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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

April 24, 2008
Ocala, Florida

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

_____ /

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE WM. TERRELL HODGES,
SENIOR UNITED STATES DISTRICT JUDGE

Appearances of Counsel:

For the Government:

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

For Defendant Snipes:

- Ms. Linda G. Moreno
- Mr. Daniel R. Meachum
- Ms. Kanan B. Henry
- Mr. Roger A. Grad
- Ms. Carmen D. Hernandez

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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25 | Reported by: Dennis Miracle, Official Reporter

P R O C E E D I N G S

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

4 We have a sentencing hearing at this time in the case
5 of the United States against Kahn, Snipes and Rosile,
6 06-criminal-22.

7 Mr. O'Neill, you're here for the United States.
8 Mr. Morris is here, I see.

9 MR. O'NEILL: Yes, Your Honor. Mr. McLellan as well,
10 Your Honor, with --

11 THE COURT: And Mr. McLellan.

12 MR. O'NEILL: -- the Department of Justice, and also
13 is Nathan Hochman, Your Honor, who is an Assistant Attorney
14 General with the Tax Division.

15 THE COURT: Hochman?

16 MR. HOCHMAN: Yes, Hochman.

17 THE COURT: Mr. Kahn, I note your presence. Good
18 morning.

19 DEFENDANT KAHN: Yes, sir.

20 THE COURT: Mr. Wilson, I note your presence with
21 Mr. Rosile. Good morning to you.

22 MR. WILSON: Thank you, Judge. Good morning.

23 THE COURT: And, Mr. Meachum, good morning to you.

24 MR. MEACHUM: Good morning, Your Honor. How are you?

25 THE COURT: Well, thank you.

1 MR. MEACHUM: Good.

2 THE COURT: You have some new lawyers on the defense
3 side, I believe, representing Mr. Snipes this morning?

4 MR. MEACHUM: Yes, I do, Your Honor. As you're
5 aware, Ms. Moreno and Ms. Henry are already counsel of record.
6 The new attorneys are Carmen Hernandez and Roger Grad,
7 Your Honor.

8 MS. HERNANDEZ: Good morning, Your Honor.

9 MR. GRAD: Good morning, Your Honor.

10 MS. HENRY: Good morning, Your Honor.

11 MS. MORENO: Good morning, Your Honor.

12 THE COURT: Good morning.

13 Give me a few moments to get this sorted out, if you
14 will.

15 MR. MEACHUM: All right.

16 (Pause.)

17 THE COURT: I have before me, counsel, as usual, the
18 presentence reports prepared by the United States Probation
19 Officer with respect to each of the three defendants presently
20 before the Court.

21 The record reflects, first, with respect to Mr. Kahn
22 that he was found guilty by a verdict of the jury with respect
23 to Counts One and Two of the Indictment, those verdicts being
24 returned on February 1 of this year.

25 And after polling the jury and accepting their

1 | verdict, the Court adjudged the defendant to be guilty of
2 | those offenses as charged in Counts One and Two and ordered a
3 | presentence investigation prior to the imposition of sentence.

4 | The Probation Officer then conducted his
5 | investigation and prepared and submitted to the parties a copy
6 | of his presentence report, which was subsequently delivered to
7 | me with the addendum required by Rule 32, reflecting that the
8 | United States has no unresolved objections to the report.

9 | However, Mr. Kahn, it's reported to me by the
10 | Probation Officer in the Rule 32 addendum that you declined to
11 | accept delivery of the report and, as far as the record shows,
12 | have not seen it; is that true?

13 | DEFENDANT KAHN: I don't accept anything. I don't
14 | accept this offer or the -- I don't consent to these
15 | proceedings, so --

16 | THE COURT: Well, the question was whether or not you
17 | declined to accept and review a copy of the presentence
18 | report.

19 | DEFENDANT KAHN: And my answer is, I don't accept
20 | anything.

21 | THE COURT: Well, I'm going to take that as a "yes"
22 | response.

23 | A copy of the report is here and available. I am
24 | obviously going to rely heavily upon it in the imposition of
25 | sentence in your case at the conclusion of this hearing.

1 Do you wish to see it and review it before that
2 happens?

3 DEFENDANT KAHN: I'm not consenting to these
4 proceedings, so whatever you do is up to you.

5 THE COURT: All right. I'll take that as a "no"
6 answer.

7 And the government having no objection to the report,
8 I will adopt and confirm it as the Court's findings of fact
9 and conclusions of law relating to the imposition of sentence
10 in the case of Mr. Kahn.

11 And insofar as the United States Sentencing
12 Guidelines are concerned, I would conclude more particularly,
13 as did the Probation Officer, commencing at paragraph 78 of
14 the report, that the base offense level applicable to the
15 offenses of conviction would be level 6.

16 The defendant is then subject to an enhancement of 22
17 offense levels by virtue of the specific offense
18 characteristic discussed at paragraph 79 of the report
19 relating to the amount of the loss or intended loss in tax
20 revenue in the case.

21 He's then subject to an additional enhancement of two
22 offense levels by virtue of the characteristic discussed at
23 paragraph 80 of the report relating to utilization of mass
24 marketing techniques.

25 He is then subject to an additional enhancement of

1 two offense levels as discussed at paragraph 81 of the report
2 having to do with the misrepresentation -- or
3 misrepresentations described more fully in that portion of the
4 report.

5 And he is then subject to an additional enhancement
6 of four offense levels by virtue of his role in the offense or
7 offenses of conviction as an organizer or leader of criminal
8 activity, producing an adjusted offense level of 36.

9 There are no additional enhancements or diminutions
10 so that the total offense level remains at 36.

11 The Probation Officer then determined that the
12 defendant has three criminal history points, which places him
13 in criminal history category two. And at offense level 36,
14 criminal history category two, the applicable sentencing range
15 would be a term of commitment of from 210 to 262 months.

16 However, the statutory maximum with respect to the
17 offenses of conviction are five years as to each count, so
18 that the legal and guideline sentence becomes a sentence of
19 not more than 120 months to be followed by a term of two to
20 three years supervised release and a fine or other financial
21 sanctions as elsewhere set out in the report to include a
22 special assessment of \$200, which is mandatory.

23 With respect to Mr. Rosile, the presentence report of
24 the Probation Officer reflects that he also was found guilty
25 by verdict of the jury returned on February 1, 2008, of the

1 offenses charged in Counts One and Two of the Indictment.

2 After polling the jury, the Court accepted and filed
3 the verdicts of the jury and adjudged the defendant to be
4 guilty of those offenses and ordered a presentence
5 investigation and report.

6 The Probation Officer then conducted that
7 investigation and prepared and submitted to Mr. Rosile and to
8 his counsel, Mr. Wilson, a copy of the report, which then was
9 delivered subsequently to me with the addendum required by
10 Rule 32 reflecting that the defendant does have a number of
11 remaining objections which will require resolution before
12 sentence may be imposed. The United States has no unresolved
13 objections.

14 Is all of that correct, Mr. Wilson?

15 MR. WILSON: That is correct, Your Honor.

16 THE COURT: Come to the lectern, Mr. Wilson, and let
17 me hear you, then, with respect to your objections, please.

18 The first objection, as I understand it, has to do
19 with paragraph 4 of the report, which recites that the
20 offenses of conviction occurred from 1999 through October of
21 2006.

22 And your objection, if I understand it correctly, is
23 that that's overly broad and expands what should be considered
24 as relevant conduct.

25 MR. WILSON: Well, Judge, I think the first objection

1 I have is with respect to the actual version of the sentencing
2 guidelines that should apply in this case.

3 By virtue of the fact that the offense -- the offense
4 occurred on a finite date in 2006, I believe. The guidelines
5 changed in October of 2006. Because my interpretation of the
6 facts of this case is that the offense was committed prior to
7 2006, the guidelines in effect at the time of the offense
8 should apply because the guidelines were amended in November
9 of the year that the offense was committed and the guidelines
10 became more severe.

11 For example, assuming for the sake of argument that
12 the government is correct in its analysis of the base offense
13 level, under their interpretation of the guidelines -- and
14 that would be the guidelines in effect presently -- he would
15 end up with a sentencing guideline range of 78 to 87 months.
16 However, if the old guidelines are applied, his sentencing
17 range would be 51 to 63 months, his base offense level.

18 I believe that irrespective of the fact that the
19 Indictment is extremely broad in its wording and alleges that
20 the offense commenced in 2006 or at some date earlier through
21 the date of the Indictment, I believe that the actual offense
22 conduct of Mr. Rosile in signing the tax return at issue was
23 completed prior to the new guidelines taking effect and,
24 therefore, the old guidelines should apply.

25 THE COURT: All right. Mr. Leanhart, let me see a

1 | copy of the Indictment, please.

2 | Who speaks for the government on this issue,
3 | counsel? Mr. Morris?

4 | MR. MORRIS: Yes, Your Honor.

5 | THE COURT: Come to the lectern, please.

6 | What do you say to this objection, Mr. Morris?

7 | MR. MORRIS: Your Honor, we agree with the position
8 | taken by the Probation Officer; that is, that defendant Rosile
9 | was convicted of the conspiracy count as well as the false
10 | claim count of Count Two.

11 | Count One, the conspiracy count, alleges that the
12 | conspiracy took place from in or about 1999 through the date
13 | of the Indictment, which was in October of 2006. And
14 | Mr. Rosile did not affirmatively withdraw from the conspiracy.

15 | THE COURT: Well, what was the effective date of the
16 | guidelines manual that was applied in this case by the
17 | Probation Officer in the presentence report?

18 | MR. MORRIS: Your Honor, I believe that the 2007
19 | guideline manual was used.

20 | THE COURT: So that it was effective after the date
21 | of the filing of the Indictment and after the date of the
22 | conclusion or termination as a matter of law of the charged
23 | conspiracy offense in Count One, right?

24 | MR. MORRIS: Yes, Your Honor. However, there is no
25 | difference, I believe, between the 2007 manual and the

1 | guidelines that were in effect at the time of the Indictment.

2 | THE COURT: Well, then it's back to you, Mr. Wilson.
3 | What do you say to that?

4 | MR. WILSON: Judge, I would agree that the guidelines
5 | manual from 2006 to 2007 were consistent. However, I disagree
6 | with respect that either of those are the guidelines that
7 | should be applied in this case.

8 | Obviously the guidelines were revised in 2006, I
9 | believe, and -- or November of -- was it November -- I'm
10 | sorry, Judge. 2001. Between 2006 and 2007, there would be no
11 | difference in the guidelines. However, from 2000 to 2001,
12 | there's a significant difference in the guidelines.

13 | And our position is that because the offense of
14 | conviction was completed or committed during 2000, those are
15 | the guidelines that should apply.

16 | MR. MORRIS: Your Honor, I would point out that the
17 | evidence at trial established that Mr. Rosile prepared over
18 | 200 fraudulent returns for American Rights Litigators'
19 | clients. Some of those returns were prepared in November and
20 | December of 2001. And so that conduct goes beyond the
21 | effective date of the guideline change in November 1st of
22 | 2001.

23 | THE COURT: So as to be relevant conduct with respect
24 | to Count One.

25 | MR. MORRIS: Yes, Your Honor.

1 THE COURT: I think so, Mr. Wilson. I'm inclined to
2 overrule that objection on that basis. The evidence
3 presented, I think, at trial, viewing the evidence at this
4 point in the light favorable to the verdict, would compel the
5 conclusion that the defendant Rosile was an active participant
6 in the conspiracy in late 2001, if not later. And there's no
7 evidence of a legal withdrawal or abandonment.

8 So it seems to me that the Probation Officer is
9 correct in the manner in which he determined the applicable
10 guideline manual for purposes of determining the applicable
11 guideline sentencing range, and I'll overrule that objection.

12 What is your next objection?

13 MR. WILSON: Judge, there was a significant amount of
14 information in this presentence report that does not apply to
15 Mr. Rosile. It does not apply to his activities. It is -- a
16 significant amount of information applies only to either
17 Mr. Snipes or Mr. Kahn.

18 And while it does not affect Mr. Rosile's guideline
19 offense level, I believe that there's just a significant
20 amount of surplusage that should not appear in the
21 guideline -- I'm sorry -- in the presentence investigation
22 report.

23 Most specifically, there is an allegation in the
24 presentence report that there was a finding that Mr. Rosile
25 had filed a frivolous motion in the civil injunction

1 proceeding that was filed against him after the termination of
2 this conspiracy. It was not related to this particular case.
3 It was not related to the injunction that was filed against
4 American Rights Litigators and Mr. Kahn.

5 However, to the extent that there's any type of an
6 averment or allegation that Mr. Rosile exhibited any type of
7 disrespectful conduct to the Court, we would just ask that be
8 excised from the report as unnecessary.

9 THE COURT: Well, focus my attention on the specific
10 provision of the presentence report that that addresses.

11 MR. WILSON: Paragraphs 33 and paragraphs 36.

12 I'm sorry, Judge. This is actually the revised
13 version, so this would be paragraph 34 on page 7.

14 THE COURT: Your contention is that that proceeding
15 and the factual circumstances addressed in that injunction
16 were unrelated to the relevant conduct in this case?

17 MR. WILSON: Well, Judge, if -- if I recall the
18 testimony correctly, this -- the investigation that prompted
19 the injunction hearing was commenced for unrelated conduct.

20 During the course of the agent's investigation, she
21 became aware of ARL activities, and that was certainly
22 encompassed in the -- in the activities that she had included.
23 But I think that for purposes of the conduct in this case,
24 specifically, we still believe that this was a single-object
25 conspiracy -- that conspiracy was to file the Snipes return --

1 I believe that the allegation that he actually had an
2 injunction entered against him -- and if the Court recalls, I
3 believe that that's -- there was significant argument over
4 that was admissible evidence in the trial. But I certainly
5 believe that any type of averment that he filed some sort of
6 frivolous document or in any way was disrespectful to the
7 Court should not be included in the presentence report.

8 THE COURT: Mr. Morris?

9 MR. MORRIS: Your Honor, there was evidence
10 introduced in the trial of this case not only in the form of
11 testimony, but also at least one exhibit -- I believe the
12 relevant exhibit is 94-2 -- which was a redacted copy of the
13 complaint against defendant Rosile.

14 And in essence, the information that's contained in
15 the presentence report is taken from that trial evidence as
16 well as the -- apparently the Probation Officer's own
17 investigation in this matter utilizing the records of this
18 Court. And certainly that's proper for the Probation Officer
19 to do that.

20 The allegations pertain to an injunction against the
21 defendant regarding this so-called 861 argument. And so I
22 would argue that it's clearly relevant conduct and is properly
23 included in the presentence report.

24 As the Probation Officer notes in the addendum to the
25 report, 18 U.S.C. Section 3577 and U.S. Sentencing Guidelines

1 Section 1B1.4 place no limit on the information that the Court
2 can consider concerning the background, character and conduct
3 of the defendant. And that's what this is relevant for. As
4 Mr. Wilson notes, these passages or paragraphs in the
5 presentence report have no effect on Mr. Rosile's guideline
6 computation.

7 THE COURT: Well, here again, I think the government
8 has the better of that, Mr. Wilson. It seems to me that it is
9 relevant conduct in a sentencing context, and the finding
10 concerning the filing of the frivolous motion was made by the
11 Court itself in that proceeding in the -- in the Tampa
12 Division. And it does seem to me that that's properly
13 included in the presentence report.

14 The extent to which it may be given weight or not
15 given weight in the formulation of a sentence that is
16 otherwise determined to be within the guideline range for
17 purposes of the sentencing guidelines is another matter. But
18 I think it's properly included in the report for such
19 consideration as the Court might wish to give it. And on that
20 basis, I'll overrule that objection as well.

21 Now, let's move on to your next one.

22 MR. WILSON: I think the next objection deals with
23 the fraud loss amount to be used in determining his offense
24 level.

25 The government and the Probation Officer have

1 | calculated Mr. Rosile's fraud loss -- or the loss
2 | attributable -- attributable to him as \$11,213,947. That
3 | includes \$7,360,755 of the 1997 Snipes 1040 X, which is the
4 | subject of the trial, as well as what they have calculated as
5 | \$3,853,192 in refunds that were sought on behalf of other ARL
6 | clients.

7 | Judge, again, I believe that this was a single-object
8 | conspiracy and that the actual fraud amount attributable to
9 | Mr. Rosile should be the amount of his Snipes return,
10 | \$7,360,755.

11 | THE COURT: Well, assume for purposes of argument
12 | that that position is correct. What would be the effect under
13 | the tax table -- tax loss table in Chapter 2?

14 | MR. WILSON: Your Honor, I -- Judge, I believe that
15 | under the -- under the current guidelines, which the Court is
16 | using over objection, there would be no difference.

17 | However, under the prior guidelines that we would
18 | urge the Court are the appropriate guidelines to use, there
19 | would be a significant difference. But whether there's a 7
20 | million or \$11 million loss, I believe the loss table is
21 | consistent for those amounts.

22 | THE COURT: Well, thank you, Mr. Wilson. And based
23 | on the ruling, then, that I previously made concerning the
24 | applicable guideline manual, I'll overrule this objection
25 | because it's unnecessary to resolve it. The result for

1 purposes of the application of the guidelines would be the
2 same.

3 MR. WILSON: And, Your Honor, I just want to point
4 out that the actual range for this loss amount is 7 million to
5 20 million. So by virtue of the fact that he -- according to
6 what the government indicates the loss to be at 11 million, it
7 would be the same whether it's 11 million or 7.3 million,
8 although we would urge the Court to consider 7.3 million as
9 the actual amount for further argument.

10 THE COURT: And that would be toward -- your point is
11 toward the low end of that particular bracket in the table?

12 MR. WILSON: Yes, Judge.

13 THE COURT: I follow. All right. But the objection
14 is overruled.

15 Your next objection has to do with the question of
16 role, as I understand it.

17 MR. WILSON: That's correct, Your Honor. Judge, the
18 -- it's our position that Mr. Rosile's role in this conspiracy
19 was that of a minor participant. Mr. Rosile -- his role, as
20 was indicated during the trial, was limited to the preparation
21 of 240 some-odd ARL 861 tax returns.

22 He was not involved in the actual promoting of the
23 scheme. He was not involved with contacting the Internal
24 Revenue Service. That was the province of Mr. Malatesta,
25 Mr. Baxley and other individuals involved in the ARL scheme.

1 He was not a founding member. In fact, ARL existed
2 long before Mr. Rosile became a member of ARL and then an
3 employee, and it continued to function after he resigned from
4 American Rights Litigators. In fact, I believe that his
5 involvement with American Rights Litigators spanned anywhere
6 from six to eleven months based upon the documents that we saw
7 at trial.

8 I do believe that his role is significantly less
9 culpable than that of other participants, that being Mr. Kahn.
10 I believe his role is significantly less involved to that of
11 Mr. Malatesta, to that of Mr. Baxley. There were 861 returns
12 prepared by ARL before Mr. Rosile became involved with that
13 organization. There were 861 returns prepared by them after
14 he left the organization. I believe that his role in the
15 conspiracy is minor, and he should be entitled to a minor role
16 reduction.

17 THE COURT: Well, if I follow your argument, you are
18 not objecting to the two-level enhancement suggested by the
19 Probation Officer at paragraph 81 of the report, which is
20 predicated upon Section B1.3 of the guidelines. Your
21 objection or complaint is that the defendant should be
22 entitled to a mitigating role adjustment under Section 3B1.2.

23 MR. WILSON: Your Honor, I have objected to the
24 enhancement for sophisticated means likewise.

25 THE COURT: Well --

1 MR. WILSON: If the Court is looking at my objection
2 -- I apologize; it's convoluted -- but I was in the
3 situation --

4 THE COURT: Well, I'm looking at the presentence
5 report. The enhancement at paragraph 81 is not based upon
6 sophisticated means or aggravating role. Rather, it's based
7 upon the abuse or use of a special skill in a manner that
8 significantly facilitated the commission of the offense, in
9 this instance his training and status as an accountant.

10 MR. WILSON: No, Judge. That adjustment was, in
11 fact, object -- that was objected to, which remains
12 outstanding.

13 THE COURT: All right. But I understood your -- your
14 argument as you just presented it to me, Mr. Wilson, seemed to
15 focus primarily, if not exclusively, upon the claim for
16 mitigating role reduction.

17 MR. WILSON: I skipped over, Judge. I was going to
18 argue both. I apologize for getting ahead of myself. I do --

19 THE COURT: Well, then, let me -- what is -- why
20 wouldn't the special skill enhancement be applicable to
21 Mr. Rosile?

22 MR. WILSON: Judge, because of the actual conduct in
23 this case. The conduct was -- was limited to signing a tax
24 return. He didn't -- he didn't prepare the underlying return.
25 He was, in fact, an accountant at one time. That is correct.

1 And I would also suggest that it is appropriate that
2 a bookkeeper can, in fact, utilize special skills. But I
3 don't believe that merely having a special skill is the same
4 as using it in the commission of an offense.

5 His conduct was limited to signing a 1040 X -- or a
6 number of 1040 Xs. There is no evidence presented that he
7 prepared the underlying 1040s. For example, Mr. Snipes.
8 Mr. Snipes' 1040 was prepared by the accountants in New York
9 who testified at this case.

10 Mr. Rosile basically copied -- assuming that it can
11 be said that he prepared the return, he merely copied numbers
12 from one form to another and signed it and attached the 861
13 language to the -- to the return itself. I don't believe that
14 he actually utilized special skill in this particular offense.
15 He may possess it, but he didn't use it any more so than a
16 rocket scientist robbing a bank.

17 THE COURT: All right. Over to you, Mr. Morris.
18 There are, in effect, two objections here, one having to do
19 with role and the other having to do with special skill.

20 What do you say to that?

21 MR. MORRIS: Your Honor, with regard to the special
22 skill objection, first, I don't think that the analogy just
23 put forth by Mr. Wilson is apt. We're talking about an
24 accountant who prepared tax returns, forms 1040 and 1040 X.
25 Regardless of who prepared the original returns in the case of

1 1040 X amended returns, this was an accountant who prepared
2 tax returns that asserted a fraudulent position under Section
3 861 of the Internal Revenue Code.

4 So it's difficult to see how someone could better
5 utilize a skill in the commission of an offense than in this
6 particular case, an accountant preparing bogus tax returns.

7 With regard to the objection about minor role, I
8 would point out that the relevant conduct that's been assessed
9 against Mr. Rosile in this case, whether it's the \$7 million
10 attributable just to the false claim for Mr. Snipes or the
11 \$11 million in total false claims, those were all prepared by
12 Mr. Rosile.

13 And so he is only being held accountable for the
14 relevant conduct that he actually participated in, not for
15 this broader scheme involving American Rights Litigators at
16 large. So he's just being held accountable for that conduct.

17 And I believe the leading case in the Eleventh
18 Circuit would be the Rodriguez DeVarn case setting forth the
19 two factors the Court is to consider, and that's the first
20 one.

21 And the Court in that case said that where the
22 relevant conduct attributed to a defendant is identical to his
23 or her actual conduct, he or she cannot prove that she is
24 entitled to a minor role adjustment simply by pointing to some
25 broader criminal scheme in which that person was a minor

1 participant but is not being held accountable.

2 Furthermore, with regard to the actual conduct he's
3 being held accountable for, he was the accountant for a period
4 of time who was preparing these false returns. And he may not
5 be as culpable as defendant Kahn in this, who was the leader
6 and organizer and lead promoter of this scheme. Nonetheless,
7 he's certainly not far enough down the level of culpability
8 as, say, one of the women in the office who was doing clerical
9 or administrative duties. He was the accountant preparing
10 false tax returns. So we don't believe that he qualifies for
11 a minor role adjustment.

12 THE COURT: Well, back to you one more time,
13 Mr. Wilson. What do you say to the fact that Mr. Rosile
14 signed a number of these tax returns as the preparer of those
15 returns?

16 MR. WILSON: That's what he did, Your Honor. That
17 was -- that was his only function in this organization, and
18 the --

19 THE COURT: Well --

20 MR. WILSON: -- organization was pretty broad. And
21 he -- there was a whole array of activities that the
22 organization was involved in, and I believe that his role was
23 not minimal -- those would be the girls in the office --
24 however, his role with respect to this conspiracy was that of
25 a minor participant.

1 And with respect to the special skill, I think that
2 the essence is the using of a special skill to avoid or make
3 it more difficult for detection of the crime. This is a
4 situation where he signed these tax returns and then
5 basically, as we indicated at trial, put a note on there that
6 said, Dear IRS: This is what we're doing.

7 THE COURT: All right. I think it's a close
8 question, not with respect to the use of the special skill
9 adjustment as applied by the Probation Officer, which I think
10 was correct. I do think there's a close question as to
11 whether in relation to the conspiracy as proved at trial the
12 defendant Rosile would be entitled to a minor role adjustment,
13 and I'm inclined to sustain that objection and give him a two
14 offense level reduction under Section 3B1.2, Subsection B of
15 the guidelines and reduce the total offense level from 28 to
16 26 in his case.

17 Give me a moment to make this note in the margin of
18 the report.

19 (Pause.)

20 THE COURT: What is your next objection, Mr. Wilson?

21 MR. WILSON: Judge, I believe that resolves my
22 objections.

23 THE COURT: All right. The United States had no
24 objections, Mr. Morris; is that correct?

25 MR. MORRIS: That's correct, Your Honor, other than

1 | there was one housekeeping matter that I -- I'm not sure if
2 | it's been connected or not. On the second page of the report,
3 | there's a reference to related cases and the case involving
4 | Milton Baxley. The draft -- or I should say the final report
5 | indicated that Mr. Baxley pled guilty. In fact, he was
6 | convicted by a jury of the contempt of court charge set forth
7 | therein.

8 | THE COURT: The version that I have before me recites
9 | that he was convicted by a jury of contempt of court, two
10 | counts.

11 | MR. MORRIS: Very good. Thank you, Your Honor.

12 | THE COURT: Having resolved the objections to the
13 | presentence report applicable to the defendant Rosile, the
14 | Court will now adopt and confirm that report as amended by my
15 | rulings as the Court's findings of fact and conclusions of law
16 | relating to the imposition of sentence.

17 | And I conclude for purposes of the sentencing
18 | guidelines in accordance with the ruling just made that the
19 | total offense level applicable to the offenses of conviction
20 | in the case of Mr. Rosile is offense level 26.

21 | The Probation Officer determined that the defendant
22 | has no prior criminal history or criminal history points, so
23 | that he remains in criminal history category one. And at
24 | offense level 26, criminal history category one of the
25 | guidelines, the sentencing range is a term of commitment of

1 not less than 63 and not more than 78 months, to be followed
2 by a term of two to three years supervised release, the
3 possibility of a fine or other financial sanctions as
4 elsewhere set out in the report, to include a special
5 assessment of \$200, which is mandatory.

6 And we'll turn now to the report as it pertains to
7 the defendant Snipes. It reflects that in the case of
8 Mr. Snipes, he was found by the jury to be guilty of the
9 offenses charged in Counts Three, Four and Five of the
10 Indictment and was found not guilty of the other counts of the
11 Indictment in which he had been named. And the Court as to
12 those counts entered a judgment of acquittal.

13 After polling the jury with respect to its verdict,
14 however, the Court accepted the verdict of guilty as to Counts
15 Three, Four and Five, adjudged the defendant to be guilty, and
16 ordered a presentence investigation and report.

17 The Probation Officer subsequently conducted his
18 investigation and then prepared and submitted to the parties a
19 copy of his report, which was subsequently delivered to me, as
20 in the other cases, with the addendum required by Rule 32
21 reflecting in this instance a number of remaining objections
22 both by the government and the defendant. And those
23 objections remain to be heard and resolved before sentence may
24 be imposed.

25 Is that a correct statement, Mr. Morris?

1 MR. MORRIS: Yes, Your Honor.

2 THE COURT: Mr. Meachum, who speaks for the defense
3 this morning?

4 MR. MEACHUM: On the objections, Your Honor,
5 Ms. Hernandez will be addressing the objection on behalf of
6 Mr. Snipes.

7 THE COURT: All right.

8 MR. MEACHUM: Your Honor, I have been requested to
9 request of you a quick bathroom break, if that's possible,
10 before we start to argue and present our objections.

11 THE COURT: All right. It's the middle of the
12 morning. We'll pause for a ten-minute break.

13 MR. MEACHUM: Thank you very much, Your Honor.

14 (A recess was taken.)

15 THE COURT: Be seated, please.

16 In the case of Mr. Snipes, the presentence report, as
17 I said, I think, before the recess, reflects that he was found
18 guilty of the offenses charged in Counts Three, Four and Five.

19 The Probation Officer, after conducting his
20 presentence investigation, prepared and submitted his report
21 to the parties, and that report has since been delivered to me
22 under Rule 32 with the addendum reflecting the objections of
23 the parties.

24 Ms. Hernandez, the defendant has received and has
25 reviewed with counsel a copy of the report, I take it.

1 MS. HERNANDEZ: Yes, Your Honor.

2 Your Honor, thank you for allowing me to appear
3 before the Court pro hac vice.

4 THE COURT: You're welcome.

5 Who speaks for the government? Mr. Morris?

6 MR. MORRIS: Yes, Your Honor.

7 THE COURT: The United States has two objections
8 according to the addendum. What is your argument with respect
9 to them?

10 MR. MORRIS: Your Honor, the first objection is with
11 regard to paragraphs 48 and 54 of the Offense Conduct section.
12 The defense had asked that the words "at the advice of
13 counsel" be inserted into the text of that paragraph, and we
14 objected simply because there had been no evidence at the
15 trial or that's been provided to us that the activities that
16 are involved in paragraphs 48 and 54 were at the advice of
17 counsel.

18 Those paragraphs refer to letters that were sent by
19 Mr. Snipes to one of the special agents of the IRS who was
20 investigating this case.

21 I would refer the Court to Exhibits 139 and 140 that
22 were received into evidence in this case.

23 THE COURT: Well, wait just a minute. Let me catch
24 up with you. I have partially distracted myself, and I'm not
25 sure that I followed what you said, Mr. Morris.

1 The objection as stated in the addendum has to do
2 with the reference in paragraphs 48 and 54 to the advice of
3 counsel, as I understand it.

4 MR. MORRIS: That's correct, Your Honor.

5 THE COURT: Well, then, start again. The
6 government's objection to that is what?

7 MR. MORRIS: The -- with regard to both paragraph 48
8 and 54, the phrase "at the advice of counsel" was inserted
9 into those paragraphs at the request of defense counsel after
10 reviewing the draft presentence report.

11 Our objection is that there was no evidence
12 introduced at trial or that's been provided since the time of
13 the presentence report investigation that would substantiate
14 that the activities set forth in those paragraphs were at the
15 advice of counsel.

16 Paragraph 48 details actions that were proven up at
17 trial with regard to two letters that were sent by defendant
18 Snipes to one of the investigating special agents of the IRS.
19 And as I referenced before, that would be Government's
20 Exhibits 139 and 140 that were received in evidence.

21 With regard to paragraph 54, that activity pertains
22 to a number of alleged filing statements in lieu of tax
23 returns for which there was evidence submitted at trial. I
24 would refer the Court to Government's Exhibits 128-1 and
25 128-2. And, again, in that paragraph, the phrase "at the

1 | advice of counsel" was inserted, and there's no evidence that
2 | we're aware of that those actions were taken at the advice of
3 | counsel.

4 | THE COURT: What do you say to that, Ms. Hernandez?

5 | MS. HERNANDEZ: Your Honor, what we would submit to
6 | the Court is that the counsel who advised was Robert Bernhoft,
7 | although I will tell the Court one of our objections is that
8 | much of the presentence report includes information that is
9 | not directly relevant to the three misdemeanor counts of
10 | conviction, so that -- and this objection and this issue goes
11 | to include -- is -- is part of that objection in the sense
12 | that these assertions and allegations don't go to -- you know,
13 | the count of conviction's a pretty simple count: an
14 | obligation to file a tax return and a failure to file it.
15 | Proof of that is -- doesn't require this reference to -- to
16 | what was done or not done.

17 | THE COURT: Well, it may not require it; but in terms
18 | of fashioning the appropriate sentence for the offenses of
19 | conviction, it's clearly relevant conduct, is it not?

20 | MS. HERNANDEZ: We submit that it is not,
21 | Your Honor --

22 | THE COURT: Well --

23 | MS. HERNANDEZ: -- that it is not -- with a failure
24 | to file, the -- these are related, if at all, to the two
25 | counts which the jury returned not guilty or acquitted

1 | verdicts. So we don't think that this --

2 | THE COURT: All right. But that's another matter
3 | we'll come to --

4 | MS. HERNANDEZ: Okay.

5 | THE COURT: -- in a moment. I don't think we're
6 | going to see eye to eye on that, and it shouldn't take us very
7 | long to dispose of it.

8 | But at the moment counsel says that this refers to
9 | advice given by Mr. Bernhoft. What do you say to that,
10 | Mr. Morris?

11 | MR. MORRIS: Your Honor, we'll accept that
12 | representation.

13 | THE COURT: All right. That renders the objection
14 | moot, then, I believe.

15 | What is the next objection of the United States?

16 | MR. MORRIS: The only other one, Your Honor, is with
17 | regard to paragraph 122 of the presentence report. That
18 | paragraph recites a number of factors that the defense has put
19 | forth that they believe that the Court should consider in
20 | rendering a sentence below the advisory guideline system.

21 | We have addressed, I believe, all or almost all of
22 | those factors in a sentencing memorandum filed a couple of
23 | weeks ago, and so I won't belabor the point, Your Honor.

24 | But with regard to one of those points, defense
25 | counsel just the other day filed their sentencing

1 memorandum -- I believe it was yesterday -- and they go into
2 some more detail than they originally stated in their
3 objections, and I would like to address that. And that's with
4 regard to this issue of sentencing disparity. They cite a
5 number of totally unrelated cases that they say the Court
6 should consider when sentencing defendant Snipes. I'm
7 referring to court document 453, which is their sentencing
8 memorandum filed yesterday.

9 For example, they point out that Milton Baxley
10 received a sentence of 18 months' imprisonment. Well,
11 Your Honor, that was for a totally different offense. In
12 fact, the Court did give defendant Baxley a guidelines
13 sentence and imposed a fine in that case.

14 They point to the case of Igor Olenicoff.
15 Your Honor, in that case the defendant pled guilty and paid
16 his full tax liability in a civil settlement of his taxes.

17 They point to the case of Marc Anthony. That was a
18 civil case, Your Honor, that involved the City of New York.

19 They point to the case of Washington, D.C., mayor
20 Marion Barry. Mayor Barry pled guilty to those counts, and
21 the tax loss involved in that case was substantially less than
22 involved in this case.

23 They point to the case of Norman Whitfield. In that
24 case, likewise, the defendant pled guilty, and the amount of
25 tax loss was substantially less than involved here.

1 Furthermore, in that case a sentence of imprisonment
2 was not imposed by the Court for the stated reason that the
3 defendant had severe health issues.

4 And then they point to the case of Willie Nelson,
5 which was a Tax Court case, that is, a civil case, not a
6 criminal case.

7 Finally, they point to the case of the rapper T.I.
8 In that case, again, the defendant pled guilty, is cooperating
9 with authorities. The charge is different.

10 All of those cases are easily distinguishable from
11 the instant case, and we would submit that there's no basis
12 for the Court to impose a sentence of probation, which the
13 defense advocates, based on any of those cases because they
14 are easily distinguishable.

15 THE COURT: Well, I think all of that is
16 appropriately considered as a matter of the allocution of the
17 parties. But in terms of an objection to the presentence
18 report wherein the Probation Officer simply recites
19 appropriately the contentions of the defense concerning
20 factors that might warrant a departure, I think it's
21 appropriate.

22 And to the extent the United States has stated
23 objection to its mere inclusion in the report, I would and do
24 overrule that objection, and the report will remain unchanged
25 in that respect.

1 But I can and will take into consideration your
2 arguments with respect to consideration of that material,
3 Mr. Morris.

4 MR. MORRIS: Thank you, Your Honor.

5 THE COURT: All right. Now we'll turn to the defense
6 objections.

7 Your first objection is what, Ms. Hernandez?

8 MS. HERNANDEZ: Your Honor, I think the overriding
9 objection is an objection to the guideline itself, and I --
10 we -- I think we're fairly expansive in our explanation, but I
11 will -- let me argue to the Court.

12 Some years ago, at the request of the government, the
13 case went up to the Supreme Court when they challenged a
14 guideline, and the guideline they challenged was the career
15 offender guideline. And they challenged it on the basis that
16 the Commission, in adopting a particular provision of that
17 guideline, had violated the statute 28 U.S.C. 994, which is
18 the statute that Congress enacted when it created the
19 Sentencing Commission. And 18 -- and 28 U.S.C. 994 directs
20 the Sentencing Commission to do certain things with respect
21 to -- with respect to how it formulated the guidelines.

22 And the Supreme Court in that case, United States
23 versus LaBonte, L-A-B-O-N-T-E, said, yes, the Commission has a
24 lot of discretion, but it's not unfettered. And the
25 discretion has to be at the -- has to give way to the specific

1 requirements in 994.

2 As I say, that case -- and as a result, the
3 Supreme Court invalidated that particular provision of the
4 guideline. And it was the career offender provision that the
5 Commission had defined what -- essentially had defined out
6 subsequent -- second and subsequent drug cases in determining
7 what the offense statutory maximum was for career offender.

8 THE COURT: I haven't read the decision,
9 Ms. Hernandez. I accept, of course, your representation
10 concerning its precedent --

11 MS. HERNANDEZ: Okay.

12 THE COURT: -- but I have -- first of all --

13 MS. HERNANDEZ: Yes, sir.

14 THE COURT: -- the decision, I take it, was
15 predicated upon statutory construction and not constitutional
16 grounds.

17 MS. HERNANDEZ: It was -- it was a statutory
18 construction argument. That is correct. It -- the
19 Commission -- the Supreme Court read 994(h), which was the
20 provision in that case, and said, you're directed to do this
21 and you must.

22 THE COURT: Well, did the Court discuss the effect,
23 if any, upon that rationale of the provision of the statute
24 which requires submission of the guidelines both initially and
25 then annually thereafter to Congress for congressional review?

1 MS. HERNANDEZ: In fact, that provision had been
2 adopted by the United States Sentencing Commission on May 1st,
3 had gone to Congress, as Your Honor just --

4 THE COURT: That's not quite the answer to my
5 question. My question was whether the Court discussed that.

6 MS. HERNANDEZ: I believe the Court -- I --
7 Your Honor, the -- the answer is I'm not -- I -- I'm not
8 exactly certain. I know that that issue was -- I was at the
9 argument. I was sitting in the -- in the Supreme Court
10 argument.

11 I recall the defense counsel raised that very issue,
12 that, in fact, that was an amendment that had gone to
13 Congress. Congress had adopted it -- had allowed it to
14 become -- to go into effect, which is how it works. And, in
15 fact, the government had not objected, as they have the right
16 to do before the Commission, or as they often do when the
17 amendment is pending before Congress.

18 Neither of those items deterred the sentencing -- the
19 Supreme Court from saying this provision does not abide by the
20 directive. You know, it states you shall do such and such.
21 And, therefore, this provision -- it didn't invalidate the
22 entire career offender guideline; it just invalidated this one
23 amendment which the Supreme Court held was inconsistent.

24 Now, the Court asked a very interesting question,
25 whether it was based on constitutional -- whether it was

1 | constitutionally grounded. I would argue to the Court that,
2 | in fact, had the -- let me have a couple of steps.

3 | Number one, the Supreme Court cited *Mistretta* in
4 | explaining the directives that were given to Congress, and it
5 | cited it in the context that the Commission was not completely
6 | free to do whatever it wanted. And that goes to the
7 | constitutional argument because, as the Court, I'm sure,
8 | knows, Justice Scalia in *Mistretta* said the -- you know, what
9 | we're creating here is a JV Congress. And he believed that
10 | that would be an unconstitutional delegation of the
11 | legislative power.

12 | So to the extent that the Court is asking whether I'm
13 | making a constitutional argument or whether there's a
14 | constitutional argument involved in this -- in this objection,
15 | yes.

16 | If the Commission is allowed, as it did in this case
17 | in two -- in two areas, it seems to me, to completely
18 | disregard the statutory -- specific statutory requirement and
19 | to on its own create a guideline that's inconsistent with
20 | Congress' direction, then I think it's an unconstitutional
21 | delegation of the legislative power, which only Congress has.

22 | THE COURT: What would be the effect of *Blakely* on
23 | the constitutional argument?

24 | MS. HERNANDEZ: It's a separate argument, because
25 | we're talking about -- well, it's two -- there's two responses

1 | to that. Number one, after Blakely, the first step Your Honor
2 | has to do is to calculate a guideline, and it gets -- it gets
3 | taken into consideration. And, in fact, I think the cases
4 | talk about that's the touchstone or that's the -- you know,
5 | that's the beginning point.

6 | So I don't think that -- first, I don't think Blakely
7 | in any way, shape or form impacts the argument that there is
8 | only one legislative -- that the Constitution creates only one
9 | legislative body and that that can -- that power cannot be
10 | delegated to anyone else, as Your Honor's power cannot be
11 | delegated to anyone else either.

12 | THE COURT: No. But if it isn't binding, then
13 | there's no constitutional injury.

14 | MS. HERNANDEZ: Well, I would say to the Court it --
15 | first, the legislative argument, the argument that it's an
16 | unconstitutional delegation of legislative power applies.

17 | And, secondly, it would be a due process violation
18 | to, in essence, calculate -- in essence, take into
19 | consideration in making your final decision something that's
20 | unconstitutional. It would be as if the government came in
21 | here with a completely false or a completely improper argument
22 | or fact and Your Honor took that into consideration in your
23 | decision-making.

24 | So I don't think Blakely invalidates the argument
25 | because your -- unless Your Honor is going to not -- to

1 completely disregard the guideline. But as I say, I don't
2 think -- and I would argue to the Court that the
3 unconstitutional delegation of legislative power nonetheless
4 is a problem, a problem that's only remedied by the fact that
5 the Commission is not legislating but it's acting within some
6 legislative guidelines.

7 THE COURT: No one has so held yet.

8 MS. HERNANDEZ: That -- that it can't legislate? I
9 think that's Mistretta. Mistretta said --

10 THE COURT: No, no, no. I mean, no one -- no court
11 has invalidated the applicable guideline in this case on the
12 basis of that argument.

13 MS. HERNANDEZ: You have that privilege, Your Honor.
14 But let me -- let me say it's -- it's a narrow argument. I'm
15 not asking you to invalidate the tax guideline altogether.
16 I'm saying that the tax guideline -- or the provision -- the
17 tax -- the provision in the tax guideline that directs the
18 Court to look at the tax table is invalid only with respect to
19 misdemeanor offenses, only with respect to 7203 offenses, not
20 with respect to tax evasion offenses.

21 So it's a very narrow request that we're making,
22 because the reason it's invalid, the reason it becomes
23 inconsistent with the -- with the statutory directive is that
24 the two statutory directives in 994 that we believe are
25 invalid -- invalidate the guidelines --

1 THE COURT: Now we're back to the statutory argument.

2 MS. HERNANDEZ: Yes. Well, it -- well, it's --
3 they're intertwined. The -- 994(h) says -- I'm sorry. 994(h)
4 was the provision in -- in LaBonte.

5 994(j) says -- and -- and, you know, I will say that
6 the -- the formulation is very similar to the one that the
7 Commission considered in LaBonte. The provision that the
8 Commission considered in LaBonte starts out by saying, The
9 Commission shall assure that the guidelines -- and then it
10 goes on to say. The one I am -- I'm using here is the
11 Commission shall ensure. So it's almost the identical
12 language, the identical composition.

13 The -- the provision in LaBonte was 994 -- 28 U.S.C.
14 994(h). The provision here is 28 U.S.C. 994(j). And what
15 994(j) tells the Commission to do -- and it's "shall," so it's
16 mandatory. There's no -- no squirminess whether the
17 Commission "may" or "should." It's "shall ensure that the
18 guidelines reflect the general appropriateness of imposing a
19 sentence other than imprisonment in cases in which the
20 defendant's a first offender" -- that's what we've got -- "who
21 has not been convicted of a crime of violence" -- that's what
22 we've got -- "or an otherwise serious offense."

23 Now, the fact that what you're considering is a
24 misdemeanor by categorical definition means that you've got an
25 offense that's not a serious offense. That's -- Congress gets

1 | to decide how to punish this crime. It decided that it was
2 | going to make it a misdemeanor with a statutory maximum of
3 | one. I cited a number of cases, circuit cases, that have
4 | looked at 7203 in different contexts and have all said 7203 is
5 | not a serious offense. It's a misdemeanor. You don't lose
6 | your right to vote. You don't lose your right to bear arms.
7 | So it fits squarely within this.

8 | Yet the Commission didn't provide for this, which
9 | says first-time offender, nonviolent, you have to ensure the
10 | appropriateness of imposing a sentence other than
11 | imprisonment. And as the Court well knows --

12 | THE COURT: How would that argument apply to the mail
13 | fraud?

14 | MS. HERNANDEZ: That's a felony.

15 | THE COURT: And you're saying that Subsection J of
16 | Section 994, Title 28, only applies to felony -- only applies
17 | to misdemeanor offenses?

18 | MS. HERNANDEZ: I'm saying I don't want to take on --
19 | I don't want to litigate in front of Your Honor for all the
20 | mail fraud defendants. I think they may have -- no, I'm
21 | saying I think they may have an argument in a given case.

22 | But I'm telling you in this case you don't even --
23 | because of -- if you apply categorical analysis to the -- to
24 | the statute, which I think is how -- which makes it very
25 | simple, Congress made a decision to -- to determine that this

1 | is a misdemeanor. That's their right. And having done that,
2 | it comes within the description of this statute.

3 | And let me -- let me explain to you, if the Court
4 | will allow it. I didn't mean to -- I'm very well versed in
5 | the guidelines.

6 | The Commission -- this is -- this guideline is
7 | fraught with problems when it -- it's -- when it's applied to
8 | misdemeanor offenses. Ordinarily this is what the guidelines
9 | do. They generate a guideline range that is consistent with
10 | the statutory maximum. You can go to any guideline and that's
11 | what you're going to have. That's what generally happens.

12 | In this case the statutory maximum is 12. What they
13 | should have done -- and what they did, for example, with the
14 | drug guidelines, the misdemeanor drug guideline is a separate
15 | guideline from the felony drug guideline. The felony drug
16 | guideline has multiple enhancements based on the quantity of
17 | drugs which can get you from zero to life, which is
18 | essentially what the drug statutes allow. And then they have
19 | a separate guideline for misdemeanor drug offenses where they
20 | have a base offense level 4, 6 or 8, which each are going to
21 | get you within the statutory maximum a year.

22 | THE COURT: What's the mens rea, or state of mind,
23 | element in misdemeanor drug offenses under Title 21?

24 | MS. HERNANDEZ: You still have to have intent. It
25 | still -- I'm sorry. It still has to be a knowing possession.

1 THE COURT: Knowledge.

2 MS. HERNANDEZ: It requires knowing possession. If I
3 have drugs on my -- on my body and I don't know about it,
4 that's not a violation.

5 THE COURT: I understand. But the state of mind is
6 simple knowledge, right?

7 MS. HERNANDEZ: Yes, I --

8 THE COURT: Willfulness is not an essential element
9 of that misdemeanor offense.

10 MS. HERNANDEZ: Well, I will say two things. There's
11 a Seventh Circuit -- I will say two things. That does not
12 undo the categorical determination of Congress to -- to make
13 this a misdemeanor. And as -- as the Fifth Circuit said in
14 reviewing these cases, they said that the tax code is a
15 carefully constructed scheme from misdemeanor failure to file
16 cases --

17 THE COURT: Would you concede or not concede that in
18 fashioning a sentence within the statutory maximum of one year
19 with respect to a misdemeanor offense that the presence or
20 absence of mens rea as an element of the offense would be
21 taken into consideration in determining the relative
22 seriousness of the offense for purposes of sentencing within
23 the statutory maximum?

24 MS. HERNANDEZ: For purposes of Your Honor's decision
25 to sentence, I would say yes.

1 For purposes of analyzing what Congress directed the
2 Commission to do, in almost every other instance where there
3 is this type of decision-making, the Supreme Court has said
4 use a categorical analysis, because it's not for the Court, it
5 doesn't seem to me, to start deciding what Congress intended
6 or meant.

7 So it's much easier if you apply a categorical
8 analysis, which says if it's a misdemeanor, we all know that
9 means it's not serious. Why do we know? You don't lose your
10 civil rights. You don't -- you don't lose your right to
11 federal benefits. You don't -- there's a statutory maximum --

12 THE COURT: I'm not sure I understand that argument,
13 Ms. Hernandez, because any offense which would place my
14 liberty at risk is a serious matter.

15 MS. HERNANDEZ: I agree, in a -- as a personal
16 matter. Nonetheless, Your Honor, that is a clear line of
17 demarcation.

18 THE COURT: But isn't that taken into account in
19 terms of the maximum sentence? By definition, a misdemeanor
20 is an offense, with maybe some exceptions, rare exceptions --
21 by definition, a misdemeanor offense is one that is punishable
22 by no more than one year term of commitment.

23 MS. HERNANDEZ: That's the definition -- well, it's
24 the definition -- a felony definition -- anything more than a
25 year, you've crossed over to felony.

1 THE COURT: That is a felony.

2 MS. HERNANDEZ: Right, so --

3 THE COURT: And anything a year or less is a
4 misdemeanor.

5 MS. HERNANDEZ: Correct.

6 THE COURT: So the relative seriousness as between
7 misdemeanors on the one hand and felonies on the other is
8 already taken into account by the maximum sentence that
9 applies.

10 MS. HERNANDEZ: Right, and that's why when this --
11 what the Commission said is, if you're dealing with a
12 nonviolent first-time offender and it's a not serious
13 offense -- and as -- you know, I don't know how more clearly
14 one could look at a crime and decide whether it's serious or
15 not than to say what's the statutory maximum and -- and, in
16 fact, Congress has -- has also established what they call
17 classes of felonies. So you have Class A, Class B, Class C --

18 THE COURT: Well, I think we don't need to extend
19 this. My only point is that to say that a misdemeanor is not
20 serious I think is a misnomer or a distortion. It's not as
21 serious as a felony offense, but it's still a serious matter
22 because one's liberty is at risk. And the relative
23 seriousness of the offense as a misdemeanor, it seems to me,
24 is driven in large part by the state of mind requirement for a
25 conviction.

1 MS. HERNANDEZ: Well, Your Honor, I -- in that
2 regard, although I am not -- I don't think that -- that
3 that -- Your Honor's focus on that really determines whether
4 misdemeanor offenses fall within 994(j). There is a Seventh
5 Circuit case that I cited where, in fact, an argument was made
6 as to the -- whether the state of mind made a difference.

7 Again, it's not on point in the sense that they
8 weren't considering 994(j), but the -- but the -- it was a
9 case where the Seventh Circuit reversed the felony tax
10 evasion. And they said, We're going to -- we're going to --
11 and the government said don't remand it because, you know, we
12 know what the Court is going to do and -- and the Court -- and
13 the Seventh Circuit said, no, no, we don't, because there is a
14 significant difference between a felony and a misdemeanor,
15 particularly with respect to state of mind. And, therefore,
16 you have -- you know, that's a decision that has to be made.

17 THE COURT: I think that --

18 MS. HERNANDEZ: My argument I think Your Honor --

19 THE COURT: I think I have --

20 MS. HERNANDEZ: -- understands.

21 THE COURT: I think I have your argument with respect
22 to that. Let's focus on the specific objections to give some
23 structure to this.

24 MS. HERNANDEZ: Okay. I'm sorry, Your Honor. Before
25 we move on, I -- also, as part of this 994 argument --

1 994(b)(1) also tells the Commission that it shall for each
2 category of the offenses establish a sentencing range that is
3 consistent with all pertinent provisions of Title 18. And the
4 argument is by establishing a sentencing range that goes above
5 the statutory maximum that that also violates (b)(1).

6 And what I'm saying to the Court is that the
7 guidelines in almost every other offense -- I don't know of
8 any other guideline that doesn't make the guideline range
9 parallel to the statutory maximum.

10 THE COURT: I've seen many such cases.

11 MS. HERNANDEZ: In a given case but not as a matter
12 of course.

13 THE COURT: Well, not every day, but it's common.

14 MS. HERNANDEZ: And I guess, then, the third argument
15 with respect to this is that the Commission on its own -- and
16 they told us this in the background note. The -- in
17 Kimbrough, the Supreme Court recently -- U.S. versus
18 Kimbrough, which was the --

19 THE COURT: Well, let me repeat, I think I have your
20 argument with respect to 994 and the statutory delegation
21 argument, both statutory and constitutional, Ms. Hernandez.
22 Let's focus on your objections as stated and carried with the
23 case in the addendum.

24 MS. HERNANDEZ: Okay. All right. I just don't want
25 to waive the argument.

1 THE COURT: You're not waiving --

2 MS. HERNANDEZ: There's another component to the
3 arguments that the Commission on its own decided to raise to
4 make sure that more people went to jail for these offenses,
5 and they tell us that they did that -- you know, when they
6 originally set the guidelines, they -- they reviewed 10,000 --
7 so I just want to make sure that that argument, which we made
8 in our -- in our papers is -- it's not waived.

9 THE COURT: It's not waived.

10 MS. HERNANDEZ: Okay. Thank you, Your Honor.

11 THE COURT: If it's in your papers -- and this one
12 is -- it's certainly not waived.

13 MS. HERNANDEZ: The -- to go on to the specific
14 objections, the objection that is in the alternative to this
15 argument is the calculation of the tax loss. The argument I
16 just made would obviate the need to calculate a tax loss,
17 because you would not be required to review the tax table. So
18 if we go to --

19 THE COURT: You're moving -- you're moving, then, to
20 your objection which is numbered 6 in the Probation Officer's
21 addendum?

22 MS. HERNANDEZ: In the addendum?

23 THE COURT: I suggest you get a copy of the addendum
24 before you.

25 MS. HERNANDEZ: I have it, Your Honor.

1 THE COURT: Let's go through it 1, 2, 3, 4.

2 MS. HERNANDEZ: Okay. These, again, are
3 constitutional arguments. Concededly, the Eleventh Circuit
4 has rejected these arguments on the standard of proof,
5 hearsay, and confrontation rights. The -- so I'm happy to
6 make the arguments for the Court. They're based on
7 Supreme Court arguments.

8 THE COURT: I think that's set out in your sentencing
9 memorandum that was filed yesterday in some detail.

10 MS. HERNANDEZ: Right.

11 THE COURT: And as you say, the law of the circuit,
12 which binds me at least at the moment, is to the contrary on
13 these -- on these items. So I'm obliged to overrule that
14 objection for that reason.

15 MS. HERNANDEZ: The Eleventh Circuit -- there is --
16 the Eleventh Circuit has not exactly ruled on this issue. And
17 I don't -- on one aspect of this issue, and that's an aspect
18 where in this case the acquitted and uncharged conduct drives
19 the sentence. In other words, if the Court only looks at the
20 offense -- it drives the sentence in terms of the tax loss.
21 The jury was never asked to determine tax loss.

22 And it drives the sentence in terms of the
23 allegations of obstruction of justice and in terms of the
24 allegation of sophisticated means. Without any of those
25 things, we'd be looking at offense level 6.

1 So while the Eleventh Circuit has addressed the issue
2 of what standard of proof you can use and whether acquitted
3 conduct can be used, it has never done it in the context of a
4 case what, you know, the Supreme Court refers to as where the
5 sentence is the tail that wags the -- is a tail that wags the
6 dog. And that's this case. If you throw out -- if you -- if
7 you only look at what the -- at what the jury found, we've got
8 offense level 6, period.

9 THE COURT: I'm sorry. What?

10 MS. HERNANDEZ: If you only consider what the jury
11 found, you have an offense level of 6 and nothing more.
12 Everything else, every other enhancement in this case is
13 conduct that would -- is based on conduct that was either
14 acquitted or uncharged or not found by a jury beyond a
15 reasonable doubt. So to the --

16 THE COURT: And --

17 MS. HERNANDEZ: So the Eleventh Circuit has never
18 ruled in a case -- nor has the Supreme Court. In
19 United States versus Watts, the case where the Supreme Court
20 said it's okay for -- after a jury finding in a related
21 matter, it's okay for a court to nonetheless consider that
22 conduct, we were talking about a two-level enhancement. In
23 other words, it was a drug case. They had charged a firearm,
24 and the jury acquitted on that. And the judge then added a
25 two-level enhancement for use of a -- for presence of a

1 | firearm in -- in the -- in the drug offense.

2 | That's not what we've got here. We don't have an
3 | addition of two levels. We've got -- depending on how you
4 | look at it, we've got an addition of 20-something levels based
5 | on acquitted or uncharged conduct.

6 | THE COURT: Well, that may get into the question of
7 | the ascertainment of the tax loss or intended tax loss for the
8 | offenses of conviction.

9 | MS. HERNANDEZ: That was not found by the jury. The
10 | jury was not asked to make a finding as to what the tax loss
11 | was.

12 | THE COURT: Well --

13 | MS. HERNANDEZ: And, in fact, as the Court knows,
14 | we -- we have --

15 | THE COURT: How do you get to offense level 6 as the
16 | base offense level applicable to the case?

17 | MS. HERNANDEZ: Well, if you look at the tax statute
18 | -- at the tax guideline -- I'm sorry -- the tax guideline
19 | provides for two alternatives, 6 or, if you need to go look at
20 | the tax table based on tax loss, then you add whatever number
21 | of enhancements you have.

22 | So what I'm suggesting to the Court is you've got a
23 | default table -- a default base offense level for 2T1.1, and
24 | that is 6. That's -- that would be a perfect solution to this
25 | case. You avoid the --

1 THE COURT: Well, it's entirely disingenuous, I
2 suggest, Ms. Hernandez, because the Commission did not
3 approach the ascertainment of the base offense level in that
4 fashion. It included both components. You just want to
5 disregard one on the basis of your argument that it's invalid.
6 But that does not mean, then, that the Commission would affix
7 the base offense level -- or that the Court should -- in terms
8 of the advisory guidelines at level 6, does it?

9 MS. HERNANDEZ: Well, the alternative would also have
10 been to go -- to ask the jury to ascertain the tax loss. They
11 could have asked the jury to say, What's the tax loss beyond a
12 reasonable doubt by a jury of his peers? And that would also
13 -- that would solve this argument that I'm making, the
14 constitutional argument of whether -- even under an advisory
15 guideline system because -- and I would say to the Court
16 Booker didn't resolve this issue, because the -- the question
17 that -- what we have today even after Booker and Gall and
18 Kimbrough and all the other cases is that the Court is still
19 -- is still calculating a guideline range under a mandatory
20 system; that is, the Court has to apply all these guideline
21 enhancements in this if you find a factual predicate.

22 So we're still -- and then that number gets factored
23 into the entire decision-making. So we're still, I would
24 argue to the Court, dealing with an unconstitutional component
25 to this.

1 THE COURT: Well, I understand the argument, and I'm
2 not persuaded by that. So let's move on to the next item.

3 MS. HERNANDEZ: The next item identified by -- in the
4 -- in the addendum by the Probation Officer is our objection
5 that -- that, again, you're taking into account in paragraphs
6 5 through 70 -- the description of the offense conduct is
7 really the description of something other -- all of this other
8 conduct that is beyond the offense of conviction.

9 It is beyond -- you know, it takes -- it describes --
10 it -- in a nutshell, Your Honor, this presentence report and
11 the government's memorandum is the same thing that would have
12 been -- appeared before the Court if Mr. Snipes had been
13 convicted of everything.

14 THE COURT: But doesn't the statute say -- has always
15 said -- and the Supreme Court has repeatedly reaffirmed the
16 concept that the sentencing court should not be limited with
17 respect to the information that it can consider in fashioning
18 an appropriate sentence --

19 MS. HERNANDEZ: It's one thing not --

20 THE COURT: -- as long as it's relevant to that
21 determination?

22 MS. HERNANDEZ: Number one, I would argue -- in
23 answer to your question, the Supreme Court has said things --
24 in dicta has said a number of things like that.

25 One -- one argument is, it's one thing for the Court

1 | to take this into account as a background; it's another thing
2 | to take it into account in fashioning a guideline number,
3 | which is discrete, which the Court is required to do. And
4 | it's -- and -- and to do it in the face of a jury verdict.

5 | And as -- as -- as late as the Gall opinion late last
6 | year, you know, Justice Scalia and a number of the other
7 | justices say this -- the Sixth Amendment right to jury trial
8 | has to mean something more than you look -- looking at the
9 | exact sentence that you would have been looking at if the jury
10 | had convicted. It just -- I don't -- I -- I can't understand
11 | how your sentence can be identical -- or your calculation or
12 | your consideration is identical than if a jury had not spoken.

13 | Why have -- you know, it's almost like a 1984
14 | scenario or an Alice in Wonderland scenario. And I don't mean
15 | any disrespect. There are judges who have talked about the
16 | guidelines in -- in terms of this is an Alice in Wonderland
17 | scenario. You go to a jury. They acquit. Thank you.
18 | Goodbye. Now we're going to go on our merry way as if the
19 | jury hadn't --

20 | THE COURT: There's a tremendous -- there's a
21 | tremendous difference in this case by virtue of the jury
22 | verdict of acquittal of the felony offenses.

23 | MS. HERNANDEZ: You've got the --

24 | THE COURT: As it stands now, the defendant is
25 | exposed to a maximum sentence of three years, each count

1 stacked, whereas had he been convicted of the felony offenses,
2 it would be, what, on the order of 15 years.

3 MS. HERNANDEZ: Right. But what I'm telling the
4 Court is if you --

5 THE COURT: Ten years, I suppose. But -- well --

6 MR. MORRIS: Sixteen, Your Honor.

7 THE COURT: -- plus the other felony offense -- I
8 mean, misdemeanor offenses, it would be in the neighborhood of
9 15 years.

10 MS. HERNANDEZ: But you would not be taking into
11 consideration all this information. You would be looking
12 at -- you would be looking at did he file tax --

13 THE COURT: Had he been convicted of all of the
14 offenses charged in the Indictment, I would not be considering
15 this?

16 MS. HERNANDEZ: Oh, no. Absolutely. If he had been
17 convicted of all the offenses, you would be looking at the
18 same exact -- you would be considering the same exact conduct
19 that is being presented to the Court.

20 THE COURT: Right. But the jury -- the jury verdict
21 cut his exposure from 15 to three, in round numbers, right?

22 MS. HERNANDEZ: Yes. But now it's coming in the
23 through the back door. It's -- I -- I am -- I'm -- blah,
24 blah, blah, blah. Excuse me. I am struck, and I -- you know,
25 I'm -- I -- I'm an expert in sentencing, so I do a lot of

1 sentencing. I'm --

2 THE COURT: If I might be so bold, I've had some
3 experience with it myself.

4 (Laughter.)

5 MS. HERNANDEZ: Probably -- probably broader and --
6 and of -- of more -- of greater quality, Your Honor, I agree.
7 And I don't -- again, I started this by thanking Your Honor
8 for allowing me to practice before you. And I thank you for
9 your consideration of these issues.

10 And I recognize that sentencing a human being is the
11 most difficult thing that a judge does. I -- I -- I -- and I
12 didn't mean to make light of that. But -- so I apologize. I
13 -- I meant no disrespect to the Court. I -- I -- I -- I know
14 how difficult it is -- this process is.

15 The point I was going to make is I've -- I've been in
16 a number of cases where there's been an acquittal of -- of the
17 primary offense. You know, the -- and I'm always struck by
18 the fact that the government comes in to sentencing without
19 any sort of acknowledgement that -- that their arguments were
20 rejected by a jury. They don't ever pull back a little and
21 say, okay, you know, we'll concede this or we'll concede that.
22 They come in and as I -- I -- I would venture to bet that you
23 would be looking at the same exact document had he been
24 convicted of everything. In other words, their arguments
25 would be identical. The calculations would be identical. And

1 I just -- I just think that as a Sixth Amendment matter,
2 you're right. It -- it cut down the statutory maximum, but
3 there -- it ought to mean more than that, because that's like
4 sort of a structural thing. It -- Your Honor's still -- and
5 we're still spending all this time arguing over things which
6 you've spent months or weeks and a jury has resolved. And it
7 ought to have some -- some -- some more weight than just at
8 all levels. Having said that, I apologize for going off on
9 that.

10 So paragraphs 5 through 7, we object to the inclusion
11 as a matter of -- of respect for the Sixth Amendment, also as
12 a matter of relevant conduct. Without -- you know, what is --
13 what -- relevant conduct has to be that all acts and omissions
14 -- I'm -- I'm paraphrasing -- that occurred during the
15 commission of the offense of conviction, in preparation for
16 that offense, or in the course of attempting to avoid
17 detection or responsibility for the offense. It's all -- the
18 offense is the -- is the loadstone for relevant conduct.

19 And the offense in this case merely is an obligation
20 to file a tax return and a failure to fax -- to file it. It's
21 a very simple offense, as befits the fact that it's a
22 misdemeanor. And all this other stuff is extraneous to
23 relevant conduct.

24 THE COURT: All right. Well, I have your argument
25 with respect to that. Let's move to the next objection. I'll

1 | pass on these when we have completed our discussion of all.

2 | MS. HERNANDEZ: The next objection listed on the --
3 | on the addendum is the obstruction of justice. The prime --
4 | we -- I'll start out with number 1. There's no obstruction in
5 | connection with the offense of conviction; that is, the
6 | only -- he filed -- the IRS knew he -- I'm sorry. He failed
7 | to file. The IRS knew that he failed to file. He -- he
8 | wasn't hiding from the IRS. He didn't change his name so the
9 | IRS wouldn't know about it. There was nothing -- there was no
10 | material act -- there was no act by him material to the
11 | offense of conviction. You have to go outside of the offense
12 | of conviction, again, to consider facts that are -- in order
13 | to enhance him two levels for obstruction of justice.

14 | And I would cite to the Court U.S. versus Barakat, an
15 | Eleventh Circuit case, where the Court reversed not an
16 | obstruction but reversed a sophisticated means in a case where
17 | the defendant was charged with a bribery scheme and a failure
18 | to file -- I'm sorry -- a bribery scheme and tax evasion. And
19 | -- and the government's theory of the case is that he used the
20 | kickbacks and failed to -- and evaded his taxes on the
21 | kickbacks by not reporting them.

22 | And the jury acquitted on the -- on the bribery
23 | scheme and convicted of the tax evasion, and the District
24 | Court enhanced for sophisticated means -- again, not the
25 | obstruction, but it's a similar argument.

1 And the -- the Eleventh Circuit reversed, and
2 reversed on the theory that the -- the conduct considered for
3 the -- for the enhancement was not sufficiently related to the
4 offense of conviction, which was the tax evasion, not the --
5 it would have been related to the -- to the kickback scheme,
6 but it wasn't related to the tax evasion in that case.

7 So I -- so I would submit to the Court that, again, I
8 mean, this whole -- we're going to -- most of these objections
9 are about things extraneous to the offense of conviction.

10 THE COURT: I'm not sure I understand your argument
11 as it relates to this item. The obstruction of justice
12 enhancement suggested by the Probation Officer is based upon
13 the testimony, as I understand it, at trial of the witness
14 Carmen Baker. And her testimony was, to summarize it in the
15 vernacular, that when she received a grand jury subpoena, she
16 was effectively directed by the defendant to stonewall.

17 How is that not relevant conduct with respect to all
18 of the counts of the Indictment, including the three counts of
19 conviction?

20 MS. HERNANDEZ: I would say to the Court that it is
21 a -- it's not relevant to the -- to the -- it's not -- it's
22 not a material obstruction to the offense of conviction
23 because nothing that -- without conceding that that's --
24 that's what happened, but for purposes of this legal argument,
25 nothing that took place changed the fact that he had an

1 obligation and he didn't file. It -- you know, I -- those are
2 the -- and I --

3 THE COURT: Well, then, if that is the argument, any
4 post-offense obstructive behavior by the defendant would never
5 relate to the offense of conviction, would it?

6 MS. HERNANDEZ: Well, Your Honor, the enhancement for
7 obstruction of justice, 3C1.1, Application Note D -- first,
8 the guideline itself: The defendant willfully obstructed or
9 impeded or attempted to obstruct or impede the administration
10 of justice with respect to the investigation, prosecution, or
11 sentencing of the instant offense of conviction. So they even
12 narrow it more. You know, they don't often use that
13 additional "instant."

14 And then Subsection 4D, an application note, with
15 respect to destroying or concealing or directing or procuring
16 another person to destroy or conceal -- and, Your Honor,
17 that's not the -- as I understand it, it didn't go that far,
18 even accepting the testimony. It was just, you know, stay
19 away from them, don't -- it wasn't destroy any -- it wasn't --
20 even accepting the testimony, the testimony doesn't go so far
21 as to say "destroy."

22 But, nonetheless, the key is, it has to be material.
23 And so what's materiality in this case? Material means that
24 the offense of conviction was somehow delayed or obstructed or
25 the government wasn't able, you know, to bring the offense of

1 conviction, not whatever else doesn't form -- doesn't -- you
2 know, isn't part of the offense of conviction.

3 And then at the bottom of that, it says it also
4 applies to any other obstructive conduct in respect to the
5 official investigation, prosecution, or sentencing where
6 there's a separate count of conviction for such conduct.

7 So, again, I mean, it's really focused on what is the
8 count of conviction and how is it material. And it says,
9 Material evidence means evidence that would tend to -- that,
10 if believed, would tend to influence or affect the issue under
11 determination.

12 And, again, I say, what are the issues under
13 determination? Did he have an obligation to file, and did he
14 file? And I don't think the testimony is material to the --
15 to that -- to the -- to the offense of conviction.

16 THE COURT: Well, all right. I have your argument as
17 to that, Ms. Hernandez. Let's move to the next one, which has
18 to do, as I understand it, with the issue of acceptance of
19 responsibility.

20 MS. HERNANDEZ: I'm sorry. Okay. Acceptance of
21 responsibility. Your Honor, I -- I don't know whether the
22 Court was given documents that we presented to the Probation
23 Officer. I -- I know in some instances you were.

24 The basis of this argument is the following:
25 Mr. Snipes, through his counsel, offered in a letter to plead

1 guilty to misdemeanor failure to file.

2 The government, in their discussions with the -- with
3 the defense counsel, rejected -- let me -- let me -- the offer
4 was -- and I have the case -- the letter here which, as I
5 understand, the Court has a copy of the letter.

6 THE COURT: I think I've seen it, or at least I've
7 been --

8 MS. HERNANDEZ: But I --

9 THE COURT: -- advised as to the -- my understanding
10 of the circumstances was, there was an offer made to plead to
11 one of the failure to file counts with certain stipulations
12 concerning a non-commitment sentence and perhaps other
13 stipulations.

14 MS. HERNANDEZ: Right. And the -- and the -- and
15 there's a -- and the last -- and I have passed the letter up
16 to the Court. It's a letter dated August 24, 2007. And
17 the -- and the last sentence of that -- of the second
18 paragraph says, if the government's not willing to accept an
19 Alford plea, which is the proposal, we're willing to engage in
20 further discussions with our client to determine if a
21 non-Alford plea would be accepted. So it's not a final offer;
22 it's an offer. And the government's position was, it's got to
23 be a felony or nothing at all.

24 And he was not only offering to plea to a
25 misdemeanor, but he was offering to also, as part of that,

1 resolve the tax liability. So it wasn't an empty offer, and
2 -- and in part, that's why we cited all the different cases
3 that we did in the -- in the disparity argument, including
4 this most recent case by a billionaire in California who owed
5 \$75 billion of taxes and was allowed to plead and get, you
6 know, 12 months or 24 months probation.

7 But the bottom -- but -- but -- and so we are --
8 under the acceptance of responsibility guideline, it states in
9 Application Note 2 -- well, let me back off.

10 Number one, the acceptance of responsibility
11 guideline states -- and as interpreted, there is no -- a plea
12 of guilty is not an essential requirement for acceptance of
13 responsibility. And, in fact, we cited two Eleventh Circuit
14 cases in similar situations where a defendant was offering to
15 plead to -- to only part of what he was charged with, and the
16 jury, in fact, convicted only of the -- the -- the crimes
17 which the defendant offered to plead to and was acquitted of
18 the -- of the larger offenses.

19 The acceptance of responsibility, first and foremost,
20 tells the Court it isn't -- it isn't, did you plead guilty?
21 It's a question of consider the -- you know, consider what
22 took place. And -- and it tells the Court essentially to
23 consider conduct before trial.

24 I admit to the Court that if Mr. Snipes first came in
25 after -- at sentencing and said, I admit responsibility,

1 | although there are cases that say that's enough, that's a
2 | less, sort of, compelling argument.

3 | But what we're saying to the Court is, look before
4 | sentencing, and what did he do? What he did is -- I'll admit
5 | that I failed to file, that I willfully failed to file. That
6 | was the offer -- or that was the -- the -- the charge he was
7 | willing to plead to. And, two, I will resolve my tax
8 | liability. As the government does every day in multiple
9 | cases, they -- they get together with -- with the defendants
10 | -- or with the putative defendants' experts and they come up
11 | with the amount of tax and they pay it, and they resolve it.

12 | And they've done it at -- you know, the Willie Nelson
13 | case, which I cited in the context of disparity -- and I love
14 | his music, which is neither here nor there -- but, you know,
15 | that was an infamous case because it went on for years and he
16 | owed -- you know, he ended up settling with the government.

17 | And so this happens in a lot of cases, these -- these
18 | cases where famous people or infamous -- or just ordinary folk
19 | fail to file. And the government allows -- allows a plea.
20 | And sometimes they don't even ask for a plea, as in the Willie
21 | Nelson case or -- or the Marc Anthony case. And then they
22 | settle.

23 | I'm looking for the language in the letter where
24 | they -- where he offered -- with respect to -- to the payment
25 | of Mr. Snipes' back taxes, we propose to undertake a joint

1 effort to determine a proper offer and compromise and plan of
2 any outstanding taxes which will result in a settlement and
3 closure of the account.

4 So we submit that under Application Note 1, he was
5 truthfully admitting the conduct comprising the offense, or
6 offering to -- voluntary termination or withdrawal from
7 criminal conduct, payment of restitution prior to adjudication
8 of guilt, which is what he was -- these are the factors under
9 the application note, which is what he was willing to do --

10 THE COURT: On a technical level --

11 MS. HERNANDEZ: And he -- I'm sorry.

12 THE COURT: -- apart from the facts of the case,
13 Ms. Hernandez, the offer was to plead to one count, right?

14 MS. HERNANDEZ: Right.

15 THE COURT: The Indictment, obviously, was pending,
16 and had been, for over a year, I believe, at the time of this
17 letter.

18 MS. HERNANDEZ: The letter was in August of --

19 THE COURT: August the 9th of 2007. And the
20 Indictment alleged not only the felony offenses but five
21 counts of failure to file.

22 How can an offer, just as a matter of law, to plead
23 to one count of failure to file constitute acceptance of
24 responsibility for the other counts of conviction?

25 MS. HERNANDEZ: Well, number one, the only counts of

1 conviction are three, not -- not the six that the government
2 was proposing. So it seems to me that you're weighing the
3 three versus one.

4 THE COURT: Well, I know, but that's what we have
5 before us now. We're looking at the case at the moment with
6 three counts of conviction. And I'm looking back in
7 history -- you're leading me back in history to determine to
8 what extent the defendant accepted responsibility for those
9 offenses -- not that offense, but those offenses.

10 If this concept has any remaining applicability,
11 notwithstanding your statutory and constitutional arguments,
12 my question would be how, as a matter of law, an offer to
13 plead guilty to one count can constitute acceptance of
14 responsibility for three offenses.

15 MS. HERNANDEZ: Okay. Let me go -- let me argue
16 several points.

17 Number one, Your Honor, one of the three counts -- as
18 the Court, I believe, is aware, at the government's
19 concession, the year 2000, there was -- there is, in fact,
20 zero tax liability. In fact, there's negative tax liability.
21 These aren't our numbers; these are the government's numbers.

22 THE COURT: Well, there's still an obligation to file
23 a return, right?

24 MS. HERNANDEZ: Well, there's a question on that.
25 And the reason I say --

1 THE COURT: Well, let's -- let's go past that.

2 MS. HERNANDEZ: Okay.

3 THE COURT: I've got a jury verdict finding the
4 defendant guilty of three criminal offenses.

5 MS. HERNANDEZ: Okay. The -- the -- the best
6 response to that, Your Honor, is that that's what an offer to
7 plea is. I -- you know, I -- I don't know the Court's
8 background, but I'm assuming you were a defense -- or you were
9 an attorney at one point.

10 THE COURT: That --

11 MS. HERNANDEZ: Not defense -- I don't mean to insult
12 the Court, but the point is that that's what -- that's -- you
13 know, that's what plea negotiations are about. You offer; the
14 government comes back. And, in fact, there's an explicit
15 statement: If this isn't acceptable, come back to us. The
16 government's response was: Felony or nothing at all. And
17 that's exactly what he was acquitted of.

18 So his position was, I'll plead to failure to file.
19 He's admitting that. I'll -- I'll -- I'll come -- I'll pay.
20 And that's another one of the factors that the guidelines say
21 you should look at --

22 THE COURT: Well, all right. I have your argument on
23 this point, Ms. Hernandez, and I'm not persuaded that an offer
24 to plead guilty to one count in the face of the Indictment as
25 it stood at the time, especially with limitations as to

1 sentencing alternatives, justifies under the guidelines an
2 application of a reduction for acceptance of responsibility.
3 We can move on to the next --

4 MS. HERNANDEZ: Your Honor, I would ask that the
5 Court make the letter part of the record. I think I just --
6 that would be Defense Exhibit 1 for the sentencing hearing.

7 THE COURT: Let it be so marked, Mr. Clerk, and it
8 will be made part of the record.

9 MS. HERNANDEZ: Thank you.

10 MR. MORRIS: Your Honor, since the Court has received
11 that, may I speak briefly and add a couple of notes?

12 THE COURT: Well, you'll have your opportunity when
13 we finish, Mr. Morris.

14 MR. MORRIS: Thank you, Your Honor.

15 THE COURT: Make your side note that that's something
16 you wish to address, and I'll hear you at the appropriate
17 time.

18 MR. MORRIS: Thank you, Your Honor.

19 THE COURT: Go ahead, Ms. Hernandez. The next matter
20 has to do with the calculation of the base offense level, as I
21 understand it.

22 MS. HERNANDEZ: And that is completely related to the
23 tax loss.

24 THE COURT: The tax table.

25 MS. HERNANDEZ: Right.

1 THE COURT: Well, in your sentencing memorandum and
2 in your discussions with the Probation Officer, I believe,
3 given the paragraph 6 of the addendum, it has been the
4 contention of the defense that the aggregate loss or intended
5 loss for the offenses -- the years involved in the offenses of
6 conviction would be no more than \$228,000 --

7 MS. HERNANDEZ: That's correct.

8 THE COURT: -- in round figures.

9 MS. HERNANDEZ: That's correct, Your Honor.

10 THE COURT: Well --

11 MS. HERNANDEZ: I will -- and we can, I think,
12 dispose of year -- of the year 2000 easily because both
13 parties agree that the tax --

14 THE COURT: Well, I hadn't finished my question.

15 MS. HERNANDEZ: I'm sorry.

16 THE COURT: If you take the 228,000 and plug it in to
17 the tax table, it would result in a base offense level of 18,
18 right?

19 MS. HERNANDEZ: I'm sorry, Your Honor. That is the
20 case if you -- that's the case if you aggregate the years and
21 use the current manual, which is the same as the 2001 manual.

22 THE COURT: Well -- and that's what we're supposed to
23 do in applying the guidelines, is it not?

24 MS. HERNANDEZ: Well, we've argued that there's an
25 ex post facto problem.

1 THE COURT: I understand. But I'm -- the guidelines
2 as they are written before me, if I take the number 227,000
3 and plug it in to the tax table at Section 2T4.1 of the
4 guidelines, it produces offense level 18.

5 MS. HERNANDEZ: Yes, sir.

6 THE COURT: And the sentencing range on the
7 sentencing table with respect to offense level 18 is from 27
8 to 33 months before we consider any enhancement for
9 obstruction.

10 MS. HERNANDEZ: Yes, sir. If -- you know, if you
11 apply -- if applied as the -- we have objections to the manner
12 in which all of those are applied, but I -- I concede that
13 if -- if the Court rejects all our -- all our objections and
14 applies the guideline, then that's the number you come up
15 with.

16 THE COURT: Well, additionally, with respect to the
17 tax table, there's a provision at Section 2T1.1C2, Note A,
18 that if there is a disagreement with respect to the intended
19 tax loss, just take 20 percent of the gross.

20 MS. HERNANDEZ: Well -- unless a more accurate
21 determination of the tax loss can be made, and I -- we can
22 make a more accurate determination of the tax loss. We have a
23 CPA here. We have provided the government with our numbers.
24 We've attempted to meet with the government, to have the
25 government meet with the -- with -- have our CPA meet with the

1 revenue agent. We have pointed out, for example, for 1999 --
2 it's a simple matter --

3 THE COURT: Well, isn't the 20 percent rule addressed
4 to precisely these circumstances? A sentencing hearing in a
5 criminal case, especially for failure to file, was not
6 intended to result in or to descend to an extensive
7 evidentiary hearing with respect to what the tax liability may
8 have been.

9 MS. HERNANDEZ: I respectfully disagree, Your Honor.
10 He has a Fifth Amendment due process right not to be sentenced
11 on factually incorrect information, and that's -- we -- it's a
12 very simple matter to show the Court what the error is.

13 THE COURT: All right. But I'm back to where I
14 started. It seems to me it's all unnecessary and -- for the
15 Court to decide under Rule 32 where it is conceded that the
16 loss would be 228,000 which, according to the tax table, would
17 produce a starting offense level of 18.

18 And if the two-level enhancement is applied for
19 obstruction of justice, then it would become 20. And if
20 acceptance of responsibility is disallowed, as I've already
21 ruled, then at offense level 20, criminal history
22 category one, the range of commitment is 33 to 41 months, and
23 a three-year maximum statutory term of 36 months is squarely
24 in the middle of that sentencing range.

25 MS. HERNANDEZ: Well --

1 THE COURT: So why should I go any further than that?

2 MS. HERNANDEZ: Then -- then -- then use the --
3 the -- our number?

4 THE COURT: Sure.

5 MS. HERNANDEZ: Is that what the Court is saying?

6 THE COURT: Sure.

7 MS. HERNANDEZ: Subject to all the other challenges?

8 THE COURT: Sure.

9 MS. HERNANDEZ: Subject to all the other challenges,
10 I think that's okay. If the Court -- will the Court indulge
11 me in a moment if I -- to speak to my co-counsel?

12 THE COURT: Well, we're coming up on the lunch hour.
13 I think we are making some progress. Let's lay that aside for
14 a moment and see if we can address the remaining objections
15 that you have to the presentence report, Ms. Hernandez.

16 You object to paragraph 78 wherein the Probation
17 Officer suggests a two-level -- two-offense-level enhancement
18 by virtue of the utilization of sophisticated means in the
19 commission of the offense of conviction.

20 MS. HERNANDEZ: Your Honor --

21 THE COURT: What is your argument as to that?

22 MS. HERNANDEZ: Your Honor, it's -- and I think
23 there's an Eleventh Circuit case which is directly on point,
24 and that's U.S. versus Barakat, which I mentioned earlier,
25 where the sophisticated means enhancement was applied with

1 | respect to the acquitted conduct rather than the offense --
2 | than the tax evasion count. And the -- and the Eleventh
3 | Circuit reversed. That's U.S. versus Barakat, 130 F.3d 1448.

4 | You know, I -- I don't want to sound like a broken
5 | record, but there was -- there were absolutely no
6 | sophisticated means with respect to the offense of conviction.
7 | Did he fail to file? Yes. Did he hide from the IRS that he
8 | was failing to file? Absolutely not. If anything, he put --

9 | THE COURT: Well, let's -- let me reverse the
10 | structure that I gave to this argument earlier, Mr. Morris,
11 | and ask you to deal with that one.

12 | What do you say to that objection as it relates to
13 | the offenses of conviction as distinguished from the acquitted
14 | counts?

15 | MR. MORRIS: Your Honor --

16 | THE COURT: I mean, the very notion of
17 | sophisticated -- using sophisticated means and not filing a
18 | return is a little difficult conceptually to me.

19 | MR. MORRIS: I think that the reason why it's
20 | appropriate, Your Honor, is that the sophisticated means also
21 | encompasses not just the commission of the offense but the
22 | concealment of the offense.

23 | And in this case, as set forth in the presentence
24 | report at paragraph 78 and as there was substantial evidence
25 | that came in at trial -- and I have a number of exhibits I

1 | could cite the case to -- cite the Court to -- there was
2 | substantial transfers of assets offshore as set forth in the
3 | presentence report --

4 | THE COURT: Well, I understand all of that, but I'm
5 | not sure that addresses my fundamental question as to how that
6 | would facilitate the commission of the offense of failure to
7 | file as distinguished from the making of a false claim or the
8 | conspiracy as charged in the Indictment.

9 | MR. MORRIS: I'm not arguing that it would be the
10 | commission -- right, that -- that it's -- that it goes to the
11 | commission of the offense, but, rather, the concealment of the
12 | offense.

13 | For example, under 2T1.1, Application Note 4, which
14 | discusses the sophisticated means enhancement, the Commission
15 | states that sophisticated means means especially complex or
16 | especially intricate offense conduct pertaining to the
17 | execution or concealment of an offense. Conduct such as
18 | hiding assets or transactions, or both, through the use of
19 | fictitious entities, corporate shells or offshore financial
20 | accounts ordinarily indicates sophisticated means.

21 | THE COURT: No question about it, but how does it
22 | conceal the failure to file as distinguished from the
23 | calculation of the tax?

24 | MR. MORRIS: Your Honor, by having the --

25 | THE COURT: I don't think we have to extend this.

1 I'm inclined to sustain that objection, and we'll just get it
2 out of the case. It has little or no impact upon the
3 calculation of the ultimate guideline sentence in any event,
4 but I'll sustain the objection to the two-level enhancement at
5 paragraph 78 of the report. And depending on other possible
6 rulings yet to be made, that would reduce the total offense
7 level at paragraph 84 from 32 to 30. And I'll note those
8 changes in the margin.

9 Let's deal with the last objection. I believe it's
10 the last one, Ms. Hernandez.

11 MS. HERNANDEZ: I think we have objections to the
12 fine and to the -- I don't see it here, but also to the
13 assignment of costs.

14 THE COURT: Well, what are those objections, then?
15 Flesh that out for me.

16 MS. HERNANDEZ: Well, I think one is fairly simple --
17 one part of this is fairly simple, because even assuming that
18 the Court accepted the government's argument that 3571(d)
19 applies, that is, the special -- the alternative fine based on
20 gain or loss, I think once the Court has reduced the tax loss
21 as it did, then even assuming that's what the Court goes to,
22 it's -- it would be reduced accordingly.

23 Right now the fine maximum that the Court is looking
24 at -- that the PSR proposed was based on the much larger tax
25 loss. But if -- if we're talking about the 220,000, then --

1 | then the maximum would be -- under 18 U.S.C. Section 3571(d),
2 | the maximum would be twice that.

3 | But we also argue that you -- you should not go to
4 | the alternative fine. You should apply, if at all, 3571(b),
5 | which establishes a maximum for Class A misdemeanors of a
6 | hundred thousand.

7 | And even more so than that, Your Honor, we think you
8 | should not impose a fine in this case because the --
9 | Mr. Snipes will be -- in order to resolve his tax liability
10 | will be paying fines and penalties already.

11 | So whether it's as a matter of due process or -- or
12 | double jeopardy or -- or any number of other -- or just, you
13 | know, what is just under the circumstances, it seems as if the
14 | Court -- the money is going to the same place. It should go
15 | by way of resolution of the tax liabilities rather than --
16 | rather than as an alternative fine.

17 | You know, I -- frankly, I don't think that this was,
18 | you know -- anyhow, that's the argument, that this is a
19 | case -- given that he's -- he will be paying fines and -- and
20 | penalties for the -- for the year -- for the failure to file
21 | years.

22 | THE COURT: I'm a little confused about the matter of
23 | fines in this case. The maximum fine by statute would be
24 | \$100,000 per count.

25 | Is that right, Mr. Morris?

1 MR. MORRIS: That would be -- ordinarily, that would
2 be what would be applied. We're arguing that under 3550 --
3 I'm sorry -- 3571(d), as counsel concedes, that there is a
4 provision that allows the Court to impose a fine of two times
5 the amount of loss.

6 THE COURT: Under what circumstances?

7 MR. MORRIS: Where the defendant has a pecuniary gain
8 from that. In this case, that would be the nonpayment of
9 taxes.

10 MS. HERNANDEZ: Your Honor, we would argue that he
11 doesn't get a pecuniary gain. He will be paying off these
12 taxes. And gain is the -- you know --

13 THE COURT: Well --

14 MS. HERNANDEZ: The fact remains, Your Honor, he's
15 going to be paying a lot more than he would have paid had he
16 paid his taxes on time. There's no question about that.

17 THE COURT: It might be observed with respect to the
18 number of lawyers who have made an appearance in this case, I
19 would suspect he's paid quite a bit more.

20 MS. HERNANDEZ: I will not argue with the Court on
21 that. And -- and it will continue, because as the Court
22 knows, the civil resolution of the taxes will incur additional
23 expenses.

24 THE COURT: All right. Well, I will carry that
25 matter of an appropriate fine, if any, with the case.

1 MS. HERNANDEZ: The government has also filed a bill
2 of costs. And, again, there's an Eleventh Circuit case on
3 point, United States versus Palmer, 809 F.2d 1504,
4 Eleventh Circuit, 1987. It involved a similar case, a tax
5 evasion case -- a case involving charges of tax evasion and
6 charges of failure to file. Again, there was an acquittal on
7 the 7201 charges and conviction on the failure to file cases.
8 And the Eleventh Circuit reversed and said that the costs --
9 the costs that were properly -- I can't pronounce it --
10 allocated to charges of which the defendant was acquitted
11 could not be taxed and -- and remanded for -- for a hearing by
12 the District Court to determine what, if any, of the -- of the
13 costs related to this.

14 Now, maybe -- maybe the best thing to do would be for
15 the parties to try to resolve this rather than to require that
16 the Court have some sort of hearing. The government is
17 seeking \$257,000, plus --

18 THE COURT: What do you say to this authority that
19 counsel cites, Mr. Morris?

20 MR. MORRIS: I didn't catch the name of the case, and
21 there was no specific objection set forth in the presentence
22 report.

23 Is this the Palmer case?

24 MS. HERNANDEZ: Yes.

25 MR. MORRIS: Your Honor, the --

1 THE COURT: Well, the United States bill of costs was
2 only filed the day before yesterday.

3 MR. MORRIS: Yes, Your Honor. However, the -- a
4 detailed listing of these costs was provided to defense
5 counsel exactly one month ago, and that schedule in my email
6 to Mr. Meachum said, if you want any additional detail or
7 information, please contact me. We haven't been contacted
8 about this. There has been no objection raised about this
9 prior to today.

10 THE COURT: But all I'm saying is that insofar as the
11 specific deadlines under Rule 32 relating to objections to the
12 presentence report, you're not arguing, are you, that
13 counsel's present objection is untimely since the bill of
14 costs, while it may have been otherwise disclosed earlier, was
15 not filed until two days ago?

16 MR. MORRIS: I'm not trying to make that argument,
17 Your Honor, but what I am pointing out is that these
18 numbers -- in fact, a number a little bit higher than that,
19 \$258,000, was the number that was included in the draft
20 presentence report that the defense had an opportunity to
21 review. And schedules had been provided to the defense at
22 least a month ago setting forth these numbers, so --

23 MS. HERNANDEZ: Your Honor, we did object. Paragraph
24 107 of our April 4, 2008, objections does object to the costs
25 of prosecution. We didn't have the exact number then, but

1 | there is an objection.

2 | MR. MORRIS: It objects in a general fashion,
3 | Your Honor, if I recall what -- what Ms. Hernandez is saying,
4 | that it's unfair essentially to impose these on him.

5 | MS. HERNANDEZ: No.

6 | THE COURT: Well --

7 | MR. MORRIS: I would point out to the Court that the
8 | costs that have been set forth here relate to the counts of
9 | conviction.

10 | We have removed from the potential costs of
11 | prosecution figures that would relate to expenses for the
12 | other defendants or that would relate only to the counts that
13 | he was acquitted of. So the counts -- the costs that are
14 | included in here relate either directly or in some fashion to
15 | the counts he was convicted of.

16 | MS. HERNANDEZ: Your Honor --

17 | THE COURT: Just a minute.

18 | (Pause.)

19 | THE COURT: The statute 26 U.S.C. Section 7203 simply
20 | says in broad, generic terms that as a penalty for the offense
21 | of, in this instance, failure to file, the defendant shall be
22 | subject to assessment of the costs of prosecution, or words to
23 | that effect, right?

24 | MR. MORRIS: That's correct, Your Honor. And then
25 | there is case law that supports that the costs of prosecution

1 are most often determined by courts to fall -- to fall under
2 28 U.S.C. Section 1920. And so we have used Section 1920 as
3 our guideline in the preparation of the costs of prosecution.

4 THE COURT: Well, the question I'm struggling with is
5 a procedural one, and that is whether or not that aspect of
6 the sentencing process can be severed and decided separately
7 or whether it must be included in the judgment that is entered
8 as a result of today's proceedings.

9 My suspicion is that the law would require the
10 latter, which doesn't take into account the complication and
11 prolongation of the sentencing hearing when there's a dispute
12 with respect to the parsing of the costs.

13 Ms. Hernandez has suggested that the matter be
14 resolved separately.

15 MS. HERNANDEZ: If there is a matter, we would waive
16 any objection to having it resolved separately, Your Honor.

17 THE COURT: All right. That --

18 MS. HERNANDEZ: And we would hope that we could
19 resolve it with the government without taking up the Court's
20 time --

21 THE COURT: That's helpful.

22 MS. HERNANDEZ: -- or we will attempt to, in any
23 event.

24 THE COURT: That's helpful. And I'm going to lay
25 that issue aside and probably refer it to the Magistrate Judge

1 | to conduct such hearings or proceedings as may be necessary to
2 | resolve that matter so that an amended judgment or
3 | supplemental judgment can be entered, if necessary, to comply
4 | with the statute.

5 | All right. Now, I think that I have the argument of
6 | the defense at least with respect to each of the objections.
7 | But before I rule, you wish to confer, I understand,
8 | Ms. Hernandez.

9 | MS. HERNANDEZ: Thank you.

10 | THE COURT: And we'll stop for lunch until 1:30.

11 | (The luncheon recess was taken.)

12 | THE COURT: Thank you. Be seated, please. And good
13 | afternoon, everyone.

14 | Ms. Hernandez?

15 | MS. HERNANDEZ: Good afternoon, Your Honor.

16 | I don't have any additional fact-based objections or
17 | arguments to the -- to the guideline calculation.

18 | There was some question as to the Court's proposal
19 | subject to our objections to the use of the tax table
20 | altogether. The Court's proposal of accepting the
21 | 220-something thousand dollars as tax loss as a factual
22 | matter --

23 | THE COURT: Well, excuse me. I wouldn't describe it
24 | as a proposal; I was simply asking questions.

25 | MS. HERNANDEZ: I'm sorry, Your Honor. I was

1 inarticulate. We won't -- we will not object to a finding by
2 the Court as a matter of fact on those numbers. We preserve
3 the legal arguments that we have been making.

4 The final item that I would like to take up with the
5 Court at this juncture is I'd like to tender to the Court as
6 payment for the -- for taxes from 1999 through 2006. And we
7 don't know what that exact number is.

8 And as evidence that Mr. Snipes has accepted
9 responsibility for his conduct and is attempting to make
10 amends, we would like to tender to the Court a check for
11 \$5 million totaling -- checks totaling \$5 million.

12 And we'd also like to tell the Court that he has --
13 the government had questioned this. He has filed an extension
14 for tax year 2007 and paid estimated taxes of \$1.5 million.
15 And that's the -- I think what we would propose to do now is
16 to -- we have some character witnesses.

17 THE COURT: Well, let me resolve the objections and
18 hear from the government.

19 Referring to the objections as they are enumerated in
20 the Probation Officer's addendum -- Rule 32 addendum to the
21 presentence report, I will overrule the objections stated in
22 paragraphs 1 and 2 and take the arguments into account with
23 respect to the imposition of sentence.

24 Similarly, with respect to the objections stated in
25 paragraph 3 having to do with the obstruction of justice, I'll

1 | overrule that objection for the reasons stated by the
2 | Probation Officer in his comment to the objection in the
3 | addendum.

4 | As I previously ruled, I believe, I will overrule the
5 | objection described at paragraph 4 having to do with
6 | acceptance of responsibility.

7 | And I will, likewise, overrule the objection at
8 | paragraph 5 having to do with the use of the tax table for the
9 | determination of the base offense level applicable to the
10 | misdemeanor offenses of which the defendant has been found
11 | guilty.

12 | I will reserve for a moment until I hear from the
13 | government the objections stated at paragraph 6 having to do
14 | with the determination of the base offense level predicated
15 | upon the amount of the loss or intended loss as stated in the
16 | tax table at Section 2T4.1 of the guidelines.

17 | I have sustained the objections stated at paragraph 7
18 | having to do with an enhancement attributable to the use of
19 | sophisticated means in the commission of the offenses of
20 | conviction, and I will reserve for the moment until
21 | pronouncement of sentence the objections stated in paragraph 8
22 | having to do with the imposition of a fine in the case.

23 | So it's over to you, Mr. Morris. There was one
24 | matter you said you wished to be heard about, and I would like
25 | to hear you in addition, as I just said, concerning whether

1 | it's necessary for the Court to belabor the issue of the tax
2 | loss in determining the base offense level applicable to this
3 | case under the guidelines.

4 | MR. MORRIS: Your Honor, the matter that I had said
5 | that I wanted to address to the Court, the Court's already
6 | ruled on that objection in our favor, so I don't see any point
7 | in belaboring that matter.

8 | THE COURT: All right. Thank you.

9 | MR. MORRIS: So turning to the tax loss, Your Honor,
10 | the bottom line with regard to the tax loss is that the
11 | parties disagree about what the amount of the tax loss is.

12 | And, quite frankly, a definitive determination of tax
13 | loss for the years 1999 through 2004 and beyond up through the
14 | most recent tax year, 2007, simply cannot be undertaken at
15 | this time. And it would take months, if not longer, for a
16 | determination of that tax liability to be computed. That will
17 | be done through the civil tax process, but a definitive
18 | calculation is simply not possible at this time. And the
19 | parties disagree about even what a reasonable estimate of the
20 | taxes -- tax loss is.

21 | So we would submit to the Court that the Court should
22 | use the 20 percent of gross income figure as provided in the
23 | guidelines. That is, in fact, the presumption that the
24 | guidelines call for.

25 | I would point out that the 20 percent of gross income

1 figure is readily determinable by mechanical application. The
2 amount of gross income was proved at trial. It was not
3 contested at trial. It's set forth in the presentence report.
4 And so that amount can be readily determined and taken from
5 the presentence report.

6 Your Honor, I would also point out that using a
7 20 percent figure in this case is actually very conservative
8 or favorable to the defendant. If one reviews the tax history
9 of Mr. Snipes from the evidence that was submitted at trial
10 for the six years leading up to the prosecution period, that
11 is, for the years 1993 through 1998, and one compares the
12 amount of tax that was reported and paid by Mr. Snipes during
13 those years to the amount of gross income that he had in those
14 years, you come to the conclusion that for all of those years
15 except one in which there was a loss for tax purposes that
16 defendant Snipes paid between 30 to 38 percent of his gross
17 income in tax, and that even including that loss year, the
18 amount of tax that he paid on average over that six-year
19 period was 36 percent.

20 So using the 20 percent figure is, in fact, very
21 conservative for Mr. Snipes. And, in fact, using the
22 20 percent estimate, which would arrive at a tax loss of
23 approximately seven and a half million dollars for the six
24 failure to file counts that are at issue would be conservative
25 compared to the defendant's own estimate of his tax liability.

1 The defendant provided information through counsel to
2 the Probation Office with regard to his financial affairs, and
3 the defendant's own estimate of tax liability submitted to the
4 Probation Office was a range of 10 to \$20 million. So the use
5 of the 20 percent figure arriving at seven and a half million
6 is conservative for that purpose as well.

7 Furthermore, if the Court were to use even just the
8 figures submitted by the defendant to the Probation Office --
9 and really the Court should not limit itself to looking at the
10 three years that are the counts of conviction, but all six
11 years under the prosecution period because the additional
12 failure to file counts, although acquitted, clearly are
13 relevant conduct under any definition of that -- the figure
14 would be in the range of three and a half million dollars.
15 And that would compute a tax loss at a guideline level of 24.
16 A guideline level 24 would result in a range of imprisonment
17 of 51 to 63 months, which would be well in excess of the
18 36-month statutory maximum.

19 So, Your Honor, we would argue, again, the Court
20 should use the 20 percent figure. It's conservative and it's
21 readily determinable. But under any circumstances, the
22 defendant is going to -- his tax loss would be well in excess
23 of the statutory maximum.

24 Your Honor, finally, turning to the issue with regard
25 to the fine that's set forth in paragraph 8 of the objections,

1 | the United States has asked for the Court to impose a fine of
2 | \$5 million based on the financial information provided to the
3 | Probation Office. We believe that the defendant clearly has
4 | the wherewithal to be able to pay a substantial criminal fine.

5 | And a criminal fine is separate and apart from
6 | whatever penalties and interest he owes to the IRS as a civil
7 | matter. The purpose of a criminal fine is for the purposes of
8 | punishment at sentencing. It's different from the sanction to
9 | be imposed by the IRS at a civil proceeding.

10 | Now, even if one were to use the numbers provided by
11 | the defendant and only look at the three counts of conviction,
12 | the defendant's numbers, which we dispute and which we would
13 | argue are extremely low, their figure of \$227,000 for the
14 | three counts of conviction, if doubled as provided for under
15 | Section 3571(d), would result in a maximum fine of \$450,000.
16 | So we urge the Court to impose a fine of at least \$450,000 in
17 | this case.

18 | MS. HERNANDEZ: Your Honor, may I respond or --

19 | THE COURT: Well, let's find out -- had you finished,
20 | Mr. Morris?

21 | MR. MORRIS: Yes, Your Honor, I had.

22 | THE COURT: You may, Ms. Hernandez, if it's brief.

23 | MS. HERNANDEZ: Yes, sir.

24 | Your Honor, we object to the use of the 20 percent
25 | number and would ask the Court to hold a fact-bound hearing

1 | because we can -- and we have with us a CPA and two tax
2 | lawyers. The CPA is the person who prepared the summary
3 | that's been submitted to the Probation Officer.

4 | The guidelines require the Court to consider a more
5 | accurate figure if one is available. I will tell the Court
6 | that we have taken the numbers provided by the government --
7 | that is, we have not changed a single number on the revenue
8 | agent's report -- and applied to those numbers standard
9 | permissible tax policy. For example, as I -- you know, in --
10 | for 1999, the government applies the regular tax -- three
11 | items in 1999. They fail to provide a foreign tax credit,
12 | which is listed on their documents, that Mr. Snipes paid to
13 | the Canadian government taxes in excess -- I believe it was
14 | around \$900,000. That's not reduced, standard.

15 | Second thing, they applied the wrong tax rate to
16 | capital gains. Again, it's their determination of how much
17 | capital gains was.

18 | THE COURT: Let me interrupt to ask a question about
19 | that, Ms. Hernandez. I don't think it's necessary for me to
20 | resolve it, but there's an interesting point that's made in
21 | the government's memo about the Court's consideration of the
22 | proffered calculations of the tax owed by the defendant for
23 | the years of conviction. My recollection is decisions are
24 | cited from three circuits to the effect that the defendant
25 | lacks standing and/or is estopped at this point in these

1 | proceedings from offering such tax calculations where there
2 | has been no return filed under oath establishing the claim.

3 | MS. HERNANDEZ: I -- I have three responses to that.
4 | One, none of the cases are Eleventh Circuit cases.

5 | Two, there is a Supreme Court case this year which I
6 | cite in our memorandum in a tax evasion case, which is, you
7 | know, a more severe offense, in which the government's
8 | position was the defendant cannot as a defense do what -- what
9 | is being suggested. He can't say that there were legitimate
10 | deductions or -- or that the tax calculation is wrong. And
11 | the Supreme Court said, no, you have got to allow that as part
12 | of the case. So if it's allowable in a tax evasion case --
13 | and what -- the Court went further and said if he has zero --

14 | THE COURT: Was that in a sentencing context or in
15 | the defense of the case?

16 | MS. HERNANDEZ: In the defense of the case.

17 | THE COURT: Where no return had been filed?

18 | MS. HERNANDEZ: Where no return had been filed. And
19 | the government -- and the defendant's response was -- and --
20 | and the charge was tax evasion. The defendant's response was,
21 | I -- there is no tax liability, and I can prove it. And the
22 | Supreme Court said if there is no tax liability, he has to be
23 | allowed to prove it and -- and it -- there is no offense.

24 | THE COURT: Well, if there's no tax liability,
25 | there's no evasion. There would be a defense to the offense

1 | itself.

2 | MS. HERNANDEZ: Well, absolutely. But if it's going
3 | to be a defense to a more severe crime -- and what the
4 | guidelines call for clearly -- what -- what does it mean --
5 | what does it mean -- how -- what can it possibly mean to
6 | provide for a more accurate determination of tax loss? The
7 | options are to take 20 percent of gross. That would mean
8 | you're not allowed to take any deductions or anything that you
9 | would. So what does it mean to be able -- to prove a more
10 | accurate determination of tax loss?

11 | THE COURT: Twenty percent of gross seems to me has a
12 | built-in margin of approximately 10 percent for deductions,
13 | exemptions, or other exclusions with a 30 percent tax rate.

14 | MS. HERNANDEZ: Moreover, Your Honor, it seems to me
15 | that Barakat, the Eleventh Circuit case which, again, was a
16 | tax evasion case --

17 | THE COURT: Well, there's no need -- no need to
18 | explore it because I don't find it necessary to resolve that
19 | either in this case. It was just a point that interested me
20 | raised in the briefs.

21 | Are you familiar with the Supreme Court decision that
22 | counsel is referring to on that point, Mr. Morris?

23 | MR. MORRIS: Yes, Your Honor. It's the Boulware
24 | case, Your Honor, B-O-U-L-W-A-R-E.

25 | Your Honor, I think as the Court has indicated, that

1 case would be inapposite in this case -- in this proceeding.
2 It's in a different postural setting.

3 THE COURT: Well, be that as it may, I don't find it
4 necessary to resolve that.

5 MS. HERNANDEZ: And, Your Honor, the objection
6 that -- the original and the overarching objection that we
7 have is that it is -- it violates my client's due process
8 rights under the Fifth Amendment. And there are at least two
9 Supreme Court cases about the use of inaccurate information to
10 sentence a person to jail. And that's exactly what's being
11 proposed here.

12 We have a number that we can provide to the Court
13 without much fanfare that would be more accurate. And to --
14 and to -- and to use inaccurate over what we would suggest to
15 the Court are completely wrong numbers --

16 THE COURT: And that --

17 MS. HERNANDEZ: To base a sentence on that is
18 unconstitutional.

19 THE COURT: And that bottom line number is \$228,000
20 in round figures?

21 MS. HERNANDEZ: Yes, sir.

22 THE COURT: Well, under the -- well, before I proceed
23 with that, Mr. Morris, I have three envelopes here which I've
24 not opened, but they have been tendered to the Court
25 apparently as checks payable to the United States Treasury in

1 satisfaction of presumably all or part of the defendant's tax
2 liability. I know of no authority on the part of the Court to
3 accept funds that are intended for the United States Treasury.

4 What does the government say about this?

5 MR. MORRIS: May I have a moment, Your Honor?

6 THE COURT: Sure.

7 (Pause.)

8 MR. MORRIS: Your Honor, I'm not authorized at this
9 time to accept that funds.

10 MR. MEACHUM: Your Honor, I'll take the checks back.

11 (Laughter.)

12 THE COURT: Return them to counsel.

13 MR. MORRIS: Your Honor, payment can be made directly
14 to the Internal Revenue Service.

15 THE COURT: Well, I'll leave that to counsel or the
16 revenue service to resolve. The Court is not in the business
17 of collecting tax revenue.

18 MR. MORRIS: Your Honor, I would note that the amount
19 that counsel said was tendered was \$5 million as an estimated
20 tax payment. I think the Court can take that into account.

21 MS. HERNANDEZ: Well, Your Honor, we're tendering
22 that. It's an estimate. It's a -- it's a -- instead of a
23 conservative, it's a -- it's an overly -- it's -- it's -- we
24 don't know -- we're not suggesting that that's the accurate
25 determination of the taxes and --

1 THE COURT: It's a moot matter, Ms. Hernandez. The
2 checks have been returned. Mr. Meachum has put them in a safe
3 place.

4 MR. MEACHUM: My pocket, Your Honor.

5 (Laughter.)

6 MS. HERNANDEZ: Your Honor, if the Court would allow
7 me just to speak to that a moment? The government had raised
8 a question in one of their -- in one of their letters to the
9 Probation Officer questioning whether Mr. Snipes had paid his
10 2007 taxes.

11 And also, the reason we are -- we just wanted to
12 allow the Court to understand that Mr. Snipes recognizes and
13 accepts that he owes taxes and that he has an obligation to
14 file tax returns. The guidelines --

15 THE COURT: When did he come to that realization,
16 Ms. Hernandez?

17 MS. HERNANDEZ: Well, Your Honor, as -- as -- as
18 early as 2007 in the letter that we submitted to the Court
19 earlier, his counsel offered to the government to resolve the
20 tax liability and to take responsibility for that.

21 So it's not -- he -- he realized it as soon as he got
22 away from -- he -- I just want to have the Court understand
23 that he accepts responsibility and recognizes that he owes --
24 he has an obligation under the laws of the United States of
25 America to file tax returns, as he had done for previous

1 years, and that he -- he -- it is his intent to resolve that.

2 THE COURT: I find that inherently incredible.

3 MS. HERNANDEZ: That he --

4 THE COURT: This is April the 24th, 2008. The
5 defendant has known since the year 2000, as I recall the
6 testimony, that his tax obligations to the United States were
7 under investigation, and I haven't seen or heard any evidence
8 of the filing of any return, any amended return --

9 MS. HERNANDEZ: Your --

10 THE COURT: -- any effort to resolve the matter --

11 MS. HERNANDEZ: Your Honor, for one --

12 THE COURT: -- other --

13 MS. HERNANDEZ: I'm sorry.

14 THE COURT: -- other than the letter that you've
15 produced, which is a far cry from a resolution of the civil
16 and criminal responsibility that the defendant may have had.

17 MS. HERNANDEZ: Your Honor, number one, it is my
18 understanding that ordinarily and regularly in cases where
19 there are either investigations or pending -- I don't want to
20 say threats, but pending criminal charges, that matters are
21 resolved by agreement. And you -- people do not tend to file
22 amended returns and tax returns when there's an investigation
23 unless counsel can resolve it, because it -- it just gets to
24 be a very tricky situation in terms of what are the
25 liabilities, what can be used against the defendant in a -- in

1 a -- in a subsequent prosecution.

2 It's my understanding that the revenue agent in this
3 case at some time around 2000, in fact, told Mr. Snipes that
4 anything he said or did with regard to tax returns from that
5 day forward, you know, could be used against him. And so --
6 and he was being represented by a number of lawyers.

7 THE COURT: Isn't that equally true today?

8 MS. HERNANDEZ: Well, he has been -- you know, we
9 have an -- we have a conviction. And -- and I suppose if the
10 case gets reversed and we get to retry it again --

11 THE COURT: You have a -- you have a conviction with
12 respect to three years...

13 MS. HERNANDEZ: And double jeopardy with respect to
14 2004 -- through 2004.

15 MR. MEACHUM: Your Honor, may I -- may I -- may I
16 approach?

17 THE COURT: I'll hear one lawyer at a time,
18 Mr. Meachum, please.

19 MR. MEACHUM: Okay. All right, Your Honor.

20 MS. HERNANDEZ: You know, there's double -- there's
21 three acquittals as to -- as to 2001, 2003, 2004. The Court,
22 I hope, can understand that he has been focused on the defense
23 of the criminal case. And since the trial ended, we've been
24 focused on attempting to -- to resolve this case.

25 I would -- I would tell the Court that we have been

1 attempting to have a meeting with the government's revenue
2 agent to resolve -- to resolve that even during the
3 pendency -- even since the -- the case -- the -- the verdict
4 came back. So this is not -- and we have been unable -- the
5 most charitable thing that I can say is that we have been
6 unable to secure that.

7 The most recent information we -- you know, I could
8 -- I could say a lot more contentious statements about the
9 government's position in this case. We have offered to
10 resolve this and -- and, frankly, they have not been -- they
11 have not been willing to -- to sit down and resolve this.

12 So -- and that's why the money was tendered to the
13 Court, just to -- I think it's perfectly permissible and
14 legitimate to allow the Court -- if this were a case involving
15 restitution, it would be perfectly permissible and legitimate
16 to allow the Court to be informed that that restitution has
17 been made. And the idea that the even -- even -- even as we
18 sit here, the government rejects the payment.

19 MR. MORRIS: Your Honor, there's nothing that has
20 prevented the defendant from filing back tax returns or paying
21 his tax liability prior to today.

22 THE COURT: Even subsequent to the filing of the
23 Indictment?

24 MR. MORRIS: Certainly subsequent to the jury's
25 verdict. Nothing prevented --

1 THE COURT: Well -- all right. I don't --

2 MR. MORRIS: Even after the Indictment, Your Honor --
3 the Indictment covered up through the year 2004. There was
4 nothing that prevented him from filing tax returns for 2005 or
5 2006 or, most recently, for 2007, like every other American.

6 THE COURT: I understand.

7 With respect to the application of the tax table to
8 the case, which is Section 2T4.1 of the sentencing guidelines,
9 for purposes in turn of arriving at a sentencing range under
10 the guidelines, I'm going to invoke the provisions of Rule 32
11 little (i) (3) (B) of the Federal Rules of Criminal Procedure
12 and find it unnecessary to determine the dispute between the
13 parties concerning the tax loss or intended loss for purposes
14 of the guidelines because there is no dispute that the
15 defendant owed in tax \$228,000 or thereabouts in tax.

16 And, likewise, it's unnecessary to invoke the
17 20 percent rule which is provided for in Section 2T1.1(c) (2),
18 Note A of the guidelines, because by applying the tax
19 obligation of 228,000 -- 27-, 28,000 under the tax table, it
20 produces total offense level 18 as to which the range of
21 commitment would be 27 to 33 months.

22 In addition, when one would add the two-level
23 enhancement which I have sustained at paragraph 81 of the
24 report for obstruction under Section 3C1.1, that would produce
25 a total offense level of 20, criminal history category one, as

1 | to which the guideline sentencing range would be a term of
2 | commitment of from 33 to 41 months, the upper end of which
3 | exceeds the statutory maximum that the Court could impose in
4 | this case in any event.

5 | And so for guideline sentencing purposes and
6 | guideline sentencing purposes alone, I find it unnecessary
7 | under the rule to resolve these issues of the exact tax
8 | liability of the defendant and will and do leave that for
9 | determination in other appropriate proceedings.

10 | So for purposes of the guidelines in the case of
11 | Mr. Snipes, I will pursue that means of resolution and find in
12 | a light most favorable to his position that the sentencing
13 | range is the one applicable to offense level 20, criminal
14 | history category one, as to which, again, the suggested range
15 | of commitment would be a sentence of from 33 to 41 months to
16 | be followed by a term of one year of supervised release, the
17 | possibility of a fine, the guideline provisions with respect
18 | to which being a fine of from \$17,500 to \$175,000, although,
19 | as pointed out in the report as to the offenses of conviction,
20 | there may be a statutory maximum of \$100,000 in fines, but I
21 | will carry that with the case for the moment.

22 | And, in addition, of course, there is the matter of
23 | the costs of prosecution which I have severed for subsequent
24 | determination.

25 | Now, Mr. Morris, let me hear again -- I, frankly,

1 have forgotten what the government's position is with respect
2 to the statutory cap on the fine in this instance.

3 MR. MORRIS: Yes, Your Honor.

4 THE COURT: Let me focus our attention specifically.
5 At paragraph 112 of the presentence report, the Probation
6 Officer states that as to each count, the maximum fine is
7 \$100,000, citing 18 U.S.C. Section 3571(b)(5). I take it
8 that's an accurate statement of the law?

9 MR. MORRIS: Yes, it is, Your Honor. It's --

10 THE COURT: Well, how and why, then, did I hear
11 you -- I think I heard you earlier suggest a fine of a half a
12 million dollars in the case.

13 MR. MORRIS: Yes, Your Honor. That would be set
14 forth in paragraph 113. And that's based on another provision
15 of Section 3571, 3571(d), which provides for an alternative
16 fine based on the amount of gain or loss. We had argued that
17 the amount of tax loss was millions of dollars and that if you
18 doubled that amount, that certainly a \$5 million fine would
19 fall within double the amount of the amount of tax loss and --

20 THE COURT: Well, that goes back to a determination
21 of the amount of the actual tax loss for sentencing purposes.

22 MR. MORRIS: Correct. And that -- Your Honor, that's
23 why I said that even if you were to use the number which the
24 defense has put forward for the three counts of conviction,
25 the number that the Court just referenced, that approximately

1 | \$228,000 in tax loss that they stipulate to -- that, if you
2 | double that amount, would be approximately \$450,000, or a
3 | little over \$450,000. So we would submit to the Court that
4 | \$450,000 is the maximum fine that the Court can impose.

5 | THE COURT: All right. Again, I'll carry that with
6 | the case for the moment.

7 | I think I should add as a matter of caution to the
8 | findings I made a few moments ago about the amount of the tax
9 | loss for purposes of the tax table in determining the
10 | sentencing guideline range has nothing whatsoever to do with a
11 | judicial determination of the actual tax liability of the
12 | defendant, which is to be established -- or is left for
13 | establishment in separate proceedings before a court, or
14 | courts, of competent jurisdiction.

15 | MR. MORRIS: Your --

16 | THE COURT: And it is not my intention to settle this
17 | afternoon what the defendant's tax liability, if any, may
18 | actually be to the United States.

19 | MR. MORRIS: Thank you, Your Honor.

20 | THE COURT: This is an exercise for purposes of
21 | sentencing in a criminal proceeding only.

22 | MR. MORRIS: Your Honor, given that clarification,
23 | the United States would urge the Court to impose a fine of
24 | \$300,000, and that would obviate any -- any issue that could
25 | come up if the Court were to exceed the amount that is

1 absolutely clearly authorized by statute.

2 MS. HERNANDEZ: Your Honor, that would require an
3 upward departure from 5E1.2.

4 MR. MORRIS: And we set forth an argument in our
5 sentencing memorandum that that would be warranted under the
6 facts of this case.

7 THE COURT: Wait just a moment.

8 MS. HERNANDEZ: Guideline 5E1.2 sets out a fine
9 range.

10 THE COURT: What does it say, Ms. Hernandez?

11 MS. HERNANDEZ: Your Honor, it has a fine table
12 that -- that is triggered by the offense level of the offense,
13 not -- you know, so that your total offense level is what
14 triggers.

15 And for an offense level of from 20 to 22, which is,
16 I believe, where we fall according to the Court's
17 determination, it's a range of 7,500 to 75,000.

18 In addition, just for the record, Your Honor, we're
19 not -- we object to the use of the alternative fine in
20 3571(d).

21 THE COURT: All right.

22 MR. MORRIS: Your Honor, may I respond?

23 THE COURT: Yes, Mr. Morris.

24 MR. MORRIS: Your Honor, as we set forth in our
25 sentencing memorandum, commentary note 4 to that guideline

1 Section 5E1.2 states that the Sentencing Commission envisions
2 that for most defendants, the maximum of the guideline fine
3 range will be at least twice the amount of the gain or loss
4 resulting from the offense. Where, however, two times either
5 the amount of gain to the defendant or the amount of loss
6 caused by the offense exceeds the maximum of the fine
7 guideline, an upward departure from the fine guideline may be
8 warranted. We believe that that is the case here.

9 Moreover, the guidelines --

10 THE COURT: Let me ask, has the government explored
11 or researched the jeopardy implications of the imposition of a
12 fine with respect to any subsequently assessed fraud penalties
13 or the like?

14 MR. MORRIS: I'm not sure I understand your question,
15 Your Honor.

16 THE COURT: Well, I don't know what --

17 MS. HERNANDEZ: Good question, Your Honor.

18 THE COURT: -- the issues may ultimately be in
19 whatever civil proceedings are undertaken with respect to the
20 assessment and collection of past due income taxes from
21 Mr. Snipes, but I suspect that the government will be claiming
22 in those proceedings that he is obligated to pay not only the
23 net tax that is due but also interest and penalties.

24 And my question is whether or not the imposition of a
25 fine in this criminal proceeding would have any former

1 | jeopardy implications with respect to the assessment and
2 | collection of the penalties as distinguished from interest and
3 | tax in the civil proceedings to follow.

4 | MR. MORRIS: I don't believe it would, Your Honor.
5 | But if you'll give me a moment, I'll confer -- can I confer?

6 | (Pause.)

7 | MR. MORRIS: Your Honor, we don't believe it would
8 | have any implication with regard to jeopardy for the civil
9 | assessment of interest and penalties. And I would point out
10 | that the defendant --

11 | THE COURT: There are some fairly recent
12 | Supreme Court decisions on that point. Are you familiar with
13 | those cases?

14 | MR. MORRIS: No, I'm not, Your Honor.

15 | MS. HERNANDEZ: Your Honor, I would argue, if the
16 | Court would allow, that, in fact, for the reasons Your Honor
17 | is saying, a fine isn't -- is really not appropriate in this
18 | case. I don't know at what date you -- you measure pecuniary
19 | gain, but, in fact, after he pays taxes, interest, and
20 | penalties, there is no pecuniary gain.

21 | And the Court -- although we have different branches
22 | of the government, whether it's a fine or a penalty, it will
23 | end up in the same fisc. And so, frankly, it is not
24 | appropriate in this case to impose a fine when we know for a
25 | fact that he will be -- that there will be penalties and

1 interest -- certainly penalties, statutory -- penalties with
2 respect to the taxes owed imposed upon him.

3 THE COURT: All right. I have resolved, then, the
4 sentencing guidelines issues in the case as they relate to
5 each of the three defendants, and we can turn now to
6 allocution as to what the sentence ought to be.

7 And I'll approach it in reverse order since you're
8 there, Ms. Hernandez, speaking for Mr. Snipes. Are you going
9 to address allocution generally, or is other counsel going to
10 be heard?

11 MS. HERNANDEZ: Your Honor, if the Court would allow
12 it, we have just two or three -- four short character
13 witnesses that Ms. Moreno would put on in support of our
14 arguments for a downward departure of sentence under 3553(a).

15 THE COURT: All right.

16 MS. HERNANDEZ: So if I could sit down and she
17 could --

18 THE COURT: Very well.

19 MS. HERNANDEZ: Thank you, Your Honor.

20 MS. MORENO: Good afternoon, Your Honor.

21 THE COURT: Good afternoon, Ms. Moreno.

22 Call your first witness, please.

23 MS. MORENO: May it please the Court. We would like
24 to call Mr. Bob Wall.

25 THE DEPUTY CLERK: Please come forward to be sworn.

1 ROBERT ALAN WALL, DEFENDANT SNIPES' WITNESS, SWORN

2 THE DEPUTY CLERK: Have a seat on the witness stand.

3 THE COURT: You might remember, Ms. Moreno, that I
4 have the defendant's sentencing memorandum that was filed
5 yesterday to which is attached not one, but two letters, as I
6 recall, from Mr. Wall. So I already know basically what his
7 views are in the matter.

8 MS. MORENO: Your Honor, all of these witnesses do
9 have letters. They will be short.

10 THE COURT: Go ahead.

11 MS. MORENO: Thank you, Your Honor.

12 ROBERT ALAN WALL,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MORENO:

16 Q. Could you state and spell your name for the
17 record?

18 A. Robert Alan, A-L-A-N, Wall, W-A-L-L.

19 Q. Mr. Wall, in what town and state do you
20 reside?

21 A. California, Tarzana.

22 Q. And do you have a position in the World Black
23 Belt?

24 A. Yes. I'm the CEO and president of World
25 Black Belt.

1 Q. And when did you find that?

2 A. We found that company in 1999.

3 Q. Okay. And how long have you been involved in
4 the world of martial arts?

5 A. Forty-eight years.

6 Q. Okay. And in your involvement with martial
7 arts, have you had an opportunity to train and
8 instruct persons from the White House?

9 A. Yes.

10 Q. And who would that have been?

11 A. That would have been senior President Bush
12 and part of his staff.

13 Q. Okay. Any other presidents that you trained?

14 A. Other presidents I met, but didn't train.

15 Q. Okay. And do you also teach any members of
16 the Secret Service or the FBI?

17 A. Yes. We've taught the Secret Service our AID
18 program. It's America in Defense Program that we
19 contract with American Airlines for. And so we
20 taught that program to all the law enforcement
21 officers that wanted the training, including the
22 FBI, the Secret Service, the sheriffs and so forth.

23 Q. Okay. And yourself, are you inducted into
24 several halls of fame?

25 A. Yes.

1 Q. And what are they, sir?

2 A. Well, they're numerous, but Professional
3 Martial Arts Hall of Fame, Martial Arts Legend Hall
4 of Fame. There's a variety of them. There's about
5 a half a dozen major ones.

6 Q. When did you meet Wesley Snipes?

7 A. Over 20 years ago.

8 Q. Okay. And do you recall the circumstances of
9 that meeting?

10 A. Yes. I met him at a martial arts event.

11 Q. Okay. And over the course of the last
12 20 years, how often have you seen Mr. Snipes and
13 interacted with him?

14 A. Quite often.

15 Q. Okay. And what does that mean, "quite
16 often"?

17 A. Well, I've seen him numerous times, actually
18 went with him for three days to a very, very large
19 martial arts event called The Arnold, Arnold
20 Schwarzenegger's event.

21 Q. And is that the Governor Schwarzenegger of
22 California?

23 A. Yes, ma'am.

24 Q. Okay. In what year was that, sir?

25 A. 2003.

1 Q. Okay. And what was that event about and what
2 was Mr. Snipes' participation in that?

3 A. He was the guest of honor. The governor had
4 asked him to be there, and so I arranged it by
5 asking Mr. Snipes if he would go, and he agreed and
6 was there for three days.

7 Q. Okay. And what did he do during those three
8 days?

9 A. He interacted with the people. He was
10 absolutely mobbed. He was -- he was just amazing.
11 He went around, you know, literally ten hours a day
12 shaking hands, taking pictures, signing autographs
13 and then going to each of the events. There's
14 numerous rings. It's quite large. About 120,000
15 plus people go there. So he just went from ring to
16 ring to ring interacting with the people.

17 Q. And did you see him also interact with the
18 kids at the event?

19 A. Yes. It was fabulous. It was very
20 impressive to me, because I've been around a lot of
21 celebrities. But Wesley's just one of the kindest
22 humans I've ever seen. He spent a lot of time with
23 the kids, really talked to anybody who approached
24 him. He's a very approachable, calm man. I was
25 so -- I was very impressed.

1 Q. Now, let's talk about the tragic events of
2 September 11th. Did something happen with respect
3 to your working with American Airlines that
4 Mr. Snipes was involved in?

5 A. Yes. Immediately after 9/11 -- Chuck Norris
6 has been my partner for 42 years. We built a very
7 large chain of schools back in the '60s. And so he
8 and I were actually working out that morning when
9 9/11 happened.

10 So we were both, like anybody, upset, taken
11 aback, and we decided right then that we needed to
12 do something for these cabin crew personnel so this
13 could never happen again.

14 And so we contacted everybody, top A-plus
15 martial artists, which included Wesley Snipes, and
16 we said, Look, we all need to check our egos at the
17 door; we've got to train people who are not police
18 officers, not black belts, that are mostly hired for
19 their passivity, their ability to take BS from
20 people who maybe have emotional problems or drink
21 too much or whatever.

22 So Wesley was one of the most instrumental
23 people, which kind of was amazing to me because he
24 didn't ask for any pay. He didn't ask for any
25 press. He just got in. He understood the problem

1 and gave us some amazing input.

2 And he was really one of the key people
3 responsible for the creation of this program,
4 because it came out of all of our heads: What could
5 we teach people who are not black belts that they
6 could do on the -- on the airplane? And we came up
7 with an amazing program.

8 Q. And what is the program, and is it in
9 operation today?

10 A. Yes. We taught 33 airlines for free for
11 about a year and a half and then was contracted by
12 Larry Wansley, who is a retired FBI agent,
13 undercover, quite famous -- hired us. He was head
14 of corporate security.

15 And the program -- I submitted to the Court
16 letters from -- from the former FBI agent, Larry
17 Wansley, and the director of that program where they
18 said it was one of the best programs they've ever
19 had. It's been a very, very successful program.

20 But due to the input of Chuck Norris and Lou
21 Casamassa, Wesley Snipes, and so on and forth, it
22 really turned into an amazing program, because he's
23 an amazing martial artisan.

24 Q. And did any of your trainees from that
25 particular program have anything to do with the shoe

1 bomber?

2 A. Yes. Our graduates actually took him down.

3 Q. And that would have been Richard Reid?

4 A. Correct.

5 Q. And these are graduates of the program that
6 Mr. Snipes helped develop?

7 A. Correct.

8 Q. And do you know if Wesley got any -- if
9 Wesley Snipes got any pay or publicity for his
10 participation in that?

11 A. No. Everybody wanted to keep it low key, but
12 Wesley didn't ask for or receive anything. He just
13 was there whenever we needed him to give us his --
14 his concepts.

15 Part of the program we created was an acronym
16 called ACOP, because a lot of people don't like
17 police officers when they give them a ticket or
18 arrest them, but they all want a police officer when
19 somebody's trying to kill them. So we made the
20 acronym ACOP -- Awareness, Confidence, Observation,
21 Perception -- to teach those specific skills to
22 these cabin crew.

23 Q. Now, you recently wrote a book that's about
24 to be published about the martial arts; is that
25 correct?

1 A. Yes. This is my second one. I wrote Who's
2 Who in the Martial Arts, and this one is The First
3 Hundred Years Pictorial, about 2,000 pictures
4 starting from 1900.

5 Q. And did you include Mr. Snipes in this book
6 and why?

7 A. He's so admired in the martial arts world for
8 the kind of centered, calm man of character,
9 integrity. He's been one of the most impressive
10 martial artists I've ever met.

11 And so because of that, we put those people,
12 including Chuck Norris and him, on the front cover
13 and -- and, of course, in the book.

14 Q. Mr. Wall, is there anything else that you
15 would -- you would like His Honor to know about the
16 gentleman that you've known for the last 20 years
17 and the gentleman that you've been able to see in
18 different situations that would assist the Court in
19 meting out a just and fair sentence in this case?

20 A. Yes, I certainly hope so.

21 Your Honor, I -- the man that I've known for
22 over 20 years is, in my opinion, one of the most
23 honorable men of character. It's obvious he's made
24 mistakes, as we all have. I certainly include
25 myself in that category. We're human beings; we

1 make mistakes.

2 But I have been just so impressed with the
3 depth of his character, his honor, his centeredness,
4 his passion to help us protect America. He -- he --
5 because of him, he helped create what I consider to
6 be one of the best self-defense programs for flight
7 attendants and police officers.

8 And everything he's ever done with me, he's
9 never asked for any press. He's never asked for any
10 pay. He volunteered his time. And he's a busy
11 person.

12 But the most impressive thing to me is just
13 seeing how he treats people. He's a very kind man.
14 This is a man that can benefit society in so many
15 ways better than to have, in my opinion, a negative
16 sentencing situation. I think this man could do so
17 much good out speaking to people, because he made a
18 mistake and he can pay for it in a very positive way
19 because he's an amazing speaker. He's a tremendous
20 human being. He's a credit to America.

21 And I just hope the Court can see that, yes,
22 he made a mistake, but there's so much better way to
23 pay for it. This man is going to really give an
24 opportunity to others to not make this mistake and
25 -- and also there's so many other ways that he can

1 benefit them, uplift them, see that -- you know, he
2 -- he wasn't born into wealth or fame. He created
3 it. And he's a self-created man. He represents
4 everything that's good about American people. So
5 that's what I would hope the Court would consider.

6 I understand it's a difficult job, but I just
7 think this is -- we have a real golden opportunity
8 here to have this great man out there teaching
9 others from his errors.

10 Q. Thank you so much, Mr. Wall.

11 MS. MORENO: Pass the witness.

12 THE WITNESS: Thank you.

13 THE COURT: Any questions, Mr. O'Neill?

14 MR. O'NEILL: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. O'NEILL:

17 Q. Good afternoon, Mr. Wall.

18 Mr. Wall, do you derive your income from the martial
19 arts; is that how you make your living?

20 A. It's part of it. I have a real estate
21 company as well, yes.

22 Q. What type of --

23 A. A real estate company.

24 Q. Real estate company.

25 And, sir, do you pay and file your taxes?

1 A. Yes, sir.

2 Q. Okay. Each and every year?

3 A. Yes, sir.

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

5 THE COURT: Thank you, Mr. Wall.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: You may step down.

8 MS. MORENO: Thank you, Your Honor.

9 We would call Judge Joe Brown.

10 JOSEPH B. BROWN, DEFENDANT SNIPES' WITNESS, SWORN

11 THE DEPUTY CLERK: You may be seated on the witness
12 stand.

13 THE WITNESS: Good afternoon, Your Honor.

14 THE COURT: Good afternoon.

15 THE DEPUTY CLERK: Please state your full name, and
16 spell your last name for the record.

17 THE WITNESS: Joseph B. Brown, B-R-O-W-N.

18 JOSEPH B. BROWN,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MORENO:

22 Q. Good afternoon, sir.

23 A. Afternoon, counselor.

24 Q. What city and state do you reside in, sir?

25 A. Actually, three: Tennessee, Memphis;

1 California, Los Angeles, also the Ojai area, and
2 Aspen/Snowmass in Colorado.

3 And I guess I've got a connection here. I've
4 got a stallion, a paso fino, down the way at one of
5 the ranches getting trained.

6 Q. Can you tell His Honor very briefly your
7 background as an attorney, a prosecutor, and a
8 judge?

9 A. I got my law degree from UCLA, University of
10 California Los Angeles. My first legal assignment
11 was with Legal Services. We handled poverty law.
12 And then I was an investigator for the federal
13 government.

14 Then I became the first African-American
15 prosecutor in the history of the City of Memphis.
16 Then I wound up being the public defender for that
17 city.

18 I got into private practice about 1978. I
19 was on the Major Violators, Habitual Criminals Unit
20 for the public defender's office doing a volunteer
21 thing there part-time. I also trained their capital
22 defense team.

23 And in 1990 I got elected to the bench in
24 Tennessee where I was a judge, Judge Division 9 of
25 the Thirtieth Judicial District, State of Tennessee,

1 sitting in Memphis.

2 Q. And how long, sir, did you serve on the bench
3 before you began your next career?

4 A. Ten years.

5 Q. And do you currently have a television
6 career?

7 A. I have a television show. It's in year
8 eleven. We finished up last year as number four
9 daytime syndicated show. And what I do, according
10 to the California Supreme Court, is a binding
11 arbitration under the California statutes.

12 Q. Okay. Let's talk about Mr. Snipes. Did you
13 at some point years ago meet his mother?

14 A. Yes, I did. She and some other mothers of
15 celebrities and athletes had been working with an
16 NBA program to get around into the cities, the
17 barrios, ghettos, Appalachia, the trailer parks to
18 do something about the youth, the boys in this
19 country. And I got involved by giving the character
20 component.

21 Q. Okay. And was it through his mother that you
22 met Mr. Snipes?

23 A. No, it was not. I met him --

24 Q. And how did you do --

25 A. -- through Mr. Stewart, who is back there.

1 He's another martial artist. And I've known
2 Mr. Stewart for about 42 years. We went to UCLA
3 together.

4 Q. How long ago did you meet Wesley Snipes?

5 A. About eight years ago.

6 Q. Okay. And in the last eight years, how often
7 have you interacted with Wesley Snipes?

8 A. By phone, long distance, quite often. And
9 every now and then we run into each other -- or
10 every few months, I'd say.

11 Q. And how would you describe your relationship
12 with him?

13 A. I've been something of a mentor to the young
14 man.

15 Q. Now, in your letter to the judge, you talked
16 about Wesley Snipes as a person possessed of
17 enormous appeal to today's youth.

18 A. Yes.

19 Q. Can you please explain to His Honor what you
20 meant by that and why that's important?

21 A. Your Honor, I've been running into a problem
22 with something that's going wrong with the young
23 males in this country. They have no role models.
24 They are turning to hip hop or gangster rap to see
25 something masculine because, unfortunately, this

1 | industry I've been involved in tends to make being a
2 | man a joke these days.

3 | And Mr. Snipes has done something that I
4 | admire in that he's taken that position in our
5 | society where he represents what John Wayne used to
6 | represent to the country, what Sidney Poitier did.
7 | He becomes a role model of a good side of man. In
8 | other words, he plays character roles, but you have
9 | to have it in you to play those kind of roles. It's
10 | somebody that the youth can look up to.

11 | And I have cause to have some contact with
12 | some of the young men that are in the military, and
13 | they all admire him as somebody that they think is
14 | one of the good guys.

15 | I have always enjoyed talking to the young
16 | man because his interest in the youth and in doing
17 | the right thing to further America being America has
18 | always been profound.

19 | Q. Judge Brown, do you have any hesitation to
20 | recommend to His Honor in making this very difficult
21 | and consequential decision -- do you have any
22 | hesitation in asking the Court to not sentence
23 | Wesley Snipes to prison?

24 | A. I would have absolutely none at all.
25 | Your Honor, I would highly recommend that course to

1 | to Mr. Snipes. Did you ever discuss his payment or
2 | filing of taxes during that time?

3 | A. We talked about taxes but not his. I make it
4 | a practice, since I still am a licensed attorney,
5 | not to discuss such types of matters so you won't
6 | get into a situation where there is a malpractice
7 | thing looming.

8 | Also, since he talked to me most of the time
9 | by phone, it's been my experience that that's not
10 | really a secure way to talk to anybody. So I
11 | discourage anyone talking about legal matters over a
12 | phone, cell phones in particular.

13 | Q. I'm not sure what you mean about a secure
14 | method on a telephone.

15 | A. In other words, you don't talk about
16 | somebody's legal business over something that can be
17 | intercepted readily. Cell phones are readily
18 | interceptable.

19 | Q. Now, you mention a role model. Would you
20 | agree Mr. Snipes has failed somewhat in that by
21 | publicly being accused of not filing and paying his
22 | taxes and then being convicted of that fact?

23 | A. There's a problem with that, but this country
24 | has sort of a myopic view of that kind of thing.
25 | They kind of look at what somebody has gotten into.

1 | John Wayne, for example, got into some severe
2 | problems because he trusted some people to handle
3 | his financial business for him. A lot of stars get
4 | into problems because they have that.

5 | Now, one thing you have to understand, when
6 | you're dealing with people that are in this
7 | industry, they are sophisticated in one sense but
8 | very naive in another. They are isolated from the
9 | point they become celebrities from the real world to
10 | an extent. They have to really extend themselves to
11 | get out into it.

12 | There's a lot of money that comes through
13 | your hands that you're not used to handling, because
14 | if you didn't come from money, it's an exorbitant
15 | amount based on your prior experiences in life.

16 | So my impression of the young man over here
17 | is he is a very intelligent, very adept and adroit
18 | person who is involved and engaged, but he also has
19 | some naivetes that are also associated with that
20 | celebrity status.

21 | So what I would say in answer to your
22 | question directly is, I don't think it would
23 | interfere with his image.

24 | Q. So you don't think the fact that he's been
25 | convicted of failing to file his taxes now would

1 affect his image at all?

2 A. I don't think so. It's a misdemeanor.

3 Q. Well, let me ask a question: Do you know
4 about Mr. Snipes' background?

5 A. Somewhat.

6 Q. You know he went to the public school system
7 in the Bronx?

8 A. Yes.

9 Q. And do you know if the tax system pays for
10 that public school system?

11 A. Yes.

12 Q. Do you know that he graduated from SUNY
13 Purchase in New York?

14 A. Yes.

15 Q. The State University of New York system?

16 A. And taxes paid for all of it.

17 Q. Taxes paid for that, right?

18 When you want to give back to the community
19 and you are the beneficiary of our public school
20 system, wouldn't it help to pay your taxes?

21 A. Yes, it would, but there's another side to
22 that, too.

23 Q. To pay the taxes?

24 A. For years North American Rockwell, Boeing,
25 General Dynamics, Centra paid absolutely no income

1 | taxes to this country's benefit. And if there's a
2 | beneficiary of what we do in this country, certainly
3 | those major corporate entities are the
4 | beneficiaries.

5 | Q. And are they on trial here today, sir?

6 | A. No, they're not.

7 | Q. Thank you very much.

8 | A. Okay.

9 | THE COURT SECURITY OFFICER: No clapping. No
10 | outbursts in this courtroom, please.

11 | THE COURT: The next time it happens, I'm going to
12 | clear the courtroom. This is a very solemn and serious
13 | proceeding involving a man's liberty and the enforcement of
14 | the law of the United States, and we're not having that kind
15 | of display.

16 | Thank you, sir. You may step down.

17 | MS. MORENO: Thank you, sir.

18 | THE WITNESS: Thank you, Your Honor. It was a
19 | pleasure being here.

20 | MS. MORENO: May it please the Court. Your Honor, we
21 | would call Cliff Stewart.

22 | CLIFFORD STEWART, DEFENDANT SNIPES' WITNESS, SWORN

23 | THE DEPUTY CLERK: You may be seated in the witness
24 | stand.

25 | Please state your full name, and spell your last name

1 | for the record.

2 | THE WITNESS: Clifford Stewart, S-T-E-W-A-R-T.

3 | CLIFFORD STEWART,

4 | having been duly sworn, testified as follows:

5 | DIRECT EXAMINATION

6 | BY MS. MORENO:

7 | Q. Good afternoon, Mr. Stewart.

8 | A. Good afternoon.

9 | Q. Mr. Stewart, where do you reside?

10 | A. Los Angeles, California.

11 | Q. Would you please tell the Court a little bit
12 | about your background?

13 | A. I went to UCLA and wrote a book on personal
14 | protection, published --

15 | Q. When you were at UCLA, did you counsel
16 | minority students at UCLA?

17 | A. Yes. I was a minority counselor for UCLA for
18 | the jocks and minority students.

19 | Q. Okay. And you wrote a book?

20 | A. Wrote a book --

21 | Q. Okay.

22 | A. -- on personal protection -- personal
23 | protection.

24 | Q. All right. And you are a consultant to
25 | various organizations in law enforcement, correct?

1 A. All in law enforcement training, a consultant
2 for Los Angeles Police Department, defensive
3 tactics, consultant for SEAL Team 1, Manassas Adult
4 Correction Cert Team. That's a special team that
5 extracts prisoners. And I train the trainers.

6 Q. And where is that facility located?

7 A. In Manassas, Virginia.

8 Q. In Virginia?

9 A. Yes.

10 Q. Okay.

11 A. Trained Baltimore SWAT teams, Atlanta SWAT
12 teams --

13 Q. Okay.

14 A. -- to name a few.

15 Q. Okay. And have you ever qualified as an
16 expert in court?

17 A. Qualified expert in Reno, Nevada, on -- on
18 training, yes.

19 Q. On the use of force?

20 A. Use of force and training, yes.

21 Q. Okay. When did you meet Mr. Snipes?

22 A. Initially I met Mr. Snipes in 1998 or '99
23 when he was filming Blade 1.

24 Q. All right. And were you at some point in
25 time thereafter employed by him?

1 A. Right. In the year 2000 I came aboard to
2 work as a personal protection agent for Mr. Snipes.

3 Q. Okay. And how long did you work for
4 Mr. Snipes?

5 A. For approximately three years.

6 Q. And during that period of time did you have
7 an opportunity to spend a lot of time with him and
8 observe him in all kinds of settings?

9 A. Yes. I think my position is unique as an
10 employee of his. And because of my job position, I
11 was with him from waking him up until I closed the
12 door and make sure he was in his room.

13 And that was -- well, from 2000, January to
14 July, I think we didn't see each other totally for
15 -- seven days would be the most time we weren't in
16 direct contact.

17 Q. And you were also an instructor of his; is
18 that right?

19 A. Right. I was also his instructor and a
20 friend.

21 Q. Okay. So you were an employee, a friend, and
22 a teacher to him; is that correct?

23 A. Correct.

24 Q. Now, did you have an opportunity to see
25 Mr. Snipes in different situations and how he

1 | interacted with his family and your family?

2 | A. Yes. Mr. Snipes, Wesley, is a very unique
3 | young man. He does not have that kind of Hollywood
4 | persona, that superstar attitude. He is always a
5 | kind, generous, humble, and respectful individual.

6 | I've traveled with him from California to
7 | central Europe, to Africa, and he's always had
8 | respect for every person we dealt with, every person
9 | we came in contact with. He is a kind man.

10 | Q. Did you have an opportunity to watch him
11 | interact with young people and students?

12 | A. I have watched him interact with his family
13 | as a father, as a husband. He is a person that you
14 | would be very proud to know he was your son-in-law,
15 | that he was the father of your grandchildren. He is
16 | that kind of individual.

17 | And he is not the -- the people -- there's no
18 | way for a person that's not with him to really
19 | understand the depth and the kindness of this man,
20 | but I in a very unique position was with him all the
21 | time. And as a teacher, student -- a student has to
22 | be subservient. And he has always been humble,
23 | kind, respectful, and giving -- giving to those
24 | people that couldn't do things. He would give out
25 | of his own pocket without asking anything in return

1 | because he's that kind of individual.

2 | Q. And did he show you special kindnesses with
3 | your own family?

4 | A. Well, when we were -- we had been away from
5 | my family, my young son, who was three years old,
6 | four years old at the time -- he allowed me to fly
7 | him to Prague in the Czech Republic, and his only
8 | mandate with me -- he didn't want to see me again
9 | until my son was back home. So that time he allowed
10 | me to be with my son, which he didn't have to do.

11 | Q. Mr. Stewart, is there anything you would like
12 | His Honor to know in coming to this very difficult
13 | decision --

14 | A. Yes.

15 | Q. -- regarding Mr. Snipes?

16 | A. I would say to you, Your Honor, that most of
17 | us only have a glimpse of him on the screen, but my
18 | privilege has been to know him as a person off the
19 | screen. He's a kind person that is a positive
20 | person. As Judge Joe Brown said, there's naivete
21 | involved but nothing malicious. And I would think
22 | any consideration you would give him would be well
23 | worth it.

24 | Q. Thank you so much.

25 | MS. MORENO: Tender the witness, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. O'NEILL:

3 Q. Good afternoon, Mr. Stewart.

4 A. Good afternoon.

5 Q. Sir, when you were an employee of Mr. Snipes,
6 how were you paid?

7 A. By direct deposit.

8 Q. Okay. And I assume you filed your taxes?

9 A. Yes, sir.

10 Q. And paid your taxes?

11 A. Yes, sir.

12 Q. Did you ever discuss that with Mr. Snipes?

13 A. Oh. No, sir.

14 Q. Okay. Mr. Stewart, you also talked about
15 training various law enforcement entities such as
16 the Los Angeles Police Department.

17 A. Consultant for them, yes.

18 Q. Okay. And were you paid?

19 A. No, sir.

20 Q. Okay. How about the DeKalb SWAT team?

21 A. Yes, I was.

22 Q. Okay. And how about SEAL Team 1?

23 A. No, sir.

24 Q. Okay. And you've also worked for special ops
25 groups as well?

1 A. Worked for them?

2 Q. Other special ops groups you have in your
3 letter.

4 A. Yeah. Baltimore SWAT team. There was --

5 Q. Okay.

6 A. -- nine SWAT teams, yes, sir.

7 Q. And you are aware, Mr. Stewart, that all of
8 these police agencies, SWAT teams and Department of
9 Defense organizations, such as SEAL teams, they're
10 all paid by United States tax dollars?

11 A. Yes, sir.

12 Q. Okay. And without those tax revenues, they
13 would not exist?

14 A. Yes, sir.

15 Q. Thank you, sir.

16 THE COURT: Mr. Stewart, you wrote me a letter.

17 THE WITNESS: Yes, sir.

18 THE COURT: It's under the letterhead of Judge Brown.

19 THE WITNESS: Yes, sir.

20 THE COURT: You presently work for him?

21 THE WITNESS: I work for the show as a special
22 project producer for the show, yes, sir.

23 THE COURT: I see. Thank you.

24 THE WITNESS: Thank you, sir.

25 MS. MORENO: Your Honor, we would call our last

1 witness, please, Professor Madhubuti.

2 HAKI MADHUBUTI, DEFENDANT SNIPES' WITNESS, SWORN

3 THE DEPUTY CLERK: Please have a seat on the witness
4 stand.

5 Please state your full name, and spell your last name
6 for the record.

7 THE WITNESS: Haki Madhubuti, M-A-D-H-U-B-U-T-I.

8 HAKI MADHUBUTI,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. MORENO:

12 Q. Good afternoon, sir.

13 A. Good afternoon.

14 Q. I'm addressing you as a professor because
15 indeed you are a professor; is that correct?

16 A. That's correct.

17 Q. And where are you a professor, sir?

18 A. Chicago State University. I also hold the
19 university distinguished professor at Chicago State
20 University.

21 Q. Okay. And do you currently live in Chicago,
22 Illinois?

23 A. Yes. That's correct.

24 Q. And could you tell the Court what you do?

25 A. I'm a poet, writer. I've published 28 books.

1 I own Third World Press Publishing Company.

2 Q. Tell the Court what Third World Press
3 Publishing Company is.

4 A. It's the oldest publishing company in the
5 country, Judge, and we publish African-centered
6 literature, children's books, fiction, nonfiction.

7 And we have Third World Press Foundation,
8 which we supply free literature to incarcerated men
9 and women around the country. All they have to do
10 is just write us, and we send -- send them free
11 books at Third World Press.

12 We also have four schools, Judge: a
13 preschool, two elementary schools, and a high
14 school. We teach students -- over 1,000 students
15 each day with three charter schools and a private
16 school. And this is -- I'm sorry. I'm getting
17 ahead of myself.

18 Q. No. No. Please.

19 A. Okay. This is the context I met Wesley
20 Snipes. I used to own three book stores also,
21 Judge, but Borders Books and Barnes & Noble put us
22 out of business. And so I went back to publishing
23 mainly. But when we had our book stores, Mr. Snipes
24 came to one of our book stores to buy books and --

25 Q. Let me ask you, how long ago was that?

1 A. Well, it was about 14 -- 14, 15 years ago.

2 So I've been knowing him that long, yes.

3 Q. And before we get into that particular
4 meeting, you -- you told the Court that you've
5 written 28 books.

6 A. Yes.

7 Q. Now, some of these books are used where?

8 A. Oh. They're used in colleges and
9 universities across the country.

10 Q. Okay.

11 A. Also, these books are used in community
12 centers and in prisons. Two books, Judge, that I
13 wrote are used in prisons: Black Men: Obsolete,
14 Single, Dangerous, and Tough Notes: A Healing Call
15 For Creating Exceptional Black Men, which I
16 dedicated to Mr. Snipes. He was one of the persons
17 I dedicated the book to.

18 And these books are about essentially how to
19 begin to become better Americans, you see. And our
20 position is that we claim ownership of America just
21 like everybody else. And we are citizens, and we're
22 just as patriotic as everybody else.

23 So, therefore, we must develop men and women
24 who understand the intricacies of being a good
25 citizen in this country.

1 Q. Now, when you met Mr. Snipes about 15 years
2 ago, did you have any of these schools at that time?

3 A. Oh. Yes. We had one school at that time.
4 Since then, we've added three other schools and --

5 Q. And in what context did Mr. Snipes assist in
6 your endeavors -- your academic endeavors?

7 A. Well, prior to our acquiring the charters,
8 Judge, Your Honor, we had private schools. The
9 charter system just came into existence about six
10 years ago.

11 In private schools, that means we had to do
12 an awful lot of fund-raising in order to pay our
13 teachers adequately. And Mr. Snipes was responsible
14 for helping us get through those very rough days. I
15 would call him when we needed money to help with
16 payroll. I would call him when we needed to buy new
17 books and get supplies and update our computer
18 system, and he would always respond -- kindly
19 respond.

20 Q. With respect to a particular documentary
21 involving John Henry Clark, could you tell the Court
22 who John Henry Clark is?

23 A. Dr. John Henry Clark is deceased now, Your
24 Honor, but he was one of the foremost
25 African-centered historians in the world, a

1 worldwide reputation. He retired as emeritus at
2 Hunter College in New York City. But he is
3 considered one of the top 10 or 15 black historians
4 in the world.

5 Mr. Snipes and I had a long talk about -- I
6 guess about 12 years ago, and we talked about his
7 company, Amen-Ra Productions. And I suggested that
8 he do a documentary on Professor Clark, and he said
9 he would take it under advisement and think about
10 it.

11 In about two weeks, he called me and said
12 this is a deal, we're going to do this, and he asked
13 me to get involved, which I did.

14 And it's a wonderful documentary. In fact,
15 it's been shown on cable television on the major
16 educational stations across the country.

17 Q. Do you know if it's been used in university
18 programs?

19 A. Absolutely. I use it in my program. I
20 direct the masters of fine arts program and creative
21 writing at Chicago State University, and I showed it
22 to my students last week.

23 Q. And I'm going to ask you my final question,
24 sir: Is there -- what can you tell His Honor that
25 he should know about Wesley Snipes before he makes

1 | this very, very difficult decision?

2 | A. Well, the donations that he's made to our
3 | schools, he quietly told me that this is between you
4 | and me. I don't need the publicity. Just use the
5 | money wisely. That's number one.

6 | Number two, we have moved to initiate martial
7 | arts in our schools. Our schools -- we are in the
8 | heart of the black community. All right? And the
9 | Chicago public school system sends the young boys
10 | that they can't deal with to us. All right? And so
11 | it's our responsibility to not only teach them but
12 | to show them various areas in terms of discipline.
13 | And so the martial arts are coming into our schools
14 | because of Mr. Snipes. They see him as a hero -- as
15 | a hero.

16 | And wherever he goes -- I went to -- with him
17 | to Africa. I don't know if you know this,
18 | Your Honor, or not, but Mr. Snipes was made a chief
19 | of the Ebo nation. And what does that mean? When
20 | the queen made Sting a knight, that's the same thing
21 | that happened to Wesley Snipes in Nigeria. He's a
22 | chief of the Ebo nation.

23 | And I can see no good, none whatsoever,
24 | especially understanding the populations of black
25 | men who are locked down in prisons now, of sending

1 | this fine young man to prison. It doesn't make any
2 | sense to me.

3 | We need him in our community. We need him.
4 | And he's one of the few men internationally known
5 | who is serious about the development of his
6 | community. He's not run from his community at all.

7 | And finally, I would say I have seen him
8 | interact with his family, his children, his wife,
9 | and I -- and I -- and traveling with him, he's a man
10 | of honor and integrity, and I would go with him
11 | anywhere on this earth. We need him out here now.

12 | Q. Thank you so much, sir.

13 | MS. MORENO: Tender the witness, Your Honor.

14 | MR. O'NEILL: No questions, Your Honor.

15 | THE COURT: All right. Thank you.

16 | THE WITNESS: Thank you.

17 | THE COURT: You may step down.

18 | MS. MORENO: Your Honor, I would just briefly ask the
19 | Court to consider the over three dozen letters that we did
20 | append to the sentencing memorandum.

21 | And I would like the Court to take a look at the
22 | array of diversity in the authors of those letters. We have
23 | letters from educators, from pastors, from youth advocates,
24 | academics, and family members.

25 | I would ask the Court to seriously consider the --

1 | the -- the whole character of Mr. Snipes as seen through the
2 | eyes of not just these four gentlemen who flew a very long way
3 | to try to assist the Court in making this decision, but in
4 | these other letters as well. And I would submit it,
5 | Your Honor.

6 | THE COURT: Does anyone else wish to be heard on the
7 | defense team there for Mr. Snipes in allocution of the
8 | sentence that the Court should impose?

9 | Ms. Hernandez?

10 | MS. HERNANDEZ: Thank you, Your Honor. I would like
11 | to address the Court on the downward departures and also the
12 | factors -- the 3553(a) factors.

13 | Your Honor, I think I'm going to start with a
14 | rather -- what we have -- the sentencing scheme, which the
15 | Court well knows, is in -- is in effect right now, 3553(a).
16 | The Court is directed by Congress to impose a sentence that is
17 | sufficient but not greater than necessary.

18 | So the mandate to Your Honor is to not sentence one
19 | day more than you have to, and what that means -- and part and
20 | parcel with that is the guideline range that Your Honor
21 | calculated is no more important than every other factor under
22 | 3553(a).

23 | The guideline range is no more important than the
24 | testimony you've heard about Mr. Snipes' personal
25 | characteristics, about Mr. Snipes being a good human being,

1 | having children, being caring and giving to charities and to
2 | other -- other things of value in his community and in this
3 | country.

4 | His good works after September 11th, that weighs --
5 | that -- that carries the same weight as the guideline range.
6 | I would submit to the Court that carries more weight in many
7 | respects because it is more personal to what he did, and he
8 | did it at a time when he wasn't expecting that that
9 | information would be to his benefit. He wasn't expecting that
10 | that information would come to anyone's attention, and he
11 | didn't publicize it. And so it -- it's -- it's a measure of
12 | who the man is when the lights are off.

13 | Let me start perhaps with a question that the Court
14 | raised. Why hasn't he filed his tax returns up till now? And
15 | I will tell the Court that the reason he cannot file tax
16 | returns now once -- once the investigation began is that the
17 | government has taken inconsistent positions with respect to
18 | some of the -- with some of the entities that are owned.

19 | The revenue agent's testimony with respect to the
20 | Amen-Ra and Kimberlyte may -- was stated that these entities
21 | should be regarded as certain types of corporations, and yet
22 | in the numbers that they submitted to the Court for purposes
23 | of tax loss, they've taken a contrary and contradictory
24 | position.

25 | What does that mean? That means if Mr. Snipes files

1 tax returns asserting that the entities are X and they, in
2 fact, are Y, he is opening himself to another claim or charge.

3 I will say to the Court that one of the attorneys
4 here, who is a tax attorney, will tell the Court that he has
5 advised Mr. Snipes not to file returns until they can resolve
6 that aspect of it with the civil tax division. And that is
7 the ordinary and normal way --

8 THE COURT: Let me understand this. Counsel has
9 advised Mr. Snipes not to file tax returns?

10 MS. HERNANDEZ: I'm not saying back when this -- I'm
11 not talking about 1999. I'm talking about once the
12 investigation began and once he is where he is today, the
13 normal and ordinary way that -- that tax returns are resolved
14 and tax liabilities are resolved is that there is a settlement
15 or a resolution of these thorny issues with the civil tax
16 division and they both agree that this is how these entities
17 are to be treated so that it doesn't come back that he's, you
18 know, failing to file or failing to -- to -- he's here if the
19 Court wants to speak to him. I'm not a tax lawyer.

20 THE COURT: Well, I don't want to necessarily speak
21 to anybody. I'm here listening to what's presented to me, and
22 I just heard that a member of the bar advised a client not to
23 file a tax return.

24 MS. HERNANDEZ: While the -- once the investigation
25 began and once -- and -- but -- as I have -- as I have stated

1 with respect --

2 THE COURT: When did the investigation begin
3 according to your understanding?

4 MS. HERNANDEZ: I -- I don't know that.

5 THE COURT: All right.

6 MS. HERNANDEZ: I -- I am not --

7 THE COURT: Let me just say this. I think that
8 lawyer, if that's an accurate description, should be very
9 careful about what he says here concerning --

10 MS. HERNANDEZ: Your Honor --

11 THE COURT: -- that advice.

12 MS. HERNANDEZ: -- let me not overstate what I'm
13 trying -- what I -- what I am telling the Court. What I am
14 telling the Court, the -- in no way am I asserting that that
15 -- that the reason he did not file taxes in 1999, 2000, or
16 2001 was for that reason. I am not in any way attempting --
17 far from that. There is no -- none -- none -- none of that.
18 That's not what I'm trying -- I'm not trying to excuse
19 behavior on that.

20 I'm trying -- your court -- Your Honor said why
21 hasn't -- you know, why -- why wait until today to -- to
22 submit money to the -- on these taxes? What I'm trying to
23 tell the Court is that -- and I'm not a tax lawyer. So I'm
24 repeating something, and that -- and that may be why I'm being
25 less than articulate.

1 Let me, therefore, read exactly what I've been --
2 what -- what has been communicated to me, not by Mr. Snipes:
3 Government has taken inconsistent positions on entity
4 classifications. What entity classifications? Kimberlyte,
5 Amen-Ra. And, in fact, I'm told that at page 21, line 3 of
6 the revenue agent's testimony in this court, the -- what he --
7 how he described what -- how those entities should be treated
8 is inconsistent with the manner in which the tax deficiencies
9 were submitted to this Court.

10 So it places someone who is trying to advise an
11 individual as to how to file tax returns -- these are not just
12 individual taxes. These are complex tax returns with multiple
13 entities and -- and ordinarily once you -- once you get to
14 this stage of proceedings where you're being charged, what you
15 -- what needs to get done is to have a resolution of these
16 complex issues so that the -- the -- the conservative manner
17 of advising a client in this situation like this is to try to
18 resolve those inconsistencies by way of -- of a -- an
19 agreement with the civil tax division so that there is -- so
20 that the person is not open to further charges or accusations.

21 That's the point I'm trying to make, that the Court
22 should -- should not hold that aspect of it against him. I am
23 in no way trying to say that what he did during the years for
24 which he's convicted can be attributed to -- to -- to the
25 advice of any legitimate attorney.

1 And along those lines, Your Honor, I know the Court
2 denied the request for acceptance of responsibility, but I
3 would ask the Court to take into consideration the fact that
4 he did attempt to resolve the case, that he did attempt
5 through his counsel to -- to -- he did offer to resolve his
6 tax liability. Granted, it was after the indictment had come
7 down, but I just want the Court to -- to look at the case as
8 not someone who went to trial with some -- you know, without
9 any recognition that he did have a tax liability, that he did
10 owe money, that he intended to resolve that.

11 This is a man, Your Honor -- as you've heard, he
12 comes from a very, very modest working class, poor background.
13 He was raised by a single mother. Most of the young men he
14 grew up with in his neighborhood didn't make it out of that
15 neighborhood.

16 So the Court ought -- and he made it out through --
17 as -- as most of us whoever accomplish anything, a lot of it
18 is -- is -- is reflected in his own character and his own
19 dedication to hard work, his own decision to do well.

20 And part of it, you know, can be attributed to those
21 around him, his mother, who is a single mother and raised him
22 alone when his father left them, to, you know, luck that he
23 got a scholarship to the High School of Performing Arts in
24 New York City and then to -- to the State University of
25 New York at Purchase. But he should get credit, Your Honor,

1 | for the fact that what he accomplished -- the fact that he was
2 | able to become a very accomplished actor, that that -- some of
3 | that is owed to his own personal character.

4 | He's -- you know, persons who reach the level of --
5 | of -- as famous as he -- and I will tell the Court that
6 | I've -- I've only known him for a short period of time, but
7 | going to dinner is an event. The waiters, the people who are
8 | in a restaurant all want to see him, touch him, get his
9 | autograph.

10 | And yet he's not a man that until these events came
11 | up whom you read about in the paper. In this day and age when
12 | half of the celebrities find themselves in front of cameras
13 | acting badly, that's not the person he is. He's a family man.
14 | He's got four young children, ages seven to the age of one.

15 | He's married. He has a son -- a 20-year-old son from
16 | a previous marriage whom he takes care of. I have some
17 | pictures of his children and his wife that I would ask to pass
18 | up to the Court so you can see.

19 | Your Honor, the guidelines provide, in fact, that the
20 | Court can depart down for family circumstances. And I know
21 | that every person that the -- that Your Honor sentences to
22 | prison who has a child or more than one child, that that --
23 | that child suffers whenever a parent goes to prison. That's a
24 | fact of life. We all know it, those of us in the system. I'm
25 | sure Your Honor knows it. I have many clients.

1 And to some extent the Court may -- may think that
2 Mr. Snipes' children are better equipped than other children
3 to weather a term of imprisonment because at least his family
4 will be financially taken care of. But -- but what I have
5 found in -- with my clients, it doesn't matter how well off or
6 how poor the person is, the child suffers in innumerable ways.
7 The little ones cry. A little older, they -- they do badly in
8 school. You know, they get sick. They get ulcers. There's
9 all sorts of -- there's all sorts of harms. And it's -- and,
10 of course, it's really easy to say, well, Mr. Snipes brought
11 it upon himself; it's his conduct that is going to hurt his
12 children. But what I'm asking the Court is to take that into
13 consideration in sentencing. Not -- this is not a plea on
14 behalf of Mr. Snipes; this is a plea on behalf of his
15 children.

16 Now, when you're -- when you're talking -- and I
17 don't mean to -- to -- to de-emphasize the seriousness of his
18 offense. As I've told the Court, as a matter of law, as a
19 matter of congressional intent, you are -- you are sentencing
20 Mr. Snipes on misdemeanor offenses.

21 And -- and so as a matter of law, they are less
22 serious offenses. I don't mean to de-emphasize that what he
23 did in this case was wrong. But, nonetheless, when -- when --
24 when the -- when this -- when the -- when we as citizens --
25 when the Court has to consider what to do with a person who

1 | has committed a crime -- of course if you've got a violent
2 | person or a person who -- whom -- who has to be imprisoned to
3 | protect the public, then a number of these other factors --
4 | the harm to the children just has to give way.

5 | What I'm -- what I'm arguing and pleading with the
6 | Court to consider is that when you've got a man who is not a
7 | threat to society, if he -- if he is -- we as citizens are not
8 | going to be safer just because Mr. Snipes is behind bars.

9 | So when you've got that kind of balance, I would
10 | submit to the Court that consideration of how -- how sending
11 | Mr. Snipes to prison will affect his children and his family,
12 | that balance I think weighs in favor of the children.

13 | There are other factors, Your Honor, that I would ask
14 | the Court to take into account. Mr. Snipes, in fact, has a
15 | huge tax liability that he's facing, millions of dollars.
16 | That will be increased by the -- by the penalties, by the
17 | interest that he -- that he will be assessed. Although he is
18 | a man of a lot of resources, he is not a billionaire. In
19 | order to pay those tax assessments, he needs to continue to
20 | work.

21 | I would submit to the Court -- and there's case law
22 | to this -- to this -- to support this. There's a case,
23 | U.S. versus Rivera, authored by then Chief Judge Breyer, who
24 | at the time was the chief judge on the First Circuit, in which
25 | he affirms a case -- a sentence in a case where the judge

1 reduced the base offense level in a case -- reduced the total
2 offense level in a case to downward depart in order to allow
3 the defendant to continue working rather than send him to
4 prison. It was a white-collar offense. And I submit to the
5 Court that this is a situation also that you should take into
6 account.

7 And -- and -- and that aspect of it is not only as to
8 Mr. Snipes. He has got, for example, an offer to make a
9 movie. If he is not able to work in that, it's not only him
10 who loses a job, but about the 250 other people who are going
11 to earn a living as a result of his participation in this
12 movie. And that's another factor that courts have said can be
13 taken into account, and it's another factor listed in the
14 guidelines.

15 Your Honor, the Court did not take -- in setting
16 the -- in establishing the guideline range, you didn't
17 consider acquitted conduct that much except for one of the
18 enhancements. Nonetheless, the Court may be in imposing
19 sentence looking at the whole picture and not just at the
20 offense of conviction.

21 You sat through a trial. More than in a case where
22 someone pleads guilty, you have a sense of what happened or
23 didn't happen in this case. I'm certain that Your Honor came
24 to certain conclusions from hearing the testimony.

25 I'm asking the Court, to the extent that you're going

1 | to take into account conduct that was not charged or as to
2 | which he was acquitted, that at best you discount that or not
3 | take it into account at all.

4 | Certainly the First Circuit has said that in a case
5 | where the court takes -- and this is pre Booker -- in a case
6 | where a court is going to take acquitted conduct into account,
7 | you can depart down if part of your decision-making is based
8 | on acquitted conduct.

9 | Just as a matter of your discretion, Your Honor, it
10 | seems to me that when a jury speaks, in our system of justice,
11 | we have to accept that. And we ought not to give it undue
12 | weight -- or any weight at all.

13 | The government in its sentencing memorandum asks the
14 | Court to send a strong message. They said that they want the
15 | Court to send a message that he didn't beat the rap, quote,
16 | unquote. I submit to the Court that I think that's an
17 | improper ground upon which to sentence Mr. Snipes.

18 | Although they certainly are free to choose who they
19 | prosecute and they can choose to prosecute one person over
20 | another because that person is famous, and, therefore, they
21 | think that they can send a message that more people can hear,
22 | I don't think the law allows, once there's been an acquittal
23 | on the serious offenses, to send a message so that the public
24 | doesn't think that he got away with anything.

25 | Just to be clear, as the Court well knows and as the

1 Court, in essence, commented, Mr. Snipes has gotten away with
2 nothing. The -- the -- the amount of aggravation, money, hurt
3 to himself as a human being, embarrassment -- I want to say
4 degradation that has -- that he has brought upon himself
5 through his conduct, through his, you know, failure to file
6 income tax returns is immeasurable.

7 No one should walk away from here thinking that
8 because he stands convicted only of the misdemeanors he's
9 somehow -- he somehow hasn't suffered or hasn't -- hasn't
10 reaped certain consequences. He certainly has, Your Honor. I
11 don't think -- I don't think the Court is allowed, as the
12 government requests, to send a message, to sentencing him more
13 harshly in some ways because, in fact, the jury acquitted him
14 on some of the counts. I don't think that's the function of
15 the Court, and I certainly don't think that that's what 18
16 U.S.C. Section 3553(a) intended when it tells the Court to
17 consider deterrence in establishing a sentence.

18 I want to say two more -- I want to address two more
19 issues, Your Honor. I cited to the Court 28 U.S.C. 994(j),
20 which directed the Commission to -- that -- to -- that it was
21 preferable to not imprison a human being when you're talking
22 about a nonviolent offense -- and he's a first-time
23 offender -- and when the offense is not an otherwise serious
24 offense.

25 Whether 994(j) invalidates the tax table or not, that

1 nonetheless remains the expressed intent of Congress with
2 respect to misdemeanors, I would say, Your Honor -- with
3 respect to nonviolent misdemeanors. And I would ask the Court
4 to consider it if not -- at least when you're considering what
5 sentence to impose.

6 There are a number of cases that we cited,
7 Your Honor, as to unwarranted disparities. One of the factors
8 that you've been directed by Congress to consider in
9 establishing a sentence is to eliminate unwarranted
10 disparities among defendant -- among persons who are convicted
11 of the same conduct.

12 The cases that the government has cited of the
13 persons involved in IRL (sic) who have been convicted -- and
14 there's a long list that the Probation Officer included -- are
15 -- each and every one of those cases were convicted of the
16 felony tax evasion counts, and most of those people received
17 sentences of 30 to 40 months.

18 I submit to the Court that if persons -- and most of
19 them were convicted of multiple counts. So it isn't just a
20 single felony count. Multiple felony counts. If the
21 sentences for those people are to be considered, they're to be
22 considered only as you cannot impose a same or similar
23 sentence on Mr. Snipes, whose offense of conviction is much
24 less serious.

25 And the amount of tax loss was not something that

1 Congress took into account in deciding failure to file cases.
2 They decided failure to file cases where misdemeanors
3 regardless of the amount of taxes owed. And so I ask the
4 Court to respect the congressional intent in these cases, and
5 that's to sentence -- look at him as a misdemeanant and not a
6 felony defendant.

7 Your Honor, one of the years in question, in the year
8 2000, Mr. Snipes owed no taxes whatsoever. I will tell the
9 Court that it's my understanding that the policy of the tax
10 division is not to charge criminally when there is zero tax --
11 when there's a zero loss and that, in fact, if this had been a
12 tax evasion case, that conviction could not stand for that
13 count. Whether that conviction can stand in a failure to file
14 case where -- where the government admits that there is zero
15 tax liability, even if it can stand, Your Honor, there's
16 something unjust about sending someone to prison on -- on
17 the -- on the basis of the year when he failed to file taxes
18 and, in fact, he owed no taxes.

19 So I would ask the Court to look at the case as a
20 24-month case at most. And by that I don't mean that he
21 deserved to be sent to prison for 24 months. I'm saying that
22 you ought to -- instead of thinking that you can stack the
23 sentences 12, 12, 12 for three 12 years (sic), that the fact
24 that he owed no taxes in the year 2000, it goes not just to
25 whether he ought to be getting any prison time for that

1 year -- even if he -- even if there's -- even if it's
2 legitimate to -- to prosecute him despite the fact that that's
3 not tax policy -- that's not the policy of the tax division;
4 but even if we get all -- past all that, you ought not to send
5 him to prison for that year. Even if -- even if the
6 conviction stands, that's -- that's -- on the scheme of
7 failure tax cases, that's got to be the least serious of any
8 failure tax case. That's got to be a case that calls for --
9 for absolutely zero time.

10 The other thing that that -- that that says about --
11 about his involvement in -- in -- in these activities is that
12 this wasn't a rational decision on his part. Why would he
13 fail to -- why would someone who owes no taxes not file an
14 income tax return? If it's driven by greed, it makes no
15 sense. It's irrational. He could have filed the tax return
16 and said zero, and that would have -- that would have meant he
17 wouldn't be standing here facing -- facing a criminal
18 prosecution for that. And the -- and the 1999 -- I mean,
19 1999, 2000 and 2001, the amount of taxes owed are so
20 relatively low that it just adds to the irrationality,
21 frankly, the stupidity of his conduct.

22 Your Honor, the list of cases -- you know, the
23 millionaire -- the billionaire in California who finally
24 settled for 75 -- a \$75 million tax liability, he was an
25 industrialist. And it was -- he pled guilty to felony tax --

1 THE COURT: When we're talking about other cases,
2 Ms. Hernandez, are you familiar with Mr. Kahn's background?

3 MS. HERNANDEZ: He's a felony -- he's facing a felony
4 tax conviction, Your Honor.

5 THE COURT: I said background.

6 MS. HERNANDEZ: No, sir.

7 THE COURT: Would it surprise you to know that he was
8 convicted in 1985, as public records show, of three counts of
9 failure to file with no prior record before the Sentencing
10 Reform Act became effective? And you know what his sentence
11 was? Three years maximum sentence as to each count
12 consecutive. That's in this very room. How should I consider
13 that?

14 MS. HERNANDEZ: Well, he obviously -- and Mr. Kahn is
15 one of the other -- I don't -- it's --

16 THE COURT: We're talking about parity in sentencing
17 at the moment. That's what you were referring to.

18 MS. HERNANDEZ: Yes, sir.

19 THE COURT: Well, what about the parity with
20 Mr. Kahn?

21 MS. HERNANDEZ: Well, I -- I don't know anything
22 about Mr. Kahn. I don't know what other positive information
23 there was about him. I don't know whether one of the years he
24 owed no taxes and nonetheless failed to -- I don't know what
25 his background is.

1 I do know that of these ARL cases, Your Honor, my
2 understanding is there were about 4,000 people. And some of
3 them were doctors. Some of them were lawyers. Some of them
4 were CPAs. Some of them were IRS agents. And they weren't
5 prosecuted in this case. So I -- this is -- you know, how do
6 you -- how do you compare apples to oranges? But that's where
7 you're required to -- you know, that's what the statute says,
8 consider it.

9 And I'm -- and I'm suggesting to -- look, even with
10 the guidelines, there is no -- there is an inherent disparity,
11 because one judge is more lenient; another one is more severe.
12 One prosecutor pushes everything; another prosecutor wouldn't
13 prosecute. One prosecutor would have dropped the charges on
14 the 2000 failure to file because there was zero tax liability;
15 another one doesn't. I -- I admit it, we're not -- we're
16 living in an imperfect world.

17 But nonetheless, I mean, part of what the government
18 is telling you explicitly is to send a message -- to send a
19 message on his back. And I'm not -- well, why didn't they
20 think they wanted to send a message on the billionaire who was
21 -- who was a businessman who owed \$75 billion who -- who --
22 who -- who resolved it at \$75 billion? That was the plea.
23 You know, we're -- we all know that when you plead you -- you
24 -- you give and take.

25 THE COURT: Let me suggest, Ms. Hernandez, that you

1 | limit yourself to another ten minutes --

2 | MS. HERNANDEZ: Yes, sir.

3 | THE COURT: -- and focus on Mr. Snipes' case.

4 | MS. HERNANDEZ: Well, I was addressing the disparity.

5 | I have submitted a number of cases that reflect that a

6 | sentence of three years in this case would create disparity.

7 | I listed a number of cases. It's a --

8 | THE COURT: I have your argument with respect to

9 | that.

10 | MS. HERNANDEZ: Okay.

11 | THE COURT: This is at this point allocution with

12 | respect to Mr. Snipes.

13 | MS. HERNANDEZ: There are four -- the sentence -- in

14 | addition to having to be sufficient but not greater than

15 | necessary, there are four stated purposes of sentencing.

16 | THE COURT: I'll well aware of them. I have them in

17 | front of me.

18 | MS. HERNANDEZ: Right. One of them is to

19 | rehabilitate Mr. Snipes.

20 | THE COURT: It has no application in this case.

21 | MS. HERNANDEZ: Another one is to protect the public.

22 | THE COURT: It has no application in this case.

23 | MS. HERNANDEZ: We're left with deterrence and just

24 | punishment for the offense.

25 | THE COURT: And seriousness of the offense.

1 MS. HERNANDEZ: Well, that's the just punishment.
2 That's -- to consider the seriousness of the offense, blah,
3 blah, I'm -- I'm shorthanding it as just -- just punishment,
4 Your Honor. What's just depends on the -- on the seriousness
5 of the -- of the offense.

6 And I would submit to the Court, I don't want it -- I
7 do not want to -- I pay taxes. Everyone else in this
8 courtroom pays taxes.

9 THE COURT: Not everyone.

10 (Laughter.)

11 THE COURT: There are one or two exceptions here.

12 MS. HERNANDEZ: Your Honor --

13 THE COURT: I have said before that I do not tolerate
14 these kinds of outbursts in court. Some of these remarks may
15 sound humorous, but they're deadly serious.

16 MS. HERNANDEZ: Absolutely, Your Honor.

17 THE COURT: Mr. Meachum, do you wish to be heard?

18 MR. MEACHUM: I do, Your Honor. I was just passing
19 her a note. I wish to be heard.

20 THE COURT: Well, if I am to hear -- if I am to hear
21 other counsel, Ms. Hernandez, tell me something you haven't
22 already said before today.

23 MS. HERNANDEZ: Your Honor, I think -- forget what I
24 think. I think the law allows the Court -- I'm asking the
25 Court to show mercy in this case. I'm asking the Court to

1 weigh the scales of justice, to take a chance that Mr. Snipes
2 will not ever do this again, that he will make amends, that
3 he's -- he attempted to resolve this case through his counsel
4 before trial to pay the tax liability and to plead. It's
5 not -- it's not a crazy proposal. As I was mentioning, the
6 billionaire in California was able to accomplish that.

7 What is absolutely not right, Your Honor, is to -- is
8 to sentencing -- to sentence him to send a message,
9 particularly after the jury -- and they want a message not
10 just that he was convicted, but a message that somehow the
11 fact that the jury acquitted -- that you have to sentence more
12 severely because the jury acquitted just so people don't get
13 confused that somehow you can get away with not failing -- not
14 -- not filing your taxes. That's just wrong, and that's not
15 the deterrence that the government -- that the Congress was
16 thinking of or that this Court ought to -- ought to consider.
17 You know, he has offered to do public service announcements,
18 all types of things.

19 Your Honor, I want to -- I want to finish with one
20 thing, and this is -- I want to read from a part of the
21 Supreme Court case in U.S. versus Gall, which talks about the
22 difference between -- because -- it states, We recognize that
23 custodial sentences are qualitatively more severe than
24 probationary sentences -- and Gall was a case where the
25 Supreme Court upheld a sentence of probation for a defendant

1 | charged with conspiracy to distribute ecstasy -- we recognize
2 | that custodial sentences are qualitatively more severe than
3 | probationary sentences of equivalent terms. Offenders on
4 | probation are, nonetheless, subject to several standard
5 | conditions that substantially restrict their liberty.
6 | Inherent in the very nature of probation is that probationers
7 | do not enjoy the absolute liberty to which every citizen is
8 | entitled. Probationers may not leave the judicial district,
9 | move, or change jobs without notifying and in some cases
10 | receiving permission from their Probation Officers or the
11 | Court. They must report regularly to their Probation Officer,
12 | permit unannounced visits to their homes, refrain from
13 | associating with any person convicted of a felony, and refrain
14 | from excessive drinking. Most probationers are also subject
15 | to individual special conditions imposed by the Court. And it
16 | goes on as to the special conditions imposed by the Court.

17 | I'm asking the Court to impose a sentence of home
18 | detention for two years, to impose any conditions the Court
19 | deems appropriate, to let him stay at home, raise his
20 | children, to order him to resolve his tax liability as soon as
21 | possible, to fine him, to let -- to order him to do community
22 | service, to -- to -- to teach children, adults, the public, to
23 | give public service announcements about the stupidity, the
24 | wrongfulness of failing to file, the idiocy of falling trap --
25 | falling prey to these -- to these -- these ideas.

1 I ask the Court to consider that Mr. Baxley, on whose
2 authority these 861 letters were sent, got 18 months after
3 trial. So I -- I ask the Court to show mercy, and I...

4 THE COURT: Do you wish to be heard, Mr. Meachum?

5 MR. MEACHUM: Yes, Your Honor.

6 How are you, Your Honor?

7 THE COURT: Well.

8 MR. MEACHUM: Your Honor, I guess I'd start off by
9 saying that I -- on the defense side, I've had the opportunity
10 of the longest tenure to be in front of you, and I have
11 watched your deliberation on how you've tried this case, and I
12 know you take it very seriously. And I have, as it relates to
13 the issue of allocution, a --

14 THE COURT: I'm sorry. Someone coughed and I didn't
15 hear your word. What --

16 MR. MEACHUM: -- as it -- as it relates to this area
17 of allocution a couple of things that I'd like to address the
18 Court on. First, because obviously this may be my last time,
19 I'd like to thank the Court for its temperament and thank your
20 staff for treating us as if we are home-bred Middle District
21 Florida lawyers. And I appreciate that.

22 Your Honor, as I see this and as I see this role of
23 sentencing, the word that rings throughout everything that
24 I've thought about and how I address you is discretion. That
25 discretion is what you have today. You have made rulings

1 based on your knowledge of the law, and you may have or you
2 may not have found those rulings to be difficult. But based
3 on my observation of you, Your Honor, I believe that your
4 exercising discretion as it relates to sentencing is a most
5 difficult one for you. I don't think that you take it lightly
6 or cavalier; I think you take it very seriously.

7 We've asked you, Your Honor, in our sentencing
8 memorandum -- and Ms. Hernandez has reiterated today in
9 addressing the Court -- and requested the Court to exercise
10 its discretion for downward departures in sentencing
11 Mr. Snipes.

12 Your Honor, I'm so old and gray that I recall in my
13 legal career -- and I'm not Learned Hand -- but I recall when
14 the judicial system allowed jurists, jurists like you who are
15 talented and experienced, to bring to bear at sentencings like
16 these their judicial experience, their human experience, the
17 ability for you to judge a defendant's heart, to look at his
18 life in toto, not an isolated occurrence or event, but to
19 actually view the totality of that person's life.

20 I remember a time, Your Honor, after having made that
21 first step, that then what you would do is to look at the
22 crime that the person committed that stood before you and
23 consider the harm caused by that person's crime.

24 I have heard all of the arguments, Your Honor, of the
25 sentencing guidelines. And I know about Booker, and I know

1 what the Eleventh Circuit Court of Appeals has said in U.S.
2 versus Williams. And I won't belabor the point because you
3 are an expert on that. But I would like to at least touch
4 upon for a moment, Your Honor, my take on acquitted conduct.

5 Your Honor, the jury spoke on February 1st. They
6 found Wesley Trent Snipes not guilty on the charge of
7 conspiracy. They found him not guilty on the issue of fraud,
8 and they found him not guilty on the misdemeanor charges of
9 failure to file for the years 2002, 2003, 2004.

10 The government, Your Honor -- they ask the Court to
11 impose punishment to treat Mr. Snipes as if he was found
12 guilty on all charges, and you've -- you've addressed that in
13 some detailed decision from the Court.

14 But, Your Honor, I still look at the judicial system
15 from -- which from a constitutional point of view our crafters
16 felt it necessary to have one that has a trial by jury. It
17 means something to us, Your Honor. What it means to me as a
18 barrister is that it is a safeguard. It is a safeguard that
19 avoids abuses of government.

20 It is a safeguard that allows defendants to be judged
21 by everyday people, everyday people who bring all of their
22 life experiences and challenges and understandings to bear to
23 see whether or not this person who is charged with this crime
24 has, in fact, committed their crime.

25 I see no better statement about its importance than

1 | the statement made by one of the original crafters of our
2 | Constitution, and his name was Thomas Jefferson. He wrote --
3 | and I quote, Your Honor -- I consider trial by jury as the
4 | only anchor ever yet imagined by man by which a government can
5 | be held to the principles of its Constitution.

6 | Your Honor, it is no different to have a trial by
7 | jury than it is to have three branches of our government. It
8 | is a, in my opinion, checks and balances. Your Honor, this is
9 | our judicial system which allows at least us to be judged by
10 | our fellow man, and that judicial system has at least two
11 | parties to state and support their position. It uses the jury
12 | system which stands for the proposition that -- which states
13 | that a defendant is either guilty or not guilty.

14 | Let me describe the situation that the government for
15 | a moment, Your Honor -- and you've heard bits and pieces about
16 | it -- has forced Mr. Snipes into. They deny him the
17 | opportunity to plea, to enter into a plea agreement, and then
18 | they will stand before you and request that, though it was a
19 | request for a plea agreement, that he has failed to accept
20 | responsibility.

21 | Your Honor, the old phrase that we use, catch-22, is
22 | something like this in this particular case. You have a
23 | meeting and you say, My client is willing to accept a plea of
24 | misdemeanor. I understand your position, Your Honor, of
25 | whether it's one or two or three, but follow me for one

1 second.

2 You place yourself at the government and you say, I
3 will plead to a misdemeanor. A misdemeanor is what you are
4 grappling with, I'm sure, in your heart on how you punish this
5 man for that. But he's offered himself for a plea agreement.
6 But it's -- it's more than that, Your Honor.

7 He talks about the ability to pay and be determined
8 on what he owes and to pay those taxes, but it goes further
9 than that, because no one said -- and I drafted and crafted
10 this letter. It was not an all-or-nothing concept. In
11 addition to accepting a plea agreement and paying the taxes,
12 let me also be used as an example to not only deter,
13 Your Honor -- because our judicial system is not just about
14 punishment; it's about protection -- let me be the person who
15 will, in a very humiliating way, stand up in public service
16 announcements at movies or on TV and talk about my crime and
17 mistake. Let me be more than just a vehicle for the IRS or
18 the Treasury Department. Let me be a vehicle for people like
19 the membership of ARP (sic), people who were taken advantage
20 of or listened to bad advice and make mistakes. But they
21 don't do that, and they don't have to. They don't have to.

22 But let's talk about the catch-22. They make him try
23 a case to defend his life. Your Honor, I -- I know as -- as
24 his attorney and as his friend, it was one that was a fight
25 for his life. Wesley is not concerned about his reputation of

1 whether or not he is perceived as being some nut or some
2 person who is trying to do something to someone else.

3 I guess a man's life is how he lived and how he's
4 judged by his fellow men. And you've heard those. But he's
5 fighting for his very life, Your Honor, in a most horrific,
6 humbling, embarrassing, and very public way.

7 He, Your Honor -- the Court needs to understand --
8 oh, I would love for the Court to understand -- even in that
9 fight, Your Honor, of what he believed in his heart was right
10 -- you see, Your Honor, because this was a criminal trial.
11 Well, the last time I looked, it's about mens rea, the
12 criminal intent.

13 Even during that time, Your Honor, he could have
14 appeared on any stage and made any message and thumbed his
15 nose up at this judicial system and said that, I am above the
16 law, I am a celebrity, and how dare you say anything to me.
17 But he didn't. He has sit there as quiet at that table. He's
18 done the same thing away from this courtroom in trying to
19 endure that.

20 Your Honor, you would look and say, Well,
21 Mr. Meachum, you know, I pay taxes. I hope you pay taxes --
22 because having represented Mr. Snipes, I'm sure someone will
23 ask that question -- and I do, Your Honor -- but this is where
24 we are. We can't go back and undo what Mr. Snipes should have
25 done in 1999.

1 But let's talk about the quandary that they put him
2 in. They make him try a case. They make him use every
3 possible legal mind that they could to deal with the
4 government -- the government -- the government of the
5 United States of America, Your Honor, that is by no means a
6 wimp of an opponent. It brings to bear all means, all power
7 to determine that they are going to prosecute a person for
8 whatever their reasons are -- whatever their reasons are.

9 Your Honor, you know, I -- I made the motion that --
10 Your Honor, it just doesn't seem right. If I had to talk just
11 like a real person, not a lawyer, it doesn't -- it doesn't
12 seem right, Judge, that you got 4,000 people -- 4,000 people
13 who were serviced by a company that obviously are in the cross
14 hairs of the government. Why are we being just prosecuted?
15 And, Your Honor, you said correctly, The government can choose
16 whomever they want to, Mr. Meachum, to prosecute.

17 But when we prosecute and we punish, Your Honor, it
18 has to be for a purpose. You just talked about it a few
19 minutes ago. One of the purposes, Your Honor, is to deter,
20 and I'm going to talk about that for two minutes, and I'll be
21 out of your hair.

22 The ability to deter, Your Honor, was lost and
23 ignored just like the attempt to pay these checks on August
24 the 27th, 2007. I think the most mind-boggling thing for us
25 in meetings is to understand and realize the government is not

1 interested in collecting taxes. They're big game hunting in
2 this, Your Honor, you see. But that's -- that -- that's kind
3 of not what the judicial system is for.

4 On February the 1st, 2008, the jury returned a
5 verdict of not guilty, and the government has not liked it
6 because the government --

7 THE COURT: Wait, wait, wait a minute, Mr. Meachum.
8 The tone and content of these remarks are somewhat off the
9 mark. The government is not on trial here.

10 MR. MEACHUM: I understand that, Your Honor.

11 THE COURT: And on February the 1st of 2008 when the
12 jury returned its verdict, it found the defendant guilty --

13 MR. MEACHUM: That is correct.

14 THE COURT: -- or we wouldn't be here this afternoon.

15 MR. MEACHUM: That is correct, Your Honor.

16 THE COURT: So it seems to me those are the aspects
17 of the case that need to be focused on at the moment, and the
18 government is not going to be sentenced.

19 MR. MEACHUM: I understand that, Your Honor. But
20 I -- I would think that the government -- that the Court would
21 agree with me that there are ethical requirements of every
22 member of the bar that they be and we be forthright and honest
23 and that we, in our attempt to be barristers, apprise the
24 Court of all things to make it easier for you to understand
25 the circumstances, and that is simply what I'm trying to do.

1 I learned a long time ago, Your Honor, that we
2 would -- we were afraid to be less than 100 percent candid
3 with a judge in a court, that our -- our responsibility was,
4 even if the case was against us, to let the judge know what
5 the law was, because our responsibility is to assist in
6 educating you.

7 So that's what I'm saying here, Your Honor, which
8 leads me to where I am now. Our roles as officers of the
9 Court and your role as the ultimate imposer of punishment is
10 bigger than Wesley Snipes. Your Honor, you've heard more
11 cases than I'll ever try. You've heard more stories and more
12 pleas than I would ever want to hear. You've heard every
13 angle, every reason why not me.

14 So our job and our responsibility is bigger than this
15 case, because tomorrow you have another case. But as officers
16 of the Court, Your Honor, our role and our responsibility is
17 to ensure the greater need of a judicial system that it be
18 fair, that it be consistent, that it deliberate, that it's
19 just and it's compassionate.

20 That's the way that I was trained as a lawyer on what
21 the judicial system is about. It is one, Your Honor, that we
22 say we want the public to be able to rely and trust our
23 judicial system. And the only way that that happens,
24 Your Honor, is that we're consistently all -- consistently all
25 of those things: that we're deliberate, that we're just, and

1 that we're compassionate.

2 You're not a robot, Your Honor. That's why we have
3 human beings sitting as jurors. We're not robots. That's why
4 we have people passionately pleading both positions.

5 A judicial system, Your Honor, that ignores all
6 political affiliations and religious beliefs and economic
7 status is where, whether rich or poor or famous, our social
8 identities -- it is a judicial system, Your Honor, that we're
9 trying to have here that ignores all political will, addresses
10 all social ills, all social injustices, all political agendas,
11 Your Honor.

12 It is the very judicial system that allows me, the
13 great grandson of a slave owner and the son of a laborer, to
14 stand before you to plea for lenience for my client.

15 It's that judicial system, Your Honor, that has been
16 the backbone and has -- and has ignored all political wills to
17 try to do the right thing, to try to take all of the
18 information that you sit there every day and listen to to
19 come -- to make some sense about it if there is a time in
20 which you have to impose a sentence like today.

21 We respectfully request, Your Honor, that you, in
22 your wisdom and your compassion and understanding -- because,
23 Your Honor, the good thing about you is that you were a judge
24 long before the Sentencing Commissions and charts and numbers
25 and columns and levels -- you were a judge who were able to

1 | look at people. Is this guy for real? What if -- what if,
2 | Mr. Meachum, I listen to you about Mr. Snipes? What do I see
3 | in him that's going to let me know that five years later he is
4 | not before me having done the same thing or greater? What is
5 | it?

6 | But you were there and had that ability and still
7 | have that experience to do that, Your Honor, which is why, in
8 | light of all the numbers that we talked about, Your Honor, I
9 | am trying to speak to you with your experience as a jurist and
10 | ask that you bring that to bear no matter what the levels are
11 | that we've talked about, no matter what obstruction that --
12 | that the Court believes had happened. I'm asking and I'm
13 | pleading with you to bring that experience before all these
14 | documents and before all these new lawyers when we were trying
15 | to determine what is true, what's just, what really happened
16 | here, when we put -- we peel all the -- the layers off to get
17 | down to what the meat of the situation is.

18 | The next thing, Your Honor, as it relates to
19 | Mr. Snipes that a court looks at and that you look at,
20 | Your Honor, is character. What is it about this man,
21 | Mr. Meachum, that I should even think about a downward
22 | departure? Because, Your Honor, you've not talked to him.
23 | He's not testified. All you see is what you see every day
24 | that we've been here.

25 | Your Honor, I -- I often try to struggle and I did

1 | the past two or three nights -- if you would ask my lawyers, I
2 | have not been to bed since Monday -- on how do you talk about
3 | someone's character. How do I tell you, without any agenda,
4 | what a wonderful person Mr. Snipes is? I think, Your Honor, I
5 | could not do it because I guess it is only fair that I come
6 | with a bias.

7 | You've heard Ms. Moreno at least to the extent that
8 | the Court was able to glean in a 15-minute direct and
9 | cross-examination where Bobby O'Neill asked everybody did they
10 | pay their taxes, to hear about what they think about this man.
11 | Your Honor, I think what I did to bring to -- to bear what I
12 | thought captures the essence of what I have found Wesley
13 | Snipes to be is in a letter attached to you as an exhibit,
14 | Your Honor. And I would just like a moment just to read
15 | excerpts from that letter. And it's -- it's -- it's dated to
16 | you, March 2008, and it's in reference to Wesley Snipes.

17 | And it reads this, Your Honor: It has been said that
18 | great leaders build their lives upon simple principles. I was
19 | fortunate enough to meet Wesley Snipes over 20 years ago, and
20 | I've called him a friend since that first day. We've worked
21 | together. We've laughed together. We've shared our knowledge
22 | with one another and respected each other throughout those
23 | years. I have seen and I'm aware of the principles on which
24 | he has built his life -- honesty, truth, and courage. In the
25 | motion picture industry, it is easy to fall in the world of

1 gossip and petty talk, yet he has always been the pillar of
2 dignity, distinction, value and powerfully-intended integrity.
3 He always puts principles before personalities. Wesley, he
4 says in closing, is like a mighty oak tree. He stands for so
5 many like a tree planted by streams of water with leaves that
6 do not wither. Many who know him have witnessed the fruits of
7 his labor, have sat in his shade and even been protected by
8 his presence. I'm proud of him. I'm proud to call him a
9 fellow thespian and, most importantly, proud to call him my
10 friend. Thank you for your consideration. Denzel Washington.

11 Your Honor, you know, we can be cynical and make
12 caricatures out of anybody. We can. We can use human
13 mistakes and human frailties to make anybody a joke, make
14 anybody look crazy, make anybody look stupid.

15 But, Your Honor, that is the beauty of who we are.
16 We come with all of our human frailties. It is by the grace
17 of God go all of us that we don't fall prey to mistakes that
18 we've made before, Your Honor -- we've made before.

19 Your Honor, I -- I know in your life -- and you've
20 sat as a judge for over 30 years. In your early life, I'm
21 sure there were mistakes that you made that in these days and
22 times in this place where we are, Your Honor, may have caused
23 you some problems, because life in this world was different
24 when we were growing up.

25 So all I am saying, Your Honor, is he made a mistake.

1 He made a mistake. That's why we're here, and that's why you
2 sentence him. But he's much more when you look at the
3 totality of the man than a caricature. He's much more than a
4 joke. He's much more than a sound bite. He's much more than
5 a front-page story. He's much more than someone saying you
6 paid your taxes, you didn't pay your taxes; what's the
7 problem? He's much more than that, Your Honor.

8 Let me for a moment, Your Honor, argue -- or ask you
9 to focus on two aspects. One is justice, and the other is
10 parsimony. Your Honor, the one thing that I have learned
11 about you is that you are a well-read man. So I use that word
12 just for you.

13 As the Court is aware, parsimony is the concept
14 behind every sentence which means that every sentence should
15 be sufficient -- sufficient. In terms of punishment and the
16 justification of the application, it focuses on deterrence --
17 talked about it -- incapacitation and rehabilitation.

18 Your Honor, I know in my heart what you sit there and
19 grapple with is, has this process began the rehabilitation
20 process of Mr. Snipes? How do I know? What can I at least
21 put my judicial experience on to understand that? I looked at
22 the --

23 THE COURT: Right there I have a question. The
24 Indictment, Mr. Meachum, and the offenses of which Mr. Snipes
25 stands convicted go back roughly, let's say, to 2000.

1 MR. MEACHUM: Yes, sir.

2 THE COURT: And I'm looking at Government Exhibit 106
3 in evidence at trial. You may not be familiar with it by
4 number, but I think you'll recognize it when I hold it up.
5 It's this missive that was sent by Mr. Snipes to several
6 people in December, I think it was -- yes -- December the 4th
7 of 2006 after the Indictment had been returned in this case.

8 MR. MEACHUM: What's the date, Your Honor?

9 THE COURT: December the 4th, 2006.

10 MR. MEACHUM: Your Honor, we -- I think, though I am
11 not sure, that we addressed that letter. But if we didn't,
12 let me take a moment to do it now --

13 THE COURT: Well, let me --

14 MR. MEACHUM: -- because I know what you're going to
15 say, I think, but go ahead.

16 THE COURT: You may know more than I do because I'm
17 composing my thoughts as I go along.

18 But that's six years after all this began, to speak
19 generically, and Mr. Snipes knew that he was at arm's length
20 with the Internal Revenue Service. And in here, among other
21 things, he tries to develop a status as a foreign national and
22 not a citizen of the United States, as I read this. It comes
23 very close and might be tantamount to a renunciation of his
24 citizenship all because of his disagreement with the tax laws,
25 apparently.

1 And it isn't just the tax laws. I'm looking now
2 toward the end of this document which contains a photograph of
3 his passport which he signed under the legend "without
4 prejudice."

5 Now, if all of this was a mistake, it was a long and
6 drawn-out one, it seems to me.

7 MR. MEACHUM: I understand, Your Honor.

8 THE COURT: What do you say about it?

9 MR. MEACHUM: Well, this is what I say, Your Honor.
10 I think that I would be insulting the Court's intelligence by
11 using the word "mistake." So if that's the word that I used,
12 then I retract it. But let me go on to try to at least shed
13 some light that the Court may not have been aware of.

14 Wesley Snipes is responsible for everything that he's
15 here in front of you for. I'm not going to make some mistake.
16 This is not black magic, some slip of the hand. But this is
17 what the Court is not aware of that I am. And I even had this
18 conversation with Mr. Svendsen back in Tampa.

19 In December the 4th, 2006, Wesley Trent Snipes was in
20 Namibia. Now, there was an attorney for the U.S. Attorney's
21 Office at the time that I think is now a new Magistrate named
22 Jim Klindt. And Jim Klindt, along with Scot Morrison (sic) --
23 and I think maybe Bobby O'Neill may have been in one of the
24 meetings -- met with me and previous counsel at that time.
25 And we said, Listen, I've been engaged to represent Mr. Snipes

1 | in an Indictment, and we need to fly to Namibia.

2 | Judge Jones I think at that time, Your Honor -- and I
3 | may be wrong on a couple of dates -- had given us an original
4 | day to appear, which I think was December the 7th. We, in
5 | fact, appeared before him on December 8th.

6 | That letter that you have in front of you did not
7 | come from Namibia, though it has Mr. Snipes' passport picture.
8 | He was in Africa, not sending letters.

9 | Your Honor, the most frustrating thing for me as a
10 | barrister is the following. Your Honor, you have received
11 | letters and documents supposedly cc'ing me talking about
12 | someone sending promissory notes to purchase the prosecution
13 | of Mr. Snipes.

14 | One of -- one of the correct incentives by the
15 | government is to shut down tax protesting groups. I agree
16 | with it. I don't like it because they are using my client as
17 | a conduit, but I agree with it.

18 | But this is what has happened, Your Honor. Every --
19 | and I want to be politically correct -- person that has a
20 | different view of you and I on taxes and the obligation to pay
21 | has at some point in time used Mr. Snipes as a poster child in
22 | furthering that.

23 | Now, you say, well, how did they get his passport?
24 | Your Honor, Wesley Snipes met with, was advised by people who
25 | gave him illegal advice -- illegal advice.

1 But what did they do, Your Honor? Your Honor, you
2 have a document in front of you that buttresses this
3 statement. There was a document that the government
4 introduced that I think, Your Honor, was 600 pages of legal
5 incoherent gibberish that purports to be from Wesley Snipes.

6 Now, Your Honor, what we could have done is probably
7 put Wesley Snipes on as a witness to talk about that. I said
8 all of that to say, Your Honor, all that has appeared in front
9 of you bearing Wesley Snipes' name he stands responsible for
10 because he is the defendant.

11 I say to you as an officer of the Court, many and
12 most of those documents were not authored by him, were not
13 authorized to be sent by him. Now --

14 THE COURT: That's why I focus on the passport.

15 MR. MEACHUM: Right.

16 THE COURT: That statement on the passport tends to
17 corroborate his identity with the balance of this document
18 whether he personally signed it -- although it appears to bear
19 his signature, someone else could have appropriated that.

20 MR. MEACHUM: I agree with that, Your Honor. I don't
21 disagree with you. I said that the -- one of the errors --
22 and I don't want to use "mistakes" -- one of the -- one of the
23 things more than a mistake, whatever the Court is comfortable
24 with, is that Mr. Snipes allowed himself to be placed in very
25 compromising and illegal situations. I agree with that. And

1 we don't stand before you to say that it hasn't.

2 But what I'm trying as best of my being to do is to
3 make you understand him as we beg you to look at him, not as a
4 nut sending 656 pages of documents, not as a person who talked
5 about he wants to be an expatriate, not that person. Not --
6 he's not Blade. This is not Jungle Fever. I'm talking about
7 Wesley Trent Snipes, a father, a son.

8 You know, Your Honor, there's a funny thing that
9 happens a lot of times, and it's happened to me. We can
10 attract -- and I'm going to be quick, Your Honor, because
11 you're looking at your watch on me -- I only got two more
12 pages -- we can attract over our lifetimes, Your Honor, some
13 very questionable people. It is -- it takes -- it takes our
14 experiences and our strength to say, Yeah, I don't think I
15 want to do that.

16 But every now and then, Your Honor, every now and
17 then there's some of us, who are good people, who fall prey to
18 those kinds of webs. I say to you, Your Honor, Wesley Snipes
19 is an intelligent -- intelligent, strong man. He has done, as
20 the jury has found -- been found guilty of on some
21 misdemeanors. But when you look at this case, Your Honor --
22 and I know you look at everything. I'm trying to at least let
23 you know those things -- though he may have allowed some of
24 his possessions to be involved in those, are not the way that
25 I would prefer and I would suggest that you view him, because

1 | much of it, if not all of it, Your Honor, are things either
2 | that maybe he allowed to be authorized and sent or were not
3 | sent by him, many of which, Your Honor, he didn't even --
4 | particularly on this December -- I thought the letter was
5 | December 6th. You said it's December 4th -- was sent -- I
6 | think that the letter basically said, Your Honor -- I thought
7 | it came from my law firm, and I did not know it until Scot
8 | Morrison (sic) and Jim Klindt said, Dan Meachum, I thought
9 | that you were in Africa and we just got a letter from you. So
10 | even -- even me, Your Honor, in this process of representing
11 | Mr. Snipes, was also a conduit of a bigger picture that had
12 | nothing to do with me or what Mr. Snipes is doing.

13 | Let me just say this, Your Honor -- if I can drink
14 | some water -- the penal code reflects the basic teachings of
15 | Mr. Morris, Norval Morris, which you would be aware of, who
16 | was a former dean in Chicago. And he talks about the
17 | principle that any punitive suffering beyond societal needs is
18 | what we have defined as cruelty.

19 | I want to read that again, Your Honor, because I
20 | think that's what I'm saying; I think that's what
21 | Ms. Hernandez is saying, so I have to read other people's
22 | intelligent thoughts. It says that any punitive suffering
23 | beyond societal needs is what we have defined as cruelty.

24 | Your challenge, Your Honor, and your mandate is to
25 | determine what punitive suffering that you must impose that

1 speaks to society's needs, because one thing beyond that we
2 have defined in our society to be cruel. When you take a man
3 and you punish him, for instance, he said, Your Honor, that's
4 not -- not for what he did but for what you want to deter in
5 another person, he said that's just.

6 And in the history of punishment, there have been two
7 basic abuses: one on the underhand where the king and the
8 emperors and princes and their prosecutors were perfectly
9 willing to do and they were allowed to terrorize. And by
10 terrorizing, Your Honor, I mean punish one who is innocent in
11 order to put the fear of the king or the gods in others.

12 The other tendency which is bad is that the victim
13 seeks not sanctions but vengeance. So if I had to try to be
14 intelligent on the vengeance side -- we've heard a lot of
15 discussion about the numbers -- because the government is a
16 victim here, and I agree they are a victim. They are a victim
17 because they are entitled to monies to support our government
18 and its inner workings from taxpayers.

19 But is what they're asking for sanctions or
20 vengeance? Your Honor, you're the judge and you make -- you
21 have to make that determination. I am just simply, as an
22 officer of the Court in trying to be a conduit, asking you to
23 think about their request to balance the words between
24 vengeance and sanctions, you see, because our system,
25 Your Honor, is better than terrorizing, and it's better than

1 | sanctions. That's not what you do; that's not what we do.

2 | I just need to say this, Your Honor: When you look
3 | at punishment and you talk about tax cases, you look at loss
4 | and you look at harm. What I would respectfully suggest to
5 | this Court is, just like the government saw a \$5 million check
6 | being posted and rejected it, it has been that kind of
7 | rejection that would make you think that Mr. Snipes has not
8 | done one scintilla of anything proactive to deal with this
9 | because, Your Honor, that's what's in your head. That's what
10 | you think is -- Mr. Snipes, how long does it take you to try
11 | to be proactive? Just like that \$5 million check that's in my
12 | pocket now that was rejected by the government, Your Honor,
13 | that has been the retort of -- since my involvement in trying
14 | to get a resolution. I don't -- I did not want to appear
15 | before you in trying this case, Your Honor, because this is
16 | against the United States government.

17 | But I think, Your Honor, that you would not want to
18 | take a plea from somebody who believed in their heart was not
19 | guilty of a conspiracy or a fraud. I don't think, Your Honor,
20 | for one moment that if you had Mr. Snipes standing in front of
21 | you and you were not convinced that his plea was genuine, that
22 | he meant it, that you would accept it.

23 | So where does it all leave us? You don't want people
24 | pleading in front of you for crimes that they did not commit.
25 | Your Honor, these were 12 people that didn't know him from

1 Adam. They had not one agenda. They had no biases. They're
2 the most hard -- hardest working jurors I have ever seen in my
3 life. They didn't believe that.

4 It's something -- it is some benefit, Your Honor,
5 that I think the Court -- I'm requesting the Court to give
6 that saw -- that were able to -- to listen to all of the
7 craziness of the documents that were entered. They listened;
8 they saw that document, Your Honor. They saw it on the
9 screen. They heard it. They saw everything. And you -- and
10 you know what, Your Honor? They had the decency and the moral
11 conviction to look beyond and through all of that to
12 determine, I don't think this guy did this.

13 Your Honor, I would suggest to you that to have had
14 him come and plead to a conspiracy charge which was the result
15 of a request to plead to a conspiracy would have itself been a
16 fraud on the Court, because it would have been asking a person
17 to plead in front of you for a crime for which he in his heart
18 did not think he had committed. That's not something that I
19 as a barrister want to do or you as a judge want to listen
20 to.

21 THE COURT: Well, I don't see that that's
22 particularly germane this afternoon, Mr. Meachum. The jury,
23 as you say, has acquitted the defendant of those counts, and
24 we're here on the conviction, not the acquittal.

25 MR. MEACHUM: I agree, Your Honor.

1 The last two things that I want to say to you --

2 THE COURT: Well, do it in two-minutes' time. I've
3 devoted a lot of time to this.

4 MR. MEACHUM: Okay. And, Your Honor, I think your
5 statement earlier is why I've given a lot of time, because we
6 have a man's life in the balance, and I wanted to try to do
7 everything in my power to convince you how to look at it. But
8 I'll do this last thing, and I'm done.

9 Linda and Carmen and I -- Ms. Moreno and
10 Ms. Hernandez -- when we sit around, to do all that we can do
11 for our client, Your Honor, the word that we always come up
12 with is the word "mercy." You know, ask the judge for mercy.

13 And we were talking last night -- I think it was last
14 night, Your Honor; we have not slept in a couple of days, but
15 I think it was last night -- and Linda and I started to talk
16 about mercy as it relates to the Merchant of Venice, which is
17 a Shakespeare play. And, Your Honor, I -- I thought it made a
18 lot of sense in this particular situation because in the
19 Merchant of Venice --

20 THE COURT: You're going to read me Bassanio's appeal
21 to Portia?

22 MR. MEACHUM: Yes, Your Honor.

23 THE COURT: "Wrest once unto your own authority, do a
24 little right to do a little wrong and curb this cruel devil of
25 his will"?

1 MR. MEACHUM: Not that one.

2 THE COURT: "Nay, it cannot be. 'Twill be recorded
3 as a precedent and many an error by the same example will rush
4 into the state"?

5 MR. MEACHUM: Not that one.

6 THE COURT: What, then?

7 MR. MEACHUM: This is the one. See, Your Honor, I
8 got you because you thought you knew what I was going to say.

9 I want to talk to you, Your Honor, about what I know
10 you have, and that is the quality of mercy. You know the
11 story. I was going to -- I was trying to impress you by
12 telling you the story, but you know the story. So let me end
13 by saying this. I want to read what Portia said.

14 Portia said: The quality of mercy is not strained.
15 It droppeth as the gentle rain from heaven upon the place
16 beneath. It is twice blessed: It blessed him that gives and
17 him that takes.

18 Your Honor, I plead to you to in your wisdom, in your
19 compassion, and in your experience to look through the minutia
20 that has been appearing in all this case and find mercy for
21 Mr. Snipes, find that there is a redeeming person by which
22 this Court could use in a greater way for a greater cause than
23 just this case at this time, because that would just be one
24 more person you -- Your Honor, I think that you more than
25 anybody else -- you have an opportunity, Your Honor, to do

1 exactly what the government wants to do without incarcerating
2 our client. You have -- you have the opportunity to send any
3 kind of message that you want to send to the masses in a way
4 that America sees every day.

5 You see, when we put somebody away, the only people
6 that see them is their -- their -- their family and their
7 friends. But if we're trying to control the masses, quell
8 those fringe groups, Your Honor, I -- I -- I would suggest to
9 you and plead to you that there's a better way for you in your
10 wisdom and compassion to do that, Your Honor.

11 Thank you for your time.

12 THE COURT: Mr. Snipes, do you have anything you wish
13 to say to me directly and personally in mitigation of the
14 sentence that I must now impose in your case?

15 DEFENDANT SNIPES: I do, Your Honor. I have a
16 prepared statement that I would like to read.

17 THE COURT: Come to the lectern, please.

18 MR. MEACHUM: Your Honor, can we get a five-minute
19 bathroom break? Ms. Moreno just asked me and I don't want
20 to --

21 THE COURT: All right. We'll take a ten-minute
22 break.

23 (A recess was taken.)

24 THE COURT: Be seated, please.

25 Mr. Snipes, you said you wished to address me, and,

1 of course, that's your absolute right. If you will come to
2 the lectern, please.

3 MR. MEACHUM: Your Honor, for purposes of
4 housekeeping, the government, Victor Lessof, in recess
5 accepted the \$5 million checks, and they said that they would
6 make the representation to the Court that they accepted that
7 check before Mr. Snipes started to address the Court. I just
8 wanted to let you know that.

9 THE COURT: What's this all about, counsel?

10 Mr. Morris?

11 MR. MORRIS: Your Honor, I intended to address this
12 matter when I spoke to the Court. I can address it now.

13 THE COURT: Well, why shouldn't I hear from the
14 government about it when I recognize the government for its
15 allocution after I've heard from the defense, Mr. Meachum?

16 MR. MEACHUM: That's fine, Your Honor.

17 THE COURT: All right. Mr. Snipes, if you'll come to
18 the lectern, please, we'll hear what you have to say.

19 DEFENDANT SNIPES: Thank you, Your Honor.

20 To the Court, Judge Hodges, the community, let me
21 begin by saying I am very sorry for my mistakes and my errors,
22 and I stand here an open-minded artist aware that regardless
23 of the professional status in life, one's time and one's word
24 and liberty are their greatest assets. Now more than ever I
25 understand and know the value of losing either.

1 Judge Hodges, after graduating from Jones High School
2 in Orlando and entering the professional training college at
3 Purchase on an acting scholarship at 17 and beating out
4 thousands of competitors for one of the coveted four positions
5 available to minorities, I thought I was more than qualified
6 to dance with the best of them and ready to perform on the big
7 stage. That's what I thought.

8 But to my surprise, the head instructors didn't
9 agree. Not only was I unprepared to perform on the big stage,
10 I wasn't even the best in the class. There ended my delusions
11 of grandeur.

12 The teachers exposed my weaknesses and brutally
13 introduced them to me. My instrument was untuned, unpolished.
14 I had poor speech, sloppy body movement, weak voice, poor
15 articulation, and no consistent method of channeling that
16 unbridled energy into constructive creativity. They said that
17 I was raw putty that needed to be remolded and that if I was
18 willing, they could teach me the skills I needed to become a
19 world-class performer.

20 So for the next four years, 12 hours a day, six days
21 a week, I was taught the essential skills needed to
22 legitimately represent myself on the big stage.

23 Judge Hodges, we were taught to overcome our fears
24 and open our minds, investigate the subject by asking
25 essential questions, questions we call the five Ws -- the who,

1 what, when, where, and why -- and never hesitate to seek more
2 qualified answers when the early results were insufficient.

3 This is the way you discover the true essence of your
4 character, they said. This is the way you discover the true
5 essence of yourself.

6 From this orientation and by this template have I
7 tried to pattern my life. I acknowledge I failed myself and
8 others by not asking the five Ws in this instance.

9 At SUNY Purchase is where I learned the benefits of
10 being a good student and the value of trusting in a good
11 teacher. It was also during this time that I had a spiritual
12 awakening. I realized that if I followed the teachings of the
13 great spiritual masters, I would learn more than just how to
14 be a world-class performer but, most importantly, how best to
15 govern one's life by qualities of righteousness, honor, and
16 integrity.

17 Like the teachings of my college professors, I
18 accepted the great master and I accept the truth of his
19 teachings and have embroidered some of those principles into
20 the fabric of my life.

21 While sitting here throughout this whole proceeding,
22 on occasion a popular street saying would come to mind. The
23 saying goes: Mo' money, mo' problems.

24 Sir, I believe there's no truer statement can
25 characterize the life of those who come from very humble

1 | beginnings and are unexpectedly catapulted into the community
2 | of the financially well-to-do. Even the well-intentioned can
3 | make costly mistakes. I include myself in this grouping. And
4 | yet even the disparaging comments about others -- I'm sorry.

5 | And even when disparaging comments about others were
6 | being accredited to me or dishonest statements were being made
7 | about my character by people who don't know me, I never lost
8 | faith. I never lost faith in the Lord's grace, never lost
9 | faith in my fellow man, nor in the system of justice I now
10 | stand before.

11 | Sir, I am an idealistic, naive, passionate,
12 | truth-seeking, spiritually-motivated artist unschooled in the
13 | sciences of law and finance.

14 | I would like to say that again, sir. I am an
15 | idealistic, naive, passionate, truth-seeking,
16 | spiritually-motivated artist unschooled in the sciences of law
17 | and finance.

18 | Even though I accept the verdict of the jury and the
19 | responsibility for the offenses, I never imagined my life
20 | would be imitating roles I played once on the screen.

21 | Judge Hodges, as far back as I can remember, I wanted
22 | to create and express the best of me through the arts, music
23 | and dance. To be living now as a working artist is a
24 | childhood dream come true.

25 | But just as being in the spotlight attracts loving

1 fans, it also attracts jackals and wolves in the same way
2 flies are attracted to fresh meat. College didn't prepare me
3 for that.

4 Yes, I accept as true the individual has the
5 responsibility for keeping all of their affairs in order
6 including, but not limited to, his finances, and yet I can't
7 help but think of the youngest of my five children, my
8 one-year-old son Moa. Being new to this world, he often needs
9 me and my wife to help him up when he stumbles and fall.

10 I, too, an adolescent in the world of wealth and
11 celebrity, am like my son in need of a helping hand to assist
12 me when I stumble and fall.

13 So newly-acquired wealth doesn't automatically endow
14 one with great financial wisdom, nor does it make one immune
15 to a good hustle. I believe I've now surrounded myself with
16 caring souls who put honor before the hustle and have
17 committed themselves to extending that helping hand to me with
18 the goal of producing a Wesley Trent Snipes better educated,
19 better skilled at doing what is right.

20 I adhere to the concept of treating people the way
21 you want to be treated, and it seems like a simple instruction
22 to follow, and yet you wouldn't know it by the way we treat
23 each other from day to day. But this is the way I live in
24 spite of often being on the receiving end of dishonor.

25 I have forgiven those who have hurt me deeply because

1 I seek forgiveness. I have parted with personal things of
2 value because others needed it more. This is the kind of man
3 I practice at being.

4 The boyhood instructions from my mother and the
5 church compel me as a man to live and treat people with
6 fairness, patience and compassion because that's the way I
7 would like to be treated. Where I have fallen short on this
8 effort, I fully accept that responsibility and seek to remedy
9 any harm I've caused or right anyone that I've wronged.

10 I apologize to my family, the Court, and the
11 community, asking forgiveness for my mistakes. And my plea to
12 this Court is that I be given the opportunity to make amends
13 in a meaningful manner, freely return to the disciplines of my
14 strength and allow me to use my talents combined with the
15 profound education gained through this life-altering
16 experience as a chance to serve as witness to the pitfalls of
17 being well-intentioned but miseducated.

18 As a spiritual being having a human experience, I am
19 with infinite capacity for redemption, and it is my divine
20 purpose to gain greater knowledge of self while making a
21 positive contribution to the elevation of humanity through the
22 arts and let my future deeds reflect the degree of my reform.

23 Truth-seekers are often idealistic, sometimes
24 foolish, and frequently adventurous, but rarely, rarely
25 malicious. I ask this Court to show me mercy and extend to me

1 the opportunity to set things right, for this will never
2 happen again.

3 Thank you, sir.

4 THE COURT: Mr. Kahn, do you have anything you wish
5 to say to the Court directly and personally in mitigation of
6 the sentence that I now have to impose in your case?

7 DEFENDANT KAHN: I have a statement I'd like to read,
8 sir.

9 THE COURT: All right. Come to the lectern and we
10 will hear it.

11 DEFENDANT KAHN: For the record, I was brought here
12 by the U.S. Marshals today against my will, under duress, and
13 by force of arms.

14 Judge Hodges, as you know, I do not recognize you as
15 an Article III judge based on your appointment affidavit and
16 your oath of office.

17 THE COURT: Hold on a minute right there, Mr. Kahn.
18 Hand this to Mr. Kahn, please, Mr. Leanhart.

19 THE DEPUTY CLERK: Yes, sir.

20 DEFENDANT KAHN: Okay.

21 THE COURT: Have you seen it before?

22 DEFENDANT KAHN: Your oath of office? Yes, I have.

23 THE COURT: It's different from the one that you have
24 previously filed.

25 DEFENDANT KAHN: Oh. Is that right? Well, then, I

1 | may not have seen it before. This is -- I'm just assuming
2 | that's the one that I filed in the court.

3 | THE COURT: It is not.

4 | DEFENDANT KAHN: You have two?

5 | THE COURT: In fact, I had three on that day.

6 | DEFENDANT KAHN: Oh. Is that right? Okay.

7 | THE COURT: But hand that back to the clerk and --

8 | DEFENDANT KAHN: Okay.

9 | THE COURT: -- we'll make it a part of the record.
10 | Make it Court's Exhibit Number 1 incident to this
11 | sentencing hearing, Mr. Leanhart.

12 | THE DEPUTY CLERK: Yes, Your Honor.

13 | THE COURT: Go ahead, Mr. Kahn.

14 | DEFENDANT KAHN: The appointment affidavit clearly
15 | identifies you as an Executive Branch officer. Since I have a
16 | right to be before a free and independent Article III judge, I
17 | did not accept your offer to try me. I did not consent to or
18 | participate in those proceedings.

19 | Today I do not accept your offer to sentence me. I
20 | do not consent to this proceeding. And if during the course
21 | of the previous proceedings I ever gave you the appearance
22 | that I was cooperating and consenting to those proceedings, it
23 | was never my intention to cooperate or consent in those
24 | proceedings, and I have no intention of consenting now or in
25 | the future to these proceedings.

1 Also, I want to correct the record. When you were
2 asking me earlier questions, I answered I don't consent to the
3 proceeding. You said, I will take that as a yes. That is
4 putting words in my mouth. I was specifically not answering
5 your question, as I am not consenting to participate or
6 consent to this proceeding. And that's what I have to say.

7 THE COURT: All right, Mr. Kahn. That's your choice.
8 I must say I do not understand it, but that is your right.
9 And you may be seated.

10 Mr. Wilson, do you wish to be heard on behalf of
11 Mr. Rosile?

12 MR. WILSON: Yes, Your Honor, I do.

13 May it please the Court. Judge, I'm not going to
14 belabor the point. I do have a few points I'd like to raise
15 with respect to the appropriate sentence for Mr. Rosile in
16 this matter.

17 The first thing I want to point out is a comment that
18 was made to me by the Probation Officer after he met with
19 Mr. Rosile. As a result of these proceedings against
20 Mr. Rosile and his conviction, he is a broken man. That was
21 the exact quote by the Probation Officer of his assessment of
22 Mr. Rosile.

23 Judge, among the factors that the Court is to
24 consider in determining an appropriate sentence of a defendant
25 in a criminal case, as is indicated in 18 U.S.C. 3553(e), are

1 | the nature and circumstances of the offense and the history
2 | and characteristics of the defendant.

3 | Judge, Mr. Rosile was an accountant prior to the
4 | commission of this offense. He lost his license. He became a
5 | member of American Rights Litigators. During the course of
6 | his membership with American Rights Litigators, he became an
7 | employee. Mr. Rosile became convinced that this 861 argument
8 | was appropriate and legitimate, apparently as many other
9 | people believed, wrongly so. He now realizes that that
10 | position was incorrect.

11 | The Court, in determining what an appropriate
12 | sentence is, is to determine the need for the sentence imposed
13 | to reflect the seriousness of the offense, to promote respect
14 | for the law, and provide just punishment.

15 | Judge, based upon the sentencing guidelines as
16 | calculated and determined by the Court, Mr. Rosile is looking
17 | at a level 26 with a criminal history category of one, which,
18 | as the Court is aware, gives a guideline sentencing range of
19 | 63 to 78 months.

20 | Judge, during the initial objections I urged the
21 | Court to consider the fact that the appropriate guidelines
22 | were those in effect at the time Mr. Rosile signed the tax
23 | return for Mr. Snipes.

24 | At that time, which was merely several months before
25 | the change, assuming that the loss was between 10- and

1 | \$20 million, that -- the intended loss -- he would have been
2 | at a level 23. This is the 2000 Federal Sentencing Guideline
3 | Manual, Tax Table 2T4.1. Between 10- and \$20 million is a
4 | level 23.

5 | I ask the Court to consider the loss at \$7.3 million,
6 | which would have put Mr. Rosile at a level 22. However, even
7 | assuming the loss to be the 11-point-some-odd million dollars
8 | that the government would consider, he would be at a level 23.
9 | That's three levels below where he falls today merely
10 | fortuitously by the fact that apparently a few of the relevant
11 | conduct tax returns he prepared were prepared after the
12 | November 1st amendment to the guidelines. So it's merely
13 | fortuitous that he falls under the present guideline range. I
14 | would ask the Court to consider that fact in determining what
15 | an appropriate sentence is.

16 | At a level 23, he would be at a guideline range of 46
17 | to 57 months. So he's barely, barely at the threshold, Judge,
18 | and it's only fortuitous that a few of these returns fell
19 | within the current guideline scheme as opposed to the prior
20 | guideline scheme, which adds a significant amount of time to
21 | his potential sentence. The guideline range now between 7-
22 | and \$20 million is 26; the prior was level 23.

23 | One of the factors to be considered is to afford
24 | adequate deterrence to criminal conduct. Judge, I have
25 | reviewed the United States' sentencing memorandum regarding

1 defendants Eddie Ray Kahn and Douglas P. Rosile, Document 446
2 in this case, and the government makes the representation in
3 this document at page 11 that says, Defendant Rosile also
4 exhibits adherence to his antitax views and a propensity to
5 reoffend.

6 Judge, I don't believe this document has any more
7 tenor than the fraudulent 1061 returns. And the reason I say
8 that is that it is clear that Mr. Rosile would not reoffend.

9 As the Court is aware, a civil injunction was entered
10 against Mr. Rosile enjoining him from promoting the 861 tax
11 argument. Mr. Rosile has adhered to that. I'm not aware of
12 any allegation that he has failed to abide by the terms of
13 that injunction. He has stopped doing this, and it has been
14 years.

15 He hasn't done these types of returns. He
16 understands he should not be doing these types of returns, nor
17 will he do these types of returns in the future regardless of
18 the sentence that's imposed upon him today.

19 Mr. Rosile told the Probation Officer that he
20 challenged his charges by going to trial because he had never
21 received an adequate response from the IRS as to why the 861
22 argument was not legitimate. And that makes him, according to
23 the government, an unrepentant declaration.

24 Judge, I think that Mr. Rosile's actions speak louder
25 than the unsubstantiated allegations of this sentencing

1 memorandum. Mr. Rosile does have no propensity to reoffend.
2 He ceased when the Court order was entered against him. He
3 has not violated that injunction, has no intention to do so,
4 nor will he ever. I think that the likelihood of the Court
5 seeing Mr. Rosile in front of it again is none.

6 3553(a)(c), the need to protect the public from
7 further crimes of the defendant, Judge, that is, likewise,
8 covered by the fact that Mr. Rosile is substantially unlikely
9 to reoffend ever.

10 The types of deterrence that the court system is to
11 consider are two types. There's specific deterrence, that
12 being deterring the defendant from the type of conduct that
13 brought him before the Court, which I believe has been
14 adequately done, and general deterrence, deterring others from
15 similar conduct.

16 Judge, I have represented thousands of criminal
17 defendants over the course of my career, probably five whose
18 names appeared in the newspaper. The rest of them are
19 obscure. They disappear. No one ever hears from them. No
20 one knows their names. They just become numbers in the prison
21 system.

22 Mr. Rosile has been thrust into the limelight as a
23 result of this particular case. I think that's something he
24 didn't bargain for. Mr. Rosile walks out of this courthouse
25 to a barrage of television cameras. That's not the type of

1 | life he's lived. He has had telephone calls from reporters.
2 | His name has been in the paper. He's associated now with this
3 | 861 tax fraud. He appears in these tax blogs on the Internet.
4 | His name is out there, and he is now the type of person that
5 | is an example, whether he likes it or not. And whether this
6 | Court sentences him within the guideline range or below the
7 | guideline range, he is an example.

8 | There is general deterrence because of the fact that
9 | Douglas Rosile is now associated with being criminally
10 | convicted of the 861 tax scheme and being affiliated with
11 | American Rights Litigators and Mr. Kahn.

12 | Mr. Rosile understands, Judge, that the offenses for
13 | which -- of which he was convicted are serious. The
14 | government would have the Court believe and as -- as is
15 | reflected in that sentencing memorandum that Mr. Rosile is
16 | single-handedly responsible for the antitax movement and the
17 | necessity to create the frivolous tax unit.

18 | Mr. Rosile was involved with this organization, as we
19 | discussed, and produced a number of these 861 returns. He
20 | understands that is not the correct conduct. He is well aware
21 | of that now, Judge, and he's learned his lesson.

22 | What we would ask the Court to do would be to
23 | consider the fact that the guideline range that he is being
24 | sentenced under he fell into only by virtue of a few of these
25 | returns around the time period when the guidelines changed.

1 The substantial conduct that he engaged in in this case
2 occurred prior to the new guidelines. We'd ask the Court to
3 consider that in determining what an appropriate sentence is.
4 Had he been sentenced merely by a number of months under the
5 prior scheme, he would be at the greatest a level 23.
6 However, he now is a level 26.

7 Mr. Rosile has family. Mr. Rosile, besides his
8 family, now has nothing. He has not been able to work as a
9 result of this case. He has abided by all the conditions that
10 have been imposed upon him by the Court in conducting himself
11 during the course of these proceedings.

12 It is correct, and I will not try to convince the
13 Court that Mr. Rosile has not had issues with the IRS. That
14 is true. He did not like the IRS. That's true. He perhaps
15 expressed himself to the IRS in inappropriate ways. That's
16 true. But, nevertheless, he is paying for his conduct. He's
17 going to continue to pay for it.

18 Judge, in considering an appropriate sentence for
19 Mr. Rosile, I believe also his demeanor and his stature is
20 something the Court can consider. Quite frankly, Mr. Rosile
21 is not going to do well in prison.

22 I'm not going to come before the Court and ask for a
23 probationary sentence. I believe, given the guideline range,
24 that that is something that is out of reach and would, in all
25 candor to the Court, probably be insulting to the Court given

1 the facts of the case.

2 However, I do believe that a sentence below the
3 guideline range, considering his characteristics, considering
4 all the factors of 3553, would render appropriate,
5 significant, substantial, and no greater than necessary to
6 promote adequate respect for the law both by Mr. Rosile and
7 generally society would be a -- a -- a sentence at some level
8 below the 63-month guideline range.

9 Now, the government, as well as the Probation
10 Officer, has included a number of cases of American Rights
11 Litigators and Guiding Light of God Ministries' members being
12 prosecuted. Among these cases, we see 33 months, 37 months,
13 41 months, 33 months, 27 months, 33 months, and one of
14 72 months. I don't really know what that particular statute
15 is -- corrupt interference -- but, Judge, the two defendants
16 that are indicated that have a 371 conspiracy, one was
17 sentenced to 33 months -- both were sentenced to 33 months.
18 Granted, these individuals, in all likelihood, weren't
19 employees of the organization but were probably members, and
20 they were all fined. Mr. Rosile has no ability to pay a fine.
21 As the Court's aware, he's been determined to be indigent.

22 With all due respect to the Court, to the government,
23 to society in general, I think on the facts of this case,
24 considering all the factors and all the characteristics of the
25 defendant, that a sentence below the guideline range would be

1 no greater than necessary to promote adequate respect for the
2 law.

3 Thank you.

4 THE COURT: Thank you, Mr. Wilson.

5 Mr. Rosile, do you have anything you wish to say to
6 the Court directly and personally in mitigation of sentence?

7 DEFENDANT ROSILE: No, Your Honor.

8 THE COURT: Who speaks for the government?

9 MR. MORRIS: Your Honor, I would like to address the
10 Court.

11 THE COURT: Mr. Morris.

12 MR. MORRIS: And Mr. Hochman has a few remarks he
13 would also like to make to the Court.

14 THE COURT: Very well.

15 MR. MORRIS: Your Honor, let me start by addressing
16 defendant Kahn.

17 For more than ten years, Eddie Kahn has sought to
18 obstruct the IRS through one fraudulent tax scheme after
19 another. Indeed, Eddie Kahn started a business, American
20 Rights Litigators, later known as Guiding Light of God
21 Ministries, that promoted and sold these schemes to thousands
22 of customers.

23 Eddie Kahn personally profited from this while the
24 IRS lost untold millions in revenue and had to devote
25 substantial resources to deal with these fraudulent schemes.

1 In fact, the harm caused to the IRS by defendant Kahn is
2 difficult to quantify, but just based on the evidence
3 introduced in this case, it is clearly in the tens of millions
4 of dollars.

5 Given his history, which the Court is well aware of,
6 it is doubtful that Eddie Kahn will ever stop promoting tax
7 fraud. So not only does Eddie Kahn deserve every day of a
8 ten-year sentence as his guidelines call for and is permitted
9 by statute, but it will protect the public as well as the
10 government from his schemes for as long as possible. So we
11 urge the Court to impose both a guideline sentence and what
12 would be the statutory maximum of ten years in prison.

13 Turning now to defendant Rosile, I believe his
14 counsel was just arguing for the Court to consider imposing a
15 sentence somewhere in the range of three years based on a
16 comparison of other prosecutions of ARL members listed in the
17 presentence report. I would point out that all of those cases
18 involved members of American Rights Litigators, not employees
19 or promoters of the tax schemes.

20 Counsel also seemed to complain that his client had
21 been made a public example by this case and has faced public
22 scrutiny by being associated with a celebrity, Mr. Snipes.
23 Well, Your Honor, that's a logical and natural consequence of
24 preparing and signing a false claim for a \$7 million refund on
25 behalf of a well-known celebrity.

1 Douglas Rosile joined forces with Eddie Kahn and used
2 his experience as an accountant to help Eddie Kahn perpetuate
3 this so-called 861 argument, a tax fraud scheme. He prepared
4 fraudulent returns for hundreds of customers throughout the
5 United States, including Wesley Snipes. The evidence at trial
6 and as set forth in the presentence report shows that
7 defendant Rosile personally profited from this scheme.

8 Now, counsel argues that defendant Rosile is unlikely
9 to reoffend. But as the evidence at trial showed and as the
10 presentence report reflects, defendant Rosile has a long
11 history of defying both the IRS and courts.

12 And so like Eddie Kahn, defendant Rosile is an
13 inveterate tax defier, and it really remains to be seen
14 whether he will stop promoting tax fraud.

15 Although he is less culpable than Eddie Kahn, who was
16 the leader of American Rights Litigators, he nonetheless is
17 responsible for an intended tax loss to the government of more
18 than \$10 million for the hundreds of fraudulent returns that
19 he prepared for ARL customers.

20 Your Honor, we would respectfully submit based on
21 that a guidelines sentence of 63 to 78 months is appropriate.
22 I do note that the 10 million to \$11 million loss as set forth
23 in the presentence report would place him in the low to mid
24 range of the 7- to \$20 million of conduct taken into account
25 under the guidelines as the Court has found, so perhaps a

1 sentence at the low to midpoint of that range would be
2 appropriate.

3 Turning now to defendant Snipes, Your Honor, defense
4 counsel argued that the Court should not sentence the
5 defendant to prison because it would be somehow improper to
6 send a message to the public. Well, the law, both the
7 sentencing statute at issue here, 3553, and the case law
8 clearly recognize general deterrence and promoting respect for
9 the law as one of the factors that the Court is to take into
10 account at every sentencing and, in fact, that it is
11 especially a chief concern in tax cases such as this.
12 Mr. Hochman will address that issue in more depth.

13 There was a great deal of discussion about this plea
14 offer that was made by defendant Snipes through his attorneys.
15 I won't belabor the point other than to make a couple of
16 observations. The plea offer that was made involved a plea to
17 one count, not three as the jury found him to be guilty of.

18 The plea offer was to an Alford plea, which would
19 mean that the defendant was not accepting responsibility for
20 his wrongful conduct.

21 The plea offer was conditioned on a stipulation that
22 the government agreed to a nonincarcerative which would have
23 undermined the guidelines and the statutory purposes of
24 sentencing.

25 And, in fact, it was clear from the totality of the

1 plea offer that the defendant wanted to portray himself as a
2 victim, a stance that he still takes at sentencing today.
3 This offer was totally unacceptable, but it was communicated
4 back to the defense that we would -- we would hear from them
5 if they had another offer to made. They never came back and
6 made another offer.

7 They argued somehow that the government put the
8 defendant in this position. As the Court has pointed out, the
9 government isn't on trial. The government didn't put Wesley
10 Snipes in this position; he did by committing these crimes.

11 Now, with regard to the issue of the \$5 million check
12 that was tendered, Your Honor, that was a grandstanding move.
13 I'm an Assistant United States Attorney. I work for the
14 Department of Justice. Everyone sitting at this table here
15 works for the Department of Justice.

16 None of us have any authority on behalf of the
17 Treasury to accept a \$5 million check tendered at a sentencing
18 hearing at the last minute by defense. But there is a
19 representative of the IRS who is here, and at the break Victor
20 Lessof, on behalf of the Treasury Department, accepted the
21 payment.

22 Your Honor, one of the character witnesses who was --

23 THE COURT: Excuse me, Mr. Morris. If the Treasury
24 Department has accepted payment of \$5 million from Mr. Snipes,
25 with what result or effect upon his outstanding tax liability,

1 | which is a matter of dispute apparently --

2 | MR. MORRIS: It is a matter of dispute, and it will
3 | continue to be a matter of dispute, I would imagine, for some
4 | time, Your Honor. It's essentially a down payment on his
5 | taxes. It is in no way a settlement of his taxes. It will be
6 | a fraction of what he owes.

7 | THE COURT: All right.

8 | MR. MORRIS: One of the character witnesses that came
9 | forward for defendant Snipes stated essentially that he -- in
10 | his view, Wesley Snipes helped protect America after the
11 | tragic events of September 11th.

12 | Well, Your Honor, one of the best ways that any
13 | citizen can help protect the United States is to pay their
14 | taxes so that the government has the funds to be able to pay
15 | agents of the FBI and the members of the military who, in
16 | fact, protect our country.

17 | Some of the witnesses talked about Mr. Snipes being a
18 | man of honor and integrity. A man of honor and integrity pays
19 | his taxes.

20 | Mr. Snipes, in addressing the Court, said that he was
21 | sorry for his mistakes and errors. He didn't say he was sorry
22 | for his crimes. He couldn't even bring himself in his
23 | allocution to say the word "taxes."

24 | He talked about being preyed upon by jackals and
25 | wolves. The defendant is still portraying himself as a victim

1 | to this Court. Your Honor, this is too little, too late.

2 | Since 1999, Wesley Snipes, individually and through
3 | his 100-percent-owned corporations, has earned tens of
4 | millions of dollars of income, yet despite clear warnings from
5 | his accountants and tax advisors and repeated warnings from
6 | the Internal Revenue Service, Wesley Snipes didn't file a
7 | single tax return and didn't pay a dime in taxes.

8 | And following this sentence, Wesley Snipes will have
9 | to pay his back taxes with penalties and interest, and the IRS
10 | will see to it that he does and stands ready to collect.

11 | But that consequence is independent from this
12 | proceeding. Indeed, Wesley Snipes would have faced that
13 | consequence even if the jury had acquitted him on all counts,
14 | but the jury didn't acquit him on all counts. They found him
15 | guilty of three criminal offenses. The jury found that Wesley
16 | Snipes was, in fact, a criminal.

17 | So Congress, through Section 7203, and the jury have
18 | authorized this Court to sentence him to up to three years in
19 | prison. Within the range of conduct that falls under Section
20 | 7203, the failure to file statute, Wesley Snipes' conduct
21 | falls at the far end of that spectrum. The tax loss caused to
22 | the government alone warrants the maximum sentence in this
23 | case.

24 | As the Court indicated before, defendant Kahn many
25 | years ago received the maximum sentence under exactly the same

1 counts, three counts of failure to file. I'm quite sure that
2 his tax liability was far less than defendant Snipes'.

3 Recently, Sherry Jackson Peel, another tax defier,
4 was sentenced by a court in the Northern District of Georgia
5 to the statutory maximum for four counts of violations of
6 7203; her tax loss, far less than defendant Snipes.

7 Now, the defense has argued at various different
8 points that this is not a serious offense. The jury's verdict
9 says otherwise. When you make millions of dollars in tax --
10 millions of dollars in income and you're told by respected tax
11 advisors and the IRS that you have to file your tax returns
12 and pay your taxes and you willfully refuse to do that, that's
13 a serious offense.

14 Every American knows you've got to file your taxes
15 and pay your taxes. To willfully not do so is a crime, and
16 that's what the jury found. And we ask that the Court honor
17 the jury's verdict.

18 Wesley Snipes is fully deserving of the maximum
19 punishment authorized by the jury -- three years in prison.

20 Thank you, Your Honor.

21 THE COURT: All right. Mr. Hochman?

22 MR. HOCHMAN: Thank you, Your Honor. I'll be brief.
23 I'll be dealing with the national significance of the
24 deterrence aspect of your sentence in this case, Your Honor.

25 Around 20 years ago, in a different courtroom in

1 New York, another celebrity tax defendant was tried and
2 convicted. That defendant, Leona Helmsley, uttered the famous
3 words, "Only the little people pay taxes."

4 Those words contained two essential misconceptions.
5 The first is that taxes are not for the rich, the powerful, or
6 the famous; and the second is that honest and law-abiding
7 taxpayers are somehow chumps for filing, adequately spending
8 the time to fill out their tax returns, filing those tax
9 returns, and paying their taxes.

10 The Court dealt with those misconceptions to promote
11 the respect for law, to promote deterrence, to promote just
12 punishment by sentencing Ms. Helmsley in that case to
13 imprisonment.

14 Tax defiers like Mr. Snipes, Mr. Kahn and Mr. Rosile
15 take non-compliance with the tax laws to its highest level,
16 the tax defier level.

17 Now, a tax defier, Your Honor, in some ways is not a
18 tax protester. A tax protester has a certain legitimate First
19 Amendment aspect to it. A tax defier is someone who engages
20 in conduct that challenges the fundamental underpinnings of
21 our self-assessment tax system, the entire system, Your Honor.
22 They reject the entire system.

23 To deal with tax defiers like Mr. Snipes, Mr. Kahn
24 and Mr. Rosile, the Tax Division of the United States
25 Department of Justice recently launched the National Tax

1 Defier Initiative to coordinate on a national level both civil
2 and criminal prosecution tools to go after these tax defiers
3 and this conduct. We view it that seriously, Your Honor. The
4 first sentence after the launch of this initiative is before
5 Your Honor. It's this sentence today.

6 Now, with respect to Mr. Snipes, Mr. Snipes casts
7 himself as a role model -- you heard it from his witnesses;
8 you read it in his letters -- a role model to his community,
9 to his family, to the military, to everyone. He wants people
10 to follow in his footsteps. He's prided himself in people
11 following in his footsteps.

12 However, sadly, Mr. Snipes is also a role model, as
13 he describes in one letter, a mighty oak for the tax defier
14 movement. And towards that end, that's where general
15 deterrence comes in, Your Honor, because this case gives this
16 Court the unique ability to send a message, to send a message
17 of deterrence, respect for the law, just punishment to all
18 those folks out there, both the honest taxpayers who are
19 spending the time to do it correctly, and the dishonest
20 taxpayers, the tax defiers who are looking to see whether or
21 not, quite honestly, they can get away with it, whether or not
22 they can do what Mr. Snipes did in this case. And let's just
23 briefly review what it was: eight to nine years of tax
24 defiance conduct, failing to file tax returns not just for the
25 counts of conviction, 1999 to 2001, but also 2001 to 2004.

1 And here's where it gets interesting. 2005, it was
2 never charged. 2006, it was never charged either. There's no
3 criminal indictment prohibiting Mr. Snipes from filing 2005
4 and 2006. And now he's on extension for 2007, but he hasn't
5 filed that return either.

6 What about the state returns, Your Honor? He was
7 obligated in every one of these years, 1999 to date -- to
8 2007, to file state income tax returns. Not one has been
9 filed. Not one penny has been paid. How about corporate and
10 trust returns also? He's been obligated to file these
11 returns. None of them have been filed. None of the tax has
12 been paid.

13 Mr. Snipes, before he engaged in ARL, put millions of
14 dollars overseas, Your Honor, so as not to pay tax on that and
15 used a variety of corporate shams and corporate structures to
16 hide that money.

17 So he failed to pay millions of dollars in taxes.
18 And, again, he's earned close to \$38 million in that time
19 period, and not a penny of tax nor a return was filed.

20 Moreover, in the missive that Your Honor read, that
21 manifesto, he threatened government employees, the people that
22 are basically doing their jobs to bring this tax prosecution
23 against him, and he's -- he threatened them with a collateral
24 risk if they continue in their efforts against him.

25 Interestingly, for the first time today, I am hearing

1 | that that manifesto went through Mr. Meachum's office. So to
2 | the extent that Mr. Snipes is looking for a greater guidance,
3 | he didn't even get it -- or didn't ask for it through -- from
4 | Mr. Meachum, his attorney, to not file that type of manifesto
5 | with the government.

6 | So at the end of the day, Your Honor, if the Court
7 | does not sentence Mr. Snipes to prison, the message is loud
8 | and clear to the entire tax defier community that you can do
9 | all these actions, fail to file all these returns, submit
10 | enormous frivolous documentation to the government and not pay
11 | a lick of taxes and get probation, get home detention, not go
12 | to jail.

13 | And that's the type of message, Your Honor, that
14 | the -- that the Section 3553(a) asks you to consider under
15 | Section B. We would ask you to consider it and to sentence
16 | Mr. Snipes to three years in jail.

17 | Thank you.

18 | MR. MEACHUM: Your Honor?

19 | THE COURT: All right. Thank you all.

20 | MR. MEACHUM: Your Honor, are we allowed to do any
21 | rebuttal on that or --

22 | THE COURT: I think I've heard all the arguments that
23 | can be made without repetition, Mr. Meachum.

24 | MR. MEACHUM: Can I at least correct one that I think
25 | directly impinges upon my efforts? I think what Mr. Hochman

1 | said is that a manifesto came through my office, through my --
2 | as if I generated it.

3 | And I think what I told the Court is that, in
4 | addition to it being sent here, it was sent by someone to my
5 | office, and I think that's a distinct difference, Your Honor.

6 | THE COURT: All right.

7 | MR. MEACHUM: It wasn't generated by my office.

8 | THE COURT: The record will so reflect.

9 | MR. MEACHUM: Thank you, Your Honor.

10 | THE COURT: It was remarked earlier, perhaps in not
11 | just these words, the formulation and imposition of sentences
12 | in criminal cases is not an easy job. It's a difficult
13 | undertaking.

14 | As a matter of fact, on the wall to my right hangs a
15 | portrait of one of my colleagues, who is long since deceased,
16 | Charles R. Scott. Judge Scott was a seasoned judge when I was
17 | appointed. And I happened to pay a call on him and express
18 | some frustration with the sentencing process and how
19 | subjective it was and how it was so hard to know what the
20 | right thing to do was in some cases.

21 | And I asked him if it ever got any easier, and his
22 | answer was, "The day it gets easy is the day you should quit."
23 | And that's been my experience in the 30-odd years since we had
24 | that conversation. So it's not easy.

25 | On the other hand, experience and the law offers

1 | considerable guidance in doing what is just. It may not
2 | always seem right; it may not always seem fair, but hopefully
3 | it's just.

4 | Now, I will begin with the case of Mr. Kahn. I have
5 | determined insofar as the sentencing guidelines are concerned
6 | in the case of Mr. Kahn that his case is to be disposed of at
7 | offense level 36, criminal history two, which would produce a
8 | sentencing range far in excess of the statutory maximum in
9 | this case so that the statutory maximum of the two counts of
10 | which he stands convicted served consecutively would become
11 | the guideline sentence, namely, a sentence of 120 months, or
12 | ten years.

13 | DEFENDANT KAHN: I don't accept that also.

14 | THE COURT: Mr. Kahn, as the result of -- or has
15 | produced a result of must -- much mischief with respect to not
16 | only his own affairs but those of many other taxpayers, many
17 | of whom have been themselves prosecuted as a result of his
18 | activities.

19 | And it's not his first time through the system. He
20 | has been sentenced once before for failure to file. And,
21 | interestingly, on that occasion he was charged with three
22 | counts of failure to file, the three misdemeanor offenses of
23 | which he was convicted. And the Court imposed, before the
24 | effective date of the Sentencing Reform Act of 1984,
25 | consecutive one-year sentences for a total of three years,

1 | which places him now in criminal history category two, which
2 | is what drives the severity of his sentence.

3 | In the case of Mr. Rosile, I have determined that,
4 | insofar as the guidelines are concerned, his case is to be
5 | disposed of at offense level 26, criminal history
6 | category one, with respect to which the guidelines would
7 | prescribe a term of commitment of from 63 to 78 months.

8 | It does seem to me in his case, however, as pointed
9 | out by Mr. Wilson, given his history, the loss of his license
10 | as a Certified Public Accountant, the time that has now passed
11 | since his active involvement in the conspiracy of which he
12 | stands convicted and his participation in the affairs of that
13 | conspiracy, that some leniency in his case as a first offender
14 | convicted of two felony offenses might be justified.

15 | Then there's the case of Mr. Snipes. Insofar as the
16 | guidelines are concerned in the way in which I have calculated
17 | the application of the applicable sentencing range by taking
18 | the tax loss suggested by his counsel, the applicable
19 | sentencing guideline range would be the one applicable to
20 | offense level 20, criminal history category one, which is a
21 | sentence of 33 to 41 months, spanning the maximum sentence
22 | prescribed by the law with respect to each count
23 | consecutively, or 36 months.

24 | Now, those are the sentences that would be suggested
25 | by the sentencing guidelines, but the sentencing guidelines

1 are no longer mandatory but are advisory. And the Court is
2 obliged in the end to fashion a sentence in the manner
3 prescribed by Section 3553 of Title 18 of the United States
4 Code. And in that process the statute guides and teaches that
5 the Court should first consider the nature and seriousness of
6 the offense.

7 Insofar as Mr. Kahn is concerned, the seriousness of
8 the offense is clearly represented in the gravity of the
9 sentence that the guidelines would suggest. And the same may
10 be said of Mr. Rosile, each of them having been convicted by
11 the jury of the felony offenses charged in Counts One and Two
12 of the Indictment.

13 Much has been argued here today about the seriousness
14 of the offenses of which Mr. Snipes has been convicted, and
15 emphasis has been placed on the fact that those three offenses
16 in his case are misdemeanors in the sense that each of the
17 three under the same statute are punishable by a maximum term
18 of one year's imprisonment.

19 Obviously in the scheme of things, a failure to file
20 conviction is not as serious as a conviction of a felony
21 offense, as in the case of Counts One and Two. Mr. Snipes was
22 found not guilty by the jury with respect to those offenses,
23 but that does not diminish, in my view, at least, the
24 seriousness of the offenses of which he was convicted. The
25 jury by its verdict has reduced his criminal exposure from

1 something on the order in terms of maximum terms 15 years to
2 three years. So the seriousness of the case has already been
3 dealt with in substantial measure by the way in which the jury
4 resolved it.

5 The failure to file offenses, nevertheless, as
6 misdemeanor offenses are serious crimes, in my view, because,
7 among other things, there is an element of mens rea or
8 willfulness or criminal intent as a necessary element of proof
9 with respect to the failure to file counts, which is not
10 common with respect to misdemeanor offenses generally.

11 Usually in the law one would find that misdemeanor
12 offenses address behavior that is called malum prohibitum,
13 things that the law prohibits but without necessity of proof
14 of criminal intent.

15 And as a consequence, offenses of that kind are
16 normally thought of as not as serious either factually or
17 legally as other misdemeanors and certainly other felonies.
18 Here, to my mind, these are serious crimes, albeit
19 misdemeanors.

20 The next thing that the Court is obliged to consider
21 under the statute is the history and prior record of the
22 accused. Mr. Snipes has no prior criminal history. On the
23 other hand, the evidence shows with respect to his obedience
24 to the tax laws of the United States a history of contempt
25 over a period of time.

1 This is not a conviction of one count for failure to
2 file or even two counts, but three counts of failure to file
3 and over a period of time that followed the years charged in
4 the three counts of conviction. And that's a troublesome fact
5 about this case to me in terms of measuring the sincerity of
6 the defendant's present expression of remorse.

7 And I was struck, as pointed out by Mr. Morris in his
8 comment upon Mr. Snipes' statement to the Court, that he never
9 once mentioned the word "tax" or "taxes," which is a little
10 troublesome as well.

11 In any event, the next item the Court is required to
12 consider is the fashioning of a sentence which is designed to
13 promote respect for the law, that is to say, to impose a
14 sentence that the public or the people of the United States
15 would regard as just in terms of the majesty and respect that
16 we should all have for the operation of our system, the rule
17 of law. And the reverse of that is to make sure that the
18 sentence is not one which invites derision or lack of respect
19 for the administration of criminal justice.

20 Then there's the matter of deterrence, which I think
21 is the most important factor in relation to tax cases in
22 general and this case in particular. Tax prosecutions, as I
23 think I may have said earlier in an order entered in this
24 case, are by their very nature selective.

25 There was a claim made here, as is sometimes made as

1 a defense in criminal prosecutions, that for one reason or
2 another the defendant has been singled out or the prosecution
3 is selective, which is always an argument, frankly, that's
4 curious to me because the very essence of the awesome power
5 and responsibility of one who is employed as a prosecutor is
6 to make selective prosecutions. The system could not possibly
7 accommodate the prosecution of everyone who is arrested and
8 initially charged with an offense. Someone has to make
9 discriminating choices in selecting those offenders who are
10 arrested for criminal conduct as to whether or not resources
11 will be devoted to their prosecution through the judicial
12 system.

13 In a very real sense, every case that the Court has
14 occasion to see in the form of an Indictment or an Information
15 is a selective prosecution, and that is particularly true, I
16 think, in my experience of observing the way the system works
17 in tax cases.

18 And there used to be -- and I'm sure still are --
19 some very restrictive regulations in the Department of Justice
20 upon the United States Attorneys even seeking Indictments in
21 tax cases. They have to be approved -- or used to be -- by
22 the head of the Criminal Division of the Department of Justice
23 precisely because they are selective in nature. And one of
24 the main purposes which drives the selective process in tax
25 cases is the deterrence that the prosecution will likely

1 achieve, especially if it's successful.

2 Now, in some instances -- and I think it's no doubt
3 true in this case -- that means that those of celebrity stand
4 at greater risk of being selected for prosecution if there is
5 evidence that they have violated the criminal provisions of
6 the Internal Revenue Code, and that's what's happened to
7 Mr. Snipes.

8 But there's nothing unusual about it, and neither is
9 there anything unlawful about it. It's the way the system
10 works, and it's one of the factors that the statute requires
11 the Court to consider in imposing sentence, one that will make
12 others think before they make a deliberate choice to not file
13 a tax return or pay the tax that is due.

14 And there are two types of deterrence. One is known
15 as general deterrence, which is the one I've been speaking
16 about, deterring the public generally on the one hand, and
17 specific deterrence on the other, which means to specifically
18 deter the individual defendant from recidivistic behavior of
19 the same nature in his or her future affairs. Here, it seems
20 to me that of the two, the issue in consideration of general
21 deterrence is far more important or significant than the
22 specific deterrence of these three defendants.

23 Then there's the matter of incapacitation, that is,
24 putting the defendant away so that he cannot because of his
25 detention continue with repetition of the same or similar

1 criminal behavior.

2 I do not believe that that factor has any significant
3 role to play in the fashioning of any of the sentences imposed
4 in this case except possibly with respect to Mr. Kahn.

5 Then there's the matter of the rehabilitation of the
6 defendant. I don't think that that factor has much of a
7 significant role to play in this case either.

8 And then there's the matter of parity, which is where
9 the consideration of the sentencing guidelines reenters the
10 sentencing regime under our present system in the wake of
11 recent Supreme Court decisions holding that the sentencing
12 guidelines are not mandatory but are advisory.

13 At the same time, the Court has held that the
14 guidelines should be considered, and the reason for that is
15 because the sentencing guidelines were designed, albeit
16 imperfectly, to achieve greater parity in the imposition of
17 criminal sanctions systemically throughout the United States.
18 As Ms. Hernandez said earlier, it's an imperfect world and an
19 imperfect system, and there will always be disparity in
20 sentencing under our system for the administration of criminal
21 justice, but the guidelines were at least designed to reduce
22 the instances of gross disparity in sentencing. And I think
23 that they have gone a long way in achieving that result,
24 although there's still some difference of opinion about that.

25 So having considered all of those sentencing factors,

1 | having taken into account the application of the sentencing
2 | guidelines to the case, having considered all of the facts and
3 | circumstances surrounding this case as disclosed at trial and
4 | during the course of this sentencing hearing today, the Court
5 | will now impose the following sentences.

6 | First, in the case of the United States against
7 | Mr. Kahn, it is the judgment and sentence of the Court that he
8 | should be and is hereby remanded to the custody of the Bureau
9 | of Prisons for commitment for a term of 120 months, or until
10 | otherwise discharged according to law.

11 | DEFENDANT KAHN: For the record, Your Honor, I don't
12 | accept that.

13 | THE COURT: You will not accept it, Mr. Kahn, but you
14 | will serve it.

15 | The term of commitment will be followed by a period
16 | of three years supervised release under the standing terms and
17 | conditions of such release normally imposed in this court with
18 | added special conditions that I will announce momentarily.

19 | The sentence is arrived at by a commitment term of
20 | 60 months as to each of Counts One and Two to be served
21 | consecutively to each other for an aggregate term of
22 | 120 months.

23 | In the case of the United States against Rosile, it
24 | is the judgment and sentence of the Court that he should be
25 | and is hereby remanded to the custody of the Bureau of Prisons

1 | for commitment for a term of 54 months, or until otherwise
2 | discharged according to law, to be followed by a term of three
3 | years supervised release under the standing terms and
4 | conditions of such release normally imposed in this court with
5 | added conditions to be articulated momentarily.

6 | The sentence is arrived at by imposing a sentence of
7 | 54 months as to each of the counts of conviction, Counts One
8 | and Two, to be served concurrently with each other.

9 | In the case of the United States against Snipes, it
10 | is the judgment and sentence of the Court that he should be
11 | and is hereby remanded to the custody of the Bureau of Prisons
12 | for commitment for a term of 36 months to be followed by a
13 | term of one year supervised release under the standing terms
14 | and conditions of such release -- stop right there.

15 | THE COURT SECURITY OFFICER: No one else is to leave
16 | this courtroom.

17 | THE COURT: The term of commitment is arrived at by
18 | the imposition of a sentence of 12 months as to each of the
19 | Counts Three, Four, and Five, to be served consecutively to
20 | each other.

21 | There will be a one-year term of supervised release
22 | following the term of commitment under the standing terms of
23 | supervised release normally imposed in this court with the
24 | added special condition applicable to each of the three
25 | defendants that he will be required to comply with all of the

1 applicable tax laws of the United States, that he work to
2 settle any outstanding federal tax obligations due and owing
3 to the United States, including any that may have incurred
4 during his term of commitment, that he be barred from
5 promoting any tax scheme the purpose of which is the evasion
6 of taxes due and owing to the United States, and that he
7 disclose on request to his supervising United States Probation
8 Officer any financial information or documentation that the
9 Probation Officer may request during the term of his
10 supervised release.

11 I will waive the imposition of a fine with respect to
12 each of the three defendants.

13 With regard to Mr. Snipes, inasmuch as his tax
14 liability has already been substantially reduced, or at least
15 reduced to the extent of \$5 million which has been paid to the
16 United States today, as I understand it, I will leave to the
17 civil process the determination of the tax and penalties to
18 which he may be obligated to the United States.

19 And I will defer the ascertainment and imposition of
20 the costs of prosecution with respect to the defendants and
21 refer that matter to the United States Magistrate Judge to
22 conduct such proceedings as he may deem necessary to the
23 making of a Report and Recommendation to the Court for the
24 entry of a supplemental judgment in due course with respect to
25 that matter.

1 I advise and caution each of the defendants that he
2 has ten days from today within which to file with the clerk a
3 notice of appeal if he wishes to seek appellate review of his
4 conviction and/or the sentence.

5 And I advise and counsel each of them that if he
6 lacks the funds with which to employ counsel and wishes to
7 apply for the appointment of counsel under the Criminal
8 Justice Act, he may do so under that act.

9 And in your case, Mr. Wilson, since you've already
10 been appointed -- and, Mr. Nielsen, I haven't recognized your
11 presence today. I do so now. You've been appointed standby
12 counsel for Mr. Kahn, and your appointment in that capacity as
13 well as that of Mr. Wilson will continue to advise and counsel
14 your respective clients concerning their rights of appeal.

15 Now, what does the government say about, with respect
16 to Mr. Snipes and Mr. Rosile, the deferment of execution of
17 the commitment component of the sentence?

18 MR. MORRIS: Your Honor, we would leave that to the
19 discretion of the Court.

20 THE COURT: Well, the statute, the Bail Reform Act,
21 18 U.S.C. Section 3143(b), requires with respect to release
22 pending appeal, if there is an appeal, that the defendant
23 demonstrate that he is not a risk of flight or a danger to the
24 community or to the public and that he has a substantial issue
25 to be argued on appeal which, if resolved in his favor, would

1 result in either reversal or a new trial.

2 MS. HERNANDEZ: Your Honor, we are asking for bail
3 not pending appeal but to be allowed to voluntary surrender.
4 And you don't have the second -- the component that Your Honor
5 just mentioned, a substantial issue, is not a component of a
6 self-surrender request.

7 So we are asking that the Court allow Mr. Snipes to
8 surrender to what I expect will be a camp rather than to be
9 detained today and be --

10 THE COURT: Do you have a request to make concerning
11 a recommendation to the Bureau of Prisons as to the designated
12 place of confinement?

13 MS. HERNANDEZ: We would like a place close to his
14 home. There are several. There's a camp at Otisville in
15 Westchester County, New York, or a -- there are several camps
16 in the area. If the Court will allow me, I will submit a
17 request in writing.

18 THE COURT: Well, I think it needs to be done now and
19 placed in the judgment, Ms. Hernandez.

20 MS. HERNANDEZ: Well, there are several, Your Honor.
21 There's Otisville in Westchester --

22 THE COURT: Well, let me do it this way: I will
23 recommend, Mr. Leanhart, that we put into the judgment that
24 the Court recommends to the Bureau of Prisons that it
25 designate as a place of confinement for Mr. Snipes a suitable

1 institution as near as possible to his home in --

2 MS. HERNANDEZ: New York.

3 THE COURT: -- New York.

4 MS. HERNANDEZ: In New Jersey. I'm sorry,
5 Your Honor.

6 THE COURT: New Jersey. All right.

7 And you can deal with the Bureau of Prisons in
8 attempting to carry that out. I realize that the point was
9 made in some of the papers, which I think is a legitimate
10 question, as to the security of Mr. Snipes because of his
11 celebrity as he enters the system. But that's left to the
12 Bureau of Prisons.

13 MS. HERNANDEZ: Well, it's something the Court could
14 have taken into account in reducing his sentence.

15 THE COURT: Well, it's something I'm taking into
16 account in my recommendation to the Bureau of Prisons, and I
17 will trust their competence to -- and their experience to see
18 to it.

19 And I will defer the execution of the sentence as to
20 Mr. Snipes until such time as he is notified by the
21 United States Marshal or the Bureau of Prisons as to where,
22 when, and to whom he should surrender himself for the
23 execution of the sentence -- of the commitment component of
24 the sentence.

25 MS. HERNANDEZ: Thank you, Your Honor.

1 MR. MORRIS: Your Honor, we would have no objection
2 to the same for Mr. Rosile.

3 I wanted to clarify my earlier response to the Court.
4 I interpreted the Court's question as to what our position was
5 after imposition of sentence but not pending appeal. Once the
6 matter of an appeal becomes an issue, the United States has --
7 has in its sentencing memoranda stated our position with
8 regard to bail pending appeal, and we would oppose bail
9 pending appeal.

10 THE COURT: We'll take that up if and when there's an
11 appeal, then, Mr. Morris.

12 MR. MORRIS: Thank you, Your Honor.

13 THE COURT: And I will make the same deferment with
14 respect to Mr. Rosile.

15 Mr. Kahn is in custody and will be remanded to
16 custody pending -- or for the execution of the sentence.

17 Do you have a request to make, Mr. Wilson, with
18 respect to the place of designation for Mr. Rosile?

19 MR. WILSON: Yes, Your Honor. Mr. Rosile and his
20 family reside in Venice. He's indicated that it's closest to
21 the Coleman facility and would respectfully request a
22 designation -- or a request for designation to the Coleman
23 facility.

24 THE COURT: I'll make that recommendation, but you
25 need to explain to Mr. Rosile, as perhaps you have already,

1 | that my recommendations with respect to Coleman have been
2 | disregarded as often as they have been followed.

3 | MR. WILSON: It has been done, Your Honor.

4 | THE COURT: Is there anything else that I need to
5 | take up in this case tonight?

6 | I'm reminded by the clerk that I have not mentioned
7 | the required or mandatory special assessments which will be
8 | included in the judgment as to each of the defendants, an
9 | aggregate of \$200 as to Mr. Kahn and Mr. Rosile respectively
10 | and an aggregate of \$75 as to Mr. Snipes.

11 | Is there anything else I need to take up, Mr. Morris,
12 | for the government?

13 | MR. MORRIS: No, Your Honor, other than I suppose
14 | asking whether there's any objections to the sentence as
15 | imposed.

16 | THE COURT: Do you have any?

17 | MR. MORRIS: We do not.

18 | THE COURT: Any objections?

19 | MS. HERNANDEZ: Yes, sir. We reassert all of our
20 | previous motions.

21 | THE COURT: All right. The record will so reflect,
22 | and it may also reflect any objections made by the other
23 | defendants.

24 | MS. HERNANDEZ: Your Honor, specifically there were
25 | some statements made by the prosecutor, the Department of

1 Justice Tax Division, about Mr. Snipes' conduct with respect
2 to income overseas. We object to the assertions that he hid
3 funds overseas and all of that -- all those allegations which
4 were not presented at the sentencing hearing.

5 And to the extent that Mr. Snipes is getting a
6 three-year sentence because he happens to be Mr. Snipes --

7 THE COURT: Just a minute, Ms. Hernandez. Mr. Snipes
8 is getting a sentence because he happens to be a defendant who
9 stood before the Court, had a full and fair sentencing hearing
10 and a fair and just sentence imposed.

11 Now, if you have any other remarks to make, I suggest
12 you give them careful consideration.

13 MS. HERNANDEZ: Your Honor, I -- I am just preserving
14 the issue. The Court, and certainly the government, asked
15 that the sentence reflect the component of deterrence, and the
16 government and the Court addressed the fact that in a tax case
17 and the fact that --

18 THE COURT: The record reflects exactly what I said
19 and what was said to me with respect to the formulation of the
20 sentence.

21 MS. HERNANDEZ: Correct. And all I am -- I am -- and
22 I thank --

23 THE COURT: You object to the consideration of the
24 factor of general deterrence?

25 MS. HERNANDEZ: No. I object to the -- to the extent

1 | that -- that much consideration -- to the extent that any
2 | consideration was given to the fact that Mr. Snipes happens to
3 | be a famous person, I object for the record, Your Honor. I
4 | thank the Court for your consideration for all the arguments.
5 | I'm just making an objection, a legal objection that I think,
6 | as I have just been --

7 | THE COURT: Then I think I'd better be clear, because
8 | you apparently did not understand what was said. What was
9 | said was that there is a high probability that Mr. Snipes was
10 | targeted for prosecution, at least in part, by his celebrity
11 | by the prosecution in attempting to achieve its objective of
12 | general deterrence.

13 | You did not hear me say that in fashioning a sentence
14 | that his celebrity played any role in the sentence that was
15 | imposed. Rather, the consideration of general deterrence, as
16 | with any tax case -- or any other case, for that matter -- it
17 | was taken into account.

18 | MS. HERNANDEZ: Your Honor, I'm just making the
19 | objection as I -- as I made it.

20 | THE COURT: Well, the objection, it seems to me, is
21 | inapposite, Ms. Hernandez. But nevertheless --

22 | MS. HERNANDEZ: Well, I don't want to waive any
23 | objections. We will be appealing. I'm -- I'm not being
24 | disrespectful to the Court. I'm just -- I'm just doing -- I
25 | am just complying with my professional responsibility. That's

1 all I'm doing, Your Honor.

2 THE COURT: Have you finished?

3 MS. HERNANDEZ: Yes, sir.

4 THE COURT: Thank you.

5 MS. HERNANDEZ: Thank you.

6 THE COURT: Court will be in recess.

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

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C E R T I F I C A T E

19 I hereby certify that the foregoing is an accurate
20 transcription of the proceedings in the above-entitled
21 matter.

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Dennis Miracle

Date

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