, Number 568,
8 Marina Del Rey, California.

9 Q. Does it also appear to have a certified mail number?

10 A. It appears to have something handwritten in, yes.

11 Q. And on the left side, is it a letter to the area director
12 of the Internal Revenue Service?

13 A. Yes.

14 Q. And when is it listed as being received?

15 A. That stamp there is June 9, 2004.

16 Q. Could you read the first paragraph?

17 A. "One, Wesley Trent Snipes, hereinafter requester, has
18 documentation in the form of a published book and an
19 independent research paper that this request wishes to have
20 made part of the permanent administrative records identified
21 by the requester's Social Security account number and name."

22 Q. And when you reviewed the records, you did not find this
23 letter?

24 A. Not that I recall.

25 Q. And you did not find the attachments included or

1 referenced in the letter?

2 A. Not that I recall.

3 MR. BARNES: Government Exhibit 128-1.

4 BY MR. BARNES:

5 Q. Who does this letter appear directed to?

6 A. Director of International Operations, Internal Revenue
7 Service, 1111 Constitution Ave. Northwest, Washington, DC

8 Q. Is it also addressed to someone else as well?

9 A. Yes, Area Director, Internal Revenue Service, Fresno,
10 California.

11 Q. And are there two different certified mail numbers?

12 A. They do appear to be different, yes.

13 Q. What does it say at the top?

14 A. You would have to be more specific.

15 Q. I'm sorry. What does it say -- there's an account number
16 listed?

17 A. Yes, account number [REDACTED]

18 Q. Is that the same Social Security Number for Mr. Snipes you
19 read earlier?

20 A. Yes.

21 Q. And what date is listed?

22 A. May 24, 2004, AD.

23 Q. And what is listed underneath -- what is listed in the
24 filing statement part?

25 A. Filing statement for tax year 1999 in affidavit form

1 pursuant to 26 U.S.C. 6001, 60 -- I'm sorry -- 6011, 6012,
2 6103, 6213(g), and 7203.

3 MR. BARNES: Could we go down?

4 BY MR. BARNES:

5 Q. What does the second paragraph say?

6 A. "One, Wesley Snipes, being of sound mind and of the age of
7 majority, having first-hand knowledge of the facts and law
8 being addressed in this filing statement for the tax year 1999
9 in affidavit form, do hereby declare the following."

10 Q. What's the next paragraph?

11 A. "This is a return for the year 1999 as one can be at best
12 defined at 26 U.S.C. 6103 and 6213(g) of the Internal Revenue
13 Code and 26 C.F.R. 301.7216-1B1. This return is filed in lieu
14 of an Internal Revenue Service Form 1040 series and satisfies
15 the requirements of IRC 6012. One has read the law and
16 understands that all past filings of Internal Revenue Service
17 Form 1040 by Wesley Snipes have been in error. One's past
18 misunderstanding of the law does not in any way reflect
19 recognition on one's part of any legal requirement or
20 authorization to file Form 1040 and/or 1040A and/or 1040EZ
21 and/or 1040SS. The assigned OMB number assigned to those
22 forms identifies the class of individual who is required to
23 file those forms. One is not of that class of individual
24 defined."

25 Q. And the next paragraph?

1 A. "Title 26, U.S.C. 6012 states that every person liable for
2 any income Internal Revenue tax must file a return or
3 statement as provided by law. For the reasons stated herein,
4 one believes that one is not liable for any Internal Revenue
5 income tax or filing requirement. However, this statement is
6 filed in order to avoid ambiguity or confusion regarding one's
7 filing requirement and status as well as to avoid any possible
8 sanctions for failure to file. If one is incorrect in one's
9 understanding, one directs you to immediately inform one of
10 one's error and identify the" -- I can't see the next two
11 words -- "statement one is required to file, if any."

12 Q. Is it "form or statement one is required to file, if any"?

13 A. I can't see. The "received" kind of goes over that, so it
14 could be "form or statement."

15 Q. Okay.

16 MR. BARNES: Could we go to Page 2? And blow up the
17 top.

18 BY MR. BARNES:

19 Q. In the fourth paragraph there appear to be a long citation
20 of various court cases.

21 A. That's correct.

22 Q. Court cases could include Supreme Court, U.S. Courts of
23 Appeals, U.S. District Courts in the federal system?

24 A. I don't know. They could include -- I don't know what
25 they include.

1 Q. Okay. So -- but when you see court cases cited, those
2 were the kind of documents that the IRS puts in the funny box?

3 A. That's correct.

4 MR. BARNES: Could we go to 128-2?

5 BY MR. BARNES:

6 Q. Is this similar to the last document with the only change
7 being the year 2000, to the best you're able to observe, at
8 the top?

9 A. Yes.

10 MR. BARNES: Can we go down?

11 BY MR. BARNES:

12 Q. Does this appear to be similar in what it states as the
13 last document?

14 A. It does appear to be.

15 MR. BARNES: Can we go to Page 2? Go to the -- a
16 little bit lower. Could we blow up the "it is apparent"
17 paragraph?

18 BY MR. BARNES:

19 Q. Could you read that paragraph?

20 A. "It is apparent that there exists an extreme vicissitude
21 of opinion in the Federal Courts regarding which statutes
22 govern the requirement to file income tax returns. It seems
23 apparent to one, based upon the learning opinions" -- I'm
24 sorry -- "the learned opinions from cites above listed, that a
25 return of some sort is expected and required if one has

1 identified taxable income. It then becomes a question what is
2 a return. In that answer there is no confusion. A return is
3 defined at 26, U.S.C., 6103 and 6213(g) of the Internal
4 Revenue Code and 26 C.F.R. 301.7216-1B1."

5 MR. BARNES: Can we go to the next paragraph?

6 BY MR. BARNES:

7 Q. What does that paragraph say?

8 A. "If the Federal District Courts, Tax Court, Court of
9 Claims and the Supreme Court cannot definitively decide the
10 fundamental question as to which section of the Internal
11 Revenue Code requires filing of an income tax return, whether
12 the tax imposed is an excise or a direct tax, it is obvious
13 that the average American not educated in the law will have
14 great difficulty in understanding the tax imposed and this
15 basic question on filing requirements and a species of tax,
16 among many other questions."

17 Q. And in your review of the files, you didn't find this
18 document either?

19 A. Not that I recall, no.

20 MR. BARNES: Go to Government Exhibit 129-1.

21 BY MR. BARNES:

22 Q. What does it say at the top?

23 A. "Notice of material facts, notice of material allegations,
24 notice of errors on the record of Account Number [REDACTED]
25 demand for corrections tax year 2000."

1 MR. BARNES: Can we blow up the "to" section, all
2 the people that's -- right there. That's it. You can leave
3 it like that.

4 BY MR. BARNES:

5 Q. Who is it first addressed to?

6 A. Secretary of the Treasury, 1500 Pennsylvania Avenue
7 Northwest, Washington, DC.

8 Q. Do you know who the Secretary of the Treasury is?

9 A. No, I do not.

10 Q. So you're unaware that he is the head of the Treasury
11 Department and all of the IRS?

12 A. I know he's the head of it, but I don't know his name.

13 Q. Oh. I'm sorry. Do you know what the position --

14 A. Yes.

15 Q. What do you know about the position of the Secretary of
16 the Treasury?

17 A. Just that he's in charge of the Treasury Department.

18 Q. And --

19 A. And the IRS falls underneath the Treasury Department.

20 Q. So he's the head guy.

21 A. I believe so.

22 Q. Who is the next person it's addressed to?

23 A. Commissioner of the Internal Revenue.

24 Q. And who is the Commissioner of Internal -- what is the
25 position the Commissioner of Internal Revenue, to the best of

1 your knowledge?

2 A. They are the head guy for the IRS.

3 Q. And who is the next addressee?

4 A. TIGTA, Attention: Complaint Management Division.

5 Q. And what is TIGTA?

6 A. It's Treasury Inspector General Tax -- I don't remember
7 the rest of it.

8 Q. That's okay. And who's the next designation?

9 A. Bureau of Alcohol, Tobacco and Firearms.

10 Q. Is that another division under the Secretary of the
11 Treasury?

12 A. I can't state if it's underneath the Secretary of
13 Treasury.

14 Q. Okay. Who is the next designation?

15 A. Area Director, Internal Revenue Service.

16 Q. Do each one of those have a certified mail number listed
17 next to them?

18 A. They do.

19 Q. And who is the letter listed as being from?

20 A. Wesley Snipes.

21 Q. What address is listed?

22 A. 4712 Admiralty Way, Number 568, Marina Del Rey,
23 California.

24 Q. Would the Fresno office be an office that would be
25 responsive for taxpayers that may reside also in California?

1 A. They may, yes.

2 Q. And the account number, is that Mr. Snipes' Social
3 Security Number?

4 A. Yes.

5 Q. And what is the "Dear Honorable"? Starting there, what
6 does that say?

7 A. "Dear Honorable John Snow, Secretary of the Treasury, and
8 all other addressees above-hereinafter respondents."

9 Q. And what is the next thing, next to "important notice"?

10 A. "This document must be filed as a permanent part of the
11 above-referenced assigned account number and Internal Revenue
12 Service master file records. If any of these" -- I can't read
13 the next word -- "files have or has been deleted and/or
14 substituted, this demand still applies."

15 Q. Is that similar language to the language that was on the
16 earlier correspondence?

17 A. Yes.

18 Q. And you did not find this letter in your search either?

19 A. Not that I recall, no.

20 MR. BARNES: Can we go further down -- or to the
21 next page? I'm sorry.

22 BY MR. BARNES:

23 Q. Does this appear to be asking similar questions as some of
24 the other documents were asking?

25 A. I couldn't answer that. I --

1 Q. You'd have to review the whole letter?

2 A. Yeah.

3 Q. Okay.

4 MR. BARNES: Go to the end of the letter, the last
5 part of this.

6 BY MR. BARNES:

7 Q. We'll go to each page. That's Page 2.

8 MR. BARNES: Can we go to the next page? Page 3.

9 Can we go to the next page? Page 4.

10 BY MR. BARNES:

11 Q. There it says "income gain." Is that another citation to
12 a court case?

13 A. It appears to be, yes.

14 MR. BARNES: Can we go to the next page? Page 5.

15 Could we go to the next page? Page 6. The next page, Page 7.

16 The next page, Page 8. The next page, Page 9. The next page,

17 Page 10. The next page, Page 11. The next page, Page 12.

18 The next page, Page 13. The next page, Page 14. The next

19 page, Page 15. The next page, Page 16. The next page.

20 BY MR. BARNES:

21 Q. By the way, there were some quotations there to the
22 United States Constitution. If somebody sent something into
23 the IRS quoting the United States Constitution, is that
24 something also that goes into the funny box?

25 A. It may, yes.

1 MR. BARNES: Go to the next page, Page 17. The next
2 page, Page 18. The next page, Page 19. The next page, Page
3 20. The next page, Page 21. The next page, Page 22. Page
4 23, Page 24, Page 25, Page 26, Page 27.

5 Would you go back to Page 26?

6 BY MR. BARNES:

7 Q. What do those top questions in three, four, five and six
8 say?

9 A. "It is required that Wesley Snipes file a Form 1040."

10 Q. Is that a question mark?

11 A. That is a question mark at the end.

12 Q. What's the next question?

13 A. "What species of tax is Wesley Snipes liable for?"

14 Q. What's the next question?

15 A. "Is a 1040 a form or species of tax?"

16 Q. What's the next question?

17 A. "If Wesley Snipes is required to file a Form 1040, does
18 that not violate Wesley Snipes' right of free speech?"

19 Q. And what is question number seven?

20 A. "If I am required to file a Form 1040, does that not
21 violate Wesley Snipes" -- is that "amendment four right of
22 privacy"?

23 Q. Yes. And what's the eighth question?

24 A. "If Wesley Snipes is required to file Form 1040, does that
25 not violate Wesley Snipes' amendment five right against

1 self-incrimination?"

2 Q. And what's the ninth question?

3 A. "How may Wesley Snipes sign a 1040 form and maintain one,
4 four and five amendment rights?"

5 Q. And what's question number ten?

6 A. "If Wesley Snipes is required to file Form 1040, will you
7 give Wesley Snipes use immunity in writing each year for all
8 the information contained in the Form 1040? Wesley Snipes saw
9 no offer of use immunity contained in your request or evidence
10 that any IRS personnel had requested any offer of immunity
11 from someone authorized to grant it."

12 Q. And what's question number 11?

13 A. "What specific tax do you allege Wesley Snipes is liable
14 for?"

15 MR. BARNES: Go to the next page, 29. The next
16 page, 30. The next page, 31. The next page, 32. The next
17 page, 33. The next page, 34. The next page, 35. The next
18 page, 36. The next page, 37. The next page, 38. The next
19 page, 39. The next page, 40. The next page, 41. The next
20 page, 42.

21 BY MR. BARNES:

22 Q. So it appeared to be a 42-page letter?

23 A. So far.

24 Q. And you didn't find this letter in any of the files that
25 you searched?

1 A. Not that I recall, no.

2 Q. And you didn't find any response to this letter in any of
3 the files that you searched?

4 A. Not that I recall.

5 MR. BARNES: Go to Government Exhibit 130-1.

6 BY MR. BARNES:

7 Q. Whose name and address is listed at the top?

8 A. Wesley Snipes, 4712 Admiralty Way, Number 568,
9 Marina Del Rey, California.

10 Q. And who is the letter addressed to on the left-hand side?

11 A. Director of International Operations, Internal Revenue
12 Service, and the Area Director, Internal Revenue Service.

13 Q. And each one of those has a separate certified mail
14 number?

15 A. That's correct.

16 Q. And the IRS account number is Mr. Snipes' Social Security
17 Number?

18 A. That's correct.

19 Q. After "Dear Director," what does it say?

20 A. "Filing statement for tax year 1999 in affidavit form
21 pursuant to 26 U.S.C. 6011, 6012, 6103, 6213(g) and 7203 was
22 sent to you via USPS certified mail receipt" -- you want me to
23 read the number as best I can?

24 Q. That's okay. You can skip that.

25 A. -- "signed for on May 28, 2004. No response has been

1 received from you."

2 Q. And what's the last part about "please respond"? Could
3 you read that?

4 A. "Please respond within ten days from receipt of this
5 notice."

6 Q. And whose signature and name appears to be on the bottom?

7 A. It appears to be Wesley Snipes'.

8 Q. And what county does it -- and state is in the notary
9 section?

10 A. It appears to be New Jersey in Bergen County.

11 Q. And at the very bottom is there a received stamp?

12 A. Yes.

13 Q. And what date does it list?

14 A. Well, there's actually two received stamp dates. One
15 lists June 30, 2004, and the one on the right is July 7, 2004.

16 MR. BARNES: Go to Government Exhibit 130-1.

17 BY MR. BARNES:

18 Q. And you did not find this letter in your files?

19 A. Not that I recall, no.

20 Q. And you didn't find any response to this letter in your
21 files?

22 A. Not that I recall.

23 Q. Does this appear to be similar to the letter we just
24 looked at?

25 A. Yes.

1 MR. BARNES: Can we go to Government Exhibit 131-1?

2 BY MR. BARNES:

3 Q. Whose name and address is listed at the top?

4 A. Wesley Trent Snipes, care of 4712 Admiralty Way, Number
5 568, Marina Del Rey, California.

6 Q. And who is it addressed to on the left-hand side? Is that
7 the same people we saw earlier?

8 A. Yes, Secretary of the Treasury, Commissioner of the
9 Internal Revenue, TIGTA, Bureau of Alcohol, Tobacco and
10 Firearms, and Department of the Treasury.

11 Q. And each one of those also has a certified mail number
12 next to it?

13 A. That's correct.

14 Q. And the IRS account number is Mr. Snipes' Social Security
15 Number?

16 A. That's correct.

17 Q. And after "notice of" -- "Dear Directors," what does it
18 say?

19 A. "Notice of material facts, notice of material allegations,
20 notice of errors on the record of account number [REDACTED],
21 demand for corrections was sent to you via USPS certified mail
22 receipt" -- and it lists the number -- "signed for you on
23 May 28, 2004. No response has been received from you in 30
24 days. Your response date expired on," it looks like,
25 "June 24. This is your second notice to respond. Please

1 respond within ten days from receipt of this notice."

2 Q. And whose name is listed at the bottom?

3 A. Wesley Trent Snipes.

4 MR. BARNES: Can we go to Government Exhibit 132-1?

5 BY MR. BARNES:

6 Q. Does this letter appear to be to from Mr. Snipes?

7 A. It does appear to be.

8 Q. And the same address in California?

9 A. That's correct.

10 Q. And it has an IRS received stamp of July 30, 2004?

11 A. That's correct.

12 Q. And the title is "notice of entry of default"?

13 A. That's correct.

14 Q. And the names listed on the left-hand side, if we can
15 scroll down a little bit, are those the same names as the
16 prior letter that he sent?

17 A. Yes.

18 Q. And each one of these also has its own certified mail
19 number?

20 A. That's correct.

21 MR. BARNES: Can we go down?

22 BY MR. BARNES:

23 Q. And can you read from beginning where it says "one"?

24 A. "One, Wesley Trent Snipes enters default against
25 respondent for respondent's failure to rebut petitioner's

1 notice of material facts, notice of material allegations,
2 notice of errors on the record of Account Number 0 [REDACTED]
3 demand for corrections filed on May 24, 2004."

4 MR. BARNES: Can we go to Government Exhibit 133-1?

5 BY MR. BARNES:

6 Q. And who does this -- does this also appear to be from
7 Mr. Snipes?

8 A. Yes.

9 Q. And it's to the Director of International Operations and
10 the Area Director?

11 A. That's correct.

12 Q. With two certified mail numbers?

13 A. That's correct.

14 Q. And his Social Security Number listed?

15 A. That's correct.

16 Q. And starting from where it says "one," can you read?

17 A. "One, Wesley Snipes enters default against respondent for
18 respondent's failure to rebut petitioner's filing statement
19 for tax year 1999 in affidavit form pursuant to 26 U.S.C.
20 6011, 6012, 6103, 6213(g) and 7203, filed on May 24, 2004."

21 Q. What's the next paragraph say?

22 A. "Wherein petitioner demanded a rebuttal by affidavit
23 within 30 days of receipt of the filing statement for tax year
24 1999 in affidavit form, pursuant to 26 U.S.C. 6011, 6012,
25 6103, 6213(g) and 7203."

1 Q. And what does it say? Keep going.

2 A. "Respondent failed to respond to first notice. First
3 notice sent May 24, 2004. Respondent failed to respond to
4 second notice. Second notice sent June 26, 2004."

5 MR. BARNES: Can we go to the next page?

6 BY MR. BARNES:

7 Q. And what does that say?

8 A. "The respondent has instituted no rebuttal by affidavit.
9 Therefore, the respondent has acquiesced and is in statutory
10 default. This default notice shall evidence that Wesley
11 Snipes is correct in his analysis of the filing requirements
12 and other tax inquiries contained within the filing statement
13 in affidavit form for tax year 1999. By this entry of default
14 notice, respondent is estopped from any further action against
15 the petitioner, a natural born, free American on the soil and
16 is without judicial standing as no controversy in law or
17 material fact between the two parties exists."

18 Q. And what does it say underneath "entry of default"?

19 A. "Default is entered in this action against the respondent
20 named in the foregoing petition for failure to serve or file
21 any paper as required by law."

22 Q. Where does it appear to be notarized?

23 A. The state of New Jersey in Bergen County.

24 Q. And you didn't find this document or any response to this
25 document in your review?

1 A. Not that I recall, no.

2 MR. BARNES: Can we go to Government Exhibit 133-2?

3 BY MR. BARNES:

4 Q. Does this appear to be a copy of the prior document or a
5 similar document?

6 A. Similar, yes.

7 MR. BARNES: Can we go to Government Exhibit 134-1?

8 BY MR. BARNES:

9 Q. Can you read who that is to at the top left-hand side?

10 A. Director of International Operations, Internal Revenue
11 Service; Area Director, Internal Revenue Service.

12 THE COURT: What exhibit is this, Mr. Barnes?

13 MR. BARNES: I'm sorry, Your Honor. I believe it's
14 134-1. Government Exhibit 134-1.

15 THE COURT: Dash 1 or dash 4? I don't see a
16 Government Exhibit 134-4.

17 MR. BARNES: My apologies, Your Honor. I mean
18 134-1. Sorry, Judge.

19 BY MR. BARNES:

20 Q. And does this have -- who is this addressed to at the top?

21 A. Director of International Operations, Internal Revenue
22 Service, and Area Director, Internal Revenue Service.

23 Q. And who is it from?

24 A. Wesley Trent Snipes.

25 Q. And what address is listed?

1 A. Care of 4712 Admiralty Way, Number 568, Marina Del Rey,
2 California.

3 Q. And what account number is listed?

4 A. [REDACTED]

5 Q. And is that Mr. Snipes' Social Security Number?

6 A. As best as I can recall, yes.

7 Q. And what does it say by "filing statement"?

8 A. "Filing statement for tax year 2005 in affidavit form
9 pursuant to 26 U.S.C. 6011, 6012, 6103, 6213(g) and 7203."

10 MR. BARNES: Can we go down?

11 BY MR. BARNES:

12 Q. From reading the prior filing statement, does this appear
13 similar?

14 A. I don't recall. I've been reading so much stuff, I
15 couldn't tell you what seems similar right now.

16 Q. Okay. Does it have a filing stamp of the IRS receiving
17 the document?

18 A. Yes, it does. It has two of them.

19 Q. But when you did a search, you did not find this document?

20 A. Not that I can recall, no.

21 Q. Are you familiar with the pocket transaction -- a pocket
22 guide to IRS transaction codes on an individual's master file?

23 A. I know that we have something like that. I'm not familiar
24 with it.

25 Q. Have you ever used it?

1 A. I've seen one probably about three or four years ago, but
2 I've never used it.

3 Q. When you review a master file, how do you know what
4 entries are there or not there?

5 A. I have a desk reference, I guess you could say, document
6 that tells me what the -- what most of the codes stand for.

7 Q. Is that a 6209 document?

8 A. Yes, it is.

9 Q. Okay. Let me show you what is premarked as Defense
10 Exhibit 117. Do you recognize that document?

11 A. This particular one, no, I do not.

12 Q. You do not?

13 A. No.

14 Q. Okay. Is it similar to one that you do recognize?

15 A. Similar, yes. I could not say -- I mean, this is
16 loose-leaf bound, you know. I could not say that this is what
17 we use.

18 Q. Okay. Does the 6209 document have a transaction code
19 entry called MFR?

20 A. Yes, it does.

21 Q. What is that?

22 A. That's a mail filing requirement.

23 Q. I'm going to show you what is premarked as Defense Exhibit
24 112. Does this look familiar to you?

25 A. Yes, it does.

1 Q. What is it?

2 A. This is an IMF MCC transcript complete.

3 Q. And what is that?

4 A. This would be a complete record of the account for this
5 particular taxpayer, Wesley Snipes.

6 Q. The first year is listed as 1993, is that correct?

7 MR. McLELLAN: Objection, Your Honor.

8 THE COURT: What's the objection, Mr. McLellan?

9 MR. McLELLAN: The government has had no discovery
10 of this document.

11 THE COURT: What do you say to that, Mr. Barnes?

12 MR. BARNES: Your Honor, this is actually attached
13 to one of the government exhibits. It was one of the letters
14 that Mr. Snipes sent in. This was attached to it, is my
15 understanding, Your Honor. I've just separated it out.

16 THE COURT: Well, which exhibit was it attached to?

17 (Pause.)

18 THE COURT: Agent Crowley, hold up that exhibit for
19 a moment so that I can see it, please. Thank you.

20 THE DEPUTY CLERK: Do you want to see it, Judge?

21 THE COURT: No.

22 MR. BARNES: Yes, Your Honor, here it is. The Bates
23 number is from the government's own discovery. It's WS-17882
24 through WS-17912.

25 THE COURT: Well, I'm not sure that -- the question

1 was to what government exhibit was it attached or did it
2 constitute a part.

3 MR. BARNES: Yes. What it is, is the government has
4 not corresponded the Bates number with their exhibits, so
5 that's where I -- I'm trying to do that now.

6 THE COURT: Well, in any event, you have that
7 information, Mr. McLellan.

8 On the grounds stated I'd overrule the objection.
9 Go ahead with your question, Mr. Barnes.

10 MR. BARNES: Yes, Your Honor. I'd move for
11 admission of Defense Exhibit 112, Your Honor.

12 MR. McLELLAN: Objection on the grounds of Rule 106,
13 Your Honor.

14 MR. BARNES: I have no problem including the other
15 document with it, Your Honor. That's fine with me.

16 THE COURT: Well, then that needs to be straightened
17 out for the record and the exhibit properly identified, I
18 think. I'm not sure what's being included with the exhibit
19 under Rule 106 under those circumstances.

20 (Pause.)

21 MR. BARNES: Your Honor, we could break early for
22 lunch to get this resolved and then come back after lunch,
23 Your Honor.

24 THE COURT: All right. That sounds like it may be a
25 good idea, members of the jury, here. We can accomplish two

1 things at once, perhaps, by breaking for lunch until 1:15.

2 (The luncheon recess was taken.)

3 (Jury present.)

4 THE COURT: Thank you. Be seated, please.

5 Members of the jury, I appreciate your promptness.

6 MR. BERNHOFT: Your Honor, may I be heard on a brief
7 point?

8 THE COURT: Very well.

9 MR. BERNHOFT: There are a couple of things,
10 administrative matters, one that I guess Mr. O'Neill is going
11 to address, and a motion that we would like to address. Would
12 it be appropriate to do that side-bar?

13 THE COURT: Well, perhaps. Come side-bar, counsel.

14 MR. BERNHOFT: Thank you, Judge.

15 AT SIDE-BAR:

16 MR. O'NEILL: Judge, the administrative stuff, the
17 government, earlier we had said 106 was not in evidence. Our
18 list did not show it. Mr. Bernhoft had the record. 106 is
19 properly in evidence. I just want to clear that up.

20 MR. BERNHOFT: That was the government exhibit that
21 Mr. Barnes wants to query on. So it was received into
22 evidence, and I think that's been confirmed.

23 THE COURT: Okay.

24 MR. BERNHOFT: Judge, a couple of hours ago we filed
25 a motion to continue as to several witnesses. What we have is

1 what we are calling the Starr witnesses; Michael Canter, Ron
2 Starr, Ken Starr. We have not received the files related to
3 the Pellicano investigation. There was a grand jury that was
4 convened with respect to the Starrs' involvement in hiring a
5 private investigator, Pellicano, to tape-record illegally
6 Sylvester Stallone's conversations. This Brady-Giglio
7 material, we need to have that before we can proceed to cross
8 those witnesses.

9 The second witness is James Lokeitz. The discovery
10 in this case references a proffer, a proffer agreement. We do
11 not have that. We previously notified the government, the
12 proffer being referenced. We don't have it. We have to that
13 before we can cross Mr. Lokeitz.

14 With respect to government witness Wayne Rebuck,
15 Mr. Rebuck testified for the government in the Arthur
16 Farnsworth trial in Philadelphia, Pennsylvania. Mr. Snipes'
17 name came up in that trial. During the testimony, Mr. Rebuck
18 references an interview with IRS special agents where
19 Mr. Snipes was discussed.

20 Now, the substance of that interview was not
21 revealed during the course of the trial, in the transcript,
22 and we don't have that, and it is absolutely critical for the
23 defense to be prepared to cross Mr. Rebuck.

24 Ms. Baker is particularly problematic, Carmen Baker.
25 The eve-of-testimony Jencks production is causing prejudice to

1 the defense. The grand jury transcript and MOS that were
2 produced demonstrate that she has got tax problems. We
3 absolutely have to have her tax returns under Brady-Giglio to
4 cross Ms. Baker.

5 There's, also, for the first time revealed under
6 Jencks that she tells conflicting stories about unemployment
7 compensation claims. We have to subpoena those records and
8 we're going to subpoena Ms. Baker today with a duces tecum.

9 She also claims that she didn't run the company,
10 Kymberlyte or Amen Ra.

11 THE COURT: Well, let me interrupt, Mr. Bernhoft.
12 It seems to me that all of this is premature, as far as I'm
13 concerned, until the witnesses are called. I don't know
14 whether these witnesses are going to be called or not.

15 MR. BERNHOFT: All right.

16 THE COURT: They may or may not. The only thing
17 that I can suggest is that you make whatever motions are
18 appropriate with respect to contemporary witnesses.

19 MR. BERNHOFT: And I just wanted to give the Court a
20 preview of some of those things. I am willing to do it in
21 open court before the jury or side-bar, the Court's
22 preference. What would the Court's preference be there?

23 THE COURT: When the witnesses are called, you can
24 make your motion or begin to in open court. And if I think it
25 is something that needs a side-bar conference, I will advise

1 you.

2 MR. BERNHOFT: Thank you, Judge.

3 IN OPEN COURT:

4 THE COURT: Mr. Barnes, you were cross-examining, I
5 believe. You may continue.

6 MR. BARNES: Yes, Your Honor.

7 Yes, ma'am, Government Exhibit 129-2. Can we go to
8 WS-15995.

9 BY MR. BARNES:

10 Q Mr. Crowley, does that appear to be correspondence from
11 Mr. Snipes to the area director of the IRS for Atlanta,
12 Georgia?

13 A Yes, it does appear to be.

14 Q Does it also have a certified mail number at the top?

15 A Yes, it does.

16 Q And does it also reference an account number and SSAN that
17 is Mr. Snipes' Social Security number?

18 A Yes, it does.

19 Q And what does it say under "report of 2000"?

20 A "Decoded individual master file."

21 Q Could you please begin to read where it begins after:

22 "Dear Director."

23 A "One, Wesley Snipes, hereinafter Requester, presents this
24 report of the 2000 individual master file transcript specific
25 decoding with analyzed and posting concern. Extensive

1 sections of the IRS manuals were used to examine and verify
2 specific postings and definitions for each entry on this
3 individual master file specific transcript you have recorded
4 and maintained concerning the above referenced Requester with
5 the above-referenced account number.

6 "The two primary manuals used for analyzing, but not
7 limited to, One-ADP and IRS Information Document 6209, 1997,
8 1998 (sic) ADP; two, Internal Revenue Service Law Enforcement
9 Manual 111 LEM."

10 Q Keep going.

11 A "This is not a request to amend or modify the record that
12 the Internal Revenue Service is maintaining under Requester's
13 name and account number. This is a demand that the individual
14 master file transcript provided by you, Internal Revenue
15 Service, along with the published meanings from the Internal
16 Revenue Service manuals be added as a permanent part of the
17 administrative files you are maintaining under Requester's
18 name and account number."

19 Q When you reviewed the records, did you find this letter?

20 A Not that I recall.

21 MR. BARNES: Can we go to the next page.

22 BY MR. BARNES:

23 Q Would you please read the first two paragraphs.

24 A "If any incorrect and/or damaging codes have been posted
25 to these IMF transcripts, they will be defined and analyzed at

1 the end of this report.

2 "If you, as a representative of the Internal Revenue
3 Service, do not respond in part or in whole to the
4 documentation provided within 30 days, it will be presumed
5 that the Internal Revenue Service agrees with this
6 documentation and with the interpretations.

7 "These documentations will stand as witness of Requester's
8 good faith efforts to understand, correct or clarify in any
9 and all documents from the Internal Revenue Service; to wit,
10 Requester's name and/or Account Number 0 [REDACTED].

11 Q And does that appear to be Mr. Snipes' signature and name?

12 A Yes, it does.

13 MR. BARNES: Can we go to the next page. Can we go
14 towards the bottom. To the next page, towards the bottom.
15 Back up. Actually, the page before. I'm sorry. Further up.
16 Keep going.

17 BY MR. BARNES:

18 Q Does that have an account number listed in the middle
19 there, top middle?

20 A Yes, it does.

21 Q And is that the same number as the Social Security number
22 for Mr. Snipes?

23 A Yes, it is.

24 MR. BARNES: Can we go to WS-16007.

25 Can you start reading where it says --

1 Actually, one before this, 16006 -- I'm sorry -- at
2 the bottom.

3 BY MR. BARNES:

4 Q Can you start reading under where it says "comments."

5 A "Upon analyzing the codes found on this IMF, along with
6 the definitions of these codes provided by the IRS manuals,
7 Requester believes that there are numerous codes that appear
8 not to be applicable to the Requester. Requester is not aware
9 of any tax liability associated with Requester's name and
10 account number.

11 "Again, please inform Requester of the specific type of
12 tax this Requester is liable in a correct form the Requester
13 is required to file. In addition, please include a copy of
14 the specific statutes and implementing rules and regulations
15 that identify the tax that the IRS wishes to collect from
16 Requester, whether this tax is voluntary or mandatory, and
17 that the IRS has the authority to enforce the collection of
18 this tax.

19 "Upon receipt of the above documents, Requester is willing
20 to comply with any and all taxes that Requester has a legal,
21 lawful liability to pay."

22 Q And then start reading under additional -- "addition years
23 analyzed."

24 A "There are no significant changes found in the individual
25 master file transcript specific that were analyzed for the

1 years 1996, 1997, 1998, 1999, 2000, 2002. Below is a brief
2 summary of the years."

3 Q And under 1996, does it have an MFR-01 code?

4 A Yes, it does.

5 Q And under 1997, does it have an MFR-01 code?

6 A Yes, it does.

7 Q The same for 1998?

8 A That's correct.

9 Q The same for 1999?

10 A That's correct.

11 Q The same for 2000?

12 A That's correct.

13 Q The same for 2001?

14 A That's correct.

15 Q The same for 2002?

16 A That's correct.

17 Q Could you read where it starts "mail filing requirements."

18 A "Mail filing requirements for all years is MFR-01. Return
19 not required to be mailed or filed."

20 MR. BARNES: Can we go to WS-16053. Blow up close
21 to the mail filing requirements.

22 BY MR. BARNES:

23 Q Does that have a Form 1040 U.S. individual tax return, and
24 then it says 01, 00 and 01 -- does it say: "01, return not
25 required to be mailed or filed"?

1 A It appears to say that, yes.

2 Q And that is what the manual actually says for the MFR-01
3 code; correct?

4 A That's what it says, yes.

5 MR. BARNES: Can we go to WS-16026?

6 BY MR. BARNES:

7 Q Do you recognize what an IMF transcript is?

8 A I recognize it, yeah, but I don't know all the locations
9 and everything that's in it.

10 Q Sure. The -- on the left side, does it have Mr. Snipes'
11 name?

12 A Yes, it does.

13 Q And under -- by "MFR," does it have "MFR-01"?

14 A Yes, it does.

15 BY MR. BARNES:

16 Q If we go to 16029, go to the top, does that have the same
17 designation there, as well?

18 A Yes, it does.

19 MR. BARNES: Can we go to 16032.

20 BY MR. BARNES:

21 Q Does it have the same designation there, as well?

22 A Yes.

23 Q 16034, does it have the same designation there, as well?

24 A Yes, it does.

25 Q 16037, does it have the same designation there, as well?

1 A Yes, it does.

2 Q 10639, does it have the same designation there, as well?

3 A Yes, it does.

4 Q Are you familiar with something called a "substitute for
5 return"?

6 A I am vaguely familiar, yes.

7 Q What is your familiarity?

8 A A substitute for return is input in the system. It's
9 usually a photocopy of a 1040 front page where the taxpayer's
10 name and their Social Security number is input on it.

11 MR. BARNES: Can we go to WS-15972.

12 THE COURT: Those are Bate stamp numbers you are
13 using, I take it, Mr. Barnes?

14 MR. BARNES: Yes, Your Honor. They are all from the
15 exhibit -- Government Exhibit 129-2.

16 THE COURT: The same exhibit?

17 MR. BARNES: Yes, Your Honor.

18 THE COURT: Let us know when you leave that exhibit
19 then, or if you leave it.

20 MR. BARNES: Yes, Your Honor.

21 Can we go towards the bottom.

22 BY MR. BARNES:

23 Q Can you start reading under: "Posting error 6, substitute
24 for return."

25 A "SFR, substitute for return, the Internal Revenue Form

1 2363. Master file entity change evidences under filing
2 requirements for IMF. No forms required. This is because
3 there are no filing requirements for an IMF. A copy is
4 attached hereto and incorporated herein by reference as
5 Exhibit 11."

6 Q And what does the next paragraph say?

7 A "The Internal Revenue Service Law Enforcement Manual III,
8 dated 1/1/90, page six, herein after LEM, shows that SFR
9 means, to wit, substitute for return. A copy is attached
10 hereto and incorporated herein by reference as Exhibit ES1-2
11 (sic)."

12 Q And the next paragraph.

13 A "Declarant has discovered that IRS employees have taken it
14 upon themselves to fill out a return in declarant's name and
15 posted it on declarant's IMF as substitute for return, SFR.
16 IRS employees have now made this a permanent part of the
17 declarant's IMF without declarant's consent and knowledge
18 until discovery."

19 MR. BARNES: Could we go to WS-16034, and move down
20 to the middle.

21 BY MR. BARNES:

22 Q There is something that references "tax period." What
23 does that mean?

24 A That's the period that this particular transcript relates
25 to.

1 Q Okay. And is there an SFR code listed there?

2 A I see "SFR," but I don't know what the code stands for.

3 Q You don't know that "SFR" stands for substitute for
4 return?

5 A I don't know what the rest of it after it stands for.

6 Q Oh, I see. Do you know that -- 02/18/2002, is that a
7 date?

8 A That appears to be a date, yes.

9 Q And what amount is listed there?

10 A Zero.

11 BY MR. BARNES:

12 Q 16037. And what tax period is this for?

13 A 2000.

14 Q And is there another SFR code?

15 A That's correct.

16 Q And it's also entered in February of 2002?

17 A That's correct.

18 Q And the amount is also zero?

19 A That's correct.

20 MR. BARNES: Pass the witness, Your Honor.

21 THE COURT: Mr. Wilson, you may inquire.

22 MR. WILSON: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. WILSON:

25 Q Good afternoon, Agent Crowley.

1 A Good afternoon.

2 Q My name is David Wilson. I am the attorney for
3 Mr. Rosile. I just have a few questions for you regarding
4 some of the exhibits to which you testified about earlier.

5 MR. WILSON: If we could please pull up Exhibit
6 60-1. And I don't know the Bates numbers, so if I ask you to
7 turn to the page that's outside the exhibit -- okay. Could
8 you please enlarge that. Next page, please.

9 BY MR. WILSON:

10 Q Agent Crowley, could you tell the jury what this is.

11 A This is a Form 1040X, amended U.S. individual income tax
12 return.

13 Q And who is the taxpayer for this document?

14 A Douglas P. Rosile, Senior.

15 Q Agent Crowley, if you -- you notice that there are some
16 numbers to the right of where the word "received" is, the
17 stamp "received," Mr. Crowley?

18 A That's correct.

19 MR. WILSON: Could you highlight those.

20 BY MR. WILSON:

21 Q All right. Did you conduct an analysis of Mr. Rosile's --
22 no. Now, the 1040X, if I am not mistaken, is an amended
23 return; is that correct?

24 A That's correct.

25 Q Okay. So there would have been a 1040 that would have

1 been filed previous to this; is that right?

2 A There should be, yes.

3 Q Okay. And the numbers in the first column, those numbers
4 should -- they should match the numbers in the 1040; is that
5 correct?

6 A That's correct.

7 Q Okay. And did you compare this 1040X with the
8 corresponding Form 1040 to determine whether the numbers were
9 the same?

10 A No, I did not.

11 MR. WILSON: Okay. Is this the next page? The next
12 page, please. The next page, please. The next page, please.
13 The next page, please. Is this the same exhibit?

14 A VOICE: No, we are out of that exhibit.

15 MR. WILSON: Could you go to Exhibit 60-2, please.
16 The next page, please.

17 BY MR. WILSON:

18 Q Agent Crowley, I think that you have testified that this
19 is a 1040X form, also; is that correct?

20 A That's correct.

21 Q Okay. And who is the taxpayer for this document?

22 A Eileen M. Rosile.

23 MR. WILSON: Can you scope to the bottom portion of
24 the return, please. Can you go to the next page, please. Oh,
25 can you go back one, please. Could you highlight the figures

1 to the right of the word -- the stamp "received" so we see the
2 figures. Yes.

3 BY MR. WILSON:

4 Q Agent Crowley, again, this is a 1040X, which you have
5 testified previously is an amended tax return; correct?

6 A That's correct.

7 Q Okay. And this is the amended tax return for Eileen
8 Rosile?

9 A That's correct.

10 Q Okay. And you have testified previously that the first
11 column of numbers that we see should correspond to a 1040;
12 correct?

13 A That's correct.

14 Q Okay. Did you make any determination as to whether these
15 numbers in this first column were consistent with the numbers
16 that Eileen Rosile reported on her 1040?

17 A No, I did not.

18 Q So you don't know if these numbers are the same or not?

19 A No, I do not.

20 MR. WILSON: Can we go to the next page, please, the
21 top of the page.

22 BY MR. WILSON:

23 Q Do you know what this piece of paper is, sir?

24 A No, I do not.

25 MR. WILSON: Okay. Could you enlarge it, please,

1 the first paragraph, before it says "28 CFR."

2 BY MR. WILSON:

3 Q Sir, does this appear to you to be some sort of a
4 quotation from the IRS regulations?

5 A It could be, but I wouldn't know for sure.

6 Q Have you reviewed this document?

7 A No, I have not.

8 MR. WILSON: Go to the next page, please. Next
9 page, please.

10 BY MR. WILSON:

11 Q Sir, do you see some references to "26 CFR" in this
12 document?

13 A Yes.

14 Q Okay. Now, you previously testified that when certain
15 returns are mailed into the IRS and they contain legal
16 citations, citations to cases, case law, Supreme Court
17 opinions, the Constitution, that those returns are placed in
18 what you refer to as a funny box; is that right?

19 A That's correct.

20 Q Okay. When a return comes in with citations to specific
21 Federal statutes, would those, likewise, generate action that
22 would result in it being placed in this funny box?

23 A Yes, it would.

24 MR. WILSON: If we can go to the next page, please.
25 The next page, please. The next page, please. The next page,

1 please. Does this -- can you just enlarge the first ten
2 lines. Okay. A little farther down, please, the next
3 section.

4 BY MR. WILSON:

5 Q Does this -- and I know it's kind of hard to see because I
6 am having trouble seeing it myself. Does this document seem
7 to have the types of references to code sections that would,
8 likewise, generate action that would result in them being
9 placed in the funny box?

10 A I believe it does, yes.

11 MR. WILSON: Okay. Next page, please. The next
12 page, please. The next page, please. The next page, please.

13 BY MR. WILSON:

14 Q Sir, do you know what this document is?

15 A Well, it looks like a 1040 U.S. individual income tax
16 return for 2000.

17 Q Okay. But we don't know for whom that form relates to or
18 to whom it relates?

19 A No.

20 MR. WILSON: Could you go to the next page, please.
21 The next page, please. The next page, please. The next page,
22 please. The next page, please. The next page, please. The
23 next page, please. The next page after that, please. Could
24 you highlight that.

25

1 BY MR. WILSON:

2 Q Sir, do you know what this document is?

3 A It appears to be a photocopy of a Treasury check.

4 Q Okay. When you say "Treasury" check, do you know what
5 agency of the "Treasury" would have generated this check?

6 A It looks like it could be a tax check sent from the
7 Internal Revenue Service.

8 Q Does it appear to be an IRS refund check?

9 A It appears to be.

10 MR. WILSON: Could you go to the next document,
11 please. The next document, please. Next page, please. The
12 next page, please. The next page, please. The next page,
13 please. Are we still in the same document? The next page,
14 please. The next page -- oh, could you go back to the
15 first -- back one more, please. Okay. Could you enlarge the
16 first -- actually --

17 BY MR. WILSON:

18 Q Sir, do you -- does this appear to be a 1040 IRS form, tax
19 return form?

20 A Yes, it does.

21 Q And who is the taxpayer, sir?

22 A Listed as Eileen M. Rosile.

23 Q Okay. And what year is that?

24 A For 1999.

25 MR. WILSON: Can we go to the bottom of the page,

1 please. The next page, please.

2 BY MR. WILSON:

3 Q Sir, do you see a signature on this return?

4 A Yes.

5 Q Okay. And who signed this return?

6 A It appears to be Eileen M. Rosile.

7 Q Is there a tax preparer's signature on this document?

8 A There does not appear to be, no.

9 Q Do you have any way of knowing who prepared this document?

10 A No.

11 MR. WILSON: Can we go to the next page, please.
12 The next page, please. The next page, please. The next page,
13 please. The next page, please. The next page, please. The
14 next page, please. The next page, please. The next page,
15 please. The next page, please.

16 BY MR. WILSON:

17 Q I believe this is a document that you testified to
18 previously.

19 MR. WILSON: Could you Highlight the first -- the
20 very top caption, letterhead part of it.

21 BY MR. WILSON:

22 Q Okay. And whose letterhead does this appear to be?

23 A Douglas P. Rosile.

24 MR. WILSON: And could you highlight the addressee
25 of the letter.

1 BY MR. WILSON:

2 Q And to whom was this letter sent?

3 A Internal Revenue Service, Atlanta, Georgia.

4 MR. WILSON: Okay. You -- if you could scroll to
5 the last paragraph of the letter. Okay. Thank you.

6 BY MR. WILSON:

7 Q Sir, you previously read much of this letter into the
8 record; is that right?

9 A I believe so.

10 Q And it would be fair to say that, after having read this
11 letter, it could be interpreted as someone who is requesting
12 information from the IRS?

13 A I can't determine what the -- I can't determine what they
14 are trying to do with this letter. I am not qualified for
15 that.

16 MR. WILSON: Okay. Let's read the first paragraph
17 that starts "the letter signed" -- okay. Let's go to the --
18 under where it says "Dear Sirs," if you would please highlight
19 that paragraph.

20 BY MR. WILSON:

21 Q Could you read that, please.

22 A "The person to whom the attached letter was sent is my
23 wife. I am responding to the letter because she has what is
24 termed a chemical imbalance and recently made a relapse. She
25 is now under the care of another psychiatrist/doctor who has

1 changed her medication and recommended a hypnotherapist. My
2 daughter and I have taken over all financial activities she
3 was handling."

4 Q Mr. Rosile has indicated that he is taking over his wife's
5 affairs; is that right?

6 A That's what it appears to me.

7 Q As her husband?

8 A That's what it appears to me.

9 Q Could you read the second paragraph.

10 A "The letter signed by someone calling herself Ellen C.
11 Bell is a classical of bureaucratic runaround and IRS
12 stonewalling by an incompetent employee. The letter is, in
13 Clinton-speak, factually inaccurate. There was no claim for
14 refund, simply a regular 1040 return seeking a normal refund.
15 The service center invented, fabricated, corrected and
16 otherwise created a balance due without any explanation or
17 substantiation. It then wantonly, deliberately and
18 maliciously refused to provide any information, case law,
19 statute or regulation to support their position that your
20 claim has no merit or basis."

21 Q Did you, yourself, undertake an investigation or try to
22 make a determination as to whether the assertions in that
23 paragraph were accurate on his part?

24 A No, I did not.

25 MR. WILSON: If you could, please, highlight the

1 paragraph --

2 BY MR. WILSON:

3 Q Or if you can read from this fine. It starts -- the
4 next-to-the-last paragraph.

5 A "I am further enclosing research from competent
6 professionals that supports the position taken by my wife. I
7 suggest you either refund her money or send a damn good
8 explanation as to why you are selectively administering the
9 law."

10 Q Could that be interpreted as requesting information from
11 the IRS?

12 A I guess you could.

13 MR. WILSON: Could you please pull up Exhibit 62.
14 The next page, please. The next page, please. Okay. Could
15 you highlight the caption of this document.

16 BY MR. WILSON:

17 Q Sir, can you tell what this document is?

18 MR. McLELLAN: Objection.

19 THE COURT: What's the objection, Mr. McLellan?

20 MR. McLELLAN: I do not believe this exhibit was
21 admitted into evidence, Your Honor. The government has --

22 MR. WILSON: Well, Judge, if this hasn't been
23 entered into -- I was under the impression that it had. This
24 was part of the -- part and parcel -- if we could --

25 MR. McLELLAN: No objection, Your Honor.

1 MR. WILSON: I am not offering it into evidence,
2 Judge, but I was under the impression this was part and parcel
3 of the litany of exhibits that were admitted into evidence
4 yesterday or this morning over objection.

5 THE COURT: Which exhibit?

6 MR. WILSON: This is 62, Your Honor.

7 THE COURT: Five-two?

8 MR. WILSON: I'm sorry; six-two, Your Honor.

9 THE DEPUTY CLERK: I don't have it.

10 THE COURT: Sixty-two is not admitted.

11 MR. WILSON: Well, if that is the case, Your Honor,
12 I will skip that.

13 If we could go to Exhibit 64-2, please. If you
14 could highlight the caption at the top.

15 BY MR. WILSON:

16 Q Can you identify this document, sir?

17 A This is a Form 1040X, amended U.S. individual income tax
18 return.

19 Q And who is the taxpayer on this document?

20 A Wesley Snipes.

21 Q With respect to the portion of the return that
22 indicates -- where it says income and deductions, to the right
23 of that, there is a series of numbers. I think you testified
24 previously that it reflected, number one, a -- I think a gross
25 income of 19,238,000 dollars or something along those lines?

1 A 19,238,192 dollars.

2 Q Okay. Now, this was a 1040X; correct?

3 A That's correct.

4 Q Okay. And it's an amended return?

5 A That's correct.

6 Q Okay. And would it be safe to assume that there is a 1040
7 to which this is intended as the amendment?

8 A There should be a 1040. That's why the taxpayer would
9 file a 1040X, yes.

10 Q Okay. Did you make any determination as to whether that
11 19-million-some-odd-dollar figure was consistent with what was
12 reported on the 1040?

13 A No, I did not.

14 MR. WILSON: If we could go to the bottom, please.

15 BY MR. WILSON:

16 Q And you indicated, I think -- if you highlight the
17 signature page -- that this was signed by Douglas Rosile; is
18 that right?

19 A It does appear to be, yes.

20 Q Okay. Do you have any way of determining who actually
21 typed those numbers on the document?

22 A No, I do not.

23 MR. WILSON: If you go to the next page, please.

24 The next page, please. If you could highlight the top of this
25 document, please.

1 BY MR. WILSON:

2 Q I believe that this is a document you testified previously
3 was referred to as a "red flag" letter?

4 A No, I did not know that it was a red flag letter. I was
5 asked about it.

6 MR. WILSON: Okay. If you would go to the next
7 page, please.

8 BY MR. WILSON:

9 Q This is a document that was attached to the 1040X return;
10 correct?

11 A That's correct.

12 MR. WILSON: Okay. If you could, please highlight
13 the first three paragraphs.

14 BY MR. WILSON:

15 Q Could you please read that, starting at "This return is."

16 A "This return is being filed on the basis of the IRS
17 regulation 26 CFR 1.861-8, which identifies all of the taxable
18 sources of income within the United States of America. As far
19 as I have been able to determine, none of the receipts of this
20 taxpayer came from any of these sources. Since according to
21 1.861-8(4), the taxable source must first be determined before
22 taxable income can be determined, these receipts must
23 therefore be exempt from Subtitle A taxes. The calculations
24 on the attached 1040 (1040X) form reflect that position.
25 Based on those calculations, there should be a complete refund

1 of all moneys paid in. Should the IRS disagree with this
2 position, please schedule an administrative law judge review
3 on this matter pursuant to the Administrative Procedures Act,
4 5 USC 556(d)."

5 Q Sir, would it be fair to say that this document has the
6 effect of putting the IRS on formal notice of what is being
7 claimed in the 1040X?

8 A That appears to be.

9 Q In your -- now, I think you testified earlier that you did
10 a search, a computer search with respect to Internal Revenue
11 records of Mr. Snipes; is that right?

12 A That's correct.

13 Q Okay. In your search, did you ever turn up or did your
14 search reveal any documents, correspondence that was sent by
15 Mr. Rosile to the IRS on behalf of Mr. Snipes?

16 A Not to my knowledge.

17 Q Okay. Did your search result in a return of any
18 information or correspondence that was sent from the IRS to
19 Mr. Rosile on behalf of Mr. Snipes?

20 A Not to my knowledge.

21 Q In fact, the correspondences that I have seen that you
22 have testified about were sent to and from Mr. Baxley and
23 Mr. Malitesta; is that right?

24 A That's what I have seen, yes.

25 MR. BERNHOFT: Your Honor, if I might, we show

1 clearly that 64-2 was in this morning and was admitted into
2 evidence. The exhibits -- I'm sorry -- yesterday, Your Honor.
3 It was 53-1 all the way through 64-2 appear to be clearly
4 received, for Mr. Wilson's benefit regarding 64-2.

5 MR. O'NEILL: No. It was 62.

6 THE COURT: 62 was the exhibit in question,
7 Mr. Bernhoft.

8 MR. WILSON: I have no more questions, Judge.

9 THE COURT: Any redirect, Mr. McLellan?

10 MR. McLELLAN: Yes, Your Honor.

11 May we have Exhibit 60-1, please. Focus on the date
12 stamp.

13 REDIRECT EXAMINATION

14 BY MR. McLELLAN:

15 Q Mr. Crowley, can you see the date stamp in the middle of
16 that tax return?

17 A Yes. There is two of them there.

18 Q Okay. And can you read one or both of them?

19 A The bottom one is March 26th, 2004. The one above it, I
20 can see "2004," but I can't read the other.

21 Q Okay. And where does this document appear to have been
22 received, according to this stamp?

23 A Criminal investigation.

24 Q Okay. And taking a look at the top of the return, the
25 name section, is this the return that you were just discussing

1 with Mr. Wilson?

2 A Yes.

3 Q Taking a look at Exhibit Number 60-2, please, Bates range
4 DR-05038, Mr. Crowley, do you see an addressee on this
5 document?

6 A Yes.

7 Q And who is that?

8 A Eileen M. Rosile, 452 Glen Oak Road, Venice, Florida.

9 Q Okay. And taking a look at the next page of that
10 document, focusing in on the upper right-hand corner, can you
11 make out the date?

12 A January 17th, 2001.

13 MR. McLELLAN: Okay. And going back to the first
14 page, okay, a little bit lower, down under "Dear Taxpayer."

15 BY MR. McLELLAN:

16 Q Okay. Could you please read the first three paragraphs of
17 that letter.

18 A "We are unable to process your claim for the tax periods
19 shown above. The law allows you to file a claim for a refund
20 of taxes you paid. The law does not allow you to file a claim
21 to reduce the tax you owe. If you disagree with the amount of
22 tax you owe, you may appeal our decision.

23 "To appeal our decision, you must first pay the tax you
24 owe. Then file an amended return with supporting information
25 to claim a refund. We must receive your claim within three

1 years from the date you filed your return or two years from
2 the date you paid your tax. Your claim has no merit or
3 basis."

4 MR. McLELLAN: Okay. Taking a look at Government's
5 Exhibit 61-1, you will need to go until we get to the return.
6 Yeah. Yeah.

7 BY MR. McLELLAN:

8 Q Okay. Please identify this document, Mr. Crowley.

9 A This is a Form 1040 U.S. individual income tax return for
10 1997.

11 Q Okay. And taking a look at the signature portion at the
12 bottom of the page -- I'm sorry -- on the next page, please,
13 focusing on the sign here, could you read the first four words
14 of that jurat?

15 A "Under penalties of perjury."

16 Q Okay. And is that the standard jurat on IRS documents?

17 A Yes.

18 Q Okay. Taking a look at Government's Exhibit 64-2, okay,
19 this is a Form 1040X for which taxpayer?

20 A Wesley Snipes.

21 Q Okay. And focusing on the address filled out underneath
22 the name, please read out that address.

23 A Care of Starr & Company, 350 Park Avenue, New York, New
24 York, 10022.

25 Q Okay. So you said "care of." Is that what "CO" means?

1 A That's correct.

2 Q Okay. Taking a look at Government's Exhibit 39-1, please,
3 what is this document?

4 A This is a 1040 U.S. individual income tax return for 1993
5 for Wesley Snipes.

6 Q Okay. And does it have the same "care of" address?

7 A Yes, it does.

8 Q Okay. 39-2, please, is this the 1994 return for Wesley
9 Snipes?

10 A Yes, it is.

11 Q And does it have the same "care of" address?

12 A Yes, it does.

13 Q 39-3, please, same questions.

14 A That's correct.

15 Q 39-4, same question.

16 A Yes.

17 Q Counsel was asking you about the Brookhaven service center
18 in New York. Is there any restriction that one service center
19 cannot receive returns from other parts of the country?

20 A No.

21 Q Can Brookhaven receive returns from anywhere in the
22 country?

23 A Anybody who -- yes, they can. Anybody can send them to
24 whichever IRS location they would like to.

25 Q You testified about something you referred to as the

1 "funny box"?

2 A Yes, I did.

3 Q Is that some kind of internal IRS term?

4 A Yes, it is. Did you want me to explain?

5 Q Well, what does that mean?

6 A Well, that means the returns that are placed in that
7 designated area are looked at because they look funny. They
8 look --

9 Q Let me ask you this. Where is the funny box?

10 A The funny box is actually in the processing -- right
11 outside of code and edit department.

12 Q And in what facility?

13 A In the Andover campus, but they also have them in all the
14 campuses.

15 Q Okay. And these are -- would these be in IRS service
16 centers, for example?

17 A Yes, they would.

18 Q I'm sorry. You were explaining what the box is.

19 A In the process of receiving a return and coding and
20 editing it for data entry, if somebody comes across the
21 particular items that are designated to be "funny box" items,
22 they would be then put into the funny box, where the people
23 from certain departments would come over and look at them to
24 see if they match what we have to look at, what are the
25 current trends.

1 Q Are these items unusual in some way?

2 A Yes, they are.

3 Q Okay. Let me ask you this. Does the IRS throw proper tax
4 returns into the funny box?

5 A On occasion, they may.

6 Q Okay. And would they end up in there forever?

7 A No, they would not. They would be looked at by somebody
8 else to determine if they were frivolous or any of the other
9 arguments or designations that the funny box has, and then
10 routed to the appropriate --

11 Q Why do they need a funny box in the service centers?

12 A Well, the service center is designed to process returns
13 and keep the work going. Instead of having one person stop to
14 look at a return and trying to figure it out, they wait until
15 they have several returns and they have people who are more
16 specialized in what the trends are, and they go and they look
17 at the particular returns.

18 Q Okay. Now, counsel asked you about what were called
19 correspondence logs. Do you recall that?

20 A Yes.

21 Q Do you -- can you explain what a correspondence log would
22 be?

23 A Well, typically, that would be in an audit file. There
24 might be some correspondence with that. If a taxpayer sends
25 some information, sometimes it is attached to the original

1 return. Sometimes it is separated and sent to particular
2 departments that they may be addressing.

3 Q Does everything that comes into the IRS go into one of
4 these correspondence logs?

5 A No.

6 Q Are there things sent to the IRS that properly should go
7 somewhere else?

8 A Yes.

9 Q Okay. Where else in the IRS can things go if it's -- you
10 know, documents and letters and things along those lines,
11 where else can they go in the IRS, besides in this log?

12 A Well, we have a department called the frivolous return
13 program. If they meet the criteria for the frivolous return,
14 frivolous filing arguments, the documents may go to those
15 folks.

16 Q Okay. Well, do you recall counsel for Defendant Snipes
17 showing you documents that had "FRP" stamped on the front of
18 them?

19 A Yes, I do.

20 Q Does that have any significance, as far as the frivolous
21 return program is concerned?

22 A Yes. Those documents would have been sent to the
23 frivolous return program.

24 Q Would they go there originally?

25 A Well, it depends --

1 Q Did the taxpayer send them in on purpose to the frivolous
2 return program?

3 A It may take a little bit of time to get there. There are
4 other issues that if someone else is actually working a case,
5 and they may put a note on the taxpayer's account, it may go
6 to, for instance, an agent or somebody else working the case,
7 it may go to them first. And then somebody makes a
8 determination to send them to the frivolous return program.

9 Q Well, if you see the FRP stamp on a document, does that
10 indicate that it has been received at the frivolous return
11 program?

12 A Yes, it does.

13 Q Okay. I believe you were asked to read from Government's
14 Exhibit 128-1.

15 MR. McLELLAN: May we see that, please.

16 BY MR. McLELLAN:

17 Q Okay. Let's focus on the title. Now, what is this
18 document called?

19 A "Filing statement for tax year 1999 in affidavit form."

20 Q Okay. And taking a look at the whole first page of it, is
21 there a -- any stamps that you see on there?

22 A Yes.

23 Q What do they indicate about the route that this document
24 has taken?

25 A It appears it has been received in Ogden, Utah. That's as

1 far as I can see right now. And then sent to the FRP program
2 on June 16th of 2004. It was also received in Fresno on June
3 2nd.

4 Q Okay. Please page through this document. Do you have the
5 hard copy in front of you?

6 A It's 121?

7 Q It's 128-1. Have you had a chance to take a look at this
8 document?

9 A Yes.

10 Q Okay. Do you see any financial information in there that
11 the IRS could use to process it as a return?

12 A No.

13 Q Let's take a look at page five of the document, the
14 second-to-the-last paragraph, please. Okay. Please read that
15 paragraph.

16 A "It appears that the Internal Revenue is the Puerto Rico
17 special trust fund as evidenced by 31 USC 1321(62), and
18 Internal Revenue is the Philippines special trust fund as
19 evidenced by 31 USC" -- I'm sorry -- "1321(2). One has
20 incurred no liability to either the Philippines special fund
21 or the Puerto Rico special fund. It may be a quaint notion,
22 but possibly the Internal Revenue Service could publish in the
23 Federal Register. Its structure and field offices and other
24 recordings, which are mandated by Congress for agencies of
25 government by Title 5 USC 552(A). This certainly would be

1 helpful to all and reduce the uncertainty one now feels with
2 an agency of government which is invisible to the law."

3 Q Okay. Please read the last paragraph on that page.

4 A "The Form 1040, if processed, would be processed under the
5 supervision and authority of the commissioner, Internal
6 Revenue Service. No authority appears to exist for this
7 officer to administer taxes, other than wagering taxes under
8 Treasury Delegation Order 221-3."

9 Q And please continue on to the next page.

10 A "I have had no wagering income. Therefore, one has no
11 filing and/or tax liability with this officer. Further, one
12 has not been able to locate any statute, regulation or other
13 document which authorizes and/or creates the office of
14 commissioner, Internal Revenue Service."

15 Q Directing your attention to page ten of that document,
16 Paragraph 4 of that page, please. Could you please read that
17 paragraph.

18 A "Wesley Snipes, living under the common law, having
19 assumed among the powers of the earth the separate and equal
20 station to which the laws of nature and nature's God entitles
21 me, in order to secure the blessings of birthright that was
22 taken from me by fraud, do hereby as asseverate and terminate
23 all trusts, feudatory and adhesion contracts with the Federal
24 and State government and its agencies and with the corporate
25 state of California and its agencies for Wesley Snipes, being

1 of sound mind and body, do not choose nor have Wesley Snipes
2 ever chosen to give up, relinquish or otherwise waive any of
3 my God-given natural constitutionally secured rights. And
4 further."

5 Q Just taking a look at the first page, again, the -- I
6 guess the caption on the document, okay, what year is this
7 document supposed to cover, according to its caption?

8 A Tax year 1999.

9 Q Okay. Taking a look at that date stamp next to the
10 caption, when was that document received at the IRS?

11 A June 9th, 2004.

12 Q Okay. When would a 1999 tax return have properly been
13 due?

14 A It would have been due on April 15th of the following
15 year.

16 Q And what year was that?

17 A 2000.

18 Q Okay. You were also asked about Government's Exhibit
19 128-2, which is another one of these filing statements. And,
20 again, taking a look at the caption, how is that captioned?

21 A "Filing statement for tax year 2000 in affidavit form."

22 Q And what stamp do you see there as this document having
23 been received at the IRS?

24 A June 9th, 2004.

25 Q When were Forms 1040 or tax returns supposed to have been

1 filed for the year 2000, by what date?

2 A April 15th of 2001.

3 Q Counsel also examined with you Government's Exhibit 133-1.

4 A I believe they did, yes.

5 Q How is that one captioned?

6 A "Notice and entry of default."

7 Q Was that one also received at the frivolous return
8 program?

9 A Yes, it was.

10 Q How do you know?

11 A The stamp just above the caption says received July 30th,
12 2004.

13 Q Okay. Taking a look at the second page of this document,
14 what's the caption there in the middle of the page?

15 A "Entry of default."

16 Q Okay. In your research, have you found any entry of any
17 kind of judgment against the IRS in favor of Wesley Snipes?

18 A No, I have not.

19 Q Counsel was also asking you about the MFR-01 code. Do you
20 recall that?

21 A Yes, I do.

22 Q Taking a look at Government's Exhibit Number 129-2 -- do
23 you have that in front of you?

24 A Yes, I do.

25 Q Does that have a stamp on the front?

1 A Yes, it does.

2 Q What does the one in the upper left-hand corner say?

3 A Received June 29th, 2004.

4 Q Where was it received?

5 A In the FRP program.

6 Q Okay. Now, I believe counsel was looking at part of this
7 document that comes later. I think it's internally paginated
8 variously as 80 and 32. It is Bate stamped WS-15762. Do you
9 have that in front of you?

10 It's captioned "IMF MCC transcript specific." At the
11 bottom of the page it says "Exhibit BBB, 1 of 15."

12 A Yes, I have that here.

13 Q Okay. What is this printout?

14 A This is the IMF transcript specific for Wesley Snipes for
15 tax year 1996.

16 Q Okay. And let's take a look at that time. For starters
17 what address does it give for Wesley Snipes in the upper left
18 corner of this transcript?

19 A The address listed is 25525 SR 46, Suite Two, Mount
20 Plymouth, Florida.

21 Q Okay. And do you see any -- taking a look at the lower, I
22 guess, middle left of the document, do you see any indication
23 of tax on this document?

24 A I see a figure next to a date and just above return
25 received date of 4,004,158 dollars.

1 Q Do you know what that number represents?

2 A I believe that represents the tax liability for that year.

3 Q Okay. And the -- there is a figure for AGI in the lower
4 right-hand corner. Do you see that?

5 A Yes, I do.

6 Q And what's the figure for AGI?

7 A 15,387,378 dollars.

8 Q And for what tax year does this pertain?

9 A 1996.

10 Q Okay. Now, do you work with transcripts like this in the
11 course of your duties?

12 A On occasion, yes.

13 Q Okay. How would one, you know, person such as yourself
14 who works for the IRS, how would you obtain it?

15 A At my terminal, I would request a copy of it sent to me.

16 Q And where does it come from?

17 A Well, it comes from the Internal Revenue Service
18 databases. When I request it, it is actually printed out at
19 the Andover service center and it's sent to me via company
20 mail.

21 Q Okay. And what would you do with transcripts like this?

22 A Well, occasionally we will have a request to have these
23 brought in for court and we will print them up for that. You
24 can review it to find out what's going on with the account.

25 Q And what do other people in the IRS do with it?

1 A There are so many different codes here. Each department
2 would have maybe their own little particular information on
3 here to tell other people what may be happening.

4 Q Is there some way people outside the IRS can get their
5 transcripts like this?

6 A Yes, if you request it under the Freedom of Information
7 Act.

8 Q Okay. And -- but, ordinarily, does the IRS just give
9 these people out to people, absent a kind of special
10 application like that?

11 A No.

12 Q So who are the people who are supposed to use these
13 transcripts?

14 A Those of us who work at the Internal Revenue Service.

15 Q Now, counsel were asking you about this MFR-01 code.

16 A That's correct.

17 Q Now, where does this code reside ordinarily, if you
18 haven't printed it out?

19 A It is in the computer system.

20 Q If the IRS computer sees this code, what does it tell the
21 IRS computer to do?

22 MR. WILSON: Objection; lack of foundation as to
23 what the computer is told to do.

24 THE COURT: Well, it's a question of what -- within
25 the witness' knowledge.

1 Do you know sufficiently to answer that question,
2 based upon the performance of your usual duties?

3 THE WITNESS: Yes, I do.

4 THE COURT: You may answer.

5 A The MFR-01 instructs the computer to not send a 1040
6 package to the taxpayer to be filed with the Internal Revenue
7 Service.

8 Q Is it correct that it has to do with sending something out
9 of the Internal Revenue Service?

10 A That's correct; and it's based on past filing history.

11 Q Okay. And how would it be -- how would past filing
12 history make any difference as to this code?

13 A If you filed using a preparer or perhaps computer software
14 or even online, we may put it as Code MFR-01 so that we don't
15 mail out a package to the taxpayer. That saves on printing
16 expenses, as well as postage.

17 Q Is this MFR-01 code supposed to be some sort of message to
18 the taxpayer?

19 A No.

20 Q Now, looking at these transcripts, as well, counsel asked
21 you about SFR's. Do you recall that?

22 A That's correct.

23 Q Okay. Does "SFR" show up in these transcripts sometimes,
24 that string of characters?

25 A Yes.

1 Q Okay. And if that shows up in there, does that mean
2 somebody has actually filed a real tax return?

3 A No. That means the Internal Revenue Service has started a
4 process wherein we can take some action for that particular
5 tax money.

6 Q Does that take away their obligation to file a tax return?

7 A No, it does not.

8 MR. McLELLAN: Begging the Court's indulgence.

9 The government has nothing further for this witness,
10 Your Honor.

11 THE COURT: Any recross, Mr. Barnes?

12 MR. BARNES: Yes, Your Honor.

13 RE-CROSS-EXAMINATION

14 BY MR. BARNES:

15 Q Previously, there was a refund to -- there was a reference
16 to a refund check that Mr. Wilson was asking you some
17 questions. Do you remember that?

18 A Yes.

19 Q And that refund check was not issued to Mr. Snipes;
20 correct?

21 A I don't remember who it was issued to.

22 Q In your review of the IRS files, did you find any refund
23 check sent to Mr. Snipes?

24 A I don't recall, no.

25 Q And did you find in your search of the files any record of

1 any administrative hearing being given to Mr. Snipes for his
2 refund claim?

3 A Not that I saw.

4 Q You mentioned a substitute for return being filed by the
5 IRS?

6 A That's correct.

7 Q Is that filed under penalty of perjury by the IRS officer?

8 A I can't answer for that.

9 Q You mentioned that many of these documents have a stamp of
10 frivolous return program; is that correct?

11 A That's correct.

12 Q Did you do a search of the files at the frivolous return
13 program held by IRS officers responsible for Mr. Snipes' file
14 there?

15 A No, I did not.

16 Q Let me show you what's been marked as Defense Exhibit 231.

17 MR. McLELLAN: Objection, Your Honor.

18 THE COURT: What's your objection?

19 MR. McLELLAN: Lack of discovery, Your Honor.

20 THE COURT: What is this and what do you say to the
21 objection, Mr. Barnes?

22 MR. BARNES: I would provide a copy to the Court.

23 Your Honor, this document comes directly from
24 government discovery. It has WS numbers at the bottom of
25 each.

1 THE COURT: Well, what do you say to that, Mr.
2 McLellan?

3 MR. McLELLAN: Well, Your Honor, we have obtained
4 from the defendant a document captioned "Defendant's Snipes'
5 exhibit list," and it contains apparently 229 items, although
6 this number is higher than any of the numbers on the list --
7 excuse me, Your Honor -- so we just don't know anything about
8 it.

9 THE COURT: Well, I am not sure at the moment that
10 that's a basis for objection, if, in fact, the document was
11 taken from those previously provided by the United States. I
12 will treat the objection as a motion to strike at the moment.

13 Go ahead with your examination, Mr. Barnes, if you
14 can lay a predicate for it.

15 MR. BARNES: Yes, Judge.

16 MR. McLELLAN: Your Honor, the government does not
17 yet have a copy of this document.

18 (Document tendered.)

19 BY MR. BARNES:

20 Q Can you go through this document, Mr. Crowley. Are you
21 familiar -- does the format of the document look familiar to
22 you?

23 A It is somewhat familiar, yes.

24 Q Could you explain?

25 A Well, it just looks like it is screen shots of a database.

1 Q What database?

2 A It appears to be from the frivolous return program.

3 Q And who is the taxpayer's name identified?

4 A Wesley Snipes.

5 Q And if you turn to the fifth page, WS-17094, are there
6 various action date entries listed there?

7 A Yes, there are.

8 Q And action date 7/9/2004 -- are those action dates, are
9 those the actions of an IRS employee?

10 A I can't attest to that. I don't know. I don't have
11 knowledge --

12 Q Normally, is the action date something that the IRS
13 employee would enter?

14 MR. McLELLAN: Objection, Your Honor.

15 THE COURT: Sustained. Based on his last response,
16 I am inclined to sustain the objection, Mr. Barnes.

17 BY MR. BARNES:

18 Q You earlier referred to these files being maintained by
19 IRS employees usually for IRS employees; is that correct?

20 A Could you state that question again? Because I don't know
21 what you are relating to.

22 Q Sure. You referred to these computer files as being files
23 maintained by IRS employees for IRS employees.

24 A That's correct.

25 Q Is this one of those files?

1 A I don't know that it's filed for all of the employees. I
2 don't know who actually has the ability to use this. I know
3 this is something that is under the frivolous return program.

4 Q So do you know if non-IRS employees have access to it?

5 A I don't believe they do.

6 Q So, to your knowledge, only IRS employees have access to
7 this?

8 A As best I know, yes.

9 Q Next to 7/9/04, the fourth entry down, does it read:
10 "Frivolous argument. No change in taxpayer, TP, position.
11 Frivolous mail. Destroy"?

12 A Yes, it does.

13 Q And the next one, 7/9/2004, does it say frivolous --

14 MR. McLELLAN: Objection. Your Honor, this exhibit
15 is not yet in evidence.

16 THE COURT: Sustained. Ought not to be published
17 unless it is in evidence, Mr. Barnes.

18 MR. BARNES: Yes, Your Honor.

19 BY MR. BARNES:

20 Q So you did not review any of these files before you came
21 here today?

22 A No, I did not.

23 Q Were you asked to review those files before you came here
24 today?

25 A No, I was not.

1 MR. BARNES: No further questions, Your Honor.

2 THE COURT: Any further questions, Mr. Wilson?

3 MR. WILSON: No, Your Honor.

4 THE COURT: Thank you, Agent Crowley. You may step
5 down.

6 Next witness, gentlemen.

7 MR. O'NEILL: Yes, Your Honor. The government would
8 call Kenneth Starr.

9 MR. BARNES: Side-bar, Your Honor?

10 THE COURT: On what, Mr. Barnes?

11 MR. BARNES: The issue that was raised previously,
12 Your Honor. The issue raised previously, Your Honor, about
13 raising per witness.

14 THE COURT: Well, I suggest we complete the
15 examination of the -- the direct examination of the witness,
16 and then we can take up. That is my understanding of the
17 Jencks Act.

18 MR. BARNES: Thank you, Your Honor.

19 THE DEPUTY CLERK: Mr. Starr, would you please raise
20 your right hand.

21 *** KENNETH STARR was sworn

22 by the Deputy Clerk ***

23 THE DEPUTY CLERK: Please have a seat. And please
24 state your full name, and spell your last name for the record.

25 THE WITNESS: Kenneth Starr, S-t-a-r-r.

1 MR. O'NEILL: May I inquire, Your Honor?

2 THE COURT: You may, Mr. O'Neill.

3 KENNETH STARR,

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. O'NEILL:

7 Q Mr. Starr, I'm going to ask you a series of questions. I
8 would ask that you speak in a loud and clear voice so everyone
9 can hear you. Also, if there's something I say that you don't
10 understand, please let me know. I will be glad to repeat it.

11 Sir, where were you born?

12 A Bronx, New York.

13 Q And how long did you reside in New York City?

14 A I still do.

15 Q You have lived there your whole life?

16 A Yes, I have.

17 Q Would you please give a brief recitation of your
18 educational background to the ladies and gentlemen of the
19 jury.

20 A I went to public school in New York, PS 53 in the Bronx.
21 I went to Bayside High School, Queens College. Got a law
22 degree from Brooklyn Law School and a master's in taxation
23 from NYU.

24 Q And in addition to your educational background, would you
25 also please give a brief recitation of your professional

1 background.

2 A For the first two-and-a-half to three years after
3 graduating from law school, I worked for a firm called
4 Oppenheimer, Pell, Dixon (phonetic), which specialized in
5 taxation. From there, I started my own firm. And then broke
6 away from that firm and started a new one in 1987, and that's
7 the firm I currently have.

8 Q So the firm you currently have, you have had since 1987,
9 sir?

10 A That is correct.

11 Q And what is the name of that firm?

12 A Starr & Company.

13 Q Now, just so the record is clear -- and you probably get
14 this a lot, but are you any relation to the Ken Starr who was
15 the independent counsel during the Clinton administration?

16 A No, I am not.

17 Q Sir, please describe what Starr & Company does. What type
18 of a business is that?

19 A We're basically what we would call a business management,
20 financial consulting firm. We consist mainly of CPAs and tax
21 attorneys. We would be called -- I guess the way people look
22 at it, it's almost like a family office, where we will do
23 everything from paying bills for people, doing their tax work,
24 and helping them determine where they would invest their
25 money.

1 Q Mr. Starr, there is a little feedback, I believe, on the
2 microphone.

3 THE COURT: Yes. Push it away just about an inch or
4 so, Mr. Starr, please.

5 THE WITNESS: Is that better?

6 BY MR. O'NEILL:

7 Q Now, where is your firm located, sir?

8 A 850 Third Avenue in New York.

9 Q In New York City?

10 A Yes.

11 Q Now, would you describe -- do you have a typical type of
12 client? Is it varied? How would you describe your clientele?

13 A It is a varied clientele. Probably about 20 to 25 percent
14 are in some form of the media. The balance are just normally
15 either affluent individuals or people who have some unique
16 achievement in an area, so we have determined and they have
17 determined that we would work together.

18 Q Now, are you familiar with an individual by the name of
19 Wesley Snipes?

20 A Yes, I am.

21 Q And do you see him in the courtroom today?

22 A Yes, I do.

23 Q Would you please identify him for the record, describing
24 what he is wearing.

25 MR. BERNHOFT: Judge, we'll stipulate to Mr. Snipes'

1 identity.

2 MR. O'NEILL: Thank you, Mr. Bernhoft.

3 THE COURT: Very well. Go ahead.

4 BY MR. O'NEILL:

5 Q When did Mr. Snipes become a client of Starr & Company?

6 A The early 1990s.

7 Q And to the best of your knowledge, how did he become a
8 client of Starr & Company?

9 A He had a manager of his career named Barbara Robinson.
10 She was a friend of my closest friend, and requested that we
11 meet with Mr. Snipes. And we did.

12 And I guess he was from the Bronx, I was from the Bronx,
13 actually not in areas too disparate from one another. And got
14 along with him well, liked him, so we determined that we would
15 work together.

16 Q When Mr. Snipes became a client of Starr & Company, what,
17 if any, services did you perform for him?

18 A The services that I stated. What we did is we would put
19 one of the partners, or a regular CPA who worked for us in
20 this case who was a partner, Michael Canter, who basically
21 worked with him.

22 We would take care of his checks, take care of his tax
23 work. And when he did earn some substantial money, helped him
24 with his investing.

25 Q And did that occur while Mr. Snipes was a client for Starr

1 & Company?

2 A Yes, it did.

3 Q Now, you mentioned Mr. Canter handled the account?

4 A That is correct.

5 Q And what is his position within the --

6 A He is a partner of Starr & Company.

7 Q Now, did there come a point in time -- well, let me ask
8 first approximately how long was Mr. Snipes a client of Starr
9 & Company?

10 A I would say probably approximately eight years or so.

11 Q Did there come a point in time when you terminated him as
12 a client?

13 A Yes, there was a point in time we did that.

14 Q And when was that, sir?

15 A That was the latter part of June 2000.

16 Q And can you describe for the ladies and gentlemen of the
17 jury how that came about, what caused the separation of him as
18 a client.

19 A Starting, I would say, probably at the beginning of 2000,
20 we were making various inquiries. Mr. Snipes had made certain
21 transfers of funds overseas, had set up some new entities.
22 And in order to do a tax return, you have to not only
23 determine what someone's salary is, but if they are earning
24 income from other investments.

25 And we inquired, sent a number of letters. Michael sent a

1 whole group of letters, and we were not really getting any
2 answers we could understand.

3 And we finally received a response that I showed to Ron
4 Starr, who was tax person. And Michael received it, and he
5 just didn't understand what it meant. And we were just unable
6 to get information that would enable us to do a tax return.

7 Q As his tax preparers, why would you need that information,
8 sir?

9 A Well, the law requires that each individual file a return
10 each year, if they have income. And we have to include -- the
11 U.S. is one of those countries that includes worldwide income.
12 So if you are a U.S. citizen, it doesn't matter where your
13 money is earned. You have to pay tax on it.

14 Our job was to prepare those returns accurately. And it
15 was impossible. We just didn't have the information.

16 Q As a result of this not being able to get this type of
17 information, did you personally confer with Mr. Snipes and
18 have a conversation with him?

19 A I spoke to Mr. Snipes. And the final conversation we had
20 was around June 28th, when we had about an hour-and-a-half
21 phone conversation, where I explained to him that we needed
22 this type of information.

23 Mr. Snipes said, basically, he wasn't going to supply it;
24 it wasn't needed, in his estimation, to file a return; that he
25 felt he did not have an obligation to file a return. I said

1 that was ridiculous, that everyone has that obligation. He
2 said he had spoken to people who, in essence, said he didn't
3 have to.

4 Prior to that time, both Ron Starr and, I believe, Michael
5 had spoken to some people --

6 MR. BARNES: Objection, Your Honor; hearsay and
7 narrating.

8 THE COURT: I didn't hear the last part after
9 "hearsay." What?

10 MR. BARNES: Narrating, Your Honor.

11 THE COURT: Well, that I am inclined to overrule.
12 However, it does appear as though he were testifying on the
13 basis of what someone else told you in that last response, Mr.
14 Starr.

15 Would that be accurate?

16 THE WITNESS: That would be accurate.

17 THE COURT: Put another question.

18 MR. O'NEILL: Surely, Your Honor.

19 BY MR. O'NEILL:

20 Q Mr. Starr, had you also been having conversations during
21 this period of time prior to this phone conversation on
22 June 28th with Mr. Snipes with other people within the firm,
23 such as Ron Starr and Michael Canter?

24 A Yes, I did.

25 Q And just for the record, is Ronald Starr your son?

1 A Yes, he is.

2 Q And did you learn facts from them, without getting into
3 that in this courtroom?

4 A Yes, I did.

5 Q And did you convey those facts to Mr. Snipes during this
6 conversation?

7 A Yes, I did.

8 Q What, if anything, did you say to Mr. Snipes during this
9 conversation on June 28th of 2000?

10 A That I had gathered that he was being advised that under a
11 section of the tax law -- I believe it was Section 861 he was
12 quoting -- that, essentially, he did not have to pay taxes;
13 that he was being advised that the tax law had never been
14 properly legislated and, therefore, did not apply; and that he
15 did not have an obligation to file his taxes.

16 Q And what was his response to you?

17 A His response was: You always think you are right and you
18 always think you know everything. You are not right about
19 this.

20 Q Based on your experience as a tax attorney with your
21 substantial experience in this field, did you think there was
22 any --

23 MR. BARNES: Objection, Your Honor. It calls for a
24 personal opinion. It also calls for undisclosed expert
25 opinions.

1 MR. O'NEILL: I agree with that, Your Honor, and I
2 move to -- at least on the first part, I will withdraw it.

3 BY MR. O'NEILL:

4 Q Based on what he told you, what, if anything, did you say
5 in response?

6 A I told him the information he was getting from the other
7 people was incorrect; if he didn't believe me, I would suggest
8 that he discuss it with other competent people in the field of
9 taxation; and that I had never heard of anyone not having an
10 obligation to file a tax return and pay their taxes.

11 Q Were you able to convince him at that time that he needed
12 to file his taxes and pay his taxes?

13 A He was adamant about the fact that he did not have that
14 obligation.

15 Q And did the -- was anybody else present for the
16 conversation that you had --

17 A Ron Starr was present for part of it. It was a long
18 conversation, so other people had walked in and out while I
19 was there. Ron Starr had been there probably for maybe a
20 half-hour or so.

21 Q And when you say a long conversation, Mr. Starr,
22 approximately how long was it?

23 A I would think it was probably close to 90 minutes.

24 Q And at the conclusion of that conversation, did you have a
25 meeting of the minds? Or what, if anything, occurred?

1 A I think we agreed to disagree, and I said we would no
2 longer be able to perform services for him, and I was going to
3 send a letter to that aspect the next day.

4 Q And did you, in fact, send that letter?

5 A Yes, I did.

6 Q With the permission of the Court, I would approach you,
7 Mr. Starr, and show you what's been previously marked as
8 Government's Exhibit 69 for purposes of identification only.
9 And I would ask you not to read it yet because it is not in
10 evidence, but I would ask you to look at that.

11 A That is the letter I sent.

12 Q And is that a document that I showed you this morning in
13 preparation for your testimony?

14 A Yes, it is.

15 Q And is it kept in the normal course of business of Starr &
16 Company?

17 A Yes, it is.

18 Q And is it the normal course of Starr & Company to keep
19 such records?

20 A Yes, it is.

21 Q And was it made at or about the time the date indicated on
22 there?

23 A Yes, it was.

24 MR. O'NEILL: Your Honor, at this time I would move
25 into evidence Government's Exhibit 69.

1 MR. BARNES: Your Honor, we have a Rule 106 request
2 that the following be admitted at the same time: 68-1, 68-2,
3 68-3, 68-4, 68-5, 68-6, 68-7, 68-8, 68-9, 68-10, 68-11, 69 --
4 well, in addition to 69.

5 MR. O'NEILL: Judge, the government is more than
6 happy to put those on through the appropriate witness that
7 will be coming up in due order. They are all on the
8 government's witness list -- exhibit list. Excuse me.

9 THE COURT: Well, on that representation, I am
10 inclined to overrule the objection, if it was stated in the
11 form of an objection, Mr. Barnes. And hearing no other
12 objection to Government's Exhibit 69, I will receive it in
13 evidence.

14 MR. O'NEILL: Thank you, Your Honor. At this time I
15 would ask to publish it to the jury.

16 THE COURT: Very well.

17 BY MR. O'NEILL:

18 Q Mr. Starr, if you would, could you please read that aloud
19 to the jury. It is a little difficult to see this up on the
20 screen.

21 A "Dear Wesley: As per our discussion of June 28, 2000, we
22 have agreed on the following procedures.

23 "One, you will hire an accountant or tax attorney to
24 prepare your 1999 tax returns for your various entities and
25 your individual return. You mentioned the possibility of

1 using Ray P. Pope.

2 "We will continue to monitor the investments which we have
3 advised you on; namely, Blackstone and Goldman Sachs.

4 "Three, we will assist you in obtaining a bookkeeper to be
5 located in your New York office, who will prepare all of your
6 checks and make all deposits for you for your various
7 entities.

8 "We will, of course, work with all of these individuals to
9 make as smooth a transition as possible to ensure that your
10 work is continued uninterrupted.

11 "Let me reiterate that I consider you to be an astute
12 individual in both your personal and business life. To the
13 extent you need our help, we will be available for you.
14 However, as I stated, the positions you are taking in both
15 your tax planning and investments are contrary to our advice.
16 Therefore, I do not believe we can effectively help you.

17 "I consider you a close friend and hope the course you
18 have chosen proves to be valid and effective. Best regards,
19 Ken."

20 Q Thank you, sir. Now, up until this point in time when you
21 had terminated Mr. Snipes as a client, had you had any
22 quarrels, disagreements with Mr. Snipes?

23 A Not at all.

24 Q Subsequent to this time, were there any quarrels or
25 squabbles with Mr. Snipes?

1 A Well, I know he had some words with Mr. Canter when
2 Mr. Snipes, when he first received this, basically wasn't
3 giving us anyplace to send the records, and, in essence,
4 wanted us virtually to continue to do the work.

5 We could not do that. I had Mr. Canter send several
6 follow-up letters, basically informing him of the due dates of
7 these returns, and reiterating the fact that those returns had
8 to be filed.

9 And eventually he gave us a place -- I believe it was his
10 New York office -- that his records were sent to.

11 Q And why would it be that Starr & Company would have had
12 records of Mr. Snipes at that time?

13 A Well, one of the requirements in being a CPA in New York
14 State Society is that you maintain the records of your client
15 and the work you have done and you, you know, hold onto them
16 until such time as someone else has taken over the account.
17 You are supposed to maintain an orderly transition, which is
18 what we were trying to do.

19 MR. O'NEILL: Thank you, Mr. Starr.

20 I have no further questions, Your Honor.

21 THE COURT: All right. That brings us roughly to
22 the middle of the afternoon, members of the jury. At this
23 natural breaking point in the examination of Mr. Starr as a
24 witness, let's pause and take our afternoon break.

25 (Short recess taken.)

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(Jury absent.)

THE COURT: Thank you. Be seated, please.

I now see the motion that was referred to at our last sidebar discussion, counsel, that was filed earlier today, I believe, by Mr. Snipes, Document 375, which addresses several anticipated government witnesses apparently, including Mr. Starr.

What is this about, Mr. Barnes, the material that's described in the motion with respect to Mr. Starr?

MR. BARNES: Yes, Your Honor. It concerns the grand jury files involving Mr. Pellicano, a grand jury investigation concerning Mr. Starr retaining attorney Burt Fields who retained Anthony Pellicano in a dispute between Mr. Starr and Sylvester Stallone that began around March of 2000, ended up in litigation in 2002.

Ultimately it was found out that Mr. Starr's attorney had hired an investigator to do illegal wiretapping on Mr. Stallone raising criminal investigation of Mr. Starr and his attorney, Burt Fields, and the investigator, Anthony Pellicano.

What we're requesting is those grand jury transcripts or any other information that would relate to Mr. Starr having any kind of agreement, or any other kind of agreement, or -- both as impeachment material and also as any

1 kind of bias motivation in favor of the government for his
2 testimony today arising out of that criminal investigation.

3 THE COURT: Mr. O'Neill?

4 MR. O'NEILL: Yes, Your Honor.

5 THE COURT: What do you say to this?

6 MR. O'NEILL: Judge, I've not seen the motion, but
7 what I can say to that is --

8 THE COURT: Say it again.

9 MR. O'NEILL: I have not seen the motion, but what I
10 can say as to Mr. Barnes' representations, there is no Brady,
11 Giglio concerning Mr. Starr. Let me explain why, Judge.

12 Mr. Barnes made an application for this material
13 pretrial. He brought it to Mr. Morris' attention, who had no
14 idea what he was speaking about, never heard of Mr. Pellicano,
15 did not know about this civil lawsuit. Apparently there was a
16 civil lawsuit involving Starr & Company and Sylvester
17 Stallone.

18 An individual was hired by the name of
19 Mr. Pellicano, who is a private investigator. He apparently
20 in that case took it upon himself to do some illegal
21 wiretapping of which he is being prosecuted. That does not
22 implicate Mr. Starr. I asked him -- just this morning, again,
23 we talked about it, and he said he was a witness in that
24 proceeding, interviewed as a witness, not as a target, not as
25 a subject. So there is no Brady, Giglio concerning Mr. Starr.

1 This was information that Mr. Barnes knew about and
2 brought to our attention. In fact, we had no knowledge
3 whatsoever about this.

4 THE COURT: How could this be exculpatory or useful
5 for impeachment of the witness?

6 MR. BARNES: Your Honor, I'll accept attorney
7 O'Neill's representation as to what the facts are. What we
8 were curious about is whether there was -- how that
9 investigation had proceeded, whether it did, in fact,
10 implicate Mr. Starr, and whether any issues arose for either
11 impeachment material or immunity material related thereto.

12 The only other thing I would request is if there was
13 any memorandum of interview or rough note relating to the
14 interview he just spoke of this morning; I believe that would
15 fall under possible Jencks material, Your Honor.

16 THE COURT: Well, only if it was a statement of the
17 witness as distinguished from the notes of counsel,
18 Mr. Barnes.

19 I don't see anything here that would be useful for
20 purposes of impeachment or otherwise within the ambit of Brady
21 or Giglio under Rule 608 of the Federal Rules of Evidence, and
22 it would be collateral impeachment at best, it seems to me.
23 So I'll not require the government to do anything more than it
24 has just done.

25 MR. BARNES: Yes, Your Honor.

1 THE COURT: Seat the jury, please, Marshal.

2 (Jury present.)

3 THE COURT: Thank you. Be seated, please, members
4 of the jury.

5 Mr. Barnes, do you wish to cross-examine?

6 MR. BARNES: Yes, Judge.

7 CROSS-EXAMINATION

8 BY MR. BARNES:

9 Q. Good afternoon, Mr. Starr.

10 A. Good afternoon.

11 Q. Were you issued a subpoena by Mr. Snipes for certain
12 documents to bring with you today?

13 A. I don't believe so. I did receive a subpoena from the
14 government.

15 Q. You have not received any subpoena in this case?

16 A. From the government I did.

17 Q. But not from ours --

18 A. No.

19 Q. -- you did not receive that subpoena?

20 A. Did not.

21 Q. Explain the -- is it the case that the clients you
22 represented -- all the money that came in originally would go
23 through your firm before they would go to the client; is that
24 the case in many instances?

25 A. It varies. In certain cases it goes first to their agent

1 and their agent remits it to us and then we record it.

2 Q. What is a loan-out company?

3 A. A loan-out company is a corporation set up by an
4 individual -- in many cases in the area of the entertainment
5 world, because they could be working for four or five
6 different films; they could be getting residuals -- and they
7 set up a corporation or an LLC, and that entity collects the
8 money. In essence, that would be the person who would sign
9 the contract to make a movie. So if you're making a movie
10 within the United States, that entity would be the entity that
11 would contract for it.

12 Q. Is that commonplace for your actor and actress clients?

13 A. It's commonplace in the industry.

14 Q. Is it also commonplace that many of the celebrity clients
15 that you represent, if they purchase a home, they don't put
16 the home in their own name?

17 A. That also happens. They will put it either in a trust or
18 a corporation in order for them not to have it easily
19 identifiable so that it doesn't draw as much attention from
20 the public.

21 Q. So stalkers don't show up at their door?

22 A. Yeah.

23 Q. One of the things you did was -- so part of what you did
24 was process incoming money on behalf of the clients, correct?

25 A. Correct.

1 Q. Another thing you did was pay the bills of those clients?

2 A. We would draw the checks and send them to the client who
3 would then sign the checks and forward those checks out.

4 Q. Would this often cover the entire scope of what bills they
5 had due; in other words, rent --

6 A. At least the bills we were aware of, yes.

7 Q. And so is -- was there any particular reason for this in
8 terms of actors' careers that --

9 A. It's not just actors; it's family officers of affluent
10 individuals or CEOs. It enables them not to have to worry
11 about the bill-paying process and the collection of their
12 income.

13 Q. Do you also recommend investments to your clients?

14 A. On occasion we do.

15 Q. Is one of those investments Blackstone Investors
16 Partnership?

17 A. Yes, it is.

18 Q. And do you also manage filing the returns for Blackstone
19 Investment Partnership?

20 A. Yes, we do.

21 Q. Does Blackstone Investment Partnership -- Investors
22 Partnership invest moneys in various foreign countries,
23 foreign entities and foreign trusts?

24 A. No, it does not.

25 Q. Does not?

1 A. It invests basically in -- well, actually, it probably
2 could invest in a foreign company, but it does -- it has one
3 major investment. That major investment is made with a group
4 called Blackstone.

5 Q. Oh. Blackstone. Does Blackstone invest or have monies
6 placed in --

7 A. Blackstone has invested overseas, yes.

8 Q. Overseas. Including foreign entities and foreign trusts?

9 A. I've never known them to do a foreign trust, but they can
10 do a foreign entity.

11 Q. Okay.

12 A. Foreign corporation.

13 Q. Was it routine when you were filing returns on behalf of
14 Mr. Snipes between 1993 and 1998 that you would request
15 extensions until October for filing those returns?

16 A. Yes, it was.

17 Q. Is that because the nature of the documentation requires
18 extra time for you to prepare?

19 A. Also because the information we have to get as -- in
20 certain cases is not ready until later in the year.

21 Q. Okay. And that's not something within the client's
22 control; that depends on third-party information?

23 A. That depends on third-party information.

24 Q. You filed the returns for Mr. Snipes, or your firm did,
25 for 1997, 1998, correct?

1 A. To the best of my knowledge, yes, Mr. Canter would prepare
2 that.

3 Q. And all tax was paid that was required under those
4 returns?

5 A. To the best of my knowledge, yes.

6 Q. Was one of your clients Sylvester Stallone?

7 A. Yes, it was.

8 Q. Beginning in March of 2000 and then culminating in
9 litigation, did a dispute arise between you and Sylvester
10 Stallone concerning management of his money?

11 A. Not in March of 2000.

12 MR. O'NEILL: Objection, Your Honor.

13 THE WITNESS: No. That's incorrect.

14 BY MR. BARNES:

15 Q. Were you aware that --

16 MR. O'NEILL: Objection to relevancy, Your Honor.

17 MR. BARNES: I'll go back to the foundation, Your
18 Honor. I'll ask the question again.

19 BY MR. BARNES:

20 Q. Were you aware of the friendship between Sylvester
21 Stallone and Mr. Snipes?

22 A. Yes, I was.

23 Q. When did the problems with Mr. Stallone begin?

24 A. Probably 2001.

25 Q. Ultimately did it result in litigation?

1 A. Ultimately it resulted in litigation.

2 Q. And he filed suit against you?

3 A. Yes, he did.

4 Q. What did he allege in the suit?

5 A. He alleged --

6 MR. O'NEILL: Objection to relevancy, Your Honor.

7 THE COURT: Sustained.

8 BY MR. BARNES:

9 Q. Did any issues arise -- well, does the name Anthony
10 Pellicano ring a bell?

11 A. Yes, it does.

12 Q. How so?

13 MR. O'NEILL: Objection to the relevancy,
14 Your Honor.

15 MR. BARNES: This was public information during the
16 period of time of which Mr. Snipes was making various
17 decisions.

18 THE COURT: Well, that doesn't demonstrate its
19 relevancy, at least to me, Mr. Barnes. I'll sustain that
20 objection.

21 BY MR. BARNES:

22 Q. Were you aware that Mr. Snipes had concerns over a
23 \$2 million note involving Chase Manhattan Bank?

24 A. Yes, I was.

25 MR. O'NEILL: If we could have a time frame on that

1 question, Your Honor?

2 THE COURT: Only ask one question at a time. Lay
3 your predicate, Mr. Barnes. Go ahead.

4 BY MR. BARNES:

5 Q. Did these concerns commence around early 2000?

6 A. Actually, I believe it was subsequent to him leaving us.
7 I don't know the exact time frame.

8 Q. So at some point in 2000 concerns were raised about a
9 \$2 million note with Chase Manhattan?

10 A. I think it was subsequent to that date. I don't know the
11 exact date.

12 Q. And was the concern that Mr. Snipes raised was that
13 someone had done that note without his authorization?

14 A. It wasn't a concern; it was a statement he made. That was
15 not true.

16 Q. That was a statement he made to you that someone had done
17 this at your firm without his authority?

18 A. He did not say my firm, and he never alleged in my firm.

19 Q. Were you aware of the criminal complaint filed in the
20 County of New York against you arising out of that matter?

21 A. There was no criminal complaint filed against me.

22 Q. Are you aware of the request for a criminal complaint by
23 Mr. Snipes to the New York County D.A. requesting an
24 investigation of you?

25 A. There was an inquiry of us that we were asked to come down

1 to explain it to the D.A.

2 Q. And at that time the D.A. explained that Mr. Snipes had
3 raised these concerns?

4 A. He said the concerns were not well-founded. They were, in
5 fact --

6 Q. The question is, did he explain to you what concerns
7 Mr. Snipes had raised concerning you?

8 A. Yes, he did.

9 Q. And those concerns --

10 A. It was not concerning me.

11 Q. Oh. Who was it concerning?

12 A. He said that there was a note signed. He did not know who
13 had signed it, and specifically did not allege it was anyone
14 at our firm or me -- at least us -- and the A.D.A. did not say
15 it was us.

16 Q. So there was a concern with a note, and they did an
17 inquiry as to you as to whether or not you were responsible
18 for signing a note that he did not authorize?

19 A. No. No. Not at all. Not what was said.

20 Q. Are you -- do you know an attorney by the name of Raymond
21 Pope?

22 A. I do not.

23 Q. Are you familiar with issuing letter opinions on legal
24 matters or tax matters for clients?

25 A. We do not do that.

1 Q. What is a letter opinion?

2 A. A letter opinion is --

3 MR. O'NEILL: Objection, Your Honor, beyond the
4 scope.

5 THE WITNESS: Pardon me?

6 MR. O'NEILL: Beyond the scope of direct
7 examination.

8 THE COURT: Well, perhaps but perhaps not. At the
9 moment I'll overrule the objection.

10 THE WITNESS: A letter opinion is normally if
11 there's a certain state of facts that you want a prior -- a
12 private opinion with the IRS. You give the statement of
13 facts; you present it to the IRS, and they will give you an
14 opinion back as to whether or not there is a validity to the
15 stand you're taking.

16 BY MR. BARNES:

17 Q. Okay. But your firm does not provide that service to
18 clients?

19 A. We do not do that.

20 Q. Okay.

21 MR. BARNES: Can we please look at Exhibit Number
22 69?

23 BY MR. BARNES:

24 Q. In the middle -- did I understand correctly that you told
25 Mr. O'Neill -- or told the jury when Mr. O'Neill was asking

1 you questions that you ceased all services for Mr. Snipes as
2 of June 29, 2000?

3 A. That is not at all what I said.

4 Q. Oh. Would you please explain?

5 A. I said that we would continue doing the transitional work,
6 as we said in the letter, because he did not have a
7 bookkeeper. And we were not able to send the records out.

8 So in concert with what the AICPA requires, we continued
9 doing the rudimentary bookkeeping work, making sure that money
10 came in was recorded and that his work was done.

11 Q. Was it just rudimentary bookkeeping work you continued to
12 do?

13 A. I was not directly on the account. You would have to ask
14 the gentleman who was.

15 Q. Well, let's look at the letter. What does category two
16 say?

17 A. "To monitor the investments which we advised you on,
18 namely, Blackstone and Goldman."

19 Q. Correct. So you were -- how much money did Mr. Snipes
20 have invested in your recommended Blackstone investment?

21 A. I don't recall off the top of my head.

22 Q. Did you take an inquiry as to how much it was at the time
23 you wrote the letter?

24 A. We did and, in fact, he ultimately requested that we -- he
25 redeem his interest in Blackstone, which was done.

1 Q. So ultimately he asked for those monies to be withdrawn as
2 well?

3 A. Correct.

4 MR. BARNES: Could you go to the bottom of the
5 letter?

6 THE WITNESS: Right.

7 BY MR. BARNES:

8 Q. You told Mr. Snipes that you hoped "the course you have
9 chosen proves to be valid and effective," correct?

10 A. Uh-huh.

11 Q. Nowhere in this letter did you cite any statutes, cases or
12 regulations that disagreed with the position he told you about
13 on the phone, correct?

14 A. We said it verbally, as did Ron Starr, as did Michael
15 Canter.

16 Q. So verbally you told him exactly which cases there were
17 and which statutes and which regulations?

18 A. That was not our obligation here.

19 Q. So -- and you did not do that?

20 A. What we said was -- he quoted Section 861. We said we
21 looked at it, that there was absolutely no way that anyone
22 could base not filing a return on that, and that we knew of no
23 reason that anyone ever had been able to not file a tax
24 return.

25 Q. But you never put that in writing?

1 A. There was no reason to. We were resigning the account.

2 We don't need a reason to resign the account.

3 Q. And you had never cited to him any particular cases that
4 dealt with the issue?

5 MR. O'NEILL: Objection, asked and answered.

6 THE COURT: No, I'll overrule that objection.

7 THE WITNESS: You would have to ask Ron Starr that
8 question and Michael Canter.

9 BY MR. BARNES:

10 Q. You don't know?

11 A. I was not speaking to his, quote, new tax advisors.

12 Q. You were aware that he had requested that people for your
13 firm speak with the tax advisors to address the legal issues
14 involved?

15 A. And they did, and they found there was no validity to what
16 they were saying.

17 Q. But they never put that in writing and never said --

18 A. They told him it verbally.

19 Q. Never put it in writing?

20 A. They said it verbally.

21 Q. Do you operate on a contingency basis?

22 A. With certain clients we do.

23 Q. And that means that you get a percentage of the amount of
24 money they make?

25 A. In Wesley's case it was 2 percent.

1 MR. BARNES: One moment, Your Honor.

2 (Pause.)

3 BY MR. BARNES:

4 Q. By the way, were you aware that in 1998 Mr. Snipes lost
5 \$750,000 on the tax return prepared by your firm?

6 A. I'm aware there was a loss reported. Mr. Snipes was
7 making documentaries. And those documentaries -- one of which
8 I think was possibly sold -- I'm not --

9 Q. Are you aware of what your investment -- what the rate of
10 return was on your investments for those years that you
11 recommended to him?

12 A. We could get it for you, but I will tell you that on
13 Blackstone and Goldman -- all right? -- they all made money.

14 Q. What was the rate of return?

15 A. He did not lose money on those.

16 Q. You don't know what the rate of return was on those years?

17 A. Not off the top of my head, no.

18 Q. And you didn't bring any of those documents with you today
19 because you --

20 A. We weren't requested.

21 MR. BARNES: No further questions.

22 THE COURT: Mr. Wilson?

23 MR. WILSON: Yes, Judge.

24 CROSS-EXAMINATION

25 BY MR. WILSON:

1 Q. Good afternoon, Mr. Starr.

2 A. Good afternoon.

3 Q. Mr. Starr, you just testified that Mr. Snipes had
4 requested that your firm send tax information to his new tax
5 advisors, is that right?

6 A. No. I said that he requested that his files be sent, I
7 believe, to his New York office, which is where they were
8 sent.

9 Q. Okay. So you -- he asked that they be sent to his,
10 Mr. Snipes', New York office, not his new tax advisors?

11 A. Not to the best of my knowledge.

12 Q. Okay. Thank you very much.

13 MR. WILSON: That's all I have, Judge.

14 THE COURT: Mr. O'Neill?

15 REDIRECT EXAMINATION

16 BY MR. O'NEILL:

17 Q. Mr. Starr, Mr. Barnes asked you about loan-out companies
18 and your familiarity. Did Mr. Snipes have a loan-out company?

19 A. Yes, he did.

20 Q. And what was that?

21 A. I believe it was Amen RA.

22 Q. Now, Mr. Barnes asked you questions about Blackstone. Do
23 you recall that?

24 A. Yes, I do.

25 Q. And can you briefly describe what Blackstone is to the

1 ladies and gentlemen of the jury?

2 A. Blackstone is the number one private equity firm in the
3 world. They manage somewhere in the vicinity at this stage of
4 approximately a hundred twenty to a hundred and thirty billion
5 dollars. They have had the best success record of any private
6 equity firm with their typical investment returning ultimately
7 somewhere in the vicinity between 25 and 35 percent a year.

8 Q. Any way to guess what Mister -- not guess, I shouldn't
9 say -- estimate Mr. Snipes' percentage within Blackstone?

10 A. There really -- you mean as far as what --

11 Q. His investment.

12 A. What portion of it was?

13 Q. Yes.

14 A. My guess is that fund was probably about a six and a half
15 billion dollar fund. He probably had about a million dollars
16 in it. So probably one-sixteenth of one percent, something
17 very small.

18 Q. Mr. Barnes -- excuse me, Mr. Starr.

19 Mr. Barnes asked you about a percentage that Starr &
20 Company would get to manage a certain person, and you
21 mentioned in Mr. Snipes' case it was 2 percent.

22 A. Correct.

23 Q. For what did you earn this 2 percent? What did you charge
24 that for?

25 A. That was inclusive of every service, from doing his checks

1 to filing his tax returns for -- as an example, Mr. Snipes was
2 talking about investing in an Internet company. We had that
3 meeting. Anything he would wish us to look at, we would look
4 at and take care of.

5 If he decided to buy a piece of real estate -- and if I
6 may explain, the \$2 million Mr. Barnes alluded to, Mr. Snipes
7 in 1995 took out a loan for \$2 million under an entity called
8 Pyramid House, which he controlled 100 percent. That
9 \$2 million then went to buy Mr. Snipes' personal residence in
10 Marina Del Rey. That's where that money went.

11 He subsequently signed with the bank several renewal notes
12 for that loan and ultimately also paid off part of the loan,
13 sent a letter to the bank promising -- after not paying
14 interest, promising to pay the balance --

15 MR. BARNES: Objection, Your Honor. All of this is
16 beyond his personal knowledge. He earlier admitted he didn't
17 know what the allegations were, didn't know what --

18 THE COURT: Well, I'm inclined to sustain the
19 objection at this point.

20 Put another question, Mr. O'Neill.

21 MR. O'NEILL: Yes, Your Honor.

22 BY MR. O'NEILL:

23 Q. I was going to move to the house, Mr. Starr. What year
24 was this house purchased by Mr. Snipes?

25 A. 1995.

1 Q. And what year did he make allegations that somehow fraud
2 was involved in the purchase of this house?

3 A. I think it was, like, 2002, 2003.

4 Q. And as a result of that, did you, in fact, go and speak to
5 the New York County District Attorney's Office?

6 A. I did.

7 Q. And at any point were you told that you were involved in
8 some sort of activity that was fraudulent?

9 A. Never.

10 MR. O'NEILL: Nothing further, Your Honor.

11 RECROSS EXAMINATION

12 BY MR. BARNES:

13 Q. One of the other investments you recommended was Planet
14 Hollywood, right?

15 MR. O'NEILL: Objection, beyond the scope.

16 MR. BARNES: It's one of the investments he
17 recommended to Mr. Snipes. He referred to the Black --

18 THE COURT: Overruled. Go ahead.

19 THE WITNESS: That is not true.

20 BY MR. BARNES:

21 Q. You did not recommend investments in Planet Hollywood to
22 any of your clients?

23 A. You asked in the case of Mr. Snipes. The answer is, I did
24 not.

25 Q. So if the tax returns show Mr. Snipes' investments in

1 Planet Hollywood, that had nothing to do with you?

2 A. Mr. Snipes was recruited by Robert Earle to be one of the
3 participants in Planet Hollywood --

4 Q. And it was Robert Earle --

5 A. -- and was given --

6 Q. Were there people on the --

7 MR. O'NEILL: Objection.

8 THE COURT: Sustained. Permit him to complete his
9 answer, Mr. Barnes.

10 THE WITNESS: And Mr. Snipes was, to the best of my
11 recollection, given a portion of Planet Hollywood. And the
12 amount of money involved, I believe, was relatively small. I
13 think it was something like \$50,000.

14 BY MR. BARNES:

15 Q. Did Planet Hollywood stock ultimately collapse?

16 MR. O'NEILL: Objection to the relevance,
17 Your Honor.

18 THE COURT: No, I'll overrule that objection.

19 THE WITNESS: Planet Hollywood ultimately went
20 bankrupt.

21 BY MR. BARNES:

22 Q. And was that the basis for the suit of Mr. Stallone
23 against you?

24 A. No, it was not.

25 Q. Was that issue mentioned in the lawsuit against you?

1 A. Yes, it was.

2 MR. BARNES: No further questions.

3 THE COURT: Mr. Wilson, do you have any recross?

4 MR. WILSON: No, Your Honor.

5 THE COURT: Thank you, Mr. Starr. You may step
6 down, sir.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Next witness.

9 MR. O'NEILL: Your Honor, the government calls
10 Ron Starr.

11 *** RONALD MICHAEL STARR was sworn by the Deputy Clerk ***

12 THE DEPUTY CLERK: Please have a seat.

13 Please state your full name, and spell your last
14 name for the record.

15 THE WITNESS: Ronald Michael Starr, S-T-A-R-R.

16 MR. O'NEILL: May I inquire, Your Honor?

17 THE COURT: You may.

18 RONALD MICHAEL STARR,

19 being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. O'NEILL:

22 Q. Mr. Starr, I'm going to ask you a series of questions.

23 I'd ask you to speak in a loud voice so everyone can hear you.

24 And if there's something that I say that you don't understand,

25 please ask me to repeat it.

1 A. Okay.

2 Q. Sir, where are you from?

3 A. New York City.

4 Q. How long have you lived in New York City?

5 A. Since 1991, so 16, 17 years.

6 Q. And, Mr. Starr, could you please relate to the ladies and
7 gentlemen of the jury your educational background?

8 A. I went to high school on Long Island. I went to
9 undergraduate school at Tufts University where I got a degree
10 in economics and in drama. And I went to NYU School of Law
11 where I got a J.D. And I fell a couple of credit shorts from
12 getting my LLM in taxation as I was going part-time during
13 work, and work hours were just a little too much.

14 Q. After graduating from law school, where did you go to
15 work?

16 A. I went to work at Proskauer Rose, which is a law firm in
17 New York City, for two years. And then I went to work with my
18 father at Starr & Company.

19 Q. And what year did you go to work at Starr & Company?

20 A. 1996.

21 Q. Now, are you familiar with an individual by the name of
22 Wesley Snipes?

23 A. Yes, I am.

24 Q. And do you see him in the courtroom today?

25 A. Yes, I do.

1 Q. When you became work -- began work at Starr & Company, was
2 he already a client?

3 A. Yes, he was.

4 Q. Now, when you went to work at Starr & Company, what, if
5 anything, did you do there?

6 A. When I first came there, I was given the title of tax
7 manager due to my background in tax law. We did basically tax
8 planning, tax compliance, which is the preparation of income
9 tax returns, gift tax returns, estate tax returns.

10 And I also did some of the business management work that
11 we do at Starr & Company, helping clients pay their bills,
12 assisting them in getting mortgages if they are buying a
13 house.

14 We also did some investment advisory work where, if they
15 were looking for investments, we would introduce them to
16 various investment managers.

17 Q. Now, did Starr & Company provide services other than tax
18 services to clients?

19 A. Sure. We do business management, which paying the bills
20 kind of falls under. I have had clients who have asked us to
21 help them find household staff. I had one client who would
22 call me -- the fire alarm went off in her apartment; the fire
23 department came. She didn't know what to do, so she called
24 us.

25 A lot of the time we just -- for our clients we try to

1 provide whatever services they are going to need, and we're
2 generally the phone call they make if they don't know who to
3 call.

4 Q. But is it fair to say generally what you do is tax --

5 A. I do mostly tax; that's correct.

6 Q. Now, is it fair to say that Mr. Snipes was a client of
7 Starr & Company?

8 A. Yes.

9 Q. And what type of services did Starr & Company provide for
10 Mr. Snipes?

11 A. They assisted him in his bill paying. We did his tax
12 returns, both corporate and individual. And to some extent,
13 if he was buying or selling a property, we would help him out
14 by introducing him to the banks, assisting with the mortgage
15 applications. We worked hand in hand with his attorneys on
16 various transactions, that kind of thing.

17 Q. Do you remember any of his attorneys?

18 A. I believe Barry Hirsch was one of his attorneys, his
19 entertainment lawyer; and Joe Denofrio was with that firm and
20 he helped him with real estate transactions. Those are the
21 only two that I knew of.

22 Q. And where is that firm based?

23 A. Los Angeles.

24 Q. Now, Mr. Starr, who primarily worked on Mr. Snipes'
25 account while he was a client at Starr & Company?

1 A. Michael Canter.

2 Q. Was he working on that account even before you got to the
3 firm?

4 A. I believe so, yes.

5 Q. Did there come a point in time when Starr & Company began
6 experiencing problems or issues in handling the account of
7 Wesley Snipes?

8 A. Yes. Around the 1999, 2000 time.

9 Q. And can you explain for the ladies and gentlemen of the
10 jury what happened?

11 A. Well, essentially while we were trying to gather the
12 information to prepare his return for 1999, he had entered
13 into some kind of a transaction where he, with the help of
14 some other people, had put together some sort of a trust
15 company. We tried to get some more information on that. He
16 had been making some transfers -- wire transfers that we
17 didn't really know what the purpose was, what the destination
18 of the wires were.

19 And when we tried to get some additional information to be
20 able to prepare the return, a lot of the information that we
21 got wasn't really helpful, and a lot of time it wasn't
22 forthcoming. We had to send several letters asking for
23 information. And sometimes the letter, when he eventually did
24 write back, didn't really have a great deal of helpful
25 information to prepare the returns.

1 Q. Were you working with anybody within the company on
2 Mr. Snipes' account at this time? Were you personally
3 involved in these issues?

4 A. Well, Michael Canter was having a lot of problems with
5 this. So then he came to me, and at one point Michael said
6 that Mr. Snipes had asked him --

7 MR. BARNES: Objection, Your Honor, hearsay.

8 THE COURT: Sustained.

9 THE WITNESS: At one point Michael --

10 BY MR. O'NEILL:

11 Q. No.

12 A. Okay.

13 Q. Mr. Starr, you cannot tell us what Mr. Canter said.

14 A. Okay.

15 Q. But as a result, did you have a conversation with
16 Mr. Canter?

17 A. I did. And as a result of that conversation, Michael
18 Canter and I telephoned someone we believed to be either Eddie
19 Kahn or Eddie Con (phonetic) -- I don't know exactly how to
20 pronounce it --

21 Q. Okay. Let me stop you for a second. When did that
22 conversation occur?

23 A. I believe that conversation was around March of 2000. I
24 couldn't tell you -- I just don't recall the exact date.

25 Q. Okay. But approximately March of 2000?

1 A. I believe so.

2 Q. And how was it -- did you call this Mr. Kahn, or did he
3 call you?

4 A. We called him.

5 Q. And do you know where he was located in this telephone
6 conversation?

7 A. I don't recall where he was located. I believe it was
8 Florida, but I couldn't be 100 percent certain.

9 Q. And when you had this conversation, were you on the
10 telephone speaking with Mr. Kahn?

11 A. Yes, I was.

12 Q. What, if anything, was said?

13 A. Well, we called Mr. Kahn because we were under the
14 impression that there was some position that Mr. Kahn was
15 espousing that individuals didn't have to pay income taxes.
16 And that was fairly new news to me. So we decided to call him
17 and ask him to give us more information on this theory why he
18 believed that income taxes didn't have to be paid, why
19 withholding didn't have to be done on employees, and to see if
20 there was any legitimacy to this claim because, like I said, I
21 didn't learn about it in tax -- in my tax classes in law
22 school. I didn't learn about it in Proskauer, and I hadn't
23 heard about it at Starr & Company.

24 Q. Now, you spoke, then, to Mr. Kahn?

25 A. Yes.

1 Q. And did he explain this position to you?

2 A. Yes, he did.

3 Q. What, if anything, did he say?

4 A. He said that the Internal Revenue Code wasn't, in fact,
5 law. And then he also said, notwithstanding the fact that
6 it's not law, there was a code provision in the Internal
7 Revenue Code, IRC Section 861, which defined what income was
8 U.S. source income and would be taxable and that most
9 remuneration is not taxable under that code section.

10 Q. So wages earned in the United States --

11 A. He was saying --

12 Q. -- were not taxable?

13 A. He was saying would not be taxable; that is correct.

14 Q. Did you ask him for any authority to support his position?

15 A. I did. And as a result, he sent us a fax that had
16 basically an introduction to the Internal Revenue Code,
17 basically saying this is a restatement of the laws. And he
18 also sent us a copy of Section 861 and the regulations under
19 Section 861, which we have in our library as well.

20 Q. And did you review that position?

21 A. Yes, I did.

22 Q. Did it make sense to you?

23 A. No, it did not.

24 Q. Did you see any basis in law or in fact as to --

25 MR. BARNES: Objection, Your Honor. That calls for

1 personal opinion, also expert opinion outside -- without prior
2 notice.

3 THE COURT: I'm inclined to overrule that objection
4 given his testimony concerning his relationship with his firm
5 and his firm with Mr. Snipes at the time.

6 You may answer the question. Do you remember the
7 question, Mr. Starr?

8 THE WITNESS: Yes. Upon researching the code
9 section, the -- the argument did not seem to hold any -- make
10 any sense or hold any water, in my opinion.

11 BY MR. O'NEILL:

12 Q. As a result of that, what, if anything, did you do?

13 A. After this conversation, after my additional research, I
14 went and spoke with my father, Ken Starr, and I told him that
15 this is not a position that we would be able to take; there's
16 no -- there's no merit in it. The Code Section 861 basically
17 is applicable to non-resident, non-U.S. citizens to see what
18 income they would be taxed on.

19 So, for example, someone that lived and was a citizen of
20 Italy, what U.S. income -- what -- what income they may have
21 that would be taxable in the United States and they'd have to
22 pay taxes. It had no bearing at all on a resident or a
23 citizen of the United States.

24 So I said to him it -- we have an issue if -- if
25 Mr. Snipes insists on taking this position, because this is

1 not something that we can do.

2 Q. Now, to your knowledge, did your father convey this
3 information to Mr. Snipes?

4 A. Yes, he did.

5 Q. And how do you know that?

6 A. He was on a telephone call with Mr. Snipes, and I was in
7 his office for the last 20 or 30 minutes of that phone call.

8 Q. And when did this conversation take place?

9 A. Sometime in -- I think it was towards the end of June of
10 2000.

11 Q. And what did you hear your father -- well, let me withdraw
12 that. That would be hearsay.

13 But you were present when your father was making a
14 telephone call -- conversation with Wesley Snipes?

15 A. That is correct.

16 Q. Shortly thereafter, was Mr. Snipes terminated as a client
17 of Starr & Company?

18 A. The very next day.

19 Q. Now, did you have a number of records at that time in the
20 possession of Starr & Company that belonged to Mr. Snipes?

21 A. Yes, we did.

22 Q. Mr. Starr, with the permission of the Court, I would bring
23 to your attention several documents beginning with
24 Government's Exhibit 65-1, which are Bates stamp numbers
25 WS-02150 through 03056.

1 Mr. Starr, I would ask you to look through these
2 documents.

3 (Pause.)

4 A. Should I look through them all?

5 Q. Yes, sir.

6 (Pause.)

7 A. I'm sorry, there's just a lot of documents.

8 Q. Yes, there are.

9 (Pause.)

10 THE COURT: Mr. O'Neill, what exhibit, or exhibits,
11 have you handed Mr. Starr?

12 MR. O'NEILL: Your Honor, 65-1.

13 THE COURT: Thank you.

14 MR. WILSON: Your Honor, I'm sorry. I didn't get
15 the Bates code ranges on those.

16 MR. O'NEILL: That would be WS-02150 through 03056.

17 MR. WILSON: Thank you, sir.

18 BY MR. O'NEILL:

19 Q. Mr. Starr, did you have an opportunity to look through
20 these?

21 A. Yes.

22 Q. Okay. Are these records that are kept in the ordinary
23 course of Starr & Company's business?

24 A. Yes.

25 Q. And is it the ordinary course of Starr & Company's

1 business to keep such records?

2 A. Yes, it is.

3 Q. And are the matters contained therein generated at or
4 about the time of the dates indicated on those documents?

5 A. Yes.

6 MR. O'NEILL: Your Honor, at this time I would move
7 into evidence Government's Exhibit 65-1.

8 MR. BARNES: No objection, Your Honor.

9 THE COURT: Hold that exhibit up so that I might see
10 it a moment, Mr. Starr.

11 THE WITNESS: You want to see them all?

12 THE COURT: Pardon?

13 THE WITNESS: You want to flip through them?

14 THE COURT: No. No. No. That's fine.

15 Counsel, if there's any way to reduce the volume and
16 burden of this record for the jury and for the Court, I'm sure
17 we're all in favor of it.

18 MR. O'NEILL: Yes, Your Honor.

19 THE COURT: I'm inclined to reserve ruling on this
20 exhibit, Mr. O'Neill. There's been no objection.

21 I think you obviously would be entitled to have the
22 witness describe it generically or specifically if there are
23 particular documents that you believe to be of precise
24 relevance, and the defense has the same opportunity.
25 Otherwise, I don't see the need for introducing such an

1 exhibit.

2 And let the record show that the exhibit being
3 discussed weighs ten pounds, by my guess, and is about nine
4 inches thick. Is that fair, Mr. Starr?

5 THE WITNESS: I would say that's a conservative
6 estimate, but, yes.

7 MR. O'NEILL: Your Honor, the only purpose of that
8 is the final review by the revenue agent to ensure all
9 records. If I could ask a couple of questions, that would
10 possibly --

11 THE COURT: Well, under 1001 it would not
12 necessarily have to be received in evidence --

13 MR. O'NEILL: That's correct.

14 THE COURT: -- for that purpose anyway,
15 Mr. O'Neill --

16 MR. O'NEILL: That's correct.

17 THE COURT: -- as long as it's available.

18 MR. O'NEILL: Yes, Your Honor. That is true.

19 THE COURT: So it's been offered. And there's no
20 objection, but I'm reserving ruling on Government Exhibit
21 65-1.

22 Why don't you proceed with your examination.

23 MR. O'NEILL: Yes, I will, Your Honor.

24 BY MR. O'NEILL:

25 Q. Mr. Starr, just in a nutshell, would you be able to

1 describe what that series of documents were?

2 A. Sure. The green binder were invoices from Starr & Company
3 for fees that were due from Mr. Snipes to Starr & Company as a
4 result of income that he earned, as well as a charge-back of
5 expenses that were incurred on his account, such as Federal
6 Express, computer charges, et cetera.

7 The rest of the documents appeared to be tax returns for
8 some of his various corporations, perhaps personal returns and
9 the work papers that went into that, including general ledgers
10 which set forth the cash disbursements and receipts for the
11 various entities.

12 Q. And previously you had mentioned Starr & Company had
13 retained a number of records in anticipation of doing the tax
14 returns. Are these some of those records?

15 A. Yes, they are.

16 Q. When he was terminated as a client, what -- approximately
17 when was that, again?

18 A. That was, I believe, the end of June of 2000.

19 Q. Would that have been in the middle of a tax year?

20 A. Yes. It -- in June of 2000 we would have been preparing
21 the 1999 returns that had been placed on extension, either
22 corporate and individual.

23 Q. And did Starr & Company complete a 1999 tax return for
24 Mr. Snipes?

25 A. We did not.

1 Q. At this time I would show you what has been marked as
2 Government's Exhibit 65-2 for purposes of identification only,
3 which would be Bates stamp numbers WS-03057 through 03106.

4 A. Okay.

5 Q. And I would ask you, do you recognize that, sir?

6 A. Yes, I do.

7 Q. And is that records that are kept in the normal course of
8 Starr & Company's business?

9 A. Yes, they are.

10 Q. And is it Starr & Company's business to keep such records?

11 A. Yes, it is.

12 Q. And were those records made at or about the time of the
13 dates indicated thereon?

14 A. Yes.

15 MR. O'NEILL: At this time I would move into
16 evidence, Your Honor, Government's Exhibit -- which one is it?

17 MR. MORRIS: 65-2.

18 MR. O'NEILL: -- 65-2. Thank you.

19 THE COURT: Any objection, Mr. Barnes?

20 MR. BARNES: No objection, Your Honor.

21 THE COURT: It's received.

22 BY MR. O'NEILL:

23 Q. Mr. Starr, I would ask you to refer to that document for a
24 second.

25 A. Okay.

1 Q. Now, what is the date of that letter?

2 A. The date of the letter is September 27, 2000.

3 Q. So is that after Mr. Snipes has been terminated as a
4 client?

5 A. That is correct.

6 Q. And who is the letter directed to?

7 A. Sandra Farrier.

8 Q. Do you know who that is?

9 A. I believe that was an employee of Mr. Snipes' company.

10 Q. And can you just read what that front of the letter says?

11 A. Sure. It's from Michael Canter, and it says, "Enclosed
12 are the following returns: Amen RA Films, Inc., 1998; Pyramid
13 House, Inc., 1999; 296 Washington Avenue Housing Corp., 1999;
14 HRMAKIS, Inc., H-R-M-A-K-I-S, 1999; Harmony Peace Productions,
15 Inc., 1999; Nile Delta Productions, Inc., 1999; Black Dot
16 Media, 1999."

17 Q. So what was Starr & Company doing with that letter?

18 A. We were sending over tax returns that had been prepared to
19 Wesley Snipes' employee, Sandra Farrier.

20 Q. And other than returning documents to Mr. Snipes, did you
21 conduct any more business with Mr. Snipes during that period
22 of time?

23 A. I do not believe so.

24 MR. O'NEILL: Nothing further, Your Honor.

25 THE COURT: Mr. Barnes?

1 MR. BARNES: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BARNES:

4 Q. Do you remember someone by the name of attorney Raymond
5 Pope?

6 A. I recognize the name. I never actually spoke with a
7 Mr. Pope.

8 Q. Was that an attorney that you were informed was advising
9 Mr. Snipes in favor of Mr. Kahn's tax position?

10 A. I didn't know he was an attorney, no. I did know the
11 name, and I know that he and I believe it was Mr. Kahn were on
12 a power of attorney to deal with the IRS. But I didn't notice
13 whether or not he was an attorney or a CPA.

14 Q. Okay. And you never issued an opinion letter to
15 Mr. Snipes citing any statutes or cases or regulations as to
16 why their position was incorrect, is that correct?

17 A. I did not.

18 Q. Let me show you what is marked as Government Exhibit 68-5.

19 A. Okay.

20 Q. Are you familiar with that document?

21 A. I have seen this letter before, yes.

22 Q. Is that a letter from Mr. Snipes to your firm of June 22,
23 2000?

24 A. Yes, it is.

25 Q. And in that letter does he refer to the status of various

1 trust entities and offshore entities?

2 A. Yes.

3 Q. I'm going to show you what is marked as Government Exhibit
4 68-4. Was that an attachment that he sent with that letter?

5 A. I don't know if it was an attachment with the letter, but
6 I have seen this document. He did send it.

7 Q. And that was the document detailing the nature of the
8 Swiss trust that he had sold various assets to in 1999?

9 A. Yes.

10 MR. BARNES: One moment, Your Honor.

11 (Pause.)

12 MR. BARNES: No further questions, Your Honor.

13 THE COURT: Mr. Wilson, any questions?

14 MR. WILSON: No, Judge, no questions.

15 THE COURT: Any redirect?

16 MR. O'NEILL: No, sir.

17 THE COURT: Thank you, Mr. Starr. You may step
18 down.

19 THE WITNESS: Thank you.

20 MR. O'NEILL: The United States would call Michael
21 Canter, Your Honor.

22 *** MICHAEL CANTER was sworn by the Deputy Clerk ***

23 THE DEPUTY CLERK: Please have a seat.

24 Please state your full name, and spell your last
25 name for the record.

1 THE WITNESS: Michael Canter; last name is
2 C-A-N-T-E-R.

3 MR. O'NEILL: May I inquire, Your Honor?

4 THE COURT: You may.

5 MICHAEL CANTER,
6 being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. O'NEILL:

9 Q. Mr. Canter, I'm going to ask you a series of questions.
10 Please speak loudly so everyone can hear you, and speak into
11 the microphone.

12 A. Okay.

13 Q. Sir, what is your current occupation?

14 A. I'm an accountant.

15 Q. How long have you been an accountant?

16 A. I've been -- over 15 years.

17 Q. Are you also a CPA?

18 A. Yes.

19 Q. How long have you been a CPA?

20 A. Over 15 years.

21 Q. And what does a "CPA" mean as opposed to just an
22 accountant?

23 A. CPA is a certified accountant.

24 Q. And what does that entail?

25 A. You have to take an exam.

1 Q. And what year did you become a CPA?

2 A. In 1990.

3 Q. Can you give us a brief recitation of your educational
4 background, sir?

5 A. I went to CUNY, which is the City University of New York.
6 I have a bachelor's in accounting.

7 Q. Are you currently employed?

8 A. Yes.

9 Q. By whom are you employed?

10 A. Starr & Company.

11 Q. How long have you worked for Starr & Company?

12 A. Over 15 years.

13 Q. Was that your first accounting job?

14 A. No.

15 Q. Had you had others?

16 A. I worked for a regional firm before that.

17 Q. For how many years?

18 A. A year or two.

19 Q. Now, what type of business is Starr & Company, briefly?

20 A. We're an accounting, business management firm.

21 Q. And within the firm what are your duties and
22 responsibilities?

23 A. Overseeing clients and client relationships.

24 Q. Now, was one of your clients Wesley Snipes?

25 A. Yes.

1 Q. And for what period of time was Wesley Snipes a client of
2 yours?

3 A. I think it started at about 1992 until somewhere around
4 2000.

5 Q. What type of work did you do for Mr. Snipes?

6 A. We started off just doing tax preparation work and
7 gradually did full business management services.

8 Q. When you say "full business management services," what
9 does that imply?

10 A. That includes bookkeeping, bill paying, day-to-day
11 operations, cash flow and investments.

12 Q. Now, did you prepare tax returns for Mr. Snipes?

13 A. Yes.

14 Q. On behalf of Starr & Company?

15 A. Yes.

16 Q. And do you recall what years you did that?

17 A. 1992 to 1998, I think.

18 MR. O'NEILL: Let me ask that we publish
19 Government's Exhibit 39-1, which is already in evidence.

20 BY MR. O'NEILL:

21 Q. And you might have a little hard time seeing this,
22 Mr. Canter, as the jury does, but the lights are going to come
23 down and be dimmed in a second.

24 MR. O'NEILL: And this is the 1993, for the record,
25 1040 individual income tax return for Wesley Snipes.

1 Would you turn to the second page, please?

2 BY MR. O'NEILL:

3 Q. And I ask you -- there appear to be two names in signature
4 on that second page of the return. The first one for the --
5 for the payer, the person who has to pay on the tax return --
6 do you see a name there?

7 A. The first name?

8 Q. Yes.

9 A. Yes.

10 Q. And whose name is that?

11 A. The first signer says Wesley Snipes.

12 Q. And you recognize his signature?

13 A. It looks like his signature, yes.

14 Q. And below that there's another signature. Do you
15 recognize that signature?

16 A. Yes. That's mine.

17 Q. Okay. Does it say "CPA" next to it?

18 A. Yes.

19 Q. And what is below that? Is that the company?

20 A. Yes.

21 Q. And what is the purpose of putting your name and the
22 company's name on that return?

23 A. I don't understand.

24 Q. Why do you put your name on a tax return?

25 A. It says "preparer's signature."

1 Q. And does the IRS require that?

2 A. Yes.

3 Q. And so did you fill out this tax return and prepare this
4 one in 1993?

5 A. Yes.

6 Q. And did you similarly do it for the ensuing years up until
7 1998?

8 A. Yes.

9 Q. Specifically I'd like to show you the 1997 return, if I
10 may.

11 MR. O'NEILL: This is the 1997 tax return. Again,
12 for the record, the jury is looking at a 1040, United States
13 individual income tax return for Wesley Snipes.

14 And if we could turn to the second page, please?

15 BY MR. O'NEILL:

16 Q. Again, it bears two signatures, Mr. Canter. Do you
17 recognize the first signature?

18 A. Yes.

19 Q. And who is that?

20 A. It says "Wesley Snipes."

21 Q. And do you recognize the second signature?

22 A. Yes.

23 Q. And what is that?

24 A. That's mine.

25 Q. And did you sign that return?

1 A. Yes.

2 Q. And did you prepare that return for Mr. Snipes for 1997?

3 A. Yes.

4 Q. Now, Mr. Canter, I would like to show you -- Mr. Canter, I
5 also want to show you right above the page -- right above the
6 signature on the second page --

7 MR. O'NEILL: If we could zoom in on the standard
8 jurat that is there?

9 BY MR. O'NEILL:

10 Q. Are you familiar with that provision that states that the
11 information contained in here is under penalties of perjury?

12 A. Yes.

13 Q. And does that apply to the preparer as well?

14 A. I believe so, yes.

15 Q. So when you signed this, you're aware that you have to do
16 this to the best of your ability and knowledge?

17 A. Yes.

18 Q. Now, let me show you Government's Exhibit 64-2.

19 MR. O'NEILL: And this is an amended, for the
20 record, U.S. individual income tax return for Wesley Snipes
21 for that same year, 1997.

22 THE WITNESS: Uh-huh.

23 BY MR. O'NEILL:

24 Q. And if we can go down to the bottom of the page, it shows
25 two names again. The first one -- do you recognize the first

1 name?

2 A. It says "Wesley Snipes."

3 Q. And do you recognize the second name?

4 A. I don't know that second name.

5 Q. Okay. Just for the record, is it your name?

6 A. It's not my name.

7 Q. Now, also, if I would direct your attention to the
8 standard jurat in this one. Instead of what we just saw, this
9 one says "under no penalties of perjury." Have you ever seen
10 a jurat like that?

11 A. I haven't.

12 Q. And did you have anything to do with the preparation of
13 this 1997 1040X for Mr. Wesley Snipes?

14 A. No.

15 Q. Now, did there come a point in time wherein you were
16 preparing his returns and you started not being able to get
17 information that you needed?

18 A. Yes.

19 Q. And when was that, Mr. Canter?

20 A. That would have been -- I think it was 1999.

21 Q. And can you describe for the ladies and gentlemen of the
22 jury what -- what happened?

23 A. We weren't receiving -- I wasn't getting all the
24 information I needed to prepare his taxes.

25 Q. And what kind of information did you need?

1 A. We needed his -- the records of both income and expenses.

2 Q. And you were having trouble getting that?

3 A. Uh-huh.

4 Q. Now, sir, did you have to file for an extension on

5 Mr. Snipes' 1999 tax return?

6 A. I think so.

7 Q. Let me show you what has been marked as Government's

8 Exhibit 67 for purposes of identification only, and I'd ask

9 you to take a look at that. Do you recognize that?

10 A. Yes.

11 Q. Without referring to it yet because it's not in evidence,

12 is that a record kept by Starr & Company?

13 A. This is kept by Starr & Company, yes.

14 Q. And is it kept in the ordinary course of business --

15 A. Yes.

16 Q. -- by Starr & Company?

17 A. Yes.

18 Q. And does it indicate a date when it was put together or

19 produced by Starr & Company?

20 A. Yes.

21 MR. O'NEILL: Your Honor, at this time I would enter

22 into evidence Document 67.

23 THE COURT: Any objection to this exhibit, counsel?

24 MR. BARNES: No objection, Your Honor.

25 MR. WILSON: No objection, Judge.

1 THE COURT: It's received.

2 BY MR. O'NEILL:

3 Q. Mr. Canter, was that for the 1999 return?

4 A. Yes.

5 Q. Did you ever file a 1999 return for Mr. Snipes?

6 A. I don't think so.

7 Q. Now, you stated that you needed some further information.

8 Let me show you what has been marked as Government's Exhibit
9 68-1 for purposes of identification, and, again, I'd ask you
10 if you recognize that.

11 A. Yes.

12 Q. And, again, is it kept in the ordinary course of Starr &
13 Company's business?

14 A. Yes.

15 Q. Is it the ordinary course of Starr & Company to keep such
16 records?

17 A. Yes.

18 Q. And was it made at or about the time and the date
19 indicated on that letter?

20 A. Yes.

21 MR. O'NEILL: Your Honor, at this time I would move
22 into evidence Government's Exhibit 68-1.

23 MR. BARNES: No objection, Your Honor.

24 THE COURT: It's received.

25 MR. O'NEILL: Would you publish this, please?

1 BY MR. O'NEILL:

2 Q. Mr. Canter, is this a letter that you sent?

3 A. Yes.

4 Q. On behalf of Starr & Company?

5 A. Yes.

6 Q. And to whom did you send that?

7 A. It says to Wesley Snipes, Carmen Baker.

8 Q. Now, who is Carmen Baker? I don't believe the jury has
9 heard her name yet.

10 A. She was a bookkeeper.

11 Q. When you say "she was a bookkeeper," for whom?

12 A. Originally, she worked for Starr & Company, and then she
13 went to work for Mr. Snipes.

14 Q. Do you recall approximately when she left Starr & Company
15 to work for Mr. Snipes?

16 A. It must have been that year, around 1999.

17 Q. Now, what is the purpose of this letter that you're
18 sending?

19 A. Asking for information to prepare his taxes.

20 Q. Mr. Canter, I now show you Government's Exhibit 68-2 and
21 ask you if you recognize that, sir.

22 A. Yes.

23 Q. What do you recognize that to be?

24 A. Asking for information.

25 Q. Well, don't read it, but what do you recognize that to be;

1 is that another letter that you sent?

2 A. Yes, another letter.

3 Q. Concerning Mr. Snipes?

4 A. Yes.

5 Q. Was it kept in the ordinary course of Starr & Company's
6 business --

7 A. Yes.

8 Q. -- to keep such records?

9 A. Yes.

10 MR. O'NEILL: Your Honor, at this time I would move
11 it into evidence as Government's Exhibit 68-2.

12 MR. BARNES: No objection, Your Honor.

13 THE COURT: Hearing none, it's received.

14 BY MR. O'NEILL:

15 Q. Again, Mr. Canter, what are you looking for in this letter
16 that you sent to Mr. Snipes?

17 A. Information.

18 Q. To do what?

19 A. To prepare his taxes.

20 Q. Let me show you what's been marked as Government's Exhibit
21 68-3. Do you recognize it, sir?

22 A. Yes.

23 Q. And what do you recognize it to be?

24 A. Asking for information to prepare his taxes.

25 Q. And is that a business record of Starr & Company?

1 A. Yes.

2 MR. O'NEILL: Your Honor, I would move it into
3 evidence as Government's Exhibit 68-3.

4 THE COURT: Any objection?

5 MR. BARNES: No objection, Your Honor.

6 THE COURT: It's received.

7 MR. O'NEILL: Publish it, please.

8 BY MR. O'NEILL:

9 Q. And can you see the letter up on the screen, Mr. Canter?

10 A. Yes.

11 Q. And does that detail, without reading the whole thing, the
12 information that you're looking for from Mr. Snipes?

13 A. Yes.

14 Q. And does it -- is it fair to say that at the beginning it
15 says, "personal taxes. Federal Form 1040 personal taxes
16 requires taxpayers to answer whether at any time during the
17 year they had an interest in a foreign account or foreign
18 trust"?

19 A. Yes, that's what it says.

20 Q. And are you looking for that information?

21 A. Yes.

22 Q. Now, did Mr. Snipes send you back some information?

23 A. I think over time we started getting some information.

24 Q. Let me show you what's been marked as Government's Exhibit
25 68-5 for purpose of identification and ask you if you

1 recognize that, sir.

2 A. Yes.

3 Q. And is that -- what do you recognize it to be, first of
4 all?

5 A. He started -- he started addressing some of the issues.

6 Q. And is that a record kept in the ordinary course of Starr
7 & Company's business?

8 A. Yes.

9 MR. O'NEILL: Your Honor, at this time I'd move into
10 evidence Government's Exhibit 68-5.

11 MR. BARNES: No objection, Your Honor.

12 THE COURT: It's received.

13 MR. O'NEILL: Publish that, please.

14 BY MR. O'NEILL:

15 Q. And, Mr. Canter, as it shows on the screen for the jury to
16 see, is this a letter from Dr. Wesley T. Snipes?

17 A. Yes.

18 Q. And it's a two-page document?

19 A. Yes.

20 Q. Mr. Canter, I would now show you Government's Exhibit
21 68-6. And, again, I'd ask you if you recognize it, sir.

22 A. Yes.

23 Q. What do you recognize that to be?

24 A. This is stating due dates on tax returns.

25 Q. And is it a letter from you to Mr. Snipes?

1 A. Yes.

2 Q. And is it a business record of Starr & Company?

3 A. Yes.

4 MR. O'NEILL: Your Honor, at this time I would move
5 it into evidence as Government's Exhibit 68-6.

6 MR. BARNES: No objection, Your Honor.

7 THE COURT: It's received.

8 BY MR. O'NEILL:

9 Q. Mr. Canter, what is the date of that letter?

10 A. It's July 26.

11 Q. Of 2000?

12 A. Yes.

13 Q. And that's a letter from you to Mr. Snipes?

14 A. Yes.

15 Q. Mr. Canter, let me show you Government's Exhibit 68-7, and
16 I'd ask you if you recognize that document, sir.

17 A. Yes.

18 Q. What do you recognize that to be?

19 A. This is speaking about transition.

20 Q. I'm sorry, I didn't understand.

21 A. Where he's possibly having somebody else handle his tax
22 preparation.

23 Q. Okay. And what's the date of that letter?

24 A. August 2000.

25 Q. And is that kept in the normal course of Starr & Company's

1 business?

2 A. Yes.

3 MR. O'NEILL: Your Honor, at this time I would move
4 into evidence Government's Exhibit 68-7.

5 MR. BARNES: No objection, Your Honor.

6 THE COURT: It's received.

7 BY MR. O'NEILL:

8 Q. Mr. Canter, I would show you Government's Exhibit 68-8,
9 and I ask if you recognize that, sir.

10 A. Yes.

11 Q. What do you recognize it to be?

12 A. It's a list of items needed to prepare his tax return.

13 Q. And is that record kept in the ordinary course of Starr &
14 Company's business?

15 A. Yes.

16 MR. O'NEILL: Your Honor, at this time I would move
17 into evidence Government's Exhibit 68-8.

18 MR. BARNES: No objection, Your Honor.

19 THE COURT: It's received.

20 BY MR. O'NEILL:

21 Q. You say that's a list of matters required for -- to
22 prepare a tax return. Did you prepare that list?

23 A. Either myself or somebody in the company. I don't
24 remember.

25 Q. But it was prepared by Starr & Company?

1 A. I believe so.

2 Q. Sir, at this time I'd show you what's been marked as
3 Government's Exhibit 68-9 and ask you if you recognize that
4 document.

5 A. Yes.

6 Q. What do you recognize that document to be?

7 A. It's outlining certain information to prepare a tax
8 return.

9 Q. Was that a letter from you to Mr. Snipes?

10 A. Yes.

11 Q. Is it kept in the ordinary course of Starr & Company's
12 business?

13 A. Yes.

14 MR. O'NEILL: Your Honor, I would move into evidence
15 Government's Exhibit 68-9.

16 MR. BARNES: No objection, Your Honor.

17 THE COURT: It's received.

18 BY MR. O'NEILL:

19 Q. Mr. Canter, at this time, with the permission of the
20 Court, I would show you Government's Exhibit 68-10. Again, do
21 you recognize that, sir?

22 A. Yes.

23 Q. What do you recognize that to be?

24 A. It's a listing of items to prepare a corporate tax return.

25 Q. Is that document kept in the ordinary course of Starr &

1 Company's business?

2 A. Yes.

3 MR. O'NEILL: At this time I would move into
4 evidence, Your Honor, Government's Exhibit 68-10.

5 MR. BARNES: No objection, Your Honor.

6 THE COURT: It's received.

7 MR. O'NEILL: Publish this.

8 BY MR. O'NEILL:

9 Q. Mr. Canter, just so it's clear, what's the date -- it
10 should be in the upper right-hand corner -- of this letter?

11 A. August 21, 2000.

12 Q. What are you doing with this letter that you're sending to
13 Mr. Snipes?

14 A. Sending him reports.

15 Q. And what's the purpose of sending him those reports?

16 A. To do his taxes.

17 Q. Now, did there come a point in time where you were
18 handling the account for Mr. Snipes that you had a
19 conversation with another individual by the name of Eddie
20 Kahn?

21 A. I -- I vaguely remember that.

22 Q. Was it in person or by telephone?

23 A. It was a telephone conversation.

24 Q. And what do you recall about that conversation and what
25 Mr. Kahn said?

1 A. He was -- I don't remember well. He -- he was speaking
2 about a tax strategy that he's using.

3 Q. Do you recall what type of tax strategy that was?

4 A. I -- I think they called it 861 position, but I -- I don't
5 really remember.

6 Q. When you say they called it an 861 position, had you ever
7 heard of that before?

8 A. I'm not sure if I heard that in the tabloids or I heard it
9 back then. I've heard it so many times already.

10 Q. Well, just zeroing in on that conversation, do you recall
11 that conversation itself?

12 A. Somewhat.

13 Q. Do you recall what that individual, Mr. Kahn, said about
14 the taxes?

15 A. He was speaking about a tax savings strategy that he was
16 using.

17 Q. Did you understand what he was talking about?

18 A. Not really, no.

19 Q. Had you ever heard of that before?

20 A. I don't believe so.

21 Q. At that time, as a CPA, had you ever heard of that before?

22 A. I have never heard of anybody using it.

23 MR. O'NEILL: Nothing further, Your Honor. Thank
24 you.

25 CROSS-EXAMINATION

1 BY MR. BARNES:

2 Q. Good afternoon, Mr. Canter.

3 A. Good afternoon.

4 Q. Are you doing all right?

5 A. I'm a little bit cold. I have a cold.

6 MR. BARNES: Could you pull up Government Exhibit
7 39-6? If you would go to the bottom of Page 2.

8 BY MR. BARNES:

9 Q. Is this a return that you prepared for Mr. Snipes?

10 A. Yes. Yes.

11 Q. And that -- and that -- when was that return signed and
12 sent in?

13 A. It says October 5, 1999.

14 Q. And was it often the case that you were sending in returns
15 for Mr. Snipes and your other clients in October?

16 A. Sometimes, yes.

17 Q. And is that the -- why is that?

18 A. October is the extended due date.

19 Q. The -- and do those clients often have information that
20 comes in late over time that requires you to have more time to
21 file the return?

22 A. Yes.

23 Q. Is it also often the case that with celebrity clients they
24 can be unavailable for substantial periods of time,
25 particularly if they're actors or actresses and they are out

1 of the country filming?

2 A. Absolutely.

3 MR. BARNES: Can you go to FC-01626?

4 It's the same exhibit. The Bates number is
5 FC-01626.

6 Can you flip through to Page 28?

7 Can you blow up the bottom page number, the page
8 we're at?

9 Actually, can you go to WS-00245?

10 Could you blow up the bottom middle there about
11 Blackstone?

12 BY MR. BARNES:

13 Q. What amount is listed next to -- from the -- what is a K1?

14 A. When you invest in a partnership, you get a tax form
15 called a K1.

16 Q. Is that the amount of income you made that year from that
17 partnership?

18 A. If you're a partner, your distributor of share will be on
19 the K1, yes.

20 Q. And what amount is listed there next to Blackstone
21 Investors Partnership for Mr. Snipes in 1998?

22 A. 6,410. That's expenses.

23 Q. That's expenses?

24 A. Yeah. That's listed under "other expenses."

25 Q. So that's under -- an expense was 6,410?

1 A. Right.

2 MR. BARNES: Can we go to WS-00247? Can we go to
3 the top half?

4 BY MR. BARNES:

5 Q. Would this be the interest and ordinary dividends
6 received?

7 A. Yes. Uh-huh.

8 Q. And what amount is listed next to Blackstone Investors
9 Partnership?

10 A. It says 9,145.

11 Q. Would it be fair to say Mr. Snipes did not make a lot of
12 money on Blackstone that year?

13 A. To analyze an investment, you have to look at -- there are
14 other items to look at also, but --

15 Q. Okay.

16 A. -- by looking at that, you could say that.

17 Q. Mr. Snipes sent you a responsive document on June 22,
18 2000, that was referred to. Do you remember that document?

19 A. Can you show it to me?

20 Q. Sure.

21 MR. BARNES: Can you pull up Government Exhibit
22 68-5?

23 BY MR. BARNES:

24 Q. This is where Mr. Snipes provided various answers to your
25 various questions, correct?

1 A. Yes. That's correct.

2 Q. Can you go down to under "corporate taxes"? Can you read
3 "in March of '99"?

4 A. You want me to read under "corporate taxes"?

5 Q. Yes.

6 A. "Amen RA Films," that part?

7 Oh. "In March of '99 I contracted the sale of all my
8 beneficial interests as well as the total assets and
9 liabilities of Amen RA Films, Inc., to M&S Finance Trust, a
10 Swiss trust corporation under the state laws of Geneva,
11 Switzerland."

12 Q. The next sentence?

13 A. "Dr. Arno E. Arndt is the managing director.

14 Subsequently, a new unincorporated pure trust organization
15 named Amen RA Films was created here in the United States of
16 America, and the indenture was recorded at the county
17 recorder's office in New Mexico. Mr. Donald Bailey is the
18 executive trustee."

19 Q. And the next sentence?

20 A. "I have been nominated as an agent authorized to do
21 business on behalf of Amen RA Films until such time as I am
22 removed."

23 Q. I want to show you what is marked as Government Exhibit
24 68-4. Is that document familiar to you?

25 A. Vaguely familiar.

1 Q. Is that something Mr. Snipes sent to you with this letter?

2 A. That could be.

3 Q. But you remember him telling you and actually giving you
4 that document during this time period?

5 A. I remember the letter that you showed me, and probably
6 this came with it.

7 Q. Okay. And that's the actual agreement between he and the
8 Swiss company?

9 (Pause.)

10 A. It looks like it. I mean, this is -- these are many pages
11 here, but this looks like the agreement.

12 Q. Are you familiar with what an 8275R form is?

13 A. Is that an IRS form?

14 Q. It is.

15 A. I'm not sure.

16 MR. BARNES: Can you pull up Government Exhibit
17 87-13?

18 Correction. Government Exhibit 64-2.

19 BY MR. BARNES:

20 Q. This is a document that Mr. O'Neill showed you earlier,
21 the 1040X form that you did not fill out.

22 A. Right.

23 MR. BARNES: Can we go to Page 3? Go to the very
24 top.

25 I'm sorry. The very top. And highlight under

1 "regulation disclosure statement."

2 BY MR. BARNES:

3 Q. Can you read that?

4 A. Okay. "Use this form only to disclose items or positions
5 that are contrary to Treasury regulations."

6 Q. Does that form ring a bell? Have you seen that form
7 before?

8 A. I haven't used that form.

9 Q. Do you remember someone by the name of Ray Pope?

10 A. The name sounds familiar.

11 Q. Were you familiar that that was an attorney who was
12 advising Mr. Snipes during this period of time?

13 A. That -- that could be.

14 Q. And Mr. Snipes asked you to have a conversation with him
15 and some other people but -- do you remember that?

16 A. Probably, yeah. That -- that probably happened also.

17 MR. BARNES: One moment.

18 (Pause.)

19 BY MR. BARNES:

20 Q. You never sent a letter to Mr. Snipes with any detail
21 about statutes or cases or regulations as to why the position
22 he was being advised to take was in error, correct?

23 A. Right.

24 Q. And you never warned Mr. Snipes that filing an amended
25 return request for refund with the IRS -- pursuing this

1 position would somehow be criminal or fraudulent?

2 A. That's correct.

3 MR. BARNES: No further questions, Your Honor.

4 THE COURT: Mr. Wilson, any questions?

5 MR. WILSON: No questions.

6 THE COURT: Any redirect, Mr. O'Neill?

7 MR. O'NEILL: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. O'NEILL:

10 Q. Mr. Canter, did you ever provide legal advice to
11 Mr. Snipes?

12 A. I don't provide legal advice.

13 MR. O'NEILL: Nothing further.

14 THE COURT: All right. Thank you, Mr. Canter. You
15 may step down, sir.

16 Next witness, Mr. Morris.

17 MR. MORRIS: Your Honor, would this be a good time
18 to break today?

19 THE COURT: Well, how do you assess our progress,
20 Mr. Morris? Are we making good progress?

21 MR. MORRIS: I believe so, Your Honor.

22 MR. BERNHOFT: We would have no objection,
23 Your Honor.

24 THE COURT: Neither do I.

25 (Laughter.)

1 THE COURT: Does any member of the jury object?

2 (Laughter.)

3 THE COURT: We'll stop, then, until 9:00 in the
4 morning, members of the jury. I think we're -- of course,
5 counsel know much better than I; I know nothing more about
6 this case than you do -- but it seems we're making good
7 progress, and it's been a long day.

8 We'll stop until 9:00 tomorrow morning.

9 (The jury exited the courtroom, having been excused
10 from further proceedings on this date.)

11 THE COURT: Be seated a moment, please.

12 MR. BERNHOFT: Your Honor, may I address a logistics
13 matter with the Court?

14 THE COURT: Yes, you may, Mr. Bernhoft.

15 MR. BERNHOFT: I appreciate that, Judge.

16 This continuing problem of lack of a cross-reference
17 between Bates numbering and exhibits is frustrating the
18 defense, prejudicing our ability to be prepared, Judge.

19 Mr. Wilson and I discussed this. We discussed this
20 over and over with prosecution attorneys. I just can't figure
21 this out, Judge. I have never, in all of my experience, done
22 a case where the government doesn't cross-reference its
23 discovery Bates stamp numbers with exhibits so we can have an
24 orderly presentation of evidence here and so the defense can
25 be prepared.

1 Now, I see a lot of cross-referencing going on. The
2 computer operator seems to have -- to be able to identify the
3 Bates numbers as it relates to exhibits. I simply do not and
4 cannot understand the problem.

5 This is a significant concern, a continuing concern.
6 It's prejudicial to the defense, and not just to Mr. Snipes,
7 but also to Mr. Rosile as well. And I just wish we could get
8 a resolution of this, Judge.

9 THE COURT: Well, what about that? I thought we
10 were to have those cross-references by this time, Mr. Morris.

11 MR. MORRIS: Your Honor, I believe we said earlier
12 in the day that that would be provided by tomorrow morning.
13 That is what we intend to do.

14 We do have internal lists that we are using for
15 ourselves to make the cross-references. We just need to put
16 that in a format that's suitable to turn over to the defense.
17 We will do that tonight. It will be provided first thing in
18 the morning.

19 Your Honor, I would point out that the exhibit list
20 that we have provided to counsel is detailed in its
21 description, that the exhibits are largely in order. They
22 have been numbered in a way to make it easier to group and
23 identify the documents.

24 So we have attempted I think you can see through the
25 numbering of the exhibits and the preparation of the exhibits

1 and the exhibit list to make this an orderly process.

2 Your Honor, I would point out that what the defense
3 has provided to us is something that's not in an appropriate
4 format for introduction into court. It does not -- it has all
5 of about three Bates numbered references on it. The
6 descriptions are sparse, and there's already been offered
7 exhibits that aren't even on the list. So by comparison, I
8 think the United States has gone well beyond what the defense
9 has provided.

10 THE COURT: Well, two wrongs don't make a right,
11 Mr. Morris. I will say, however, that it does seem that the
12 government's exhibit list, which is not particularly lengthy
13 in view of the nature of the case, has described the exhibits
14 in a way that I would think they would be subject to ready
15 retrieval by the defense with or without Bates numbers. But
16 in any event, I'm told you'll have your numbers by tomorrow
17 morning, Mr. Bernhoft.

18 MR. BERNHOFT: Thank you, Judge.

19 THE COURT: Mr. Nielsen, I note with appreciation
20 your presence, and I'll ask that you continue to monitor the
21 proceedings with a view toward potential representation of
22 Mr. Kahn should he change his mind.

23 MR. NIELSEN: Yes, sir.

24 THE COURT: And for the record, I have instructed
25 the Marshal to communicate with Mr. Kahn not less frequently

1 than early each morning to determine whether he wishes to
2 change his mind and to make a report to you and to I, to me,
3 in that respect so we can put it of record. And I would
4 appreciate it if you would remind me about that lest I forget.

5 MR. NIELSEN: Yes, sir.

6 THE COURT: We need to put on the record each day
7 that Mr. Kahn has had his opportunity to return to court and
8 what his wishes are.

9 MR. NIELSEN: Yes, sir.

10 THE COURT: We'll recess until 9:00 tomorrow
11 morning.

12 (Thereupon, the proceedings in this case for this
13 date were concluded at this time.)

14

15 C E R T I F I C A T E

16 We hereby certify that the foregoing is an accurate
17 transcription of proceedings in the above-entitled matter.

18

19

20

21 -----
Dennis Miracle

Date

22

23

24

25 -----
Kelly Owen McCall

Date

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