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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 25, 2008
Ocala, Florida

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

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

Appearances of Counsel:

For the Government:

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

For Defendant Snipes:

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

1 Appearances of Counsel (continued):

2 For Defendant Kahn:

3 Mr. Michael William Nielsen, standby counsel

4 For Defendant Rosile:

5 Mr. David Anthony Wilson

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

P R O C E E D I N G S

(Jury present.)

THE COURT: Thank you. Be seated, everyone.

Good morning, members of the jury. I appreciate your customary promptness.

Mr. Morris, are you ready to call your next witness?

MR. MORRIS: Yes, Your Honor. The United States calls Steward Stich.

*** STEWARD STICH was sworn

by the Deputy Clerk. ***

THE DEPUTY CLERK: Please have a seat. Please state your full name, and spell your last name for the record.

THE WITNESS: My name is Steward Stich. The last name is S-t-i-c-h.

MR. MORRIS: May it please the Court.

STEWARD STICH,

having been sworn as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q Good morning, Mr. Stich.

A Good morning.

Q How are you employed?

A I'm employed by the United States Treasury Department with Internal Revenue Service.

Q And what is your job title?

1 A I'm an Internal Revenue agent with them.

2 Q How long have you been an Internal Revenue agent?

3 A I have worked there for 36-and-a-half years.

4 Q Would you tell us a little bit about your educational
5 background.

6 A Yes. I went to college at the University of Georgia, and
7 received a scholarship to attend there. I had a degree, a
8 bachelor's degree in business administration, with a major in
9 accounting.

10 Q What sort of training have you received as a revenue
11 agent?

12 A When you begin with Internal Revenue, you go to school for
13 approximately six months. You take various income tax courses
14 and basic tax law, and graduates onto business financial
15 records, corporations, partnerships.

16 Q In the course of your employment, have you also engaged in
17 continuing professional education?

18 A Yes. On a yearly basis, we have continuing professional
19 education.

20 Q Have you been an instructor in the past?

21 A Yes. I have taught classes at the continuing professional
22 education, different seminars; and I have taught computer
23 classes, also.

24 Q Would you tell us generally about the duties of a revenue
25 agent, such as yourself.

1 A The duties of a revenue agent include the computation of
2 determining taxable income and the gross income of a
3 individual, and then, ultimately, the tax liability of that
4 same individual, and businesses, for that matter.

5 Q As a practical matter, what sort of things do you do in
6 the course of your duties?

7 A You review the books and records of either a business or
8 an individual. You also look at financial records that are
9 available to you, which would include banks, investment firms,
10 different information, documents that are prepared and sent to
11 that individual to determine the correct tax liabilities.

12 Q Do you also examine tax returns that have been filed by
13 taxpayers?

14 A Absolutely.

15 Q What types of tax returns have you examined?

16 A I have started -- when you first start, you start,
17 obviously, with individual tax returns. And then as you get
18 more experience, you graduate and do business returns. You do
19 individuals that have Schedule C businesses, you do
20 partnership returns, you do S-corporation returns, you do
21 corporate returns.

22 Q And have you examined all of those types of businesses and
23 those types of returns?

24 A Yes, I have.

25 Q Approximately how many tax returns would you estimate you

1 have examined in your career?

2 A I would say in excess of a thousand.

3 Q Are you familiar with what types of income are taxable and
4 must be reported on income tax returns?

5 A Yes, I am.

6 Q Are you familiar with the computation of income for tax
7 purposes?

8 A Yes, I am.

9 Q And are you familiar with the requirements for when income
10 tax returns must be filed?

11 A Yes.

12 MR. MORRIS: Your Honor, we would offer Agent Stich
13 as an expert in the computation of income for tax purposes and
14 the requirements for filing income tax returns.

15 MR. BARNES: Your Honor, we would only object to the
16 last part, to the degree it calls for legal opinion that
17 should be coming from the Court's jury instructions, not from
18 the witness.

19 THE COURT: Well, very well. You may proceed,
20 Mr. Morris, and I will consider that matter when appropriate
21 objections are made as we go along.

22 MR. MORRIS: Thank you, Your Honor.

23 BY MR. MORRIS:

24 Q Agent Stich, have you been present in the courtroom during
25 the presentation of evidence in this case?

1 A Yes, I have been.

2 Q And have you had an opportunity to hear the testimony and
3 review the evidence that's come in in this case?

4 A Yes.

5 Q And in particular, did you review the financial records in
6 depth in this case?

7 A Yes, I did.

8 Q Would that include, but not necessarily be limited to
9 Government's Exhibits 3 through 34?

10 A That's correct.

11 Q And did your examination of those records begin before the
12 trial in this matter?

13 A Yes, they did.

14 Q Based on your review of the evidence, have you made
15 calculations of Wesley Snipes' income for tax purposes for the
16 years 1999 through 2004?

17 A Yes; after reviewing the records, yes, I did that.

18 Q Now, have you prepared charts or summaries that summarize
19 the voluminous financial information that's come into evidence
20 regarding Mr. Snipes?

21 A Yes.

22 MR. MORRIS: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. MORRIS:

25 Q Mr. Stich, I have handed you a number of exhibits.

1 Turning your attention to Government's Exhibits 143-1 through
2 143-6, and 144-1 through 144-6, do you have those in front of
3 you?

4 A Yes, I do.

5 Q Are those the charts that you prepared that summarize the
6 voluminous information, financial data in this case?

7 A Yes, they are.

8 Q Are those charts based on the trial testimony and exhibits
9 that have come into evidence?

10 A That would be correct, yes.

11 Q And do those charts accurately summarize and reflect the
12 testimony and exhibits in this case?

13 A Yes, they do.

14 MR. MORRIS: Your Honor, at this time we would offer
15 into evidence Government's Exhibits 143-1 through 143-6 and
16 144-1 through 144-6.

17 MR. BARNES: No objection, Judge.

18 THE COURT: All right. Each is received.

19 BY MR. MORRIS:

20 Q Agent Stich, I would like to start by looking at
21 Government's Exhibit 144-1, publish that, please.

22 Do you see that up on the screen?

23 A Yes, I do.

24 Q Would you tell us what this summary chart shows?

25 A This shows the total income that was earned by Mr. Snipes

1 for the year 1999.

2 Q Okay. Would you walk us through this summary, please.

3 A Yes. If you look at the top of the chart, the boxes
4 across the top reflect the income that was earned by him
5 during the year, and it is categorized according to what type
6 of income that it is.

7 Q Now, what type of records did you look at in coming up
8 with these summary figures?

9 A In order to determine the income, I reviewed bank
10 statements, both for Mr. Snipes' personally and related
11 businesses; I looked at investment records for Mr. Snipes; and
12 then other financial documents that were sent to the Internal
13 Revenue Service, telling us income that is earned; and,
14 finally, information that was received from studios.

15 Q And would you walk us through the boxes at the top,
16 please.

17 A All right. The first box on the extreme left shows the
18 income, total income that was received during that year from
19 movies, royalties and residuals from those movies. And the
20 largest one there, as you can see, is from the movie The Art
21 of War.

22 Q And the total of those for 1999?

23 A The total for those -- that activity is \$5,071,454.21.

24 Q Okay. And moving across?

25 A The next box is the partnership or S-corporation income.

1 This is income that has been reported to the Internal Revenue
2 Service on a Schedule K-1, which is a schedule that the
3 partnership and S-corporations have to complete as part of
4 their tax returns.

5 And they send a copy of that to the government, and a copy
6 of it also goes to the individual involved so that they -- and
7 then they report their proportionate share of either the
8 partnership or the S-corporation income, according to that
9 K-1. And this is a summation of those amounts.

10 Q So does that number, the 265,000-dollar number, does that
11 reflect Mr. Snipes' distributive share of income from
12 partnerships that he was invested in?

13 A Partnerships and S-corporations, yes, sir.

14 Q Okay. And can we move to the next box.

15 A The next box is interest income that was received by
16 Mr. Snipes. And this also includes money -- when the
17 partnership or S-corporations issue their K-1s to the
18 individuals, it's not just one item of income. They separate
19 it, and say this much was interest income, this much was
20 dividend income, this much could be capital gain income.

21 And so this can be a combination of those, as well as
22 interest that you would earn like in a savings account or at a
23 financial institution.

24 Q So for Mr. Snipes for 1999, the interest income reported
25 was 37,000 and change?

1 A The total, yes, that he would have received, yes.

2 Q Okay. Can we move to the next box.

3 A The next box is dividend income. And that's similar to
4 the interest income in that it's the money that's being
5 reported that he would receive as dividends, again coming from
6 partnerships, the K-1s from the S-corporations, telling him
7 this is his share of dividend income.

8 And it can also come from the investment accounts that
9 were owned.

10 Q And that's 142,000 dollars and change?

11 A Yes; \$142,955.90.

12 Q Okay. And then the final box at the top.

13 A The final box at the top is the capital gains amount.
14 Again, this is coming from K-1s from the partnership and the
15 S-corporations, and it is also coming from the investment
16 houses that he has investment accounts at.

17 Q Okay. And then if we -- go ahead.

18 A I was just going to give you the total.

19 Q All right.

20 A The total on the capital gains is 4,547,028 dollars even.

21 Q And could you explain a little bit about what a capital
22 gain is.

23 A A capital gain is a sale of property that's not held in
24 the ordinary course of your business. Most of us think of a
25 capital gain as an investment. It could be land, it could be

1 stocks, something of that nature, that is something outside of
2 what you ordinarily have, like in your workday.

3 Q And then how does the capital gain -- what triggers a
4 capital gain based on that property?

5 A When you sell the property, that's when you report your
6 capital gain.

7 Q And so the boxes at the top then flow down to that next
8 box?

9 A Yes. The boxes at the top, the five boxes at the top are
10 added together, and that becomes the total income that was
11 received, the \$10,064,603.76.

12 Q Now, there is two more boxes below that. Would you
13 explain that.

14 A Yes. Some of the money was made directly to Mr. Snipes.

15 Q And how much was that?

16 A Pardon me?

17 Q How much was that?

18 A The total for that amount is \$9,999,739.55.

19 Q Now, when you say paid to him, do you mean it was actually
20 paid to him or --

21 A It doesn't necessarily have to be paid to him. In the
22 instance of an S-corporation or a partnership, they report to
23 you on the K-1 the amount of money that is due to you, but
24 they don't have to necessarily send you that money at the end
25 of the year. They can hold onto that money and distribute

1 that to you at a later time.

2 So all of that may not have been distributed to him, but
3 it is all taxable to him.

4 Q And then the box on the right-hand side.

5 A The box on the far right is money that was paid to Amen
6 Ra, which is one of his S-corporations that he owned
7 100 percent. And so the income from that goes to him
8 automatically.

9 Q So both of those types of income, the amounts paid
10 directly or reported directly to him and paid or reported to
11 Amen Ra flow down to the bottom number, which is total income
12 for Mr. Snipes?

13 A That's correct. Both of those amounts added together flow
14 down on the chart, and that becomes the total income that he
15 received for the year.

16 Q Now, why is it that amounts that are paid or reported to
17 Amen Ra are attributable to Mr. Snipes for his income tax
18 purposes?

19 A Amen Ra in the prior years was an S-corporation. They
20 elected S-corporation status. And in the prior years, the
21 income coming from -- as reported by and computed by the Starr
22 & Company, has always flowed through to his tax return.

23 And since this is an S-corporation that he owns
24 100 percent, the money flows from the S-corporation directly
25 to him.

1 Q Now, if we could move to Exhibit 143-1. And what is this?

2 A This is a further analysis of the chart that you just saw.

3 And the five boxes across the top of the previous chart, if
4 you look down the left-hand side of this page, you will see --

5 Like where it says interest income is your first box, if
6 you add up the amounts in the interest income section on this
7 sheet, that totals the interest income shown on the box on the
8 previous chart we showed you.

9 Q And so this is a more detailed break-out?

10 A Right. This gives specific numbers for those boxes.

11 Q Okay. And would you just go through the interest income
12 section for us.

13 A Okay. The interest income, the first one is the Chase
14 Manhattan Bank. This would have been interest that he earned
15 on an account held at the Chase Manhattan Bank.

16 And then, as I mentioned to you, the other items of
17 interest income concern the K-1s that were received from
18 different partnerships and S-corporations, being Blackstone,
19 Bedrock, Blacap and Blaam Partners, that were reported to him
20 on the K-1s.

21 Q And then -- so is the dividend income similar?

22 A The dividend income is similar. Again, the total of the
23 amounts for the dividend income equals the total of the box
24 that was shown on the previous chart that we showed you.

25 Q And when I say "similar," that is that there are certain

1 amounts that are coming from investment accounts and certain
2 amounts coming from K-1s?

3 A That's correct. That's correct. And it --

4 Q Go ahead.

5 A I was just going to say, as it shows you, the first two
6 items are investment accounts. Where it says Goldman Sachs
7 and Lazard Asset Management, those were investment accounts
8 that were owned, and those are the dividends that reported
9 through that investment account.

10 The next amount is an amount that he received, a Form
11 1099-DIV, which is for dividends. And that was the 2,767
12 dollars.

13 And then he received on his K-1s from the partnerships and
14 S-corporations, from the Blackstone, Blacap and Blaam
15 Partners, additional income that was reported to him. And so
16 that's how you get to those totals.

17 Q And going down further?

18 A The next section is the capital gains and losses. And,
19 again, the total of those items equal the total of the box
20 shown on the first exhibit that was shown to you.

21 Q And the -- I'm sorry. Go ahead.

22 A Well, I was just going to say that the capital gains
23 comprise -- the first two items are from the investment
24 accounts, both Goldman Sachs and Lazard Asset Management; and
25 the rest of the income coming in from that was the K-1s from

1 the various partnerships or S-corporations that he had
2 ownership of.

3 Q Okay. And moving to the next section.

4 A The next section shows the movies and royalties and
5 residuals. And, again, the total of those items equal the
6 total of the first box that was shown to you on the first
7 exhibit.

8 Q Now, these amounts, they are in two different columns; is
9 that correct?

10 A That is correct, yes.

11 MR. MORRIS: Could we go back up to the top, please,
12 and look at the column titles.

13 BY MR. MORRIS:

14 Q Okay. And could you just explain why there are two
15 different columns.

16 A Yes. The two different columns are -- the reason for that
17 is that the -- like the Art of War, the money there was paid
18 directly to and went into the account of Mr. Snipes.

19 The moneys from the payroll contracts went into the
20 account of Amen Ra, and so that's reported under the column
21 for Amen Ra. But like I said, that's an S- corporation that,
22 again, flows directly to him.

23 Q Okay. And then going down to the bottom section.

24 A The bottom shows just other income from partnerships or
25 S-corporations. And this would be reported to him on the K-1s

1 from those partnerships or S-corporations.

2 Q And then the total income at the bottom?

3 A Yes, the total income at the bottom, the 9,999,739
4 dollars, and the 64,864 dollars, those are the totals that
5 were shown on the prior exhibit.

6 Q And the total -- very bottom, total income to Wesley
7 Snipes is the same as was shown on the bottom of the previous
8 exhibit?

9 A Yes; the total income is the same figure, yes.

10 Q All right. Let's move on to the year 2000. Turning your
11 attention to Government's Exhibit 144-2, okay, tell us about
12 this, please.

13 A This exhibit is similar to the first one that was shown.
14 You have boxes across the top showing the different types of
15 income that Mr. Snipes received.

16 Again, you have movies, royalties and residuals income;
17 you have partnership or S-corporation income; the interest
18 income; dividend income; and capital gains income that was
19 received and reported to him during the year.

20 Q Please continue.

21 A Okay. And then the totals of those amounts flow down to
22 him, and that's this amount showing the 2,331,054 dollars.

23 Q So that amount represents amounts that were either paid or
24 reported directly to Mr. Snipes or to Amen Ra?

25 A That is correct.

1 Q Please continue.

2 A Okay. And then as you flow down the chart, those amounts,
3 the 2,331,000, are split between amounts either paid to him
4 directly or owed to him through the K-1 or amounts paid to
5 Amen Ra.

6 And those are the amounts of the 1,160,139 dollars paid to
7 him directly or for him, and the amounts paid to Amen Ra,
8 which is the 1,170,914 dollars.

9 Q And so the total income attributable to Mr. Snipes for
10 2000 is how much?

11 A The total income would be \$2,331,054.41.

12 Q Could we go to Exhibit 143-2. Tell us about this briefly.

13 A I didn't hear you.

14 Q I'm sorry. Could you tell us about this.

15 A Yes. This is similar to the chart that I showed you just
16 a few minutes ago. This is the analysis of gross income and
17 does -- it expands the boxes of the first chart that was shown
18 to you and explains it in further detail.

19 Again, the total -- like for the first box, group up
20 there, the interest income, the total of that section equals
21 the total interest income that was shown in the box on the
22 previous chart that was shown to you.

23 And this money is coming from accounts, again, that he
24 owns directly, and from the K-1s of the different partnerships
25 and S-corporations that were reported to him.

1 Q Okay. And if we could just scroll down the exhibit,
2 please. And, again, down near the bottom there is a section
3 for movies, royalties or residuals. Those were paid or
4 reported to Amen Ra; is that right?

5 A That is correct. Those were paid to Amen Ra and they are
6 shown in the column for Amen Ra.

7 Q And so, again, what's the total income for 2000 that's
8 reportable by Wesley Snipes?

9 A The total to be reported income by him was \$2,331,054.41.

10 Q Thank you. And if we could move now to Government's
11 Exhibit 144-3.

12 Okay. Tell us about this chart.

13 A This chart is -- the presentation is a little bit
14 different than the earlier charts.

15 Q And what year is it for?

16 A This is starting in 2001. The reason it is different is
17 because at this point in time, Mr. Snipes has disposed of his
18 interest in some of the partnerships and the S-corporations.

19 So the only income that is being shown on this chart is
20 the money coming from the movies. So you only have the one
21 box at the top, instead of as in the prior where we had
22 different boxes up at the top.

23 Q Okay. So if you will walk us through this chart, please.

24 A Okay. In 2001, as you can see from the exhibit,
25 Mr. Snipes received money coming from various movies,

1 principally from Blade II, Undisputed and Liberty Stands
2 Still. Those were the largest, anyway.

3 So the total that he received during the year from the
4 movies was \$17,353,983.43.

5 Q And that's the total that went to either him or one of his
6 loan-out companies?

7 A That would be correct, yes.

8 Q And then tell us about the next level of analysis there.

9 A The next level down shows money, in the first box, that
10 was paid directly to Mr. Snipes. That's the 500,000 dollars.

11 Q And if we could back out. And that's being attributed to
12 him why?

13 A Because it was paid directly to him or put into one of his
14 bank accounts.

15 Q And the next box over.

16 A The next box shows the money that was paid directly to
17 Amen Ra, his S-corporation. And that's the 114,886 dollars.

18 Q So this is similar to prior years. It's being attributed
19 to him because it's an S-corporation that he's the 100-percent
20 owner of?

21 A That's correct. And as you'll notice, both of those boxes
22 flow down and go directly to the total income total to him for
23 the year.

24 Q Okay. And then the next box.

25 A The next box is amounts paid to Kymberlyte Production

1 Service.

2 As we heard in testimony in the court, Kymberlyte was
3 another loan-out company that was owned by Mr. Snipes. The
4 difference between Kymberlyte and Amen Ra was that Amen Ra
5 made an election and filed to be an S-corporation, whereas
6 Kymberlyte did not.

7 What that means is that the income to Kymberlyte stays at
8 Kymberlyte. It's like a corporation that would be like an
9 AT&T or a General Motors. They get the money and the money
10 stays there, and then it only comes to him as a dividend when
11 money is paid out.

12 So as the chart shows, Kymberlyte received 16,739,097
13 dollars. That's the total that they received. But of that
14 total, they paid out to him a total of the 847,876 dollars.

15 Q Now, when you say paid to him --

16 A Well, either paid to him or for his benefit. It doesn't
17 necessarily have to go directly to him.

18 Q So this box that's highlighted now that says "Personal
19 Expenditures for the Benefit of Wesley Snipes," are those
20 items that are personal expenditures being paid out of
21 Kymberlyte's bank accounts?

22 A Yes, they are; personal expenditures either to him or for
23 him.

24 Q Now, did you try to pick up every single personal
25 expenditure that you could find that was paid from Kymberlyte

1 to or for the benefit of Wesley Snipes?

2 A No. Only the larger amounts were used in this
3 computation.

4 Q Now, have you prepared a chart that shows the differences
5 between how S-corporations are treated and how a corporation
6 like Kymberlyte Production Services would be treated for tax
7 purposes?

8 A Yes, I have.

9 MR. MORRIS: Your Honor, I would ask that we show
10 Government's Exhibit 145 as a demonstrative exhibit only.

11 THE COURT: Very well.

12 BY MR. MORRIS:

13 Q Okay. Agent Stich, please walk us through this chart that
14 explains the differences between the treatment of
15 S-corporations and C-corporations for tax purposes.

16 A Okay. For tax purposes, you have -- when you form a
17 corporation, you have the ability to make an election to be
18 either an S-corporation or a C-corporation, the difference
19 being that an S-corporation, the income flows to the
20 individual, to the shareholders. The C corporation retains
21 its money and pays the money out as dividends.

22 As the chart shows you, both entities are required to file
23 tax returns. The difference being on Block Number Two there,
24 you see the S-corporation pays no tax because all of its
25 income flows to the individual. The C-corporation pays tax on

1 its income.

2 And then, as the next block down, the S- corporation, as I
3 mentioned to you earlier, will give its shareholders a K-1,
4 telling them their proportionate share of income, interest,
5 dividends, capital gains, whatever the income might be. And
6 that's what goes on their individual tax return.

7 The C-corporation doesn't do that because it's already
8 paid tax on all of its income.

9 And so the bottom shows that the shareholder on the 1040
10 schedule, his own schedule, on the S-corporation would report
11 the income according to the K-1. On the C- corporation, he or
12 she would only report the dividend income that they receive.
13 And they should receive a form 1099-DIV to tell them the
14 dividend that they received.

15 Q So in this case, you said before that Amen Ra was treated
16 as an S-corporation. Why is that?

17 A Amen Ra filed an election to be an S-corporation. When I
18 say filed an election, there is a form, a Form 5523 that has
19 to be filed and signed by the shareholders, saying that we
20 made this election, and they have to send that into the
21 government.

22 I mean, you just can't say: I'm an S-corporation. You
23 know, you have to go through the steps, make the election, and
24 follow the proper procedures to do that.

25 Q And was that done in prior years by Starr & Company?

1 A Yes.

2 Q What about Kymberlyte?

3 A Kymberlyte did not make such an election.

4 Q Did Kymberlyte file tax returns?

5 A They did not.

6 Q And so how would Kymberlyte be treated?

7 A Kymberlyte would be treated as a C-corporation because
8 they made no election.

9 MR. MORRIS: If we could go back to the chart we
10 were looking at before, 144-3, please.

11 BY MR. MORRIS:

12 Q Okay. So when we stopped and went over to that
13 explanatory chart there, you were talking about the money that
14 was flowing into Kymberlyte and then out of Kymberlyte.

15 A Right. The 16,739,000 flowed into Kymberlyte and they
16 should have reported that on their tax return.

17 And then from there, the personal expenditures that were
18 made either to or for Mr. Snipes would be a dividend to him,
19 and that amount flows down to the taxable income of
20 Mr. Snipes.

21 Q And for this year, for your purposes, what was the amount
22 of the personal expenditures flowing out of Kymberlyte for
23 Mr. Snipes' benefit?

24 A The total coming out of Kymberlyte to him was \$847,876.23.

25 Q And then so what's the grand total of income that is

1 attributable to Mr. Snipes for 2001?

2 A The grand total is 1,462,762 dollars.

3 Q Now, if we could go to Government's Exhibit 143-3. And
4 does this chart show your more detailed analysis for the year
5 we were just looking at, 2001?

6 A Yes, yes. Again, this is a detailed analysis of the prior
7 chart. Now you have three columns across the top, instead of
8 just the two, because you have the amounts paid directly to
9 Mr. Snipes, and those total the 500,000 dollars that was shown
10 on the previous box on that chart that we just were looking
11 at;

12 You have the money paid to Amen Ra, which is 114,886,
13 which again corresponds to the box that was shown on the
14 previous exhibit;

15 And then you have a column for monies paid to Kymberlyte,
16 and that's the 16,739,097 dollars. And that corresponds to
17 that box that was on that chart.

18 But, again, all of that does not go to him; only the
19 amounts that were paid to him or for him.

20 Q So down at the bottom then?

21 A Down at the bottom, you have the total of the amounts that
22 actually would be attributable to his total income for the
23 year of the \$1,462,762.

24 MR. MORRIS: Okay. If we could go down to
25 Government's Exhibit 144-4.

1 BY MR. MORRIS:

2 Q And could you explain this briefly.

3 A This is a similar chart to the prior year exhibit that we
4 were showing.

5 Q What year is this for?

6 A This is for the year 2002.

7 During this year, principally there are two types of
8 income that are being received, and those are represented by
9 the two boxes at the top of the chart. You have the movies,
10 the royalties, residuals income received during the year.
11 Principally this is from Blade II, When the Ride is Ruff. And
12 that total for those is 3,201,433 dollars.

13 And then also during that year, Mr. Snipes received a
14 pension and profit sharing distribution from Harmony Peace of
15 235,720 dollars. And that was -- would have been reportable
16 by him as part of his total income for the year.

17 Q Okay. Please continue.

18 A So the total of those two boxes then are the \$3,437,154.
19 Out of that total, it is split out to some of the money that
20 was paid directly to Mr. Snipes, 239,863 dollars; and then you
21 have money that was paid from that previous total to Amen Ra,
22 which is 633,146 dollars. And then you have the amount paid
23 to Kymberlyte Productions, which, again, remember is the
24 C-corporation. And that was 2,564,143 dollars.

25 And of that 2,500,000-dollar total, some of that was paid

1 either for Mr. Snipes personally for his benefit or directly
2 to him. And that total 5,013,730 dollars.

3 Q Could you touch on the items that are listed in that chart
4 there.

5 A Yes. During the year, payments were made on his behalf to
6 the Carbone Faasse Trust for the house in New Jersey. That
7 was 4,807,868 dollars.

8 Payments were also made for him to the Chase Manhattan
9 Mortgage Corporation. That was for the Florida residence.
10 That totaled 48,019 dollars.

11 Then there were amounts paid to April DuBois in the form
12 of child support, and that totaled 40,843 dollars.

13 And finally there was payments made to Charles Muniz, and
14 that was payments on the New Jersey house, and that was
15 117,000 dollars.

16 Q And all of those were payments made out of the Kymberlyte
17 bank accounts?

18 A That is correct.

19 Q And so the grand total for 2002?

20 A The grand total then for that year for his total income
21 would be \$5,886,740.98.

22 Q Now, we talked about total income for these purposes.
23 What, for tax purposes, do you mean by "total income"?

24 A Total income would be all of your income from whatever
25 source derived. And that would include, but not necessarily

1 limited to items for personal services that you rendered; it
2 would include wages; it would include salaries, dividends;
3 interest; sale of property; capital gains; rents; moneys from
4 partnerships; moneys from S-corporations, pension plan
5 distributions.

6 Q Is all of that amount taxable income or is that a
7 different number?

8 A Taxable income would be a different number. This is total
9 income.

10 Q Is this the number that -- what is this number, when you
11 are looking at it for a tax analysis?

12 A It would be the total income that you received during a
13 year.

14 Q Does this relate to filing requirements?

15 A Yes, it does.

16 Q All right. If we could go into Government's Exhibit
17 143-4. And is this the more detailed analysis of 2002 of
18 gross income?

19 A Yes. This is a further analysis of the same items showing
20 the three columns again, showing money paid directly to
21 Mr. Snipes, money paid to Amen Ra, or money paid to Kymberlyte
22 Production Services.

23 Q And if we could scroll down. And you also have the
24 pension profit sharing item there?

25 A Yes. The profit sharing was coming from -- Harmony Peace

1 was the payer of the amount.

2 MR. MORRIS: If we could go to Government's Exhibit
3 144-5.

4 BY MR. MORRIS:

5 Q Okay. Tell us about this chart, please.

6 A In this chart, we again have the movie royalties and
7 residuals amount that was earned during the year. And this
8 year, principally the money is coming from Blade III, Blade II
9 and Nine Lives. And the total for the movies that was
10 received during the year is 11,761,706 dollars.

11 Q Okay. And going down to the next level.

12 A The next level shows how the money was -- who received it
13 and how it would flow to Mr. Snipes.

14 The largest portion of the money was -- in this year was
15 paid to an entity, Swiss Sterling Trust, which is a Swiss bank
16 account. And that was the 4,477,227 dollars.

17 Q Okay.

18 A The next amount was paid to Kymberlyte Production
19 Services, and that was 7,284,478 dollars. The amount from the
20 foreign bank account, the Swiss account, Swiss Sterling Trust,
21 flows directly to Mr. Snipes.

22 But the amount from Kymberlyte, as you remember, the
23 C-corporation, only flows to him for the dividends that was
24 received out of Kymberlyte. And so you have expenditures,
25 personal expenditures for him or on his behalf of 87,746

1 dollars.

2 And so the total that would be his total income for the
3 year would be 4,564,973 dollars.

4 Q Okay. And if we could go to Government's Exhibit 143-5,
5 please explain this.

6 A This chart is a further detail of the previous chart that
7 you just saw. It shows the amounts paid to either Wesley
8 Snipes directly, paid to the Swiss Sterling Trust, or paid to
9 Kymberlyte corporation.

10 And this year, none of the payments were made to him
11 directly, but they did go to his businesses, the Swiss
12 Sterling Trust and Kymberlyte.

13 Q And what's the total income at the bottom for 2003?

14 A The total income that was received during the year is
15 4,564,973 dollars.

16 Q Now, when you say the total income that was received, is
17 that 4,564,000-dollar amount an amount that would trigger a
18 filing requirement for Mr. Snipes?

19 A Yes. In figuring the -- in determining your filing
20 requirements, basically what you have is your personal
21 exemption and a standard deduction. And once you have income
22 that exceeds those two amounts, then I have to file a tax
23 return.

24 Q And maybe we will get to that in just a moment, if we
25 could go to Government's Exhibit 144-6. And if you would

1 explain this chart, please.

2 A Yes. This chart is similar to the other ones that have
3 been shown. The first block showing the movies, royalties and
4 residual income that was received during the year.

5 In this year, three items are your principal items of
6 income. They are received from Seven Seconds, Chaos and Blade
7 III. The total income that was received during the year is
8 13,804,204 dollars.

9 Q And then how is that split out?

10 A Then that further comes down and is split. The majority
11 of it, 13,241,704 dollars, went to the Swiss bank account.
12 And that flows directly to Mr. Snipes in computing his total
13 income.

14 The balance, the 562,500 dollars, was paid to Kymberlyte
15 Production Services. And of that amount, some of it was paid
16 either directly to Mr. Snipes or for his benefit, and that's
17 the 345,213 dollars.

18 So the total of those two amounts, the amounts from the
19 Swiss bank and the amount that was paid directly to him or for
20 him is the 13,586,918 dollars.

21 MR. MORRIS: And if we could go to 143-6, please.

22 BY MR. MORRIS:

23 Q And, again, is this a somewhat more detailed analysis of
24 gross income for 2004?

25 A Yes, it is. And, again, we have the three accounts or

1 columns across the top showing amounts paid directly to
2 Mr. Snipes, which in this year, again, is none; we have the
3 amounts paid to the Swiss Sterling Trust, which was the
4 13,241,704 dollars; and then you have the amounts paid to
5 Kymberlyte, which was the 562,500 dollars.

6 Q And the total, again, for 2004?

7 A The total income then that flows directly to him is
8 13,586,918 dollars.

9 Q Okay. So for the charts that we have just looked at from
10 1999 through 2004, were they prepared to show taxable income
11 to Mr. Snipes or something different?

12 A They do not show taxable income. They show gross income
13 to him.

14 Q What's the purpose of gross income? Or tell us about
15 gross income, please.

16 A Gross income is used to determine whether you are required
17 to file a tax return or not.

18 Q And I believe you referred a few moments ago to things
19 like standard deductions and exemption amounts?

20 A Yes, I did.

21 Q And does that factor into filing requirements?

22 A Yes. In order --

23 Q And let me stop you there. Have you prepared a chart that
24 helps illustrate the filing requirements?

25 A Yes, I did.

1 MR. MORRIS: Your Honor, if we could at this time
2 show Government's Exhibit 146 as a demonstrative exhibit only?

3 THE COURT: Very well.

4 BY MR. MORRIS:

5 Q Is this the chart you prepared to show the filing
6 requirements?

7 A Yes, that is correct.

8 Q Could you explain this, please.

9 A Yes. In the first section there, where it says "standard
10 deduction" -- if you will concentrate only in one year, yes,
11 it would make it easier to try to explain to you.

12 You have a standard deduction every year, depending on
13 your filing status, whether you are single, whether you are
14 married, whether you're married, filing separate.

15 That is a deduction that's allowed to you, no matter
16 whether you have any itemized deductions such as medical,
17 interest that you might pay, mortgage interest, real estate
18 taxes and such. That's allowed to you.

19 The next section down is your personal exemption. You
20 have a personal exemption amount every year. And that, of
21 course, increases slightly as the years go by due to
22 inflation.

23 But the summation of those two amounts -- in this case,
24 let's use 1999, and say if you are single, you would use the
25 4,300 standard deduction, and you would use your exemption

1 amount, 2,750. The total of those two amounts then becomes
2 7,050 dollars. So --

3 Q What's the significance of that number?

4 A That number, the sums of those numbers means that if you
5 have gross income above that amount, you must file a tax
6 return.

7 Q And then for 1999, tell us about married filing joint and
8 married filing separate.

9 A The computation would be exactly the same. The only thing
10 is for married filing joint, you would use your standard
11 deduction of 7,200, but your exemptions -- obviously, married
12 filing joint, there's two of you, so you have got to put two
13 exemptions in, not just the one. And you add those three
14 numbers together, and that gives you your 12,700 dollars.

15 So if you were married filing joint, if you had gross
16 income above that amount, you must file a tax return.

17 Q And how about married filing separate? That number looks
18 different.

19 A Married filing separate is a little bit stricter rules.
20 And for a married filing separate person, it is basically your
21 exemption amount, if you have gross income above your
22 exemption amount, you must file a tax return.

23 MR. MORRIS: Okay. And if we could back out again.

24 BY MR. MORRIS:

25 Q And so this chart shows the filing requirements for the

1 years 1999 through 2000 for people under the age of 65;
2 correct?

3 A That is correct.

4 Q And are there other filing statuses, such as head of
5 household, that you haven't --

6 A Yes. There are others that aren't shown on this chart,
7 yes.

8 Q Okay. Now, have you prepared a chart that summarizes the
9 gross income thresholds that are pertinent just to Mr. Snipes
10 for this case?

11 A Yes, sir, I did.

12 MR. MORRIS: Your Honor, with the Court's
13 permission, if we could show Government's Exhibit 147 as a
14 demonstrative only.

15 THE COURT: Very well.

16 BY MR. MORRIS:

17 Q Is that the chart I was just referring to?

18 A Yes, it is.

19 Q Would you explain this to us, please.

20 A In the first four years, 1999 through 2002, Mr. Snipes was
21 a single individual. And, therefore, the standard deduction
22 and his personal exemption during those years would require
23 him to file a return if his gross income was in excess of
24 these amounts, the 7,050 dollars for 1999; in 2000, 7,200; in
25 2001, 7,450; and in 2002, 7,700. He must file a return if his

1 income was in excess of that.

2 In 2003, he was married, and 2004, also. And even though
3 he did not file a tax return, the chart shows and gives him
4 the benefit of the doubt in that most people do file that way
5 because it is most advantageous to you to do that.

6 And so the filing requirements, the threshold amount is
7 higher than if we would have used married, filing separate.

8 Q Technically, would married filing separate be the
9 appropriate category to use since he didn't file a tax return?

10 A Technically, it would, because he didn't file a tax return
11 and he did not make the election. You have to make an
12 election to file jointly. That's not something that is
13 automatic.

14 Q But you have been given him the benefit of the doubt for
15 this purpose?

16 A I gave him the benefit of the doubt and showed this with
17 the higher number.

18 Q Now, based on the summary charts that we have seen before,
19 that have been received into evidence for each of the years
20 1999 through 2004, did Mr. Snipes have income in excess of
21 these filing thresholds?

22 A Yes. His gross income far exceeded these threshold
23 amounts.

24 Q And what does that mean in terms of his responsibility for
25 filing a tax return?

1 A What that means is that Section 6012 of the Internal
2 Revenue Code says that he must file a tax return because his
3 income, his gross income exceeded the standard deduction and
4 the personal exemption amount.

5 Q Now, what are the due dates for filing a return?

6 A Generally, your due date is going to be April 15th of the
7 year following the year of the return.

8 Q Are there exceptions to that general rule?

9 A Yes, there are. If the due date would fall on a Saturday
10 or a Sunday or a legal holiday, then you get the next business
11 day to file a tax return.

12 Q Are there other exceptions to that general April 15th
13 rule?

14 A The only other exception would be if you filed an
15 extension of time in which to file. And during the earlier
16 years, 1999 and such, you had two extensions that you could
17 file. The first was a four-month extension, and then a
18 two-month extension after that. Currently, the extension is
19 just a solid six months.

20 Q Have you prepared a chart that summarizes the due dates
21 for filing individual income tax returns that's pertinent to
22 Mr. Snipes for these years in question?

23 A Yes, I did.

24 MR. MORRIS: Your Honor, with the Court's
25 permission, if we could show Government's Exhibit 148 for

1 demonstrative purposes only.

2 THE COURT: You may.

3 BY MR. MORRIS:

4 Q Agent Stich, if you could tell us about this chart.

5 A Yes. This shows the due dates for filing the tax returns.
6 And as I mentioned to you for like 1999, the original due date
7 would be April the 15th of 2000. But since that fell on a
8 Saturday, Sunday or legal holiday, you get to the follow
9 business day. And so that makes it April the 17th of that
10 year would be the date that the return would have been filed.

11 In Mr. Snipes' case, Starr & Company filed two extensions
12 for him, that gave him the first or the automatic four-month
13 extension, and then a two-month extension after that in which
14 to file a tax return. So that his extended due date then,
15 again, because of a weekend, the way October 15th fell, gave
16 him until October the 16th of the year 2000 to file a return
17 for that year.

18 In the year 2000, no extensions were filed. But, again,
19 April 15th fell on the weekend, so the due date would have
20 been April the 16th of 2001.

21 Subsequent to that, again, no extensions were filed, and
22 April 15th would have been the due dates of those tax returns
23 for the year following.

24 Q And so if you could just read the due dates that would
25 have been applicable to Mr. Snipes for 1999 through 2004.

1 A In 1999, the extended due date was October the 16th of
2 2000.

3 For the year 2000, the due date would have been April the
4 16th of 2001. For the year 2001, the due date would have been
5 April 15th, 2002. For the year 2002, the due date would have
6 been April 15th, 2003. For the year 2003, the due date would
7 have been April 15th, 2004. And for the year 2004, the due
8 date would have been April 15th, 2005.

9 Q Thank you. And if we could go back briefly to Exhibit
10 147, if you could read again what the gross income thresholds
11 were for 1999 through 2004 for Mr. Snipes.

12 A The gross income level that would require you to file a
13 tax return for 1999 was 7,050 dollars; for the year 2000,
14 7,200 dollars; for the year 2001, 7,450 dollars; for the year
15 2002, 7,700 dollars; for the year 2003, 15,600 dollars; for
16 the year 2004, 15,900 dollars.

17 Q For the years 1999 through 2004, did Wesley Snipes have an
18 obligation to file a tax return?

19 A Yes, he did.

20 Q Did he do that?

21 A No, he did not.

22 MR. MORRIS: No further questions at this time, Your
23 Honor.

24 THE COURT: Mr. Barnes?

25 MR. BARNES: Yes. Thank you, Your Honor.

CROSS-EXAMINATION

1

2 BY MR. BARNES:

2

3 Q Good morning.

3

4 A Good morning.

4

5 Q So those were some pretty simple basic charts, right?

5

6 Were those some pretty basic charts for you to prepare?

6

7 A I guess.

7

8 Q Would those have been -- you were here and you saw all the
9 testimony in this case; correct?

8

9

10 A That is correct.

10

11 Q And you saw that Mr. Snipes was asking questions about his
12 tax status beginning all the way back from early 2000? Do you
13 remember seeing those letters and documents?

11

12

13

14 A I remember seeing those, yes, sir.

14

15 Q And in the IRS's response, they never proceeded anything
16 like those charts or answers, did they?

15

16

17 A Not that I saw, no, sir.

17

18 Q Also, you reviewed Mr. -- the prior tax returns that had
19 been filed by Starr & Company; correct?

18

19

20 A Yes, I did.

20

21 Q And in 1998, you saw that Mr. Snipes lost about 750,000
22 dollars, right?

21

22

23 A I don't remember the number, no, sir.

23

24 Q Oh, do you remember that he lost a lot of money?

24

25 A There was a loss on the return.

25

1 Q And it is your computation analysis that since Mr. Snipes
2 left Mr. Starr, he has never lost money in any of the tax
3 years that you looked at?

4 A In the tax years that I looked at, he had gross income,
5 yes.

6 Q Okay. Is what you do sort of a combination of little
7 calculator computations, and then applying the tax law to the
8 meaning of those computations? Would that be an accurate
9 characterization of what you perform?

10 A No, sir, I would not say that that was accurate.

11 Q How would you characterize it?

12 A I would say that in reviewing of his records, there were a
13 substantial amount of records to be reviewed, financial data
14 and investment firm data, and it took a great deal of time to
15 review that and to determine if he did have income or didn't
16 have income. It wasn't simply adding up something, like you
17 said.

18 Q Oh, okay. So one big part of it is figuring out how the
19 tax law applies to his financial receipts; is that correct?

20 A Yes.

21 Q And how long -- you have been an IRS employee for
22 36-and-a-half years; is that correct?

23 A That is correct.

24 Q Have you ever read the entire Internal Revenue Code?

25 A No, sir, I have not.

1 Q Have you read all of the regulations that go with it?

2 A No, sir, I have not.

3 Q Do you know of any IRS employee who has?

4 A No, sir.

5 Q Is it fair to say -- did you hear earlier in opening
6 statement Attorney O'Neill referred to legal terms sometimes
7 are terms of art. Do you remember that?

8 A I remember him saying that, yes.

9 Q Are there lots of legal terms defined in those code and
10 regulations?

11 A Yes, there are many terms defined in there.

12 Q And those are sort of -- so there is something called
13 "gross income"?

14 A Yes.

15 Q There is something called "net income"?

16 A Yes.

17 Q There is something called "taxable income"?

18 A Yes.

19 Q And the word "income" itself comes from various court
20 cases, is that correct, its definition?

21 A Yes, I would say that's probably true. It is defined in
22 the code. Under Section 61, it tells what "income" is.

23 Q Is that "income" or "gross income" that's defined in
24 Section 61?

25 A It says "gross income."

1 Q Okay. Are there also all kinds of exceptions -- or I'm
2 sorry -- exemptions in the Internal Revenue Code? Are there
3 various exemptions or deductions that are listed for various
4 activities or items?

5 A There are, but they don't apply to what we were doing
6 here.

7 Q Okay. I'm just asking you whether there are.

8 A Yes, there are.

9 Q And have -- in the history of the Internal Revenue Code,
10 have there been disputes between different attorneys as to the
11 meaning of the Internal Revenue Code or various terms therein?

12 A Of terms therein, yes, I would say, certainly.

13 Q And have there been disagreements even between accountants
14 as to the meaning of the same word?

15 A Yes.

16 Q And have there even been disagreements between individuals
17 and the IRS as to the meaning of those words?

18 A I'm sure there have been.

19 Q And have there been occasions where even people within the
20 IRS might disagree with one another as to the meaning of some
21 of those terms?

22 A I thought that's what you just said.

23 Q Oh, okay. Yes? So that answer would be "yes," as well?

24 A Yeah.

25 Q You heard earlier in the testimony a difference between

1 the civil part of the procedure and a criminal part of the
2 procedure. Do you remember that testimony by the special
3 agents?

4 A Yes, I do.

5 Q Is that correct?

6 A Yes, it is.

7 Q So there are certain rights you have as an individual
8 while the case is a civil case that you no longer have once it
9 becomes a criminal case? Is that your understanding?

10 A There are different rights, yes.

11 Q Okay. Right, there are different rights once it is a
12 criminal case?

13 A Yes.

14 Q And do you recall Mr. Snipes in the documentation, in the
15 letters, his attorneys and accountants at one time asking for
16 an examination interview to be conducted by the IRS?

17 A I remember the letter, yes.

18 Q And the examination division does something similar to
19 what you did here, right?

20 A It would be similar if it was a civil case, yes.

21 Q Okay. And in hearing all of the testimony, nobody ever
22 granted Mr. Snipes that request prior to being put under
23 criminal investigation; correct?

24 A That's my understanding, yes.

25 Q Are you aware that every year the IRS has refunds that

1 belong to other people that go unclaimed by those people?

2 A That's public record in the newspaper and on television,
3 yes.

4 Q And isn't the amount in the amount of billions of dollars
5 every year?

6 A I don't know the amount.

7 Q And the IRS isn't trying to steal that money, right?

8 A No.

9 Q It is a situation where for the individual to find out
10 whether they are entitled to a refund, they must file
11 particular forms with the IRS to get that answer; correct?

12 A No.

13 Q How would you explain it? How do you get a refund?

14 A The only way that we would know that you were owed a
15 refund is if you filed a tax return. A situation you are
16 referring to, I believe, is where people can't be located.
17 They have moved or, for one reason or another, they don't know
18 where to send the checks.

19 Q Okay. Is it also the case, if somebody -- if a taxpayer
20 or an individual believes they are entitled to a refund, the
21 proper form, if they have previously filed a return and
22 previously paid a tax, is the 1040X return?

23 A You have to repeat it. I didn't --

24 Q Oh, sure, sure. Is a proper way to ask the IRS about
25 whether or not a person is entitled to a tax refund to file an

1 amended return known as a 1040X?

2 A Assuming they have filed the first return.

3 Q Yes, that's the assumption.

4 A Then the answer would be "yes."

5 Q And are you aware of how the refund and the appeals
6 process works on the civil side of IRS?

7 A In general terms, yes.

8 Q What is your awareness of how that process works?

9 A On the civil side, you file a tax return. And then if you
10 think it is in error, you file an amended tax return. That
11 amended tax return can be processed at the service center.
12 You can receive your money immediately or that return can be
13 sent down for an examination. Even if it is processed and you
14 receive your money, the return can still be sent down for an
15 examination.

16 Upon examination, the agent, like myself, would look at
17 that, and say, yes, I either agree with your position or I
18 don't agree.

19 If I agree with it, you either keep your money or I write
20 a report where you get your money back. If we don't agree,
21 then it can go to a group manager conference. And then from
22 there, on to the appeals. And if they still don't agree, then
23 on to the courts.

24 Q Is there also a process known as or do you know what a
25 notice of deficiency is?

1 A Yes.

2 Q What is that?

3 A A notice of deficiency occurs in the process that I was
4 telling you about. And I will give you at least one example.

5 Q Sure.

6 A If I send you a report telling you this is the way that
7 the government views an item for a change in an examination,
8 if you don't respond and don't do anything about it, then I
9 would send that forward to have a statutory notice of
10 deficiency issued.

11 Q And the notice of deficiency is a way of telling the
12 taxpayer you are liable for this amount of tax?

13 A Yes.

14 Q And you have to -- the individual has to receive that
15 notice of deficiency before they can challenge that liability
16 in tax court; is that correct?

17 A I'm not 100-percent certain of that.

18 Q Okay. And in listening to the evidence here, Mr. Snipes
19 was never issued a notice of deficiency by the IRS prior to
20 being placed under criminal investigation; correct?

21 A I have seen nothing that would indicate that he received
22 anything, no, sir.

23 Q And he never received any conference, in-person conference
24 prior to being put under criminal investigation; correct?

25 A Since he wasn't under civil examination, that's correct,

1 he would not receive a conference that I am aware of.

2 Q Were you ever -- what other parts of the IRS did you work
3 in before your current position?

4 A I have always been a revenue agent.

5 Q Okay. Have you never known a taxpayer or an individual to
6 request to be audited?

7 A Yes.

8 Q How commonplace is that?

9 A Very uncommon.

10 MR. BARNES: No further questions, Your Honor.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: No questions, Judge.

13 THE COURT: Redirect, Mr. Morris.

14 REDIRECT EXAMINATION

15 BY MR. MORRIS:

16 Q Agent Stich, Mr. Barnes was asking you about whether there
17 are disputes about the interpretation of tax provisions. Do
18 you recall those questions?

19 A Yes.

20 Q Is there any uncertainty that if a person makes million of
21 dollars in income from movies and investments, that they have
22 a requirement to file an individual income tax return?

23 A No, there should be no dispute there. The code is quite
24 clear that that's part of gross income and that would require
25 or trigger the filing requirements.

1 Q Mr. Barnes asked you about filing 1040X's and whether
2 that's a proper way to seek a refund. Do you recall those
3 questions?

4 A Yes, I do.

5 Q Is a 1040X amended tax return that has a jurat that has
6 been altered to say "under no penalties of perjury" a proper
7 amended tax return?

8 A No, it is not.

9 Q Is filing a 1040X amended tax return based on a frivolous
10 tax position that's been held by courts to be frivolous a
11 proper way to try to seek money from the government?

12 MR. BARNES: Objection, Your Honor; argumentative,
13 presumes facts not in evidence, and calls for an opinion of
14 witness under 701.

15 MR. MORRIS: Your Honor, I would submit that there
16 is abundant evidence that has already come in that the
17 position --

18 THE COURT: Perhaps, but I think the question was
19 argumentative, Mr. Morris. I will sustain the objection on
20 that ground.

21 MR. MORRIS: Let me rephrase.

22 BY MR. MORRIS:

23 Q Is filing a 1040X tax return based on the 861 position a
24 proper way to seek money from the government?

25 A No, it would not be.

1 MR. MORRIS: No further questions.

2 THE COURT: Anything further of the witness?

3 MR. BARNES: Just one moment to confer, Your Honor?

4 Or it might be a good time for our morning break,
5 actually.

6 THE COURT: All right. Let's do that, members of
7 the jury, take our morning break.

8 (Short recess taken.)

9 (Jury absent.)

10 THE COURT: Be seated, please.

11 Will there be any further examination of Agent
12 Stich?

13 MR. BARNES: Yes, very brief, Judge.

14 THE COURT: All right, then. Seat the jury, please,
15 Marshal.

16 (Jury present.)

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

19 Recross, Mr. Barnes.

20 MR. BARNES: Yes. Thank you, Your Honor.

21 RE-CROSS-EXAMINATION

22 BY MR. BARNES:

23 Q. Mr. Morris asked you some questions about your perspective
24 on the proper way to get certain answers from the IRS,
25 correct?

1 A. Correct.

2 Q. And would you believe that your 36-and-a-half years of
3 experience gives you more information as to how to understand
4 what's proper and right than someone who has none of that
5 experience?

6 A. Who has none of the experience? Yes. I would say I have
7 more knowledge than them, yes.

8 MR. BARNES: No further questions, Your Honor.

9 THE COURT: Anything further of the witness?

10 MR. MORRIS: No, Your Honor.

11 MR. WILSON: No, Judge.

12 THE COURT: Thank you, Agent Stich. You may step
13 down, sir.

14 Next witness, Mr. O'Neill.

15 MR. O'NEILL: Your Honor, at this time the
16 government rests.

17 THE COURT: The government rests.

18 Then, members of the jury, as you've just heard, the
19 United States has concluded the presentation of testimony and
20 evidence for your consideration during what is commonly called
21 the government's case-in-chief.

22 And as you were told during the course of your
23 selection, it is never the obligation, responsibility or
24 burden of a defendant in a criminal case to present any
25 evidence or to undertake to prove his innocence or anything of

1 the kind. The burden of proof lies exclusively upon the
2 United States.

3 At this stage of the trial, however, when the
4 government has announced rest, an opportunity is afforded to
5 the defendants to present testimony and evidence, if they wish
6 to do so. And in prior discussions with counsel, my
7 understanding is that in all probability there will be
8 witnesses called in behalf of the defense.

9 Before we can go forward with that, however, there
10 are matters of law and procedure at this stage of the case
11 that I need to take up and discuss with the counsel before we
12 can proceed.

13 I'm not at all sure those discussions -- how long
14 those discussions will take, and so we had decided last
15 evening, after you retired, that if the government did rest
16 its case today, we would simply pause and excuse you, give you
17 an afternoon off, as it were, and start again on Monday
18 morning in the hope that we can finish the case perhaps next
19 week.

20 We don't know that, but that's the target at the
21 moment. And we have made good progress in the trial of the
22 case in relation to what had been anticipated as explained to
23 you during the process of your selection.

24 All of this is a long way of saying, therefore, that
25 you will now be excused until 9:00 on Monday morning. I will

1 have the discussions that I need to have with counsel, and
2 hopefully we'll be prepared to proceed without any further
3 delay when you return after a weekend break on Monday morning.

4 Now, I do want to caution you that, although you
5 have now heard all of the evidence to be presented by the
6 United States, as I've just explained at some length and did
7 before, that does not mean that you've heard all of the
8 testimony or evidence necessarily, and you certainly have not
9 heard the closing summations or arguments of counsel or my
10 instructions to you on the law that you will apply to the
11 facts as you find them from the evidence in this case.

12 So you should continue to do the best you can to
13 keep an open mind about the case and to avoid exposing
14 yourselves to any sort of extraneous information, conversation
15 with others or any publicity about the case or anything of
16 that kind.

17 I appreciate your patient attention throughout the
18 case, and especially this week, and you're now excused until
19 9:00 on Monday morning.

20 (The jury exited the courtroom, having been excused
21 from further proceedings on this date.)

22 THE COURT: Be seated, please. Mr. O'Neill?

23 MR. O'NEILL: Yes, sir.

24 THE COURT: I'm not sure you're aware of this. I
25 was given a memo last evening from Mr. Leanhart, the clerk,

1 that he had received information that Acting U.S. Attorney
2 Adams had scheduled a press conference this morning having
3 nothing whatsoever to do with this case -- it's another
4 matter, as I understand it -- but it was to be held somewhere
5 in the building or on the first floor at 11:00. Are you aware
6 of this?

7 MR. O'NEILL: I had heard of that from Ms. Adams,
8 Your Honor.

9 THE COURT: Well, see if you can maybe send someone
10 to ask her to delay that for a few minutes, if necessary,
11 until the jury can clear the building lest there be some
12 confusion about it.

13 MR. O'NEILL: Yes, Your Honor. With permission of
14 the Court, I will do that right now.

15 THE COURT: All right. Please.

16 (Mr. O'Neill exited the courtroom at this time.)

17 THE COURT: As a matter of fact, counsel, I'm, as we
18 speak here, working on a tentative package of jury
19 instructions that I wish to distribute to counsel so you'll
20 have them over the weekend and into next week as we proceed
21 with the case.

22 Let's take a ten-minute break. And when I return, I
23 hope to be able to pass those out, and then I'll hear any
24 motions the defense may have at this stage of the case.

25 We'll take a ten-minute break.

1 (A recess was taken.)

2 (Jury absent.)

3 THE COURT: Be seated, please.

4 The clerk is passing out now, counsel, a set of jury
5 instructions that I have prepared in draft form drawing from
6 the pattern instructions of the circuit, and you'll have those
7 to look at for the remainder of the case.

8 And I would suggest that, as you put together any
9 requested jury instructions, that you do so in a way that's
10 designed to be melded into that package. If you object to
11 anything that's in there, of course, I'll hear you at the
12 charge conference about perhaps deleting it.

13 The United States has announced rest. Who speaks
14 for the defense?

15 MR. BERNHOFT: On behalf of Mr. Snipes, I do, Your
16 Honor.

17 THE COURT: Mr. Bernhoft. You have motions you wish
18 to make at this time?

19 MR. BERNHOFT: Yes, Your Honor. If I may approach?

20 THE COURT: Please.

21 MR. BERNHOFT: Your Honor, I have consulted with
22 Attorney Wilson, counsel for defendant Rosile, and one of the
23 motions that we wanted to bring was a motion to strike certain
24 exhibits.

25 There are several categories of exhibits that would

1 be subject to this motion to strike. The first were exhibits
2 that were made subject to a motion to strike during the course
3 of the proceedings, and we don't believe that the necessary
4 connections and lines have been drawn to permit those into
5 evidence.

6 And a second category of exhibits that we believe
7 are subject to a motion to strike, based on the object of the
8 conspiracy and -- that these exhibits were far outside of the
9 scope and object of the conspiracy language in the Indictment.

10 So Mr. Wilson and I will confer after we're
11 concluded here, and we can file that motion posthaste yet
12 later this afternoon or early evening.

13 That motion, Your Honor, we do -- on behalf of
14 Mr. Snipes, the defense does wish to make a Rule 29 motion for
15 a judgment of acquittal on Counts One through Eight of the
16 Indictment. That motion will be subject to our evaluation of
17 what exhibits may be subject to a motion to strike.

18 The standards for review of a Rule 29 are that,
19 taking the testimony and evidence as a whole, drawing all
20 reasonable inferences in favor of the prosecution, could a
21 reasonable jury determine guilt or innocence based on that
22 evidence, or are there failures where the government has
23 failed to prove at least some quantum of evidence upon which a
24 reasonable fact-finder could determine guilt or innocence?

25 So we believe that this motion to strike the

1 exhibits will have a bearing on our evaluation on what
2 testimony and evidence the reasonable fact-finder would take a
3 look at in that determination.

4 Secondly, we've got some substantive arguments with
5 respect to Count Two of the Indictment -- that's the
6 substantive offense, the alleged false claim -- that we
7 believe would merit a written paper, and similar with Count
8 Three of the Indictment and also with respect to conspiracy at
9 Count One.

10 I've spoken to Mr. O'Neill about this. The
11 government doesn't oppose this request to make a written
12 Rule 29 filed tomorrow, and we would request permission to
13 file that paper tomorrow in the form of a writing with the
14 Court.

15 The other matter that Mr. McLellan asked me to bring
16 to the Court's attention is the prosecution and the defense
17 have an agreement to redact a certain portion of a particular
18 exhibit, and that's going to be accomplished prior to sending
19 all the concluded exhibits up to the clerk. Judge --

20 THE COURT: Well --

21 MR. BERNHOFT: Yes, sir?

22 THE COURT: -- the defense, of course, is free to
23 file a written motion to strike or written Rule 29 motion at
24 its pleasure. On the other hand, I wish not to keep the jury
25 waiting in this matter when they return on Monday morning.

1 We've excused them until Monday morning in order to have this
2 time, the balance of the day, to resolve motions; and that's
3 what we need to do, I think.

4 MR. BERNHOFT: Judge, if we could, we can -- I can
5 confer with Mr. Barnes and the rest of the defense team. You
6 know, we could -- we could work on this all afternoon into the
7 early evening, get this paper filed yet by midnight tonight
8 ECF so the prosecution has a copy of that and the Court does
9 as well, and I believe it would be ready for adjudication. We
10 could proceed as scheduled Monday morning at 9:00 with the
11 jury with the defense case-in-chief.

12 THE COURT: Well, all right, with that
13 understanding.

14 Madam Clerk, as motions are filed electronically,
15 they are automatically routed to one of my email -- government
16 email accounts, are they not?

17 THE DEPUTY CLERK: They can be. We can set it up
18 that way.

19 THE COURT: Okay.

20 THE DEPUTY CLERK: I don't think it's set up that
21 way now.

22 THE COURT: Pardon?

23 THE DEPUTY CLERK: I don't think it's set up that
24 way right now.

25 THE COURT: All right.

1 MR. BERNHOFT: Judge, we could also -- we could also
2 email attach to the clerk, separate of the ECF, for forwarding
3 on to you as well.

4 THE COURT: Well, all right. We can do it that way
5 and I'll spend my weekend reading motions and --

6 MR. BERNHOFT: We're eager to write them, Judge.

7 THE COURT: -- I will be prepared to announce a
8 ruling or invite argument, or both, when we resume on Monday
9 morning.

10 But my intention, counsel should understand, is to
11 rule on the motions to the extent I feel competent and able to
12 do so in a way that doesn't keep the jury waiting and invite
13 argument only with respect to matters that I feel can't be
14 properly decided unless I hear from counsel.

15 MR. BERNHOFT: Clearly understood, Your Honor.

16 One last matter that we wanted to bring to the
17 Court's attention -- it is on behalf of Mr. Snipes -- we had
18 filed a motion for an order to show cause with respect to
19 Mr. Ken Starr's testimony during the first week of trial. As
20 we urged in the motion papers and the attached declarations of
21 Noel Hojnacki and Attorney Brian Mahany, who is a senior
22 partner with my firm, we believe there's an apparent perjury
23 in the testimony of Mr. Ken Starr and, second, a contumacious,
24 contemptuous refusal to respond to the subpoena duces tecum
25 and to produce the documents and records that were commanded

1 to be produced as set forth in Attachment A to that subpoena.

2 So that motion is on the table, and we would seek
3 direction from the Court as to how to proceed with respect to
4 that motion.

5 THE COURT: Well, what does the government say to
6 that? Mr. O'Neill?

7 MR. O'NEILL: Your Honor, obviously, as the Court
8 knows, the government does not represent Mr. Starr. He was a
9 witness in this proceeding.

10 In any event, once this motion was filed, I had one
11 of the agents that was assisting in this case send a telefax
12 copy to Mr. Starr. Mr. Starr maintains that he did not know
13 of the subpoena at the time that he was testifying.

14 Your Honor, there was a very brief colloquy between
15 Mr. Barnes and Mr. Starr when he was on the stand.

16 THE COURT: I recall it, Mr. O'Neill.

17 MR. O'NEILL: Yes, Your Honor.

18 He was asked if he was issued a subpoena. He said,
19 "I don't believe so. I did receive a subpoena from the
20 government." And then he went on to say he did not get one
21 from the defense.

22 According to Mr. Starr through the agents -- so,
23 again, Your Honor, I'm getting it secondhand -- a subpoena
24 might very well have been telefaxed to the Starr group and he
25 never saw it. That's what he would say.

1 The subpoena, Judge -- category one seems to be on
2 point. Category two and three seem to be matters that would
3 be outside the scope of any cross-examination. And they were
4 actually already inquired into, as was five. And four, of
5 course, would be all business records and, five, personal tax
6 returns.

7 Mr. Starr would contend it was not contumacious
8 and -- and I'm getting this through the agent and so --

9 THE COURT: Yes. Well, the question, I think -- the
10 first question is procedurally where this motion places the
11 Court and the parties in acting on it.

12 I will say it's at best marginal when it comes to an
13 effort to demonstrate contumacious behavior, because there is
14 some question as to the sufficiency of the -- or may be on its
15 face, I -- some question concerning the sufficiency of the
16 service.

17 MR. BERNHOFT: Judge, I can advise the Court that
18 Mr. Mahany is actually in Ocala, and he's prepared to testify.
19 He had conversations with Mr. Starr, and Mr. Starr explicitly
20 agreed to accept service by facsimile. That facsimile was
21 transmitted -- confirmed transmitted. There was subsequent
22 conversations with the person at Starr who was manning the fax
23 machine.

24 Subsequent to that, I got a call from Michael
25 Canter, and Michael Canter asked me some questions about what

1 the obligations were with respect to the subpoena duces tecum.
2 He indicated to me -- and I proffer to the Court -- that he
3 indicated to me that Ken, Ron and he -- Ken Starr, Ron Starr
4 and Mr. Canter -- had concerns about bringing three duplicate
5 sets of responsive documents. And I said, no, just one set of
6 responsive documents will do.

7 Mr. Starr is an attorney, and it's our view that
8 that is -- that's -- it's contumacious not to respond and to
9 produce the documents. And there's an issue of his
10 representation from that witness stand that he didn't receive
11 the subpoena. So this is, we believe, a very serious matter,
12 as I'm sure the Court does, and I am seeking guidance from the
13 Court.

14 THE COURT: Well, let there be no mistake about
15 that. If there's a refusal to comply with an order of the
16 Court, including its processes, which would in turn include a
17 subpoena, I view it as a very serious matter.

18 By the same token, because of its seriousness and
19 its possible consequences, it is also my view that the record
20 has to be completely unambiguous with regard to the contempt.
21 That is why, among other things, Rule 4.15 of the rules of the
22 Court expressly require some evidence in the form of a writing
23 where an application for relief is made to depend upon an
24 asserted stipulation or agreement, because, otherwise, the
25 Court has no effective way of making a determination as to

1 who's right and who's wrong, et cetera.

2 I do think, however, that the motion is not so
3 facially deficient that I should deny it for that reason, that
4 some response is required.

5 So I'm inclined to grant it to the extent of
6 requiring the witness, Mr. Starr, to file a response to the
7 motion within ten days, and I will make an order to that
8 effect.

9 MR. O'NEILL: Thank you, Your Honor. I believe he
10 would like to. We were waiting for the Court to make a
11 determination of that.

12 THE COURT: Okay. I will try to see that an order
13 is entered to that effect this afternoon.

14 MR. BERNHOFT: Thank you, Your Honor.

15 MR. O'NEILL: Thank you, sir.

16 THE COURT: Now, is there anything else we need to
17 discuss at this point, then?

18 MR. BERNHOFT: Judge, I was wondering, given the --
19 all the parties' intention and the Court's intention to move
20 forward briskly Monday morning and get to the defense in
21 chief, perhaps we could start at 8:30 a.m. Monday morning.
22 Ms. Moreno suggested that. It might not be a bad idea if we
23 could do that, but obviously at the Court's discretion.

24 THE COURT: Well, I've told the jury countless times
25 now that we would be working 9:00 to 5:00, and they've

1 disbursed for the weekend. I don't know what reliance they
2 may have made on that. It's a matter of 30 minutes --

3 MR. BERNHOFT: I was thinking just for some
4 allowance for counsel argument Monday morning, not affecting
5 the jury, sir.

6 THE COURT: Well, we can certainly do that. We'll
7 resume, as far as counsel are concerned, at 8:30 on Monday
8 morning, and I'll take up whatever motions have been filed
9 over the weekend at that time.

10 MR. BERNHOFT: Thank you, Judge. Appreciate it.

11 THE COURT: Marshal Rivera, good morning.

12 DEPUTY MARSHAL RIVERA: Good morning, Your Honor.

13 THE COURT: Would you please make your daily report
14 concerning whatever conversations you have had with Mr. Kahn
15 about his presence or absence from these proceedings?

16 DEPUTY MARSHAL RIVERA: Yes, Your Honor. I
17 contacted him this morning again, dropped off the transcripts,
18 asked him once again if he wanted to participate, and he
19 refused.

20 THE COURT: All right. Well, you might inform him
21 over the -- will you have occasion to see him over the
22 weekend?

23 DEPUTY MARSHAL RIVERA: Yes, Your Honor, because I
24 will take the transcripts today so he doesn't have to wait
25 over the weekend to get it.

1 THE COURT: Make sure you inform him that the
2 United States has rested its case.

3 DEPUTY MARSHAL RIVERA: Yes, Your Honor.

4 THE COURT: As a matter of fact, at this critical
5 stage of the proceeding I think perhaps, Marshal, you should
6 produce Mr. Kahn in court so that I can address him personally
7 on Monday morning. Have him here by 8:30, if you can.

8 DEPUTY MARSHAL RIVERA: Not a problem, Your Honor.

9 THE COURT: And in the meantime, you can inform him
10 that the United States has rested and that I've instructed you
11 to have him in court on Monday morning so that I can address
12 him personally about his rights and responsibilities at this
13 critical stage of the proceedings.

14 DEPUTY MARSHAL RIVERA: Yes, Your Honor.

15 THE COURT: Thank you.

16 MR. BERNHOFT: Your Honor, if I might? I talked to
17 opposing counsel, and we wish to put on the record that the
18 government exhibit that will be redacted by mutual agreement
19 is Government's 139.

20 THE COURT: All right. The record will so reflect.

21 MR. BERNHOFT: I'm sorry. I was just talking to
22 Mr. Morris. The redaction will consist of a return address on
23 the envelope. And we'll accomplish that by mutual agreement.

24 THE COURT: All right.

25 MR. BERNHOFT: Thank you, Judge.

1 THE COURT: Is there anything else that anyone
2 wishes to address before we recess, then, for the weekend?

3 MR. BERNHOFT: Not from the defense, sir.

4 THE COURT: We'll recess until 8:30 on Monday
5 morning.

6 (Thereupon, the proceedings in this case for this
7 date were concluded at this time.)

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C E R T I F I C A T E

15 We hereby certify that the foregoing is an accurate
16 transcription of proceedings in the above-entitled matter.

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Dennis Miracle

Date

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Kelly Owen McCall

Date

I N D E X

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Exhibit	Admitted:
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