

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

January 24, 2008
Ocala, Florida

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

_____ /

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

Appearances of Counsel:

For the Government:

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

For Defendant Snipes:

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

1 Appearances of Counsel (continued):

2 For Defendant Kahn:

3 Mr. Michael William Nielsen, standby counsel

4 For Defendant Rosile:

5 Mr. David Anthony Wilson

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

P R O C E E D I N G S

(Jury present.)

THE COURT: Thank you. Be seated, everyone.

Good morning, members of the jury. When we recessed yesterday, Special Agent Anderson was testifying on direct examination by Mr. McLellan, and we will resume at that point this morning.

Mr. McLellan, you may continue.

MICHAEL ANDERSON,

having been previously sworn, testified as follows:

DIRECT EXAMINATION (cont'd)

BY MR. McLELLAN:

Q Good morning, Special Agent Anderson.

A Good morning.

Q Taking a look at Exhibit Number -- I'm sorry. Taking a look at Document Number 111, do you have that in front of you?

A Yes, sir.

Q What is that?

A It's an e-mail dated November 20th, 2002.

Q Okay. And is this derived from the computer records seized at American Rights Litigators/Guiding Light of God Ministries?

A Yes, sir.

Q Okay. And who is it from?

A It is from Steve from ARL, and his e-mail address is Steve

1 at Eddie Kahn, dot, com.

2 Q Okay. And to whom is -- or I'm sorry. What's the
3 subject?

4 A UCC.

5 Q And to whom is the e-mail addressed?

6 A Chinaka, c-h-i-n-a-k-a, at a-t-t-b-i, dot, com.

7 Q Do you recall -- taking a look at the documents we went
8 through yesterday that indicated some of the client
9 information for Mr. Snipes, do you recall an e-mail address
10 similar to that being listed for Mr. Snipes?

11 A Yes, sir.

12 MR. McLELLAN: The government offers document
13 previously marked Number 111 to be received into evidence,
14 Your Honor.

15 MR. BARNES: Objection on 803 grounds, Your Honor.

16 THE COURT: Madam Clerk, fetch the exhibit from the
17 witness, if you will.

18 Do you intend to follow this up or connect this up
19 with some response or some declaration by any of the
20 defendants in the case, Mr. McLellan?

21 MR. McLELLAN: I'm sorry, Your Honor? I didn't
22 follow the question.

23 THE COURT: Do you intend to connect this up with
24 some other exhibit or evidence attributable directly to any of
25 the defendants in the case?

1 MR. McLELLAN: Your Honor, this -- the recipient
2 e-mail address on this document, I believe, is --

3 THE COURT: Well, I understand that, but I don't
4 believe that's responsive to my question. Will there be other
5 evidence or other testimony about this document that is
6 attributable to any of the defendants?

7 MR. McLELLAN: Your Honor, there has been evidence
8 previously received that tends to --

9 THE COURT: I take it the answer to my question is
10 "no"?

11 MR. McLELLAN: If it is responsive, Your Honor, I
12 intend to, if it is received, to have the witness read the
13 e-mail.

14 THE COURT: Well, for the time being, I am inclined
15 to sustain the objection to it on the ground stated.

16 MR. McLELLAN: Well, Your Honor, I could educe a
17 couple of evidentiary rules that would tend to support its
18 admission.

19 THE COURT: Come to side-bar.

20 AT SIDE-BAR:

21 THE COURT: What are those rules, Mr. McLellan?

22 MR. McLELLAN: I believe it's a vicarious admission,
23 Your Honor, under 801(d)(2)(d), statement by a party's agent
24 or servant. There is evidence already been received by the
25 Court of somebody named Steve Hunter, who works at ARL.

1 Alternatively or in addition, this is admissible as
2 an 801(d)(2)(e), co-conspirator statement in furtherance of
3 the conspiracy. And, of course, the text of the e-mail refers
4 to this --

5 MR. MEACHUM: Sorry, Your Honor.

6 MR. McLELLAN: The text of the e-mail refers to the
7 UCC processing undertaken by American Rights Litigators. It's
8 already been shown by ample documentation and its involvement
9 of the Florida stamp copy. This has been identified by a
10 couple of other witnesses.

11 THE COURT: Well, there is discussion in here about
12 what the country has evolved into, et cetera, et cetera, which
13 seems to me to be perhaps more prejudicial than probative.

14 And I don't see that there is a great deal of
15 probative value in this to the government, or whether it falls
16 within 801(d)(2) or (d)(2)(e) either, unless you expect to
17 show that there is something that Mr. Snipes did with respect
18 to this, which would go to explain what he did or refrain from
19 doing, as the case may be.

20 MR. McLELLAN: Your Honor, this is Eddie Kahn's
21 employee soliciting for Mr. Snipes.

22 Withdraw it, Your Honor.

23 IN OPEN COURT:

24 THE COURT: Government Exhibit 111 is withdrawn.

25 You may proceed, Mr. McLellan.

1 BY MR. McLELLAN:

2 Q Special Agent Anderson, please take a look at document
3 marked 112.

4 A Yes, sir.

5 Q What is that?

6 A It's an Acrobat -- Adobe Acrobat PDF file.

7 Q And taking a look at the second page of that document,
8 what is the name of the entity on that page?

9 A Amen Ra Films.

10 Q And the name beneath that?

11 A Wesley T. Snipes.

12 Q Okay. Is this one of the files, copies of which were
13 seized in the execution of the warrant?

14 A Yes, sir.

15 Q And what is the caption on that document?

16 A On which page?

17 Q I'm sorry. The second page, over top of the names you
18 just read.

19 A "Power of attorney, Form 2848."

20 MR. McLELLAN: Your Honor, the government offers
21 Exhibit 112.

22 MR. BARNES: No objection, Your Honor.

23 THE COURT: It's received.

24 BY MR. McLELLAN:

25 Q Mr. Anderson, you said that this was, I believe, an

1 Acrobat file; is that correct?

2 A Yes, sir.

3 Q How are files of that type created?

4 A Generally, they are scanned in using a document scanner.

5 Q Okay. So taking a look at Exhibit Number 112, second

6 page, focusing on the top, is this a power of attorney for

7 Amen Ra Films and Wesley T. Snipes?

8 A Yes, sir.

9 Q Okay. And who is being given the power of attorney here?

10 A Starr & Company. Actually, I take that back. I'm sorry.

11 Ray P. Pope.

12 Q And in what tax matters is this power of attorney being

13 given?

14 A Income tax and civil penalty, Form 1120, for the years

15 1985 through 2002.

16 Q Okay. Flipping forward to the next page, who appears to

17 have signed this power of attorney?

18 A A Wesley T. Snipes.

19 Q And a couple of pages forward, there is a document

20 captioned "American Rights Litigators"?

21 A Yes, sir.

22 Q And what name is given on the name line?

23 A Wesley T. Snipes.

24 Q And -- in the middle of the page, and for what company?

25 A For Amen Ra Films, Inc.

1 Q Toward the bottom, does there appear an ARL annual POA
2 fee?

3 A Yes; of 200 dollars.

4 Q And who appears to have signed the document?

5 A Wesley T. Snipes, president.

6 Q Taking a look at Government's Exhibit Number 113 -- or I'm
7 sorry -- document previously marked 113.

8 A Yes, sir.

9 Q What is that?

10 A It's a word processing document done in Microsoft Word.

11 Q And did you check the date on this file?

12 A Yes, sir; January 14th, 2002.

13 Q And to whom is the document here addressed?

14 A Dear Doug.

15 Q And whose name is under the signature block on this
16 document?

17 A Eddie Kahn.

18 MR. McLELLAN: Government offers document previously
19 marked 113 to be received in evidence, Your Honor.

20 MR. BARNES: No objection, Your Honor.

21 THE COURT: It's received.

22 BY MR. McLELLAN:

23 Q Special Agent Anderson, please read the letter.

24 A "Dear Doug: Ed Wilkie just sent me a copy of the letter
25 that you had sent him, essentially stating that I am a

1 hypocritical Christian, that I have taken advantage of you and
2 won't pay you.

3 "I am hurt by these remarks. I talk to the Father every
4 day, asking Him for guidance in both my business and my
5 personal life. He has blessed me because of my desire to
6 follow His path.

7 "In regards to your allegations, the bottom line is this:
8 ARL has always paid you as agreed, and you have been paid for
9 Mr. Wilkie and everyone else that have sent in checks to date.
10 I told you many months before this incident occurred that all
11 checks would be made out to ARL, and three weeks after they
12 were deposited, you would get your share. That has always
13 happened.

14 If you did not like the agreement, all you would have to
15 do was say so. We simply would not have used you for this
16 work. We would have looked for another CPA or accountant that
17 would have appreciated the opportunity we were offering.

18 "Instead, you broke the agreement, with no prior notice to
19 ARL in a very underhanded way. That is not treating others as
20 you want to be treated, which is the law on which all of God's
21 laws are based.

22 As I told you before, when and if any more refund checks
23 come in for any returns that you have done for ARL clients,
24 they will be deposited, and three weeks later you will be
25 paid. If you have any problem with anything I have said, feel

1 free to give me a call." Signature block, "Eddie Kahn."

2 And postscript: "Since you have sent out letters
3 explaining your side of the situation, this e-mail will be
4 sent to all of those clients, as well, so they will know both
5 sides of the story."

6 Q Turning to Document 114, what is that document?

7 A This is an e-mail.

8 Q And what was the date of that e-mail?

9 A March 19th, 2002.

10 Q And just addressing the first part of the subject of this
11 e-mail before the hyphen in the middle.

12 MR. BARNES: Objection, Your Honor. I don't believe
13 this has been introduced yet. And to the degree that he
14 intends to introduce it, we object on 402, 403 and 803
15 grounds.

16 THE COURT: Let me see this exhibit a minute,
17 please.

18 What do you say to the objection to this exhibit,
19 Mr. McLellan?

20 MR. McLELLAN: The government intends to offer this
21 document subject to a proposed limiting instruction, Your
22 Honor, that it be considered only with respect to Mr. Kahn on
23 the question of notice.

24 THE COURT: Well, all right, I will reserve ruling
25 on it then, since it would be limited, in any event, to

1 Mr. Kahn. I suggest that you go ahead on your examination on
2 something else and we will revisit this.

3 I will reserve ruling on Government's Exhibit 114.

4 BY MR. McLELLAN:

5 Q Special Agent Anderson, do you have the e-mail?

6 A Yes, sir.

7 Q And to whom is this e-mail addressed?

8 A To a Wayne A. Paul, a Bryan Malatesta, and a Danny Trowe
9 (phonetic).

10 Q And to who is it cc'ed?

11 A To a Mr. Eddie Kahn.

12 Q Okay. And what's the subject of it?

13 MR. BARNES: Your Honor, I believe he is still
14 speaking about the same exhibit.

15 THE COURT: Your predicate has been established,
16 Mr. McLellan. The only objection I heard was on the basis of
17 Rule 402 and 403. It's limited to Mr. Kahn. I reserved
18 ruling, so I suggest you move onto something else and we come
19 back to this, if necessary.

20 MR. McLELLAN: This document would conclude my
21 examination of this witness, Your Honor.

22 THE COURT: Mr. Barnes, do you wish to
23 cross-examine?

24 MR. BARNES: Yes, Judge.

25 CROSS-EXAMINATION

1 BY MR. BARNES:

2 Q Good morning, Special Agent Anderson.

3 A Good morning.

4 MR. BARNES: Could we go to Government's Exhibit
5 107-1.

6 BY MR. BARNES:

7 Q Do you have that before you, Special Agent Anderson?

8 A Yes, sir.

9 Q Thank you. And this is the computer printout of
10 Mr. Snipes' ARL file that you found at the time of the search
11 warrant; correct?

12 A Yes.

13 MR. BARNES: Can we go to page two. Could we blow
14 up the -- where it says "Address One."

15 BY MR. BARNES:

16 Q What address was listed for Mr. Snipes' personal client
17 file?

18 A 235 West 48th Street, Number 36J.

19 Q And was the same address listed for the Amen Ra file?

20 A Yes, sir.

21 MR. BARNES: Could we go to the city and state.

22 BY MR. BARNES:

23 Q And what city and state were listed for his residential
24 address for the client file?

25 A New York, New York.

1 MR. BARNES: Could we go to page four, go up to the
2 home phone and home fax.

3 BY MR. BARNES:

4 Q What home phone number was listed for Mr. Snipes?

5 A (310)229-8905.

6 Q And what home fax number?

7 A (310)578-2225.

8 Q And the other numbers were for the Amen Ra account?

9 A Yes, sir. Home phone is the same for Mr. Snipes,
10 (310)229-8905, and the fax is (212)759-6556.

11 Q To your knowledge, are those area codes located in either
12 Los Angeles or New York?

13 A I'm not sure. I don't know what the area codes are in
14 those cities or states.

15 MR. BARNES: Can we go to Government's Exhibit
16 107-2.

17 MR. O'NEILL: It's not in.

18 MR. BARNES: Sorry. Government's Exhibit 108. Can
19 we blow up the address.

20 BY MR. BARNES:

21 Q And what address was listed there for Mr. Snipes?

22 A 235 West 48th Street, Apartment 36J, New York, New York,
23 10036.

24 Q When you were reviewing some of these documents of the ARL
25 search warrant files, did they appear to be prepared by other

1 people on behalf of the clients?

2 A Yes, sir.

3 MR. BARNES: Can we go to 109, page one, and blow up
4 the address section.

5 BY MR. BARNES:

6 Q And what address was listed there?

7 A That's the same address, 235 West 48th Street, Apartment
8 36J, New York, New York, 10036.

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

10 THE COURT: Mr. Wilson?

11 MR. WILSON: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. WILSON:

14 Q Good morning, sir.

15 A Good morning.

16 MR. WILSON: May I see Exhibit 113, please, ma'am.

17 BY MR. WILSON:

18 Q Sir, you testified regarding this document. You
19 identified it as a letter or e-mail to Doug; correct?

20 A Yes, sir.

21 Q Okay. And --

22 THE COURT: What exhibit is this now, Mr. Wilson?

23 MR. WILSON: This is 113, Your Honor.

24 BY MR. WILSON:

25 Q Were you able to identify anything with respect to this

1 particular document to show that it was ever sent out to the
2 intended recipient?

3 A Yes. It was actually an attachment to an e-mail.

4 Q Okay. And to whom was it sent, sir?

5 A I do not recall.

6 MR. WILSON: Could you scroll to the bottom of the
7 document, please.

8 BY MR. WILSON:

9 Q Sir, you see that there's a signature line there; correct?

10 A Yes.

11 Q Okay. And do you see a signature there?

12 A No signature; just the name underneath the signature line.

13 Q But -- okay. But no signature?

14 A Yes.

15 Q All right. And you have read the contents of this letter;
16 correct?

17 A Yes, sir.

18 Q And would it be fair to say that this letter indicates
19 that the author is acknowledging that there is a -- there's
20 problems with the individual to whom it's addressed, problems
21 in the relationship?

22 A Yes, sir.

23 Q Did you indicate that you were part of the search warrant
24 that entered the ARL or Guiding Light of God Ministries
25 premises?

1 A Yes, sir, I was on the premises.

2 Q And during your search -- did you actually take part in
3 the physical search of the premises?

4 A Yes.

5 Q And during your search of the premises, were you able to
6 identify and locate work stations that were assigned to
7 particular employees who worked there?

8 A Yes. We had an idea of where people were based on some
9 diagrams of the building that were --

10 Q Were you able to connect those particular workplaces to
11 particular individuals?

12 A Yes, approximately, because a lot of people share
13 computers, and we found that to happen here.

14 Q Okay. Did you find any particular work space assigned to
15 Doug Rosile?

16 A I do not recall.

17 MR. WILSON: Thank you.

18 No further questions, Your Honor.

19 THE COURT: Redirect, Mr. McLellan?

20 MR. McLELLAN: No redirect, Your Honor.

21 THE COURT: Thank you, Agent Anderson. You may step
22 down, sir.

23 THE WITNESS: Thank you.

24 THE COURT: Next witness, counsel.

25 MR. McLELLAN: The government called Shauna Henline.

1 *** SHAUNA HENLINE was sworn

2 by the Deputy Clerk. ***

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

5 THE WITNESS: Shauna Henline, H-e-n-l-i-n-e.

6 SHAUNA HENLINE,

7 having been sworn as a witness, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. McLELLAN:

10 Q Good morning, Ms. Henline.

11 A Good morning.

12 Q Where do you work?

13 A I work for the Internal Revenue Service in the frivolous
14 return program.

15 Q And what is your job title?

16 A I am the senior technical advisor for the frivolous return
17 program.

18 Q And where are you located physically for your office?

19 A That office is located in Ogden Utah.

20 Q Is that where the frivolous return program is currently
21 located?

22 A It is.

23 Q How long have you been with the IRS?

24 A Eighteen years.

25 Q And how long have you been with the frivolous return

1 program?

2 A Since November of 2000; so seven years, a little over
3 seven years.

4 Q Were you one of the original people working in the FRP?

5 A We -- once it was centralized in Ogden, yes.

6 Q Let me ask you this. Is the frivolous return program
7 commonly referred to as the FRP?

8 A It is.

9 Q You mentioned that the FRP had been centralized. Please
10 explain.

11 A Back in 2000, the IRS centralized the program, the
12 frivolous return program, so that there was one function that
13 was responding to frivolous filings, and that location was in
14 Ogden.

15 Q Okay. Now, where was the -- this function being
16 centralized from? Where was it -- you suggested it was
17 disbursed. Where was it before?

18 A There were units of technicians in all ten service
19 centers; or "campuses" is what we call them now. So there
20 were functions in each of those ten campuses that responded to
21 frivolous filings.

22 Q And what are these service centers, generally speaking?
23 What function do they serve?

24 A The service centers?

25 Q Yes.

1 A Well, they receive and process all returns, whether they
2 are frivolous or not. Is that what you mean?

3 Q You have --

4 A And there are other functions within each of the service
5 centers, such as compliance functions that audit returns and
6 collect on accounts, set up installment agreements, things
7 like that. So there are other functions. They assist people
8 with accounts, management.

9 So all of the service centers do have other functions.

10 Q If people want to mail in tax returns, is this where they
11 send them to?

12 A A submitting processing service center, yes.

13 Q Generally, what is the frivolous return program?

14 A The frivolous return program is meant to respond to
15 frivolous filings nationwide.

16 Q Okay. And what is the frivolous return program trying to
17 accomplish or what is its mission?

18 A We want to educate people. If they have filed something
19 frivolous, we advise them of that fact. We give them an
20 opportunity to re-send their filing. If it happens to be a
21 return or an amended return that would be subject to a
22 frivolous return penalty, we would give them the opportunity
23 to re-send that filing in order to avoid a frivolous return
24 penalty.

25 And we also assess the appropriate amount of tax.

1 Q Does your office in Ogden receive shipments of frivolous
2 documents that were sent into the IRS in different parts of
3 the country?

4 A Yes.

5 Q Just generally, please explain the path that these
6 documents take to get to the frivolous return program in
7 Ogden.

8 A Okay. When a frivolous filing is received, it's received
9 in what we call the submission processing areas. So when
10 somebody submits a document, it goes through a process. And
11 people in those functions, the submission processing areas,
12 are trained to recognize a frivolous filing and put the filing
13 in what we call a funny box.

14 And there is a frivolous return program coordinator in
15 each of the ten service centers who goes through that funny
16 box and culls out anything that is not actually frivolous and
17 sends the rest to Ogden.

18 Q Okay. You mentioned this term, "the funny box." Who are
19 the people who put documents into these funny boxes in the
20 first place? What would their jobs be or what would they be
21 trying to accomplish, and then end up having to put something
22 in a funny box?

23 A They could be anywhere. They could be people who are
24 opening mail. They could be a little further down the line,
25 where they are transcribing data into the computer system.

1 They could be people who are correcting errors.

2 So really anybody can put a document in the funny box.

3 Anybody who recognizes that it might be frivolous could put it
4 in the funny box.

5 Q Now, once someone has made this initial determination and
6 put a document into the funny box, are there people who
7 examine them after that?

8 A The frivolous return program coordinators, is that what
9 you mean?

10 Q I am asking are there such people.

11 A Yes.

12 Q And who are they?

13 A They are examination employees. So they are in the
14 function that audits returns, and there is one in each of the
15 ten service centers.

16 Q Okay. Is this a function for which these frivolous return
17 program coordinators receive training?

18 A It is.

19 Q Tell me about the training.

20 A We have created some training materials that are designed
21 to assist people, even at the most entry-level positions, in
22 recognizing a frivolous filing. So it describes those filings
23 and has examples of those filings.

24 And every year that training material is updated to
25 include any new issues that have emerged over the past year.

1 And so it includes both the current items that we are seeing
2 and past frivolous filings that we have received.

3 Q Okay. You have just described some training. Please
4 explain who gets that training.

5 A It is available to any IRS employee, but it's especially
6 critical that the people in the submission processing areas
7 get it. And the frivolous return program coordinators
8 oftentimes will attend that training so that they can offer
9 the same training to any function in their respective campus
10 or service center.

11 Q Okay. So these FRP coordinators in the service centers
12 that you mentioned, do they look at everything that has been
13 put into the funny boxes?

14 A They do.

15 Q And then what is their assignment with regard to -- you
16 know, once they look at a document?

17 A Their assignment is to pull out anything that is not
18 frivolous, and send anything that is frivolous to the
19 frivolous return program.

20 Q So once the FRP coordinators look at the materials that
21 are contained in the funny box, they still have a chance to
22 determine whether or not it's frivolous; is that correct?

23 A Yes.

24 Q And what happens if they determine that it is not
25 frivolous?

1 A They would just route it to or mail it to whatever
2 function needed to handle that type of filing.

3 Q Okay. So once a document has gotten through its initial
4 placement in a funny box, and then it's gotten through it's
5 second-level examination with the FRP coordinators, if it
6 still remains classified as frivolous, then what happens to
7 it?

8 A Then it comes to the frivolous return program, and it gets
9 date stamped and entered into our inventory database that's
10 called -- we call it "FRP master," and that stands for --
11 that's F-R-P master, and it stands for frivolous return
12 program, and it houses our inventory.

13 Q Okay. What's the purpose of it?

14 A To track and monitor the status of the work as it flows
15 through.

16 Q And what do you mean by "inventory"?

17 A It would include all returns, amended returns, claims, and
18 also just frivolous mail.

19 Q Okay. What kind of volume of documents are we talking
20 about here?

21 A Well, the mail is very voluminous. There is -- we receive
22 over 100,000 pieces of mail every year. Returns are more in
23 the neighborhood of -- returns and claims, I kind of include
24 all of them together -- 20- or 30,000 each year. But it has
25 been -- historically, it has been higher than that.

1 MR. WILSON: Objection; relevance to the volume that
2 they receive.

3 THE COURT: No, I am inclined to overrule that
4 objection.

5 You may continue your answer.

6 A (Continuing.) There have been times when it has been --
7 the volume of receipts has been much higher. And generally it
8 does range in that neighborhood, 20,000 to 30,000 returns, and
9 over 100,000 pieces of correspondence.

10 Q Now, how many teams of people do you have working on these
11 documents?

12 A We have three units that are comprised of 11 tax
13 technicians whose job it is to work this type of filing.

14 Q Okay. Now, you mention that the FRP master data system
15 that FRP operates tracks the inventory?

16 A Yes.

17 Q Who are the people who are making the data entries into
18 this system?

19 A Generally, those people are clerks, but sometimes tax
20 technicians also add information into that database.

21 Q Taking a -- you should have before you Government's
22 Exhibit Number 137-1.

23 A Yes.

24 Q What is that?

25 A That is a copy of the record that is contained in FRP

1 master.

2 Q And did you generate that record?

3 A I did.

4 Q And with reference to which taxpayer did you generate that
5 record?

6 A Wesley Snipes.

7 Q With what identifying number?

8 A [REDACTED].

9 Q Is that a Social Security number?

10 A It is.

11 Q Did you make that printout?

12 A I did.

13 Q So did you physically send it to the printer?

14 A Yes, I did.

15 Q What steps did you take to --

16 A I pulled the system up on my desktop, and researched to
17 locate the record, and then I printed it out.

18 Q Were you printing what was appearing on your computer
19 screen?

20 A Yes.

21 MR. McLELLAN: The government offers document marked
22 137-1 to be received into evidence, Your Honor.

23 MR. BARNES: No objection, Judge.

24 THE COURT: It's received.

25 Matter of fact, I saw that as previously received,

1 but, in any event, it is now in evidence.

2 Go ahead, Mr. McLellan.

3 BY MR. McLELLAN:

4 Q Taking a look at, I guess, the other item in that folder,
5 Document 137-2, what is that?

6 A That is a copy of the letter that was approved for use
7 starting in March of 2004.

8 Q Is there a code in Wesley Snipes' master record that shows
9 that this letter was sent to him?

10 A There is.

11 MR. McLELLAN: The government offers 137-2.

12 MR. BARNES: No objection, Judge.

13 THE COURT: It's received.

14 BY MR. McLELLAN:

15 Q Taking a look at -- I think it's probably at the top of
16 your pile, Government's Exhibit 126-4. I believe this has
17 been previously received.

18 THE COURT: 126-4, you say?

19 MR. McLELLAN: Yes, Your Honor.

20 THE COURT: Yes, it's in evidence.

21 MR. McLELLAN: Thank you, Your Honor.

22 BY MR. McLELLAN:

23 Q In the upper right-hand corner, what is the date of this
24 notice?

25 A October 29th, 2001.

1 Q And in the upper left-hand corner, who is the sender?

2 A The Department of the Treasury, Internal Revenue Service
3 in Chamblee, Georgia.

4 Q And to who is it addressed?

5 A Wesley Snipes in care of Milton H. Baxley, II.

6 Q Okay. And please read the caption on it and the first
7 couple of paragraphs.

8 A "Backup Withholding Notification."

9 Q And the next paragraph, please.

10 A "Our records show that you did not timely file the income
11 tax return reporting all of your income from interest,
12 dividends or patronage dividends you received for tax year
13 1999, or that you did not pay the tax penalty and interest you
14 owed on this income on time. We have written to you before
15 about this problem. You are now subject to backup
16 withholding."

17 Q Taking a look at Exhibit 127, if you look at the front of
18 it, was that document received at the FRP?

19 A 127, did you say?

20 Q Yes. Do you have that before you?

21 A Yes, it was.

22 Q Okay. And when was it received at the FRP?

23 A June 9th of 2004.

24 Q Okay. Please identify -- I'm sorry. What is the caption,
25 the name at the top of the document?

1 A "Letter of Demand."

2 Q Taking a look at the letterhead, who seems to be the
3 sender?

4 A Wesley Trent Snipes.

5 Q And taking a look at the signature line, who seems to be
6 the signator?

7 A Wesley Trent Snipes.

8 Q And, please, to whom is it addressed?

9 A To the area director, Internal Revenue Service, in Fresno,
10 California.

11 Q And please read the letter.

12 A "Dear Director: One, Wesley Trent Snipes, hereinafter
13 Requester, has documentation in the form of a published book
14 and an independent research paper that this Request wishes to
15 have made part of the permanent administrative records
16 identified by this Requester's Social Security account number
17 and name.

18 "The published book is for the purpose of education as it
19 relates to understanding the history of the Federal Reserve
20 and significant events in this great nation's history.

21 "Requester has enclosed: One, the book called High
22 Priests of Treason, the Federal Reserve, ISBN 0964712857,
23 Exhibit A; an investigation into the meaning of the term
24 'United States' by Alan Freeman, July 25th, 2000, Exhibit Two.

25 "Requester is demanding that the above-referenced book and

1 the independent research paper be made a part of the permanent
2 record, slash, administrative files that the Internal Revenue
3 Service are kept and maintained under this Requester's name
4 and Social Security number. Thank you, Wesley Trent Snipes,
5 Requester."

6 Q Okay. And taking a look at the next page of that mailing,
7 is this the book that's attached to it?

8 A It is.

9 Q Okay. And what's the title of it?

10 A "An Investigation into the Meaning of the Term," quote,
11 unquote, "'United States.'"

12 Q Okay. Let's take a look at the next page. I guess it's
13 the table of contents for this book.

14 A Yes.

15 Q Well, let me ask you this. Approximately how long is this
16 book?

17 A It looks like 71 pages.

18 Q Okay. And taking a look beneath the table of contents
19 there, there is an introduction and warning. Could you please
20 read that. I'm sorry. The first paragraph of that.

21 A "My primary objective in this investigation is to provide
22 a sketch of some of the meanings of the term," quote, unquote,
23 "'United States,' and scrutinize how the general
24 misinterpretation of this key term and others has led to the
25 incorrect deciphering of the Internal Revenue Code, which has

1 prompted most Americans to falsely believe that they have
2 always had some legal obligation to fill out a Form W-4, to
3 file a return, and to pay income tax. Although I do stray
4 from this point considerably in addressing tax and other
5 matters. But basic is defining the 'United States.'"

6 Q Is this what you would call frivolous correspondence?

7 A It is.

8 Q Do you think it properly came to the frivolous return
9 program?

10 A Yes, I do.

11 Q Why?

12 A It discusses things like not being a United States
13 resident or a citizen, discussions about being a taxpayer or a
14 non-taxpayer. It has -- it discusses being a person or an
15 individual. All of these things are known frivolous
16 arguments.

17 Q Directing your attention to -- in that table of contents
18 to Chapter 28, what does that say?

19 A "Conclusion and a Note on the 861 Argument."

20 Q Okay. Taking a look at Government's Exhibit 128-1 -- and
21 I guess in the same envelope you should have 128-1 and 128-2.

22 A Okay.

23 Q Were those received at the FRP?

24 A They were.

25 Q How do you know?

1 A There is a date stamp on each of them that states that it
2 was received in the FRP.

3 Q And on what date?

4 A June 16th, 2004.

5 Q Okay. Please read the caption on 128-1.

6 A "Filing Statement for Tax Year 1999 in Affidavit Form."

7 Q Okay. And to whom is this addressed?

8 A To the director of international operations, Internal
9 Revenue Service, the area director, Internal Revenue Service,
10 in Fresno, California.

11 Q And flipping forward to -- there is a signature page on
12 page seven, underneath there where it says "Statutory Notice."

13 A Uh-huh.

14 Q Who signs as the affiant, apparently?

15 A Wesley Snipes.

16 Q Now, taking a look at 128-2, is that substantially a
17 similar document, except for a different tax year?

18 A It is.

19 Q Okay. So which tax year is this one supposed to cover?

20 A The year 2000.

21 Q On the Exhibit 128-1, I guess, underneath the asterisk
22 paragraph, the first paragraph in regular font, it starts out
23 with: "One, Wesley Snipes." Could you please read that
24 paragraph and the following paragraph.

25 A "One, Wesley Snipes, being of sound mind and of the age of

1 majority, having firsthand knowledge of the facts and law
2 being addressed in this filing statement for the tax year 1999
3 in affidavit form, do hereby declare the following:

4 "This is a return for the year 1999, as one can at best
5 define at 26 USC Subsections 6103 and 6213(g) of the Internal
6 Revenue Code and 26 CFR Subsection 301.7216-1(b). This return
7 is filed in lieu of an Internal Revenue Service Form 1040
8 series and satisfies the requirements of IRC Section --
9 Subsection 6012.

10 "One has read the law and understands that all past
11 filings of Internal Revenue Service Form 1040 by Wesley Snipes
12 have been in error. One's past misunderstanding of the law
13 does not in any way reflect recognition on one's part of any
14 legal requirement or authorization to file Form 1040 and/or
15 1040A and/or 1040EZ and/or 1040SS.

16 "The assigned OMB number assigned to those forms
17 identifies the class of individual who is required to file
18 those form. One is not of that class of individual defined."

19 Q Okay. So we have here 128-1, which is this filing
20 statement for tax year 1999 in affidavit form, and we have
21 another one, filing statement for tax year 2000 in affidavit
22 form.

23 As far as the frivolous return program is concerned, are
24 these valid tax returns?

25 A No, they are not.

1 Q What do you look at to tell if it is a valid tax return?

2 A Well, it partly has to do with being able to process the
3 document. If a document such as this came into the Internal
4 Revenue Service, one of the first places it would go would be
5 to an area where they transcribe data into the computer. This
6 document has really no financial data to input to a computer.

7 But on top of that, it has a lot of frivolous rhetoric
8 attached that would render the document invalid, even if it
9 were processable.

10 Q Okay. Taking a look at Exhibit 1 --

11 MR. McLELLAN: Begging the Court's indulgence.

12 BY MR. McLELLAN:

13 Q Taking a look at Government's Exhibit 129-1, what is the
14 caption on that one?

15 A "Notice of Material Facts, Notice of Material Allegations,
16 Notice of Errors on the Record of Account Number 0 [REDACTED],
17 Demand for Corrections, Tax Year 2000."

18 Q Okay. Do there appear to be page numbers handwritten on
19 that document?

20 A Yes, there are.

21 Q And what's the highest page number you see on there?

22 A 263.

23 Q So there are at least -- are there at least 263 pages in
24 this document?

25 A Yes.

1 Q Could you look through it for a moment, please.

2 Taking a look at the first page of it, did this come into
3 the FRP?

4 A It did.

5 Q On what date?

6 A June 21, 2004.

7 Q And don't bother reading all the addresses, but please
8 read the persons to whom or offices to whom this document was
9 addressed.

10 A The Secretary of the Treasury, the Commissioner of the
11 Internal Revenue, TIGTA, which is the Treasury Inspector
12 General for Tax Administration, Bureau of Alcohol, Tobacco and
13 Firearms, and the area director in Fresno, California.

14 Q And who is it from?

15 A Wesley Snipes.

16 Q Do you think this document properly came into the
17 frivolous return program?

18 A Yes, I do.

19 Q Taking a look at Government's Exhibit 129-2, did that one
20 come into the FRP?

21 A Yes, it did.

22 Q On what date?

23 A June 29th, 2004.

24 Q Okay. So approximately how long after 129-1 came in did
25 129-2 come in?

1 A Eight days.

2 Q Are these apparently the same document, or are they
3 substantially similar?

4 A They are.

5 Q Do you have Exhibits 130-1 and 130-2 in front of you?

6 A Yes, I do.

7 Q Okay. Taking a look at 130-1, who appears to be the
8 sender of this?

9 A Wesley Snipes.

10 Q And who is it being sent to?

11 A The director of international operations and the area
12 director of the Fresno service center.

13 Q And underneath where it says "Dear Director," please read
14 the text of the letter.

15 A On -1 or -2?

16 Q I'm sorry. On Exhibit 130-1.

17 A "Filing statement for tax year 1999 in affidavit form
18 pursuant to 26 USC Subsection 6011, 6012, 6103, 6213(g) and
19 7203 was sent to you by USPS Certified Mail Receipt Number
20 700032260000511479500, signed for on May 28th, 2004.

21 "No response has been received from you. Your response
22 date expired 30 days ago on June 24, 2004. This is your
23 second notice to respond. Please respond within ten days from
24 receipt of this notice. Sincerely, Wesley Snipes."

25 Q Okay. Let's take a look back at the 129-1 -- or I'm

1 sorry -- 128-1.

2 A Okay.

3 Q Does this earlier document seem to be the document
4 being -- this filing statement for tax year 1999, does this
5 seem to be the document referred to in this -- at 130-1, this
6 dunning notice?

7 A Yes, it does.

8 Q What's the gist of this letter, this 130-1?

9 MR. BARNES: Objection, Your Honor, to the degree it
10 asks for 701 testimony.

11 THE COURT: I'm not sure I understand the basis of
12 that objection, but if you wish the witness to publish part of
13 the document, perhaps that's the way to proceed, Mr. McLellan,
14 rather than asking her to characterize it by describing the
15 gist.

16 MR. McLELLAN: Yes, Your Honor.

17 BY MR. McLELLAN:

18 Q Please read the last sentence of the letter.

19 A On 130-1?

20 Q Yes, please.

21 A "This is your second notice to respond. Please respond
22 within ten days from receipt of this notice. Sincerely,
23 Wesley Snipes."

24 Q Okay. And taking a look at 130-2, is this a similar one
25 for tax year 2000?

1 A It is.

2 Q Now, referring to Exhibits 130-3, 130-4, -5, and -6, let's
3 take a look at 130-3. What filing statement does this one
4 refer to?

5 A -3, did you say?

6 Q 130-3.

7 A 2001.

8 Q Okay. And taking a look at 130-4, which tax year does
9 this one refer to?

10 A 2001, as well.

11 Q And 130-5, which filing statement does this one refer to?

12 A 2002.

13 Q And 130-6, which filing statement does this one refer to?

14 A 2003.

15 Q Were these all sent in by Wesley Snipes?

16 A They were.

17 Q Taking a look at 131-1 and 131-2, at the top of 131-1, who
18 is the sender here?

19 A Wesley Trent Snipes.

20 Q And who are the addresses? Just the offices, the names.

21 A Secretary of the Treasury, Commissioner of Internal
22 Revenue, TIGTA again, Bureau of Alcohol, Tobacco and Firearms,
23 and the area director for Fresno service center.

24 Q And please read the text on that document under "Dear
25 Directors."

1 A "Notice of Material Facts, Notice of Material Allegations,
2 Notice of Errors on the Record of Account Number [REDACTED]
3 Demand for Corrections was sent to you via USPS Certified Mail
4 Receipt Number 70032260000511479531, signed for on May 28th,
5 2004.

6 "No response has been received from you 30 days. Your
7 response date expired on June 24th. This is your second
8 notice to respond. Please respond within ten days of receipt
9 of this notice."

10 Q Okay. And is Exhibit 131-2 substantially similar to this
11 one?

12 A It is.

13 Q Okay. Now, turning back to Exhibit 129-1, this Notice of
14 Material Facts, Material Allegations.

15 A Yes.

16 Q Okay. Comparing the title of 129-1 with this, the text in
17 this notice from Mr. Snipes, is it talking about the same
18 document, this Notice of Material Facts, Notice of Material
19 Allegations, Notice of Errors on the Record?

20 A Yes.

21 Q Okay. Taking a look at Exhibit 132-1, please, was that
22 received at the FRP?

23 A It was.

24 Q Okay. When?

25 A July 30th, 2004.

1 Q And please read the -- there's a line -- the first line at
2 the very top left corner.

3 A "Notice and Entry of Default."

4 Q I'm sorry; upper left-hand corner.

5 A I'm sorry?

6 Q The -- just the first line.

7 A "In rem: Notice of Default."

8 Q And whose name appears underneath that?

9 A Wesley Trent Snipes.

10 Q Okay. And taking a look underneath there, does that say
11 "Petitioner"?

12 A It does.

13 Q And against who?

14 A The Secretary of the Treasury, the Commissioner of
15 Internal Revenue Service, TIGTA, Bureau of Alcohol, Tobacco
16 and Firearms, and the area director of the Fresno service
17 center.

18 Q And please read the caption on this.

19 A "Notice and Entry of Default."

20 Q And the text beneath those addresses?

21 A "One, Wesley Trent Snipes, enters default against
22 Respondent for Respondent's failure to rebut Petitioner's
23 Notice of Material Facts, Notice of Material Allegations,
24 Notice of Errors on the Record of Account Number [REDACTED] 3
25 Demand for Corrections, filed on May 24th, 2004."

1 Q Okay. And taking a look at the second page, what's the --
2 what does the paragraph at the top of that page say?

3 A "Wherein Petitioner demanded a rebuttal by affidavit
4 within 30 days of receipt of the Notice of Material Facts,
5 Notice of Material Allegations, Notice of Errors on the Record
6 of Account Number [REDACTED] Demand for Correction."

7 Q And please read what -- the text and the dates beneath
8 that.

9 A "Respond notice sent on May 24th, 2004. Expired on
10 June 24th. Respondent failed to respond to second notice, ten
11 days. Second notice sent on June 26th, 2004."

12 Q And what does the paragraph beneath that say?

13 A "The Respondent has instituted no rebuttal by affidavit.
14 Therefore, the Respondent has acquiesced and is in statutory
15 default. This default notice shall evidence that Wesley Trent
16 Snipes is correct in his analysis of the rebuttal, slash,
17 decoding of the 2000 individual master file specific other tax
18 inquiries contained within the Notice of Material Facts,
19 Notice of Material Allegations, Notice of Errors on the Record
20 of Account Number [REDACTED] Demand for Corrections.

21 "By this entry of default notice, Respondent is estopped
22 from any further action against the natural-born, free
23 American man of God on the soil, Petitioner, and is without
24 judicial standing, as no controversy in law or material fact
25 between the two parties exists."

1 Q And who appears to have signed as "Petitioner"?

2 A Wesley Trent Snipes.

3 Q So that is 131 -- or I'm sorry -- 132-1. Taking a look at
4 131-2, what is that?

5 A It is -- what looks like basically the same thing.

6 Q Okay. And did that come into the FRP?

7 A Yes.

8 Q What does the caption on it say?

9 A "Notice and Entry of Default."

10 Q And moving onto 133-1, is that another notice and entry of
11 default?

12 A It is.

13 Q And taking a look at the upper left corner, who appears to
14 be the sender?

15 A Wesley Snipes.

16 Q Okay. And was he the petitioner in here?

17 A Yes.

18 Q Against whom?

19 A The director of international operations of the Internal
20 Revenue Service and the area director of the Fresno service
21 center.

22 Q Please, underneath where it says "Notice of Default" in
23 smaller letters, please read the second and third paragraphs
24 of that document.

25 A "One, Wesley Snipes, enters default against Respondent for

1 Respondent's failure to rebut Petitioner's filing statement
2 for tax year 1999 in affidavit form pursuant to 26 USC
3 Subsections 6011, 6012, 6103, 6213(g) and 7203, filed on May
4 24th, 2004, wherein Petitioner demanded a a rebuttal by
5 affidavit within 30 days of receipt of the filing statement
6 for tax year 1999 in affidavit form pursuant to 26 USC
7 Subsection 6011, 6012, 6103, 6213(g) and 7203."

8 Q Okay. Quickly taking a look at -- if we could just look
9 at it on the screen, 128-1, is this the filing statement
10 referred to in this entry of default?

11 A It looks like it, yes.

12 Q And taking a look at 133-2, is this another notice and
13 entry of default?

14 A It is.

15 Q And underneath where it says "Notice of Default," in the
16 second paragraph, what's the filing statement being referenced
17 here?

18 A For tax year 2000.

19 Q Okay. And, again, quickly looking at 128-2, is this the
20 filing statement being referenced in the notice of default?

21 A Yes.

22 Q Okay. What is 133-3?

23 A It looks like the same thing for tax year 2001.

24 Q Okay. How about 133-4?

25 A Same thing for 2001.

1 Q 133-5?

2 A The same thing for tax year 2002.

3 Q 133-6?

4 A The same thing for 2002.

5 Q 133-7?

6 A The same for 2003.

7 Q 133-8?

8 A And the same thing for tax year 2003.

9 Q In the course of your duties, have you seen anything to
10 indicate that there has been any default judgment entered
11 against the Internal Revenue Service in any court in the case
12 of Wesley Snipes?

13 A I have seen nothing.

14 Q Can you take a moment and take a look at your FRP master
15 record on Wesley Snipes. I think it's 137-1.

16 A Okay.

17 Q Okay. Taking a look at the fourth page, and looking at
18 the name at the top of the screen, what does it say there?

19 A Wesley Snipes.

20 Q And there is a column in the left-hand side listed there,
21 I guess it's called "letters." Do you see that?

22 A Uh-huh.

23 Q Now, next to the number "3175," there is a date. Do you
24 see that?

25 A I do.

1 Q What is the date?

2 A July 13th, 2004.

3 Q In directing your attention to the upper right-hand
4 corner, it says "soft letter" date. What is the date there?

5 A July 13th, 2004.

6 Q Does this record reflect the sending of a letter to Wesley
7 Snipes?

8 A Yes.

9 Q And how do you know that?

10 A The 3175 is a response letter that we issue. It responds
11 to frivolous correspondence.

12 Q And how does this record tell you that that letter was
13 sent?

14 A When one is sent, the technician enters a date, the date
15 the letter was sent in the field next to the appropriate
16 letter.

17 So in this case, it says "3175." That's a response to
18 frivolous correspondence. And there is a date there, meaning
19 that the technician sent the letter on that date.

20 Q Is a "soft letter" the same as a 3175 letter?

21 A Yes, it is.

22 Q Taking a look at the next couple of pages of your FRP
23 master data here, let's take a look at the next page here.
24 Just generally, what is recorded on here?

25 A Pretty much just mail that's been received in the

1 frivolous return program, various pieces of mail.

2 Q Let me direct your attention to the first entry on that
3 page. It has got an action date of 6/29/2004, and there is
4 some comments there. What does that say?

5 THE COURT: What exhibit is this now, Mr. McLellan?

6 MR. McLELLAN: It is Government's Exhibit 137-1,
7 Your Honor.

8 THE COURT: All right. Go ahead.

9 A Okay. It's a piece of mail that was received.

10 Q I'm asking you -- yes. And what does it say for comments?

11 A That means frivolous correspondence. Z freeze, that is
12 criminal investigation freeze. So it was forwarded to
13 criminal investigation.

14 Q Okay. So -- what's a Z freeze?

15 A It is a criminal investigation freeze.

16 Q I notice that the next entry has, in the comment field,
17 something similar. Was that also sent to criminal
18 investigation?

19 A Yes, it was.

20 Q Okay. Are these entries recording particular pieces of
21 mail, essentially, or documents that came into the FRP?

22 A Mail, yes.

23 Q So does each of these correspond to some document that was
24 sent by Mr. Snipes?

25 A Yes.

1 Q Okay. And for example, taking a look at the entry at
2 7/9/2004, do you see that?

3 A I do.

4 Q Just read those comments, please, and then I will ask a
5 question about them.

6 A "Frivolous arguments. No change in taxpayer position.
7 Frivolous mail destroyed."

8 Q Okay. Please explain that entry.

9 A It sounds like it was just a piece of mail that had said
10 the same thing that previous receipts had said, and,
11 subsequently, was put into the classified trash.

12 Q Okay. And I guess looking down the rest of this list, did
13 some of these other pieces of correspondence that came in end
14 up getting put into the classified trash?

15 A Yes, they did.

16 Q And taking a look at the next page, there are some more
17 entries. Now, it looks like some of these had a different
18 fate, though, taking a look on the second page at the third
19 entry down. What are the comments -- or what's the date of
20 that one?

21 A 7/29/2004.

22 Q And what comments?

23 A Frivolous correspondence; Z freeze; to CI.

24 Q So what happened to that document?

25 A It should have been sent to the criminal investigation

1 area.

2 Q And for 8/10/2004, what happened to that one?

3 A It looks like it was put in the classified trash.

4 Q Okay. And what about the one after that?

5 A That one was routed to criminal investigation.

6 Q So, generally, are these getting entered into your --
7 well, obviously, these are all being entered into your data.
8 What generally is happening to the correspondence when it
9 comes in? Where is it ending up?

10 A If there are no criminal investigation freezes, and
11 does -- the correspondence has no real legitimate requests,
12 such as a Freedom of Information Act request or an appeals
13 request, does not support a tax assessment or a penalty
14 assessment, it serves no purpose, so it is just routinely put
15 in the classified trash.

16 Q Okay. So this is your explanation for why some of this --
17 some of these documents ended up in the classified trash. But
18 some of these did not end up in the classified trash. Where
19 did they go?

20 A It looks like any that were not destroyed were sent to CI,
21 criminal investigation.

22 Q Okay. And we have got stacks of these documents here, do
23 we not?

24 A Yes.

25 Q Are these the documents that were sent to CI?

1 A Yes.

2 MR. McLELLAN: Begging the Court's indulgence.

3 Your Honor, the government would propose the morning
4 break at this point.

5 THE COURT: It is the middle of the morning, members
6 of the jury, so let's pause for our morning break.

7 (Short recess taken.)

8 (Jury present.)

9 THE COURT: Thank you. Be seated, please, members
10 of the jury.

11 All right, Mr. McLellan.

12 MR. McLELLAN: Thank you, Your Honor.

13 BY MR. McLELLAN:

14 Q. Ms. Henline, we've been looking at all these different
15 entries here having to do with mailings or filings or
16 documents sent in to the IRS by Wesley Snipes. These items,
17 if they are in this database, all arrived at the Frivolous
18 Return Program, did they not?

19 A. Yes.

20 Q. Were they all properly deemed frivolous?

21 A. Yes.

22 Q. Now, earlier we were talking about this thing called the
23 soft letter or the 3175 letter.

24 A. Uh-huh.

25 Q. Taking a look at Exhibit 137-2, in the upper right-hand

1 corner, is that a 3175 letter?

2 A. It is.

3 Q. And at what period did this letter that we have before us
4 here come into use?

5 A. It was approved for use in March of 2004.

6 Q. Okay. So taking a look at the date on 137-1, your screen
7 print from the FRP master data, what was the date of the --
8 recorded here for the sending of 3175?

9 A. July 13, 2004.

10 Q. Okay. On page -- actually -- well, let me -- let me ask
11 you this: If a tax technician who works in the Frivolous
12 Return Program wanted to send out one of these letters, how
13 would he or she do it?

14 A. These letters are generated systemically, so they go
15 through the computer and are generated through that. So they
16 have to input minimal information.

17 Q. So is what we have here an IRS form?

18 A. The 3175?

19 Q. Is the 3175 an IRS form?

20 A. Yes.

21 Q. Okay. I notice it has -- on the first page it has certain
22 text designated as A on the left-hand column, and then there's
23 text designated as B and text designated as C. Does the FRP
24 use any of these segments of text in its -- in its versions of
25 the 3175 letter?

1 A. No, the -- those are selective paragraphs for other
2 functions to use.

3 Q. Okay. So taking a look at the second page of that
4 document -- take a look at the text there -- is this what
5 Wesley Snipes was sent, according to your records?

6 A. Yes.

7 Q. Please read that text through to near the bottom of the
8 page where it says "general information." So just stop before
9 where it says "general information."

10 A. "We have determined that the arguments you raised are
11 frivolous and have no basis in law. Federal Courts have
12 consistently ruled against such arguments and impose
13 significant fines for taking such frivolous positions.

14 "You can obtain IRS Publication 2105, Why Do I Have to Pay
15 Taxes, from our Internet website at
16 www.irs.gov/pub/irs-pdf/p2105.pdf.

17 "We also refer you to a document entitled The Truth About
18 Frivolous Tax Arguments. It is also on our website at
19 www.irs.gov/pub/irs-utl/friv_tax.pdf.

20 "If you do not have Internet access, you can obtain copies
21 of these documents from your local IRS office.

22 "There are some people who encourage others to violate our
23 nation's tax laws by arguing that there is no legal
24 requirement for them to file income tax returns or pay income
25 taxes. These people base their arguments on legal statements

1 taken out of context and on frivolous arguments that have been
2 repeatedly rejected by Federal Courts.

3 "People who rely on this kind of information can
4 ultimately pay more in taxes, interest and penalties than they
5 would have paid simply by filing correct tax forms" -- "tax
6 returns." Excuse me.

7 "People who violate the tax laws also may be subject to
8 federal criminal prosecution and imprisonment. Information
9 about the IRS's criminal enforcement program is available on
10 the Internet at www.irs.gov. Once there, enter the IRS
11 keyword fraud.

12 "The IRS is working with the United States Department of
13 Justice and state taxing authorities to ensure that all
14 taxpayers pay their lawful share of taxes and to seek criminal
15 Indictments or civil enforcement actions against people who
16 promote or join in abusive and fraudulent tax schemes.

17 "The claims presented in your correspondence do not
18 relieve you from your legal responsibilities to file federal
19 tax returns and pay taxes. We urge you to honor these legal
20 duties.

21 "If you persist in sending frivolous correspondence, we
22 will not continue to respond to it. Our lack of response to
23 further correspondence does not in any way convey agreement or
24 acceptance of the arguments advanced.

25 "If you desire to comply with the tax law" -- excuse me --

1 "with the law concerning your tax liability, you are
2 encouraged to seek advice from a reputable tax practitioner or
3 attorney.

4 "This letter advises you of the legal requirements for
5 filing and paying federal individual income tax returns and
6 informs you of the potential consequences of the position you
7 have taken.

8 "Please observe that the Internal Revenue Code sections
9 listed below expressly authorize IRS employees that act on
10 behalf of the Secretary of the Treasury to, one, examine
11 taxpayer books, papers, records or other data which may be
12 relevant or material; two, issue summonses in order to gain
13 possession of records so that determinations can be made of
14 the tax liability or for ascertaining the correctness of any
15 return filed by that person; and, three, collect any such
16 tax" -- "any such liability."

17 Q. Okay. And beneath that do -- I won't ask you to read
18 them -- beneath that do -- do there follow various legal
19 citations?

20 A. Yes.

21 Q. What was the date this letter was sent to Mr. Snipes?

22 A. July 13, 2004.

23 Q. Directing your attention to Government's Exhibit Number
24 106...

25 (Pause.)

1 MR. McLELLAN: I'm sorry, Your Honor. We'll have to
2 conduct a search for 106.

3 (Pause.)

4 MR. MEACHUM: Your Honor, do you think this would be
5 a good time for an early lunch?

6 (Laughter.)

7 THE COURT: Well, not quite this early, Mr. Meachum.

8 MR. MEACHUM: Just trying, Your Honor, you know.

9 MR. McLELLAN: Your Honor, this document has been
10 received in evidence, so maybe we can work off the published
11 copy of it.

12 THE COURT: Of course.

13 BY MR. McLELLAN:

14 Q. Taking a look at the caption, who is this document from?

15 A. Wesley Snipes.

16 Q. And underneath -- in the upper left-hand corner where it
17 says "to," who's it to? Just the first upper left-hand
18 designee, please.

19 A. Internal Revenue Service, Mark Everson, Office of the
20 Commissioner, Office of Chief Counsel.

21 Q. That -- yeah, that -- thank you.

22 Okay. And where it says -- please take a look at where it
23 says "date and subject." When is this document dated?

24 A. December 4, 2006.

25 Q. And what is the subject?

1 A. Filing of amended return and tax statements.

2 Q. And what are the years in question?

3 A. 1997 and 1999 through 2005.

4 Q. Okay. And beneath that, can you make out what it says
5 next to SSN or TIN Number?

6 A. It has to be larger than that. I'm sorry.

7 (Pause.)

8 A. Okay. "None. Any such number you might have connected
9 with me does not belong to me and I never applied for it or
10 consented to lawfully use it."

11 Q. Okay. And taking a look at the next page, there is a
12 footer that runs along the bottom of the document. What's the
13 footer that runs along the bottom of the document? What is
14 the -- it says "amended."

15 A. "Amended returns and tax statement, years 1997 and 1999
16 through 2005."

17 Q. And this is page what?

18 A. Two of 29.

19 Q. Okay. And taking a look at the above, there's a list of
20 enclosures. What's sub enclosure 12?

21 A. "Reasonable belief about the income tax liability."

22 Q. Can we focus on 12, please?

23 A. I'm sorry. "How government defrauds you out of legitimate
24 deductions for the market value of your labor, Form"...

25 Q. Please carry on.

1 A. -- "form Number" -- can you make that bigger? 05.026.

2 Q. And what about sub enclosure Number 15?

3 A. "Non resident alien position."

4 Q. And there's a -- on the second -- please read what --
5 what's enclosed there as designated on the second-to-the-last
6 line and the last line of that list.

7 A. "Resignation of compelled Social Security trustee, legal
8 notice of change in citizenship slash domicile records, and
9 divorce from the United States."

10 Q. Have you had occasion to look through this document?

11 A. I've glanced through it, yes.

12 Q. Approximately how long is it?

13 A. It's around 600 pages.

14 Q. Let's take a look at Bates stamp WS-16361. Underneath
15 "introduction and purpose," what does the first sentence there
16 say?

17 A. "This correspondence constitutes my sincere attempt to"...

18 Q. Okay. Let's take a look -- let's focus on number one.

19 A. ..."respond as promptly as possible to the Internal
20 Revenue Service and DOJ's recent attempts to assert that I
21 have an obligation to file federal tax returns for the years
22 1999 through 2005."

23 Q. And number two, please?

24 A. "Correct inadvertent errors of fact and law arising from
25 the 1997 return allegedly filed in my name by third-party tax

1 professionals upon whom I relied in doing so by refiling for
2 that year."

3 Q. And number four?

4 A. "Thoroughly document the reasons for the decisions and
5 behaviors documented in any IRS administrative records to date
6 involving me and to thereby show that they arise from no ill
7 intent or malice or desire to evade any lawful requirement
8 but, instead, to document that the only party violating the
9 law at this point is the United States government in pursuing
10 me unjustly and unlawfully for the free exercise of my
11 constitutionally-protected rights."

12 Q. And number six, please.

13 A. "Remain in honor by providing admissible evidence under
14 penalty of perjury that there is no evidence to support the
15 conclusion that I am a person liable" -- "a person liable or
16 that you have any lawful authority to impose any kind of
17 criminal sanctions against relating to compliance."

18 Q. Okay. And down there underneath eight, there's a
19 paragraph that starts out "my question." Please read that.

20 A. "My question at this point is: Does the IRS help non
21 taxpayers, such as myself, in not complying with laws they are
22 clearly not subject to and thereby provide them equal
23 protection of the laws mandated by Section 1 of the Fourteenth
24 Amendment and 42 U.S.C. Subsection 1981?

25 "My experience to date says not, but maybe the IRS is

1 willing to at least acknowledge the existence of non taxpayers
2 instead of ignoring and prosecuting them and refusing to
3 acknowledge their existence as they have in my case to date."

4 Q. Please take a look at the words that follow after
5 "ignoring" and read those again.

6 A. "And persecuting them and refusing."

7 Q. Thank you.

8 Okay. Taking a look at the next page, the sentence that's
9 underneath the partial paragraph at the top, what does that
10 say?

11 A. "To this correspondence I have attached several enclosures
12 which"...

13 Q. All right. And there's a list there. Let's take a look
14 at number three.

15 A. ..."establish my status as a non taxpayer, a non resident
16 alien, not engaged in a trade or business as defined in 26
17 C.F.R. Subsection 1.871-1(b)(i) and not a United States
18 citizen under subsection" -- "U.S.C. subsection 1401. See
19 enclosure two and sub enclosure ten to enclosure two."

20 Q. All right. And taking a look at number four...

21 A. "Establish that I have no income, taxable income," paren
22 26 U.S.C. subsection 863. "Gross income," paren 26 U.S.C.
23 Subsection 61. "Income from sources within the United States
24 pursuant to 26 U.S.C. Subsection 871, or income effectively
25 connected with a trade or business pursuant to 26 U.S.C.

1 Subsection 7701(a)(26) and 26 U.S.C. Subsection 162. See
2 enclosure two."

3 Q. And please read number five.

4 A. "Establish that I have not waived my sovereign immunity
5 pursuant to 28 U.S.C. Subsection 1605(a)(2) by lawfully
6 conducting any kind of commerce within the legislative
7 jurisdiction of the federal government. Any evidence you have
8 in your possession that such an event has occurred is declared
9 to be false and is corrected with the enclosures attached
10 herein."

11 Q. And moving down to number eight, what does that say, at
12 the first paragraph of it?

13 A. "Establish that the IRS Form 1040 is absolutely the wrong
14 form for me to file and creates a false presumption that I am
15 a statutory United States person pursuant to 26 U.S.C.
16 Subsection 7701(a)(30) with a domicile in the District of
17 Columbia as a non resident alien not engaged in a trade or
18 business."

19 Q. And moving on to the next page, item nine at the top...

20 A. "Establish that any alleged taxes that might have been
21 withheld against me were withheld illegally and against my
22 will and to demand their immediate return. That return of
23 stolen funds cannot be called a refund because the IRC doesn't
24 address what to do with illegally withheld or stolen earnings,
25 nor does it call such funds refunds.

1 "If you disagree, please provide a regulation or statute
2 that identifies illegally withheld funds as a refund.

3 Therefore, if enclosure two indicates an amount owed by the
4 government to me, that amount is not a refund but a demand for
5 unlawfully withheld earnings."

6 Q. And moving down to item ten, please read the first full
7 paragraph there.

8 A. "Offer you an opportunity to refute the overwhelming
9 evidence out of the government's mouth that your position is
10 simply false, fraudulent and misrepresenting. The burden of
11 proof that you as a moving party asserting liability must meet
12 is clearly documented in enclosure three. I cannot and will
13 not cooperate with your enforcement efforts until all evidence
14 you are using to argue and to assert liability has been
15 provided to me in authenticated form."

16 Q. Okay. Please stop at that point and move on to item
17 number 11.

18 A. "Establish that your claim of liability and associated
19 illegal collection action is false, fraudulent and will result
20 in significant personal liability for you and your supervisor
21 for wrongful collection actions."

22 Q. Okay. Moving on to the next page, 10 of 29 of the
23 document, item number 14.

24 A. "To establish that this is not a meritless, ignorant or
25 malicious communication but the product of very serious,

1 careful and ongoing legal research by me and several others
2 for most of the past several years. It is certainly not my
3 intention to frustrate, delay or impede the lawful
4 administration of the Internal Revenue laws by the IRS or the
5 obligations of taxpayers or to take up any more of your time
6 than is absolutely necessary in resolving this issue.

7 "At the same time the errors and omissions and
8 misrepresentations in your previous correspondence and on your
9 website and your repeated failure to correct them after they
10 are politely brought to your attention have taught me that you
11 and the organization you work for are in need of serious
12 education about what the law says and the limits it places on
13 your authority. It is, therefore, the goal of this
14 correspondence to accomplish this result."

15 Q. And please read item 15.

16 A. "Provide a jury entertainment package that is part of my
17 IRS administrative record which will furnish ample evidentiary
18 protection in the event that you decide to violate the law by
19 pursuing me for any criminal provision within the Internal
20 Revenue Code."

21 Q. And please read 16.

22 A. "Provide court admissible evidence which rebuts the false
23 presumptions contained within any evidence in your possession,
24 such as the false Social Security Number which is not mine and
25 the name which is not my name."

1 Q. Okay. Moving to the bottom of the page, the last full
2 paragraph there, please read that.

3 A. "Warning: Pursuit of such a high-profile target will open
4 the door to your increased collateral risk resulting from the
5 exposure of substantive material issues in dispute and
6 governmental illegal activities contained in the
7 administrative record but hidden from the general public
8 and/or jury. I certainly don't believe this is in your best
9 interests and can be avoided."

10 Q. And moving to the next page, please start reading the text
11 at the top of the page and move down through the first four
12 paragraphs.

13 A. "I reserve the right to revise and extend this submission
14 after you receive it for an indefinite period. Should that
15 happen, this submission will be resent to you with all
16 exhibits in electronic form and any new information attached
17 in printed form.

18 "Whatever the case, thank you for taking the time to
19 educate me and help me comply with what the letter of the law
20 requires which has always been my sincere desire as a
21 patriotic, law-abiding responsible American like yourself who
22 is simply trying to lawfully disassociate with what I regard
23 as a corrupted, lawless, unaccountable oppressor of our
24 constitutionally-protected rights in fulfillment of my natural
25 and First Amendment right to disassociate."

1 Q. Please read the next paragraph.

2 A. "I have delivered this correspondence with a proof of
3 mailing and have cc'd many high-level government supervisors
4 and co-workers because personal experience in the past has
5 proven that the governments have a very bad and nasty habit of
6 ignoring important correspondence such as this.

7 "The higher-level supervisors who receive this letter are
8 receiving it because I want to request that they ensure that
9 everyone in your organization, including you personally,
10 respects and obeys the law which address and remedy these
11 issues which" -- I'm sorry -- "which supersedes agency policy
12 or procedures and is held personally responsible for a just
13 result. Results from your failure to address and remedy these
14 issues will constitute"...

15 Q. Okay. And let's skip over those and please just read the
16 last paragraph above the table there.

17 A. "Because it is likely, based on previous experience, that
18 correspondence will be ignored, below is an ongoing record of
19 the times and dates that was sent to you and ignored and,
20 therefore, defaulted to and admitted to be 100 percent
21 truthful and factual, everything in this correspondence
22 pursuant to Federal Rule of Civil Procedure 8(d) and the
23 principles of equitable estoppel.

24 "If you receive this correspondence multiple times, it is
25 probably because you have been ignoring it and are again being

1 demanded to accept the legal requirement to deal responsibly
2 and timely with the violations of law and procedure on your
3 part that give rise to" -- "that gave rise to this
4 correspondence, thereby demonstrating due respect for the rule
5 of law in this country. Your irresponsibility will become an
6 example that I will emulate, and I am entitled to equal
7 protection of the law, including equal protection of
8 irresponsibility under the law."

9 Q. Okay. And what's the caption on that table?

10 A. "Previous dates this correspondence was sent and ignored."

11 Q. Okay. Taking a look at the next page, what's the caption
12 at the top of that page?

13 A. "Past and planned reports to remedy this situation to
14 date."

15 Q. I'm sorry. Could you take a closer look at the caption
16 and read it again?

17 A. "Past and planned efforts to remedy this situation to
18 date."

19 Q. Please read the first paragraph.

20 THE COURT: Mr. McLellan, you might remember that
21 this document is in evidence and is available for the jury's
22 inspection and for the use of counsel during argument. Such
23 extended publication, I think, may be counterproductive to our
24 use of the jury's time.

25 MR. McLELLAN: Yes, Your Honor. I'll skip to more

1 limited portions of the document.

2 THE COURT: Okay. Go ahead.

3 BY MR. McLELLAN:

4 Q. Ms. Henline, please move along to the caption at
5 Paragraph 3 of that page.

6 A. "Serious defects in the criminal Indictment."

7 Q. What's the first sentence there?

8 A. "I allege that by indicting me for all of the acts they
9 allege the Department of Justice and the IRS are engaging in
10 criminal activities for the reasons set forth below."

11 Q. Okay. Moving along to Page 17, which is WS-16371, the
12 section designated as Number 4, what's the caption on that?

13 A. "Sincere apology about 1997 filing."

14 Q. Please read the paragraph beneath that caption.

15 A. "It has come to my attention that the government has
16 indicted the Social Security trust fund and trustee with all
17 the capital letters named for fraud in connection with a 1997
18 federal income tax return filed in the idemsonens"
19 (phonetic) -- I don't know what that word is -- "of my name.
20 This section shall explain the mens rea surrounding that event
21 in order to exonerate obvious misperceptions that I have
22 since" -- "that have since transpired. Below is a summary of
23 facts relating to that milestone event as I understand them."

24 Q. Please read items one and two.

25 MR. WILSON: Your Honor, I have an objection. I

1 believe that this may be raising a Bruton issue.

2 THE COURT: Well, given that objection,
3 Mr. McLellan, perhaps you can pass it over and I can hear
4 counsel at a time when the jury isn't kept waiting. Let's see
5 if we can move this along a bit.

6 MR. WILSON: And I would also ask that the exhibit
7 be taken down from the projection until we can discuss it,
8 Your Honor.

9 THE COURT: Well, who will cross-examine the witness
10 for Mr. Snipes?

11 MR. BARNES: I will, Your Honor.

12 THE COURT: Mr. Barnes, do you intend to go into
13 that aspect of this exhibit?

14 MR. BARNES: I do believe it raises the Bruton issue
15 that Mr. Wilson raises, Your Honor.

16 THE COURT: Well, what is the answer to my question?
17 Do you intend to explore that aspect of the exhibit on your
18 cross-examination of the witness?

19 MR. BARNES: Oh. My apologies. No, Your Honor.

20 THE COURT: All right. Well, let's pass it,
21 Mr. McLellan, and move on to something else until I can hear
22 from counsel at a time when the jury isn't kept waiting,
23 please.

24 MR. McLELLAN: Yes, Your Honor.

25 BY MR. McLELLAN:

1 Q. Moving along to WS-16380, what's the caption on that?

2 A. "Substitute for federal Form 1040NR, non taxpayer, non
3 filer."

4 Q. And in the upper right-hand corner, what are the years
5 there?

6 A. 1997, 1999 through 2005.

7 Q. Taking a look at the text on this page, please take a look
8 at the text on the next page, and the next page, and the next
9 page.

10 Okay. Who is the -- who is the submitter here?

11 A. Wesley Trent Snipes.

12 Q. Please read the rest of that designation.

13 A. Paren, "not Wesley Trent Snipes or vessel debtor."

14 Q. And what's the address beneath that?

15 A. "In care of office of Steward, 4712 Admiralty Way, Number
16 568, not a domicile."

17 Q. Okay. Moving forward to WS-16393, taking a look at the
18 top of that document, what is that?

19 Let me ask you this: What -- read the caption.

20 A. "United States income tax return for certain non resident
21 aliens with no dependents."

22 Q. And what's the form number in the upper left-hand corner?

23 A. It's a Form 10 -- 1040NREZ.

24 Q. And what is stamped in the middle of that form?

25 A. "Not liable."

1 Q. And taking a look at WS-16395, what is the caption there?

2 A. "The trade or business scam."

3 Q. In the lower right-hand corner there's a pagination
4 designation. What does it say about the pagination of this?

5 A. "One of 46."

6 Q. And flipping forward to WS-16410, what's the caption
7 there?

8 A. "Willful IRS deception in connection with a trade or
9 business."

10 Q. And what's the -- please read just the first sentence of
11 that first paragraph.

12 A. "It's pretty obvious that your public dis-servants in the
13 United States Congress and the IRS don't want you to know
14 about this trade or business scam because then they wouldn't
15 have any taxpayers left to terrorize, enslave, rape and
16 pillage if everyone knew what steps they" --

17 Q. Okay. That's -- that's enough for that one.

18 And then taking a look at WS-16376, if we could focus on
19 what appears to be a signature in the middle of that page...

20 A. Wesley Trent Snipes.

21 MR. McLELLAN: Begging the Court's indulgence?

22 (Pause.)

23 BY MR. McLELLAN:

24 Q. Ms. Henline, is this a frivolous document?

25 A. It is.

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

3 THE COURT: Mr. Barnes?

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

5 CROSS-EXAMINATION

6 BY MR. BARNES:

7 Q. Good morning, Agent Henline.

8 A. Good morning.

9 Q. So you read and reviewed all the various letters and
10 correspondence that was sent in either on behalf of Mr. Snipes
11 or by Mr. Snipes?

12 A. The more voluminous ones I didn't read word for word.

13 Q. Okay. So you would just sort of skim through those?

14 A. Yes.

15 Q. And is that common for people in the Frivolous Return
16 Program that, if they see it, they think it's frivolous, they
17 don't read all of it?

18 A. No, because they are not just looking for whether the
19 document is frivolous; they are also looking for legitimate
20 requests, such as appeals requests or Freedom of Information
21 Act requests. So they would read through it line by line.

22 Q. Would a request that the IRS identify which law made a
23 person liable for a particular tax -- would that fit within
24 the category of a legitimate request for the Frivolous Return
25 Program?

1 A. So the correspondence only says what law makes me liable
2 for tax; is that what you're asking?

3 Q. If it said that anywhere in the correspondence.

4 A. It would probably be looked at by the Frivolous Return
5 Program and at least -- you know, if there was a question, we
6 would seek a counsel opinion about whether it was frivolous or
7 not.

8 Q. Okay. And do you know if there was any counsel opinion
9 obtained for any of Mr. Snipes' correspondence that was sent
10 in?

11 A. Not specifically for his correspondence, but the -- at
12 least the documents that were filed as an affidavit --
13 affidavit filed in form of a -- or a tax form filed in
14 affidavit form.

15 Q. Okay.

16 A. For those we do have a counsel opinion that they are both
17 frivolous and invalid.

18 Q. Do you know if that counsel opinion was ever sent to
19 Mr. Snipes?

20 A. It would not have been.

21 Q. In the correspondence that you read and reviewed, did it
22 express some degree of confusion about the tax law, in your
23 understanding?

24 A. The correspondence that he submitted?

25 Q. Yes, ma'am.

1 A. Confusion on his part?

2 Q. Yes, ma'am.

3 A. It seemed more to me like they were -- he was trying to
4 convince me that -- or another IRS employee that his views
5 were correct and ours were not.

6 Q. Do occasions arise where an individual in the IRS disagree
7 about the meaning of tax law?

8 A. I'm sure there is, but that's why we have IRS counsel.

9 Q. Okay. And if there's a disagreement does sometimes -- you
10 mentioned appeals. How does the process work when there's a
11 disagreement between an individual and the IRS as to the
12 meaning of the tax law?

13 A. I really am not -- I don't have any expertise in the
14 appeals process. I just know that when they file an appeal,
15 then it's heard. And appeals is kind of considered a -- an
16 ancillary part of the IRS, so they are, kind of, not
17 prejudiced against one or the other.

18 Q. And is there a process after that where if the taxpayer
19 and the IRS still disagree, they can go to a court to resolve
20 their dispute?

21 A. Yes.

22 Q. Do you know if an appeal took place in Mr. Snipes' case?

23 A. I don't know.

24 Q. Do you know if Mr. Snipes ever went and had his dispute
25 resolved in a Federal Court?

1 A. I don't know.

2 Q. Were there a lot of questions in the various
3 correspondence that was sent?

4 A. It didn't seem to me like they were questions as much as
5 dissertations trying to convince us that his position was
6 correct and ours was not.

7 Q. And was the first piece of correspondence that came to the
8 Frivolous Return Program in February of 2002; is that -- do
9 you remember the timeline?

10 A. In February of 2002? I don't recall myself, and it's not
11 on this record that I can see. So, no, I don't recall.

12 MR. BARNES: Can we go to Government Exhibit 126-4?
13 Can we move down to the middle? To the -- to the top right,
14 the February stamp, middle right. And blow that portion up.

15 BY MR. BARNES:

16 Q. Do you have that document before you?

17 A. I do.

18 Q. And is there a stamp that says "February 5, 2002"?

19 A. Yes.

20 Q. And is that the Frivolous Return Program stamp?

21 A. It is.

22 Q. So, in fact, the correspondence began to be forwarded to
23 the Frivolous Return Program in February of 2002, correct?

24 A. Yes.

25 Q. On your -- is there -- but no letter -- you mentioned a

1 3175 letter, correct? No letter was sent to Mr. Snipes until
2 July 13, 2004?

3 A. Well, not according to our FRP master records. If it --
4 if it was not entered in there, I would have no knowledge of
5 it.

6 Q. Where is the actual letter from July of 2004 that got sent
7 to Mr. Snipes?

8 A. We don't keep -- they are generated systemically so we
9 don't keep a copy of that letter in the file. So it would
10 just go strictly to him, to his representative, if he had a
11 valid power of attorney on file.

12 Q. So if there was a power of attorney on file, the letter
13 would be sent to the power of attorney?

14 A. Yes.

15 Q. You mentioned classified trash. What is "classified
16 trash"?

17 A. Well, anything that has taxpayer information on it would
18 be considered classified. If we're going to throw it away or
19 destroy it, it's going to go in the classified trash. I don't
20 know what happens to it after it leaves the trash bin.

21 Q. How does it go into the trash? Is it shredded?

22 A. No, it's just in a --

23 Q. Just --

24 A. -- regular garbage can.

25 Q. Okay. And do you know how many of Mr. Snipes' documents

1 or letters that he submitted were put into classified trash?

2 A. I only know what's on the FRP master record.

3 Q. You mentioned a CI freeze.

4 A. Uh-huh.

5 Q. How does the CI freeze impact how the people in your
6 department do their particular jobs in terms of corresponding
7 with the taxpayer?

8 A. We would obtain permission to correspond with the taxpayer
9 if -- from Criminal Investigation before we proceeded.

10 Q. Okay. Do you know if that permission was obtained before
11 the July 2004 letter was apparently sent?

12 A. I have no personal knowledge of it, but the fact that it
13 was sent makes me confident that it was obtained.

14 Q. Okay. What about destroying documents sent in by a
15 taxpayer who is under criminal investigation; what is the
16 IRS's policy on that?

17 A. We generally -- once they are under criminal
18 investigation, as long as we can see that they are under
19 criminal investigation, we would forward any correspondence to
20 the Criminal Investigation function.

21 Q. So the person that was throwing these documents away was
22 violating IRS procedure and policy?

23 A. If they realized that there was a criminal investigation
24 freeze on there, then yes, they would be. But it's possible
25 that they -- you said just specifically if they did destroy it

1 and they realized there was a criminal investigation freeze?

2 Q. That is correct.

3 A. Yes, they would be.

4 Q. Do you know who it was that destroyed those documents?

5 A. No, I don't.

6 Q. So the entries don't say who is doing it when there's

7 entries in those --

8 A. There's a code that you can identify the person who did

9 it, but I just don't have each person's code memorized.

10 Q. Did you make any effort to find out who it was who did

11 those entries, who destroyed those documents?

12 A. I did not.

13 Q. Are you familiar with -- well, if someone is not liable

14 for a particular tax -- like, say, the wagering tax -- in

15 those instances then they are called non taxpayers, is that

16 correct?

17 A. The only reference to a non taxpayer that I know of is --

18 I really -- I don't have any knowledge of that, really. I

19 hear "non taxpayer." I see it in frivolous correspondence.

20 I've never heard of a non taxpayer referred to by any IRS

21 person.

22 Q. Okay. What about by President Bush?

23 A. I don't recall ever hearing that.

24 Q. Okay. These various correspondence you referred to came

25 in after the CI freeze was put on the file, correct?

1 A. I'm sorry. Can you repeat that?

2 Q. Yeah. I'll rephrase. The 2004 correspondence that you
3 were referencing from Mr. Snipes --

4 A. This?

5 Q. -- that occurred after he was placed under criminal
6 investigation --

7 A. I have --

8 Q. -- correct?

9 A. I have no idea when the criminal investigation freeze went
10 on.

11 Q. Okay. When does the CI freeze -- when is it recorded on
12 that log?

13 A. It is not. It's just put as a special instruction, and
14 there's no, like, date, effective such and such route all
15 frivolous -- or all frivolous mail or correspondence to CI.
16 It doesn't give a date; it just gives an instruction.

17 Q. When is the first date listed on there for routing all
18 documents to CI?

19 A. There is no date.

20 Q. No date.

21 What about the individual log? Is there any entry by any
22 particular date that lists that it's being forwarded to --
23 this would be Government Exhibit 137-1, I believe.

24 A. Okay. You want me to find the earliest date that we
25 routed something to CI?

1 Q. Yes, ma'am.

2 (Pause.)

3 A. It looks like the earliest date that I can see is -- was
4 received on June 1 of 2004.

5 Q. Okay.

6 MR. BARNES: Can we blow up the -- oh. The next
7 page. I'm sorry. Could we blow that up, like about the
8 middle?

9 BY MR. BARNES:

10 Q. Is there an entry by July 13, 2004?

11 A. As the date received?

12 Q. Yes. Under the "comments," is there a comment entry for
13 July 13, 2004?

14 A. Oh. Okay. Yes.

15 Q. And what is that comment?

16 A. There are two. One says, "Friv correspondence destroyed,
17 sent to Deanna Bone, has Z freeze on account."

18 Q. Is that also the same day that the letter -- the frivolous
19 response letter was purportedly -- is purported to have been
20 sent?

21 A. Yes.

22 Q. So the same person who was destroying documents was the
23 one who purported to send this letter to Mr. Snipes?

24 A. Well, that -- if you're talking about the one that I just
25 read that was -- the comments are 7-13 of 2004, although they

1 put "friv correspondence destroyed," they also said that they
2 sent it to Deanna Bone, who was at the time the liaison who
3 forwarded frivolous documents from the Frivolous Return
4 Program to CI, so I think she -- he or she neglected to take
5 part of that off. It does indicate to me that it was sent to
6 CI.

7 Q. Even though it says destroyed?

8 A. Yeah, because it also says that it was sent to
9 Deanna Bone.

10 Q. Is it possible that parts of the documents were sent to
11 Deanna Bone and parts of the documents were destroyed?

12 A. No. They would not separate them. If it comes in
13 together, it would stay together.

14 MR. BARNES: Can we go to Government Exhibit 126-4?

15 BY MR. BARNES:

16 Q. Are you familiar with computer-generated letters in the
17 IRS?

18 A. Somewhat.

19 Q. What do you know about them?

20 A. I know that certain -- for instance, if we were to assess
21 a frivolous return penalty against someone, the assessment
22 would automatically generate a bill to the taxpayer for the
23 amount of the frivolous return penalty.

24 Q. And that's some sort of computer entry system that's doing
25 that?

1 A. It's just by virtue of the fact that it was assessed. But
2 as far as -- as far as this backup withholding notice, I
3 really have no expertise in that --

4 Q. Okay.

5 A. -- area.

6 MR. BARNES: Can we scroll down to Page 4 -- or
7 WS-01498.

8 BY MR. BARNES:

9 Q. Does that have a date on it at the top left-hand corner?

10 A. A received date?

11 Q. Both a send date and then the received date.

12 A. It looks like it was sent on October 29, 2001, and
13 received in a collections area -- I have no idea where -- on
14 November 8, 2001.

15 Q. Okay. And is there a name at the top left-hand corner,
16 the name on the top of the letterhead?

17 A. Well, it's -- oh.

18 Q. Just at the top of the letterhead, there on the top.

19 A. Milton Baxley?

20 Q. Yes.

21 A. Yes, Milton H. Baxley, II.

22 Q. And is there a designation listed on the letterhead on the
23 right-hand corner?

24 A. "Lawyer."

25 MR. BARNES: Can we blow up the "re" section?

1 BY MR. BARNES:

2 Q. And who is this a letter concerning?

3 A. Wesley Snipes.

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

5 A. It is.

6 MR. BARNES: Can we go down to the beginning of the
7 letter? Start with -- blow up the -- well, that's okay.

8 BY MR. BARNES:

9 Q. Can you read the letter after "Dear Chief ACS"?

10 A. "I have power of attorney regarding federal tax matters
11 for Wesley T. Snipes. I have received your CP541 of 10-29-01
12 regarding my client."

13 Q. Keep going.

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

18 Q. And then is there an Internal Revenue Manual section
19 cited?

20 A. The Internal Revenue Manual at Section 1.2.1. -- is that
21 11.2?

22 Q. It is.

23 A. Policy statement P-11-23, approved 6-14-67 states in part.

24 Q. And what does that say, the ruling section?

25 A. "Rulings and determination letters in general. Rulings

1 and determination letters are issued to individuals and
2 organizations upon written request whenever appropriate in the
3 interest of wise and sound tax administration as to their
4 status for tax purposes and as to the tax effect of their acts
5 or transaction prior to their filing of returns or reports as
6 required by the revenue laws. Emphasis added."

7 MR. BARNES: And then the next paragraph, can we
8 highlight it? Thank you.

9 THE WITNESS: "According to the cited policy
10 statement, my client is not required to file any returns or
11 reports prior to the receipt of the determination of status
12 letter from the IRS as Wesley T. Snipes could not possibly
13 know what forms or returns, if any, would be applicable to him
14 until the determination is received.

15 "Therefore, I request that further correspondence
16 and collection activities cease until the IRS has issued its
17 determination of status letter for my client. Compliance with
18 policy statement P-11-23 will ensure due process for my
19 client."

20 BY MR. BARNES:

21 Q. Would a request like this be considered frivolous by the
22 IRS?

23 A. Very likely, yes.

24 MR. BARNES: Can we go to the next page, and the
25 next page, and the next page, and the next page? Can we blow

1 that up at the top?

2 BY MR. BARNES:

3 Q. Are you familiar with something called a "substitute for
4 return"?

5 A. I am.

6 Q. And what is that?

7 A. It is a document that is used to enable the Service to
8 assess tax when an actual return or a valid return has not
9 been filed.

10 Q. Okay. And does the -- does this appear to be one such --

11 MR. McLELLAN: Objection, Your Honor. This is
12 beyond the scope.

13 THE COURT: Well, I don't think so, Mr. McLellan.
14 I'll overrule that objection.

15 Go ahead, Mr. Barnes.

16 MR. McLELLAN: Your Honor, it also may not be in
17 evidence.

18 MS. AMBURGEY: It's not part of the exhibit.

19 MR. BARNES: Oh. It's not part of that exhibit?

20 Okay.

21 Actually, Your Honor, it might be a good time for a
22 lunch break.

23 THE COURT: All right. Members of the jury, it is
24 almost the lunch hour. Let's pause until 1:15 as usual for
25 lunch.

1 (The luncheon recess was taken.)

2 (Jury absent.)

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

4 MR. MEACHUM: Your Honor, before you bring in the
5 jurors, I think that there is a side-bar that we would like to
6 have with you concerning an issue that just arose over lunch.

7 THE COURT: All right. Well, wait just a minute,
8 Mr. Meachum.

9 Marshal Rivera, would you give us your report
10 concerning your conversation with Mr. Kahn today, please.

11 MARSHAL RIVERA: Yes, Your Honor. I went to see
12 Mr. Kahn this morning. I dropped off his transcripts and his
13 legal mail, and he said that he will not be participating in
14 the trial today.

15 THE COURT: All right. Thank you.

16 Yes, Mr. Meachum.

17 MR. MEACHUM: I mean, I think it's --

18 THE COURT: Is it necessary to have a side-bar in
19 the absence of the jury?

20 MR. MEACHUM: I really think so, Your Honor.

21 THE COURT: All right.

22 MR. MEACHUM: You know I like to get close to you,
23 anyway, so --

24 AT SIDE-BAR:

25 MR. MEACHUM: At around 12:15 today, and actually

1 earlier yesterday, an individual by the name of Aaron Abbas
2 (phonetic), who was the initial bondsman for Mr. Snipes,
3 expressed the desire to come and revoke his bond because
4 Mr. Bierman, who brought him in this case, was no longer in
5 the case.

6 And I said to him he has not violated any terms of
7 his bond; he has been out of the country three times; every
8 time he's gone out, that the United States government has
9 joined in with our petition to let him travel. He is in court
10 right now, traveling.

11 I think that that would cause some incredible
12 disruption, including another motion for severance, because we
13 want to save the marshals coming in to lock up Mr. Snipes.

14 And so what I wanted to do is to let the Court be
15 aware of that that may necessitate a motion to be entertained
16 either by you, or if you send him back to Mr. Jones,
17 Magistrate Jones.

18 Now, in anticipation of that, I have at least
19 contacted several of my classmates who are lawyers and judges
20 here in Florida, and they have several other bondsmen on
21 stand-by, if I should need that.

22 But I talked to Bobby -- I mean Mr. O'Neill, I
23 talked to -- and Scot, Mr. Morris -- I'm sorry for -- I'm not
24 disrespecting them, I just -- and told them that we needed to
25 at least talk to you about this and let you know that that was

1 an issue that had just arose.

2 THE COURT: Has any motion been filed by a bondsman
3 or anybody with respect to that?

4 MR. MEACHUM: No, sir. This was just a threatening
5 phone call this morning and this afternoon; well, yesterday
6 and this afternoon.

7 THE COURT: Okay. Well, I don't know that there is
8 very much I can do about it, except wait until somebody files
9 something.

10 MR. MEACHUM: Right. And there are no terms in that
11 agreement that have been breached.

12 THE COURT: Okay. Well, I don't -- you are not
13 suggesting there is anything that I can do to keep the
14 bondsman on the bond?

15 MR. MEACHUM: No, sir. I'm just, out of respect to
16 the Court, trying to make the Court aware of that issue that
17 may come up.

18 THE COURT: I appreciate that.

19 MR. MEACHUM: And I figured you would help me out,
20 since I'm an outsider. Thank you, Judge.

21 THE COURT: I will do whatever I can to help
22 anybody.

23 MR. MEACHUM: Thanks, Judge.

24 IN OPEN COURT:

25 THE COURT: All right. Seat the jury, please,

1 marshal.

2 Excuse me. Marshal, just a moment.

3 Since the jury is waiting -- be seated, please.

4 Mr. Wilson, you had raised an objection to the
5 publication of part of Government's Exhibit 106, I think it
6 is, which is already in evidence.

7 What is the difficulty with the exhibit? You said
8 it raised a Bruton issue, I believe.

9 MR. WILSON: Yes, Your Honor. In this particular
10 document, offered ostensibly by Mr. Snipes, there is a
11 representation, it appears, that -- specifically, it says
12 that, in Paragraph 2 -- this is on Bates Number WS16370, I
13 believe:

14 "At that time I did not have the legal skills, legal
15 expertise times skill or educational attainment necessary as a
16 working artist in order to effectively question or even
17 analyze the legalities and the recommendations of Eddie Kahn
18 or Douglas Rosile about the filing of that submission."

19 On the following page, there is an acknowledgement
20 that the filing may be illegal. To the extent that we have a
21 codefendant who, in essence, acknowledges taking a course of
22 action that he now believes or has reason to believe may be
23 illegal.

24 And to the extent that he indicates that he was
25 advised or counseled to do so by, among others, Mr. Rosile,

1 that, to me, reflects an issue, a Bruten issue.

2 I cannot cross-examine Mr. Snipes regarding this
3 statement. You know, the position that we have taken all
4 along is that Mr. Rosile never gave Mr. Snipes any advice
5 whatsoever, and this document seems to say otherwise.

6 And to the extent that it impugns or imputes any
7 possible criminal communication between Mr. Snipes and
8 Mr. Rosile, we would have to object to that as highly
9 prejudicial, and ask that -- for a severance at this point in
10 time based upon Bruten; or at the very least, some sort of
11 redaction to remove any reference to Mr. Rosile from this
12 document.

13 THE COURT: Who speaks to this for the government?

14 MR. McLELLAN: I do, Your Honor.

15 THE COURT: Mr. McLellan, what do you say to
16 counsel's objection?

17 MR. McLELLAN: Well, Your Honor, this exhibit was
18 originally offered into evidence by the defense, and it came
19 in without objection at the time. The government does not
20 believe that the statements educed by counsel fall within
21 Bruten. However, the government does not object to the
22 redaction of the names in the Subparagraph (2) that counsel
23 points to.

24 THE COURT: All right. Well, I think that's
25 probably the best solution. I am very dubious as to whether

1 Bruten would have any application under the circumstances,
2 especially given the intervening decision in Crawford, I think
3 it is, with respect to the scope of the confrontation clause.

4 But the solution is to simply redact the name, so
5 let that be done before it's published to the jury.

6 MR. McLELLAN: Yes, Your Honor.

7 MR. WILSON: Thank you, Your Honor.

8 THE COURT: All right. Seat the jury, please,
9 marshal.

10 (Jury present.)

11 THE COURT: Thank you. Be seated, members of the
12 jury, please. I apologize for having kept you waiting there
13 these last 15 minutes or so, but I have been discussing a
14 couple of matters here with counsel. And we are ready to
15 proceed now, I believe.

16 Mr. Barnes.

17 MR. BARNES: Yes. Thank you, Judge.

18 THE COURT: I believe you were cross-examining Agent
19 Henline. You may continue.

20 BY MR. BARNES:

21 Q Good afternoon.

22 A Good afternoon.

23 Q The people who make an assessment of whether a document is
24 frivolous or not, are they attorneys?

25 A Attorneys give us the opinions about whether items are

1 frivolous in nature. But, you know, then if subsequent
2 filings that are similar to those, then they would be
3 classified by the frivolous return program technicians.

4 Q Is one of those standards that if a document cites case
5 law or has legal citations, that that document is usually
6 placed in the funny box initially?

7 A I don't think that would necessarily be grounds to put it
8 in the funny box, in and of itself.

9 Q Just by itself?

10 A Right.

11 MR. BARNES: Can we go to Government's Exhibit
12 126-1.

13 BY MR. BARNES:

14 Q Does this appear to be a letter from CPA Malatesta to the
15 Internal Revenue Service?

16 A Yes, it does.

17 Q And what date is listed in the left-hand corner as the
18 date of the correspondence?

19 A June 29th, 2001.

20 MR. BARNES: Can you scroll down to where it says --

21 BY MR. BARNES:

22 Q And can you start reading where it says: "In that there
23 is a disagreement," start there.

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

1 to 26 CFR Subsection 601.105(b)(2) and IRS Publication No. 1,
2 26 CFR Subsection 601.105(b)(2) states:"

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

4 BY MR. BARNES:

5 Q Can you continue reading.

6 A "Office examination. Adjustments by examination division
7 at service center. If the taxpayer requests an interview to
8 discuss the proposed adjustments, the case is transferred to
9 the taxpayer's district office. If the taxpayer does not
10 agree to proposed adjustments, regular appellate procedures
11 apply."

12 Q Okay. Go to the next paragraph.

13 A "Before the appeals conference is held, there must be an
14 examination interview provided when requested as cited above.
15 IRS Publication No. 1 also affirms the right to this
16 interview. Regarding examination interviews, Publication No.
17 1 states."

18 Q Are you familiar with a division of the IRS called the
19 examination division?

20 A Yes.

21 Q Is that the division that conducts audits?

22 A Yes.

23 MR. BARNES: Can we scroll down to the last
24 paragraph.

25 MR. McLELLAN: Objection, Your Honor.

1 THE COURT: Yes, Mr. McLellan.

2 MR. McLELLAN: This is not an exhibit that was used
3 with this witness, and this is a course of inquiry that's
4 beyond the scope of direct.

5 THE COURT: Well, I am inclined to overrule those
6 objections. This is in evidence.

7 What's the exhibit number, Mr. Barnes?

8 MR. BARNES: 126-1, Your Honor.

9 THE COURT: Go ahead. I will overrule the
10 objection.

11 BY MR. BARNES:

12 Q Can you read that section, ma'am.

13 A "The older Publication No. 1 included a flow chart, copy
14 attached, showing that upon disagreement with the initial
15 findings of the IRS, the first step of due process is the
16 examination interview. In that the IRS has presumed my client
17 has a tax liability, I am requesting an examination interview
18 to investigate and determine whether or not there is a tax
19 liability. I ask that you respond to my request for an
20 examination interview within 30 days."

21 Q Would that document be considered frivolous by the IRS?

22 A Well, I would want to read the whole thing to determine.

23 Q So that you would want to read the attachments, as well?

24 A Yes.

25 Q Okay. Could we go to the next page.

1 A And, actually, because I can only read those little
2 snippets, you know --

3 Q Sure.

4 A -- if I could see it, I could tell better.

5 MR. BARNES: Okay. Go back to the last page and
6 scroll down.

7 BY MR. BARNES:

8 Q Do you want to read the "Before the Appeals Conference"
9 section, as well? Would that help you to determine whether or
10 not it would be considered frivolous?

11 A Part of my concern about this document being considered
12 frivolous has to do with the fact that I can only read this
13 paragraph-by-paragraph. I want to see it so I can comprehend
14 it better.

15 But I will say that that little box at the bottom that
16 says: "You are hereby put on notice that the letter must be
17 filed as a permanent part of client's --"

18 MR. BARNES: If we could blow up that box for her.

19 A "-- client's IRS/TDA," that stamp is notably present on
20 many frivolous filings. So that, in and of itself, might
21 indicate that the filing is frivolous.

22 MR. BARNES: Okay. Could we go to Government's
23 Exhibit 126-2.

24 BY MR. BARNES:

25 Q Do you remember reading a backup withholding notice that

1 Attorney McLellan asked you about?

2 A Yes.

3 Q And do you remember that notice referencing not
4 receiving -- or reference prior correspondence concerning the
5 matter?

6 A Yes.

7 MR. BARNES: Can you scroll down to paragraph four.

8 BY MR. BARNES:

9 Q By the way, was this received at the frivolous return
10 program stamped? Do you see that top right, December 2001?

11 A Yes. Yes.

12 Q And can you read that paragraph for me.

13 A "If you think you are not required to file this return,
14 please explain why on the back of the tear-off stub at the
15 bottom of this letter and send it to us."

16 MR. BARNES: Okay. And can we go to the next-to-
17 the-last paragraph, before "thank you for your cooperation,"
18 under "important notice about backup withholding."

19 BY MR. BARNES:

20 Q There is a stamp over it, but can you read that paragraph?

21 A "If you do not respond to this notice, you may become
22 subject to backup withholding. This means that we may notify
23 your bank or other dividend and interest payers to withhold
24 30.5 percent of those payments. To avoid this action, please
25 respond to this notice promptly."

1 MR. BARNES: Can we go to the next page of this
2 exhibit, and the next page, and the next page. Can we
3 highlight the top half.

4 BY MR. BARNES:

5 Q Does this appear to be a letter from Attorney Baxley dated
6 October 1st, 2001 to the IRS?

7 A Yes.

8 Q And is this all part of this same file, because it is --
9 does it appear to be a response to the prior CP notice?

10 A That about backup withholding?

11 Q Yes.

12 A Yes, it does.

13 MR. BARNES: Can we go to Government's Exhibit
14 126-3.

15 BY MR. BARNES:

16 Q Does this appear to be another CP-540 notice?

17 A Yes.

18 MR. BARNES: And can we go to the next page. And
19 the next page, and the next page, and the next page, and the
20 next page.

21 BY MR. BARNES:

22 Q Does this appear to be a letter from Attorney Baxley dated
23 October 15th, 2001?

24 A Yes.

25 Q And is that also addressed to the chief of the ACS?

1 A Yes.

2 Q And the chief of the ACS is who issued the CP-540 notice?

3 A I don't know that.

4 MR. BARNES: Okay. Can we go to Government's

5 Exhibit 137-2.

6 BY MR. BARNES:

7 Q By the way, is -- this form letter, has it ever changed
8 over time since March of 2004?

9 A Since March of 2004, it has not, but it is currently being
10 revised right now.

11 Q Okay. And so this is the letter that you believe was sent
12 to Mr. Snipes by someone else in your office. Do I understand
13 that correctly?

14 A Yes. Yes.

15 Q And you don't have the actual letter sent to Mr. Snipes;
16 correct?

17 A No.

18 Q And is that why it has all of these entries, these sort of
19 like 30V, by the case number and stuff like that?

20 In other words, are there things in brackets where data
21 entries would be entered into?

22 A Yes.

23 MR. BARNES: Can we scroll down.

24 BY MR. BARNES:

25 Q So is this the letter sent -- this is the letter sent out

1 to any person who sends in anything that the IRS considers
2 frivolous; correct?

3 A Any correspondence, yes.

4 Q And this letter was not sent out until July 13th, 2004,
5 according to the records that you have?

6 A That's correct.

7 MR. BARNES: Can we go to the second page, and the
8 bottom of the second page. And the next page, and the bottom
9 of the next page.

10 BY MR. BARNES:

11 Q Are you familiar with something called a Privacy Act
12 Notice?

13 A Yes.

14 Q What is the Privacy Act Notice?

15 A Well, I don't know what it says specifically. I know that
16 we send it out with all of our letters.

17 Q Are you familiar that it uses the word "liable," and that
18 you have to file returns if you are liable?

19 A I don't recall what it says specifically.

20 MR. BARNES: Can we go to the next page.

21 BY MR. BARNES:

22 Q Is there a Privacy Act Statement at the bottom of the end
23 of this letter?

24 A Yes.

25 Q And could you please read the second paragraph.

1 A "We ask for information to carry out the Internal Revenue
2 laws of the United States and you are required to give us this
3 information. We may give the information to the Department of
4 Justice for civil or criminal litigation, other Federal
5 agencies, states, cities, and the District of Columbia for use
6 in administering their tax laws."

7 Q And I actually should have started -- can you also read
8 the first paragraph before that.

9 A "Under the Privacy Act of 1974, we must tell you that our
10 legal right to ask for information is Internal Revenue Code
11 Section 6001, 6011, 6012(a) and their regulations. They say
12 that you must furnish us with records or statements for any
13 tax for which you are liable, including the withholding of
14 taxes by your employer."

15 Q And how long have you been an employee of the IRS?

16 A Eighteen years.

17 Q In that 18 years, have you ever had -- have you ever read
18 the entire Internal Revenue Code?

19 A No.

20 Q How about all those regulations?

21 A No.

22 MR. BARNES: Can we go to Government's Exhibit
23 129-1. Can we go to WS 15742. And can we go to the bottom.

24 BY MR. BARNES:

25 Q Are you familiar with the IMF for taxpayers?

1 A Yes.

2 Q What is that?

3 A The individual master file.

4 Q And are you familiar with the designation known as the MFR
5 code?

6 A Mail filing requirement; somewhat, uh-huh.

7 Q If somebody asked about their mail filing requirement,
8 would that be considered a frivolous document by the IRS?

9 A Not in and of itself, no.

10 Q Okay. Can you read the -- highlight the last paragraph.
11 Could you please read that.

12 A "Requester is not aware of any tax liability associated
13 with Requester's name and account number. Again, please
14 inform Requester of the specific type of tax this Requester is
15 liable for and the correct form that Requester is required to
16 file.

17 "In addition, please include a copy of the specific
18 statutes and implementing rules and regulations that identify
19 the tax that the IRS wishes to collect from the Requester,
20 whether this tax is voluntary or mandatory, and that the IRS
21 has the --"

22 MR. BARNES: Can we go to the next page at the top.

23 BY MR. BARNES:

24 Q Can you read from there.

25 A I can't read that first -- "cost"? Is that what it says,

1 "cost"?

2 Q Oh, not the top, but where it starts "authority."

3 A "The authority to enforce the collection of this tax.

4 Upon receipt of the above documents, Requester is willing to

5 comply with any and all taxes that Requester has a legal,

6 lawful liability to pay."

7 MR. BARNES: Can we go down to the years analyzed.

8 BY MR. BARNES:

9 Q Does that reference that for 1996 Mr. Snipes found an

10 MFR-01 code on his IMF?

11 A That's what that says, yes.

12 Q Okay. And is the same code list listed for 1997?

13 A That's what that says, yes.

14 Q And for 1998?

15 A Yes.

16 Q And for 1999?

17 A Yes.

18 MR. BARNES: And can we go to the next page.

19 BY MR. BARNES:

20 Q And for 2000?

21 A Yes.

22 Q And for 2001?

23 A Yes.

24 Q And for 2002?

25 A Yes.

1 Q And does that say mail filing requirement for all years
2 MFR-01, which are not required to be mailed or filed?

3 A That's what that says, yes.

4 Q If -- but you said this document was considered frivolous
5 by the IRS; correct?

6 A Yes.

7 MR. BARNES: Can we go to 15698.

8 BY MR. BARNES:

9 Q Do you see something there in the middle referring to the
10 Fifth Amendment of the United States Constitution?

11 A Yes.

12 Q And were you aware at the time Mr. Snipes sent in this
13 document that he had already been advised of his rights, that
14 he was under criminal investigation and had a right to remain
15 silent?

16 A I don't recall -- I don't know when they were -- when he
17 was advised of his rights, first of all. And I don't even
18 recall what date this particular document was filed with us.

19 Q Okay. If someone is under criminal investigation or has
20 been told they are under criminal investigation and anything
21 they file with the IRS can be used against them, if they ask
22 questions concerning that to the IRS, would that be considered
23 a frivolous document?

24 A Not in and of itself, I don't believe it would be.

25 Q Okay. But if -- but this document, because of what was in

1 the document, was considered frivolous?

2 A Yes.

3 Q If Mr. Snipes had filed a 1040 tax return after there is a
4 CI freeze code on them, those tax forms would have been sent
5 to the criminal investigators, wouldn't they?

6 A Yes; they should have been, yes.

7 Q And it could be used against him in a criminal proceeding;
8 correct?

9 A That would be -- that's my understanding, but that's not
10 my area of expertise.

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

12 THE COURT: Mr. Wilson, any questions?

13 MR. WILSON: No, Your Honor, no questions.

14 THE COURT: Any redirect, Mr. McLellan?

15 MR. McLELLAN: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. McLELLAN:

18 Q Counsel mentioned the 3175 letter to Mr. Snipes. When was
19 that sent to Mr. Snipes?

20 A July 13th of 2004.

21 Q And where would that letter have been sent?

22 A It would be sent to him. And if he had a power of
23 attorney on record, it would go to that person who is listed
24 as the power of attorney, as well.

25 Q Counsel was asking you about the MFR-01 code. Do you

1 recall that?

2 A Uh-huh.

3 Q Where -- do you know what an MFR-01 code is?

4 A My understanding is that that just means that we will not
5 mail a tax package to the person who has that code on their
6 record.

7 MR. McLELLAN: That's all for this witness, Your
8 Honor.

9 MR. BARNES: No recross, Your Honor.

10 THE COURT: Thank you, Agent Henline. You may step
11 down.

12 Mr. O'Neill.

13 MR. O'NEILL: Yes, Your Honor. The government calls
14 Gus Lesnevich.

15 *** GUS ROBERT LESNEVICH was sworn
16 by the Deputy Clerk. ***

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

19 THE WITNESS: Gus Robert Lesnevich,
20 L-e-s-n-e-v-i-c-h.

21 MR. O'NEILL: May I inquire, Your Honor?

22 THE COURT: Yes.

23 MR. O'NEILL: Thank you.

24 GUS ROBERT LESNEVICH,
25 having been sworn as a witness, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. O'NEILL:

3 Q Mr. Lesnevich, what is your current position?

4 A I am a forensic document examiner, sometimes what is
5 commonly referred to as a handwriting expert.

6 Q And how long have you been a forensic document examiner?

7 A Approximately 40 years.

8 Q Now, before I begin going over your background, do you
9 know any of the parties involved in this case?

10 A No, I do not.

11 Q Now, could you give the ladies and gentlemen of the jury a
12 brief recitation of your professional background.13 A Yes. I first began working in the field of questioned
14 documents at the United States Army Criminal Investigation
15 Laboratory, which at that time was located at Fort Gordon,
16 Georgia. I was assigned there to undergo a two-year training
17 program in the field of questioned documents.18 Upon completion of the training program, I was then
19 certified by the Department of Defense, United States Army as
20 an examiner of questioned documents, promoted to the rank of
21 warrant officer in the field of questioned documents, and then
22 worked as an examiner in the United States and also chief of
23 the questioned documents unit in Vietnam.24 After leaving the military service, I briefly entered
25 private practice in Atlanta, Georgia. While in private

1 practice, I was recruited by the United States Secret Service.

2 Q When was that, sir? Sorry to interrupt.

3 A I was in Vietnam in 1970. I left the military in 1972.

4 Joined the Secret Service in 1974, and was with them until

5 1981.

6 Q Please proceed. Thank you.

7 A After working with the Secret Service for eight years, I

8 then entered back into private practice in the Philadelphia

9 area.

10 Q And have you been in private practice since that time?

11 A Yes, I have.

12 Q Now, sir, since entering private practice, do you still do

13 work for the United States government?

14 A On occasion, yes, I do.

15 Q And you also do work for criminal defense attorneys?

16 A Yes, I do.

17 Q Do you also do work on civil cases, as well as criminal

18 cases?

19 A Most of my work is civil cases.

20 Q Are you able to give the ladies and gentlemen of the jury

21 a portion of how many cases are civil as opposed to criminal?

22 A Probably about 80 percent of my work is civil; 20 percent

23 may be criminal. I also do work for court-appointed

24 attorneys, CJA cases. And that's it.

25 Q Now, when you are engaged to do work for a particular

1 party, what types of studies or presentations do you do?

2 A The only way a person can learn the field of questioned
3 documents is by being trained in an old-fashioned training
4 program. There are no colleges and universities that offer a
5 degree.

6 In my case, the training program consisted of sitting
7 side-by-side senior experts at the United States Army crime
8 lab; being exposed to the type of cases that would come into
9 the lab; reading the various literature and texts in the
10 field; doing research problems in the field of questioned
11 documents; and then being tested on a monthly basis as to the
12 progress I was making in my training program.

13 And then upon completion of those two years of training, I
14 was then certified by the Department of Defense, U.S. Army, as
15 an examiner of questioned documents.

16 Q That was leading to my next question. Have you been
17 certified by anyone in addition to the Army?

18 A Yes. I was recertified by the Secret Service after I
19 joined their lab as one of their senior document examiners.

20 Q As a what type of examiner?

21 A One of their senior document examiners. And then I was
22 also board-certified by the American Board of Forensic
23 Document Examiners in 1980.

24 Q Now, sir, have you ever testified as an expert in the
25 field of forensic document examination in the courts of the

1 United States?

2 A Yes, I have.

3 Q Approximately how many times have you testified as an
4 expert?

5 A Probably well in excess of 500 appearances over the years.

6 Q And in those instances, has the party who has retained you
7 and sought your services asked to have you declared an expert
8 in the field?

9 A Yes, they have.

10 Q And approximately how many times were you declared an
11 expert in the field of forensic document examination?

12 A Each time I was called to testify.

13 Q Have you ever not been declared an expert?

14 A I have never been not declared an expert.

15 Q And in what courts have you testified?

16 A I have testified in all courts of all branches of the
17 Armed Forces, I have testified in state courts up and down the
18 Eastern seaboard of the United States, I've testified in
19 Federal courts throughout the United States, and I've
20 testified overseas.

21 Q You said you testified overseas. Can you briefly describe
22 that, please?

23 A I have testified in Hong Kong and Australia on cases I
24 have worked, but I have also worked a number of cases overseas
25 that didn't require testimony.

1 MR. O'NEILL: Your Honor, at this time I would move
2 to have Mr. Lesnevich declared as an expert in the field of
3 forensic document examination.

4 MR. BARNES: Your Honor, we have no objection to him
5 as a handwriting expert.

6 MR. WILSON: No objection here, Judge.

7 THE COURT: All right. You may proceed, Mr.
8 O'Neill.

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

10 BY MR. O'NEILL:

11 Q Mr. Lesnevich, would you explain to the ladies and
12 gentlemen of the jury how a person can be identified through
13 their handwriting.

14 A Yes, I can. When you think back to your first or second
15 grade, or nowadays probably a little bit earlier than that,
16 usually across the top of the blackboard of the classroom
17 would be the printed alphabet, you would have a solid line, a
18 dotted line and a solid line.

19 And the student would have in front of them, you know, a
20 copy book, a piece of paper to write on, again with the solid
21 lines, dotted lines and solid lines.

22 And when you look at that blackboard, what you notice is
23 all the capital letters were exactly the same height. If you
24 had a B, for instance, you had a staff that connected the two
25 solid lines, and then two half-circles meeting with the dotted

1 line that was in the center.

2 Your lower case letters, your a's, e's and o's, would be
3 half the height of the capital letters; and your lower
4 extension letters, your g's and p's, would be halfway back
5 down again. There was a uniformity on the alphabet that we
6 all started with in printing.

7 The teacher would come up to the student and put a writing
8 instrument in their hand, usually a pencil, and the student
9 would then try to take the images they see on the blackboard
10 and reproduce them on a piece of paper.

11 And when they do this, they begin to develop things such
12 as hand-eye coordination; they begin to develop form
13 perception, how they can see a form and how they can reproduce
14 the form. And most importantly what they develop is the
15 various nerves and muscles that go to the fingers, the wrist,
16 the elbow and the shoulder, muscles that come into play when
17 you actually begin to write.

18 Over a period of time, actually in the beginning stages --
19 not every student gets the same marks in penmanship, because
20 everyone has a little different abilities to write.

21 But over a period of time, when the blackboard disappears
22 and the student goes from print to script -- and the script is
23 the same with the solid line, dotted line, solid line.

24 And over many years of practice, eventually the student
25 becomes an adult, and then gets to a point in their life when

1 they can pick up a writing instrument and, without any
2 conscious thought or remembrance of how they learned to write,
3 their hand automatically moves in a reflex action. The nerves
4 and muscles automatically go. And this happens most often in
5 signatures, the thing you write most, more than anything else.

6 If you have a signature that's in question, and if it is
7 naturally and spontaneously written, and it is very unique --
8 in other words, it differs from the basic text we all started
9 with -- then it becomes highly identifiable to one particular
10 person.

11 It is nothing more than receiving a Christmas card or a
12 birthday card from an aunt and uncle, or a letter from someone
13 you love, and, as soon as you get the envelope and you look at
14 the address, you know who sent it to you because you recognize
15 the handwriting.

16 When you get to that stage, then writing can be identified
17 to a particular person.

18 Q And let me direct your attention to Government's Exhibit
19 64-2, which is already in evidence. It will come up on the
20 screen. And the jury has seen this document many, many times.

21 What I would like to focus in, Mr. Lesnevich, are the two
22 signatures on the bottom, one being in black ink, that being
23 of Wesley Snipes; and one being in blue ink, that being of
24 Douglas P. Rosile.

25 And did you have an opportunity on the behalf of the

1 United States government to review these two signatures and
2 other documents affiliated with them?

3 A Yes, I did.

4 Q Now, let me begin by mentioning the Douglas Rosile ones,
5 if I might. When you are asked to examine a signature to see
6 if -- who wrote that signature, what kind of an examination do
7 you do?

8 A The initial examination is with the questioned documents.
9 One is so I can familiarize myself with the signature. The
10 other is I examine it to determine if it is naturally and
11 spontaneously written or could be the product of a tracing or
12 a simulation.

13 Q Now, in this particular case, zeroing in just on the
14 Defendant Douglas Rosile at this moment, how many questioned
15 documents were there?

16 A There was just one.

17 Q And did you have any known documents which contained his
18 handwriting?

19 A Yes, I did.

20 Q And were they provided to you by the government, as well?

21 A Yes, they were.

22 Q And if I might, just so the record --

23 MR. O'NEILL: Judge, if I could stand next to the
24 witness while I do this --

25 THE COURT: You may.

1 MR. O'NEILL: -- just to expedite matters.

2 BY MR. O'NEILL:

3 Q Mr. Lesnevich -- and I will talk as loud as possible --
4 let me show you what has been marked as -- well, entered into
5 evidence as Government's Exhibit 59-1. And I ask you is that
6 one of the known documents that you relied upon in your
7 analysis?

8 A Yes, it is.

9 Q Let me take it back, sir. And let me ask the same
10 question as to 59-2. Is that a document you relied on as a
11 known sample of Mr. Rosile's handwriting?

12 A Yes, it was.

13 Q Likewise, sir, Government's Exhibit 59-3?

14 A Yes, it was.

15 Q Mr. Lesnevich, let me show you Government's Exhibit 54,
16 and ask you if that one was also provided to you.

17 A Yes, it was.

18 Q Mr. Lesnevich, same question as to Government's Exhibit
19 595.

20 A Yes, it was.

21 Q Again, as to Government's 56, was that document provided
22 to you for your analysis?

23 A Yes, it was.

24 Q Mr. Lesnevich, I show you Government's Exhibit 59-7, and
25 ask you if that one was provided to you?

1 A Yes, it was.

2 Q Again, Mr. Lesnevich, as to Government's Exhibit 60-1.

3 A Yes, it was.

4 Q The government will now show you Government's Exhibit
5 63-1, and ask you if that was provided.

6 A Yes, it was.

7 Q Same question as to Government's Exhibit 63-2.

8 A Yes, it was.

9 Q Again, was 63-3 provided to you for your analysis?

10 A Yes, it was.

11 Q And, finally, as to these set of documents, Mr. Lesnevich,
12 was Government's Exhibit 63-4 provided to you for your
13 analysis?

14 A Yes, it was.

15 Q Thank you, sir.

16 Now, Mr. Lesnevich, in addition to the one questioned
17 document and the known examples of Mr. Rosile's handwriting,
18 were you provided with a series of exemplars?

19 A Yes, I was.

20 Q Would you briefly describe for the ladies and gentlemen of
21 the jury the purpose of an exemplar or handwriting sample.

22 A An exemplar is a writing taken from the person either by
23 an agent or I might take it myself from somebody, to see a
24 sampling of their writing that repeats the text that's in
25 question or a text to be used for comparison purposes.

1 Q And did you take the ones in this case or did an agent?

2 A An agent did.

3 Q With the permission of the Court, I would show you what's
4 been previously marked and entered into evidence Government's
5 Exhibit 104, and I would ask you is that the exemplar provided
6 by Douglas P. Rosile?

7 A Yes, it is.

8 Q And did you utilize that in your analysis?

9 A Yes, I did.

10 Q Now, Mr. Lesnevich, in taking the questioned documents,
11 the known signatures and the exemplars, what did you do with
12 those?

13 A After having made the initial examinations with the
14 questioned signature, I then took the known specimens, the
15 first group that I saw, I compared each one against each other
16 to get an understanding of how this person wrote, what the
17 individual writing habits of the individual was.

18 I then added the handwriting specimens that were provided,
19 and I compared them against the other known writings to make
20 sure that I had the product of one person.

21 After completing that form of the examination, I then
22 compared the handwriting specimens to the known writings with
23 the questioned signature to see whether or not it was the
24 product of the same person.

25 Q And did you form an opinion based on your analysis of

1 whether, indeed, those signatures were made by the same
2 person?

3 A Yes, they were. The signatures, as well as the
4 information below the signature, was all the product of one
5 writer.

6 Q And so going back to Government's Exhibit 64-2, which I
7 would ask to be shown up on the screen again, as well as the
8 known documents, as well as the exemplars, were they all
9 written by the same individual?

10 A Yes. One person wrote all the signatures; and that same
11 person also wrote the address that appeared below the
12 signature on the one document that's shown.

13 Q And, Mr. Lesnevich, in anticipation of your testimony
14 today, did you compile a comparison chart for each of the
15 individuals that you analyzed in order to show the jury the
16 manner in which you conducted such an analysis?

17 A Yes, I did prepare one.

18 MR. O'NEILL: With the permission of the Court, Your
19 Honor, I would seek to publish this comparison chart -- there
20 is enough copies for all the jurors and counsel -- to allow
21 Mr. Lesnevich to quickly go over his analysis.

22 THE COURT: Very well.

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

24 THE COURT: Have you marked it as an exhibit for
25 identification, Mr. O'Neill?

1 MR. O'NEILL: Your Honor, at this time I would mark
2 the comparison chart of Doug Rosile as Government's Exhibit
3 152, Your Honor.

4 I need one as a master.

5 THE COURT: As you have heard counsel say, members
6 of the jury, you are being handed copies of what's been
7 identified for the record as Government's Exhibit 152.

8 And rather than launch yourselves into individual
9 study of that exhibit just now, let me suggest that you hold
10 it in your laps and follow along as the witness,
11 Mr. Lesnevich, is examined with respect to it. And that way
12 we will all be on the same page, as it were, in more ways than
13 one.

14 MR. O'NEILL: Would the Court like a copy as we go
15 through?

16 THE COURT: I would.

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

18 BY MR. O'NEILL:

19 Q Mr. Lesnevich, it is entitled "Comparison Chart of Douglas
20 Rosile."

21 A Yes, but could I have a copy?

22 Q Oh, sure. Sorry about that.

23 MR. WILSON: I'm sorry, Your Honor. If we could
24 approach briefly, I may be able to save some time here.

25 THE COURT: Well, let's anticipate that. Would that

1 be agreeable with the government?

2 MR. O'NEILL: Yes, sir.

3 THE COURT: All right. Come to side-bar then a
4 minute.

5 AT SIDE-BAR:

6 THE COURT: Yes, Mr. Wilson?

7 MR. WILSON: Judge, Mr. Rosile will stipulate that
8 he signed that Exhibit 64-2. If that's where this is all
9 going, he will stipulate that that's his signature on the
10 bottom of 64-2.

11 THE COURT: Is that the lone exhibit that the
12 government is going to seek --

13 MR. O'NEILL: After Rosile, Judge, then we move to
14 Mr. Snipes.

15 THE COURT: But 64-2 is the only one which you're --

16

17 MR. O'NEILL: For Mr. Rosile. For Mr. Snipes, it is
18 a lengthy list.

19 THE COURT: Well, while we are here, does Mr. Snipes
20 wish to listen to the testimony or offer a stipulation?

21 MR. BARNES: He will listen to the testimony.

22 THE COURT: Very good.

23 Offer your stipulation in the presence of the jury.

24 MR. WILSON: Okay, Judge. I didn't want to do that
25 in the presence of the jury without --

1 THE COURT: That's what the rule requires. You did
2 precisely correctly.

3 IN OPEN COURT:

4 THE COURT: Mr. Wilson.

5 MR. WILSON: Yes, Judge. Mr. Rosile will stipulate
6 that his signature appears on the bottom of Exhibit 64-2, and
7 that he signed it.

8 THE COURT: Pardon?

9 MR. WILSON: And that he did sign it.

10 THE COURT: Yes. Then, as you have heard, members
11 of the jury, Mr. Wilson and specifically Mr. Rosile stipulate,
12 which is a word meaning simply that it is agreed without
13 necessity of further testimony or evidence, that in this
14 instance the subject of the stipulation, namely the signature
15 of Mr. Rosile on Government's Exhibit 64.2 is, in fact, his
16 signature and he signed it.

17 And you may accept that without necessity of further
18 proof or evidence, to be given such weight as you think it is
19 entitled to receive in your consideration of all of the facts
20 and circumstances of the case as you find them from the
21 evidence.

22 And the government accepts that stipulation?

23 MR. O'NEILL: The government does, Your Honor.

24 THE COURT: All right.

25 MR. O'NEILL: Thank you very much.

1 THE COURT: Then we can take up the exhibit.

2 MR. O'NEILL: Yes, Your Honor, I would collect the
3 exhibits.

4 BY MR. O'NEILL:

5 Q Mr. Lesnevich, at this time I would show you -- or let me
6 lay some predicate questions.

7 Mr. Lesnevich, did you likewise do an analysis of
8 Government's Exhibit 64-2 for the signature on that document
9 that states "Wesley Snipes"?

10 A Yes, I did.

11 Q And please explain to the jury what you did for that
12 exhibit.

13 A I examined the signature itself that was at issue to
14 determine if it was naturally and spontaneously written to
15 eliminate any possibility of a tracing or a simulation.

16 Q And what other documents did you utilize to conduct your
17 analysis of that document?

18 A I had some other documents that bore his signature to be
19 used for comparison purposes, as well as some handwriting
20 specimens that were obtained.

21 Q With permission of the Court, I would approach you and
22 stand next to you. Was there a number of more documents for
23 the analysis of the Wesley Snipes' signature than there was
24 for the Douglas Rosile one?

25 A Yes, there were.

1 Q Mr. Lesnevich, at this time, with the permission of the
2 Court, if I could stand here and just go over some of the
3 documents. Were there a number of known signatures of
4 Mr. Snipes?

5 A Yes, there were.

6 Q Let me show you, beginning with Government's Exhibit 39-1,
7 is that one of the known signatures that you were provided
8 with by the government?

9 A Yes, it was.

10 Q And did you utilize that in conducting your analysis?

11 A Yes, I did.

12 Q Mr. Lesnevich, let me ask you the same questions as to
13 Government's Exhibit 39-2.

14 A Yes, I also utilized this exhibit.

15 Q Mr. Lesnevich, let me ask you whether you utilized
16 Government's Exhibit 39-3?

17 A Yes, I utilized this exhibit.

18 Q Turning to Government's Exhibit 39-4, Mr. Lesnevich, did
19 you utilize that exhibit?

20 A Yes, I did.

21 Q Sir, directing your attention to Government's Exhibit's
22 39-5, did you utilize that exhibit?

23 A Yes, I did.

24 Q Same question, Mr. Lesnevich, as to Government's Exhibit
25 39-6.

1 A Yes, I did.

2 Q Sir, directing your attention to Government's Exhibit 43,
3 did you utilize that exhibit?

4 A Yes, I did.

5 Q Same question, sir, as to Government's Exhibit 46.

6 A Yes, I did.

7 Q Directing your attention, sir, to Government's Exhibit
8 48-4, did you utilize that exhibit?

9 A Yes, I did.

10 Q Sir, I would ask you, as to Government's Exhibit 50,
11 whether you utilized that exhibit.

12 A Yes, I did.

13 Q Turning now to Government's Exhibit 52-1, did you utilize
14 that exhibit, sir?

15 A Yes, I did.

16 Q And direct your attention to Government's Exhibit 52-2,
17 sir.

18 A Yes, I did.

19 Q And, sir, were these documents that I just showed you for
20 the record, were they the known examples of the signatures of
21 Mr. Wesley Snipes?

22 A Yes, they were.

23 Q Now, in addition to the known examples of the signatures,
24 sir, as we talked about with Mr. Rosile, did you also conduct
25 an analysis of exemplars?

1 A Yes, I did.

2 Q And were exemplars provided to you in this case?

3 A Yes.

4 Q And, again, very briefly, what is an exemplar?

5 A That is where the individual is asked to actually write
6 certain information so that it can be used for comparison
7 purposes.

8 Q And let me show you what has been introduced into evidence
9 as Government's Exhibit 105, and it is in evidence. And you
10 recognize that, sir?

11 A Yes, I do.

12 Q And what do you recognize it to be?

13 A They are handwriting specimen forms that were given to me
14 as bearing the writings of Mr. Snipes.

15 Q And just so the record is clear, did you take these
16 exemplars or did an agent?

17 A An agent did.

18 Q Now, in addition, sir, to the known documents bearing
19 Mr. Snipes' signature, as well as the exemplars, were there
20 also a number of documents that you were asked or considered
21 to be questioned documents?

22 A Yes.

23 MR. O'NEILL: And if I may stand by the witness
24 again, Your Honor?

25 THE COURT: You may.

1 BY MR. O'NEILL:

2 Q Mr. Lesnevich, I would begin by showing you a number of
3 documents, if I could, starting with Government's Exhibit 87.

4 And I would ask you specifically, sir, to look at 87-1, and
5 ask you if that was a document that you used in your analysis?

6 A Yes, it was.

7 Q The next document would be 87-5.

8 A Yes, I did.

9 Q Sir, the next document that I am asking about would be
10 87-11. Did you use that document in your analysis?

11 A Yes, I did.

12 Q And finally within Exhibit 87, Mr. Lesnevich, I would ask
13 you to look at Government's Exhibit 87-33.

14 A Yes, I did.

15 Q Thank you. Sir, let me show you what's been marked as
16 Government's Exhibit 106, and it has been entered into
17 evidence already. And I would ask you, if you would, to take
18 a look at Government's Exhibit 106, and ask you if you could
19 find the signature page on that.

20 A Can you help me with this, if it's in the front or back or
21 --

22 Q Yes. Let me see if I can help you on this.

23 Rather than waste time, Mr. Lesnevich, let me go to
24 something else and get back to that.

25 Let's go past 106 for a second, sir, and show you what has

1 been marked and entered into evidence as Government's Exhibit
2 117, and ask you, if you would, if you would look at that.

3 A Yes, I have examined this.

4 Q The next document, sir, would be Government's Exhibit 118,
5 placed in evidence already, and ask you if you utilized that
6 in your analysis?

7 A Yes, I did.

8 Q Next document will be Government's Exhibit 119. Did you
9 utilize that document?

10 A Yes, I did.

11 Q Turning now to Government's Exhibit 120, I would ask you
12 if you utilized that document in your analysis?

13 A Yes, I did.

14 Q Sir, the next document I would tender to you is
15 Government's Exhibit 127, and ask you if you utilized that
16 one.

17 A Yes, I did.

18 Q At this time, sir, I would show you Government's Exhibit
19 128, which bears two subparts. First, please look at 128-1,
20 and I would ask you if you utilized 128-1.

21 A Yes, I have.

22 Q And then how about the very next one, -2, sir, did you
23 utilize that one?

24 A Yes, I have.

25 Q I would like to direct your attention back to Government's

1 Exhibit 106. And with the assistance of my colleagues who
2 tabbed a few pages, do you recognize the signatures in that
3 document, and did you utilize that document in your analysis?

4 A Yes, I did.

5 Q Now, go out of order with another document for
6 expediency's sake. Thank you, sir.

7 Mr. Lesnevich, let me show you now what's been marked and
8 entered into evidence as Government's Exhibit 130-3.

9 A I have also examined this document.

10 Q Now, direct your attention to Government's Exhibit 130,
11 and ask you, sir, on Government's Exhibit 130, is that a
12 document that you likewise utilized in your analysis?

13 A 130-1, or all of this group?

14 Q Each of them, sir, if you would look at them.

15 A Yes. Yes, I have.

16 Q Sir, I now show you Government's Exhibit 131. That has
17 some subparts, as well. Specifically, sir, let me direct your
18 attention to 131-2. Do you see that before you?

19 A Yes, I do.

20 Q And did you utilize that in your analysis?

21 A Yes. 131-2 is the same signature as 131-1. That's why I
22 was looking at it.

23 Q Mr. Lesnevich, let me direct your attention to
24 Government's Exhibit 132. And, again, sir, directing your
25 attention to both subparts, -1 and -2.

1 A Yes, I have examined the signatures.

2 Q Mr. Lesnevich, I will show you Government's Exhibit 133,
3 directing your attention to -1, -2, -4 and -6 and -8.

4 A Yes, I have examined those documents.

5 Q And, Mr. Lesnevich, I would show you Government's Exhibit
6 136, which is entered into evidence already. And I would ask
7 you to please look at that document, sir.

8 A Yes, I have.

9 Q Finally, sir, taking out of order, I show you Government's
10 Exhibit 129, another voluminous document where I have
11 highlighted a couple of pages, and ask you to look at that,
12 sir.

13 A Yes, I have.

14 Q And did you use that document in your analysis?

15 A Yes, I did.

16 Q Mr. Lesnevich, as you did with Mr. Rosile, did there come
17 a point in time when you put together a comparison chart for
18 the benefit of the jury in the event that you would testify?

19 A Yes, I did.

20 Q And, again, in addition to the other documents, just as in
21 the case of Mr. Rosile, did you likewise cause to examine
22 Government's Exhibit 64-2, which was the amended tax return
23 that also bore Mr. Rosile's signature?

24 A Yes, I did.

25 Q And is that one of the question documents?

1 A Yes, it is.

2 MR. O'NEILL: Your Honor, with the permission of the
3 Court, I would mark comparison chart of Wesley Snipes as
4 Government's Exhibit 153, and I would ask to tender copies of
5 the comparison chart to the ladies and gentlemen of this jury.

6 MR. BARNES: A brief side-bar, Your Honor?

7 THE COURT: All right. Come to side-bar, counsel.

8 AT SIDE-BAR:

9 MR. BARNES: Yes, Judge. My client stipulates that
10 that is his handwriting.

11 THE COURT: Do you accept the stipulation?

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

13 THE COURT: All right. Well, now, wait a minute.
14 When you say that is his handwriting, let's be specific. How
15 many exhibits? Only those you have just identified?

16 MR. O'NEILL: All the questioned documents. I could
17 read them into the -- some of them were known, but there were
18 a number of questioned documents.

19 THE COURT: All of which you have now tendered to
20 the witness?

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

22 THE COURT: So I will inform the jury that all of
23 the exhibits just tendered to the witness by Mr. O'Neill are
24 stipulated to have been signed by Mr. Snipes where his
25 signature appears?

1 MR. BARNES: Yes, Your Honor.

2 IN OPEN COURT:

3 THE COURT: I have been informed by Mr. Barnes at
4 side-bar, members of the jury, that Mr. Snipes now stipulates
5 that where his signature appears on all of the exhibits just
6 tendered by Mr. O'Neill to Mr. Lesnevich were, in fact, signed
7 by Mr. Snipes.

8 And you may accept that as a fact, members of the
9 jury, without necessity of further proof or evidence, to be
10 given such weight, if any, as you think it entitled to receive
11 in conjunction with the other facts of the case as you find
12 them from the evidence.

13 And the government accepts that stipulation, as I
14 understand it.

15 MR. O'NEILL: The government does, Your Honor.
16 Would it be prudent for the government, Your Honor, to
17 reiterate what documents now have been stipulated to with the
18 signature?

19 THE COURT: That would be helpful, Mr. O'Neill. Go
20 ahead.

21 MR. O'NEILL: Thank you, Your Honor. Government's
22 Exhibit 64-2. Government's Exhibit 130-2. Government's
23 Exhibit 130-5. Government's Exhibit 130-6. Government's
24 Exhibit 130-4. Government's Exhibit 131-1. Government's
25 Exhibit 130-1. Government's Exhibit 127. Government's

1 Exhibit 130-3.

2 Government's Exhibit 133-5. Government's Exhibit
3 133-5 at page three. The first one is page one and two.
4 Government's Exhibit 133-3. Government's Exhibit 133-7,
5 Government's Exhibit 140. Government's Exhibit 139.
6 Government's Exhibit 4-1.

7 Government's Exhibit 117, multiple signatures.
8 Government's Exhibit 118, multiple signatures. Government's
9 Exhibit 119, multiple signatures. Government's Exhibits 87-1,
10 87-5, 87-11, 87-33.

11 Government's Exhibit 120, multiple signatures.
12 Government's Exhibit 136, multiple signatures. Government's
13 Exhibit 128-1, multiple signatures. Government's Exhibit
14 128-2, multiple signatures. Government's Exhibit 129-1,
15 multiple signatures. Government's Exhibit 129-2, multiple
16 signatures.

17 Government's Exhibit 131. Government's Exhibit 133,
18 multiple signatures. At Government's Exhibit 133-1, that
19 would be the one with multiple signatures. Government's
20 Exhibit 133-2, multiple signatures. Government's Exhibit
21 133-4, multiple signatures. Government's Exhibit 133-6,
22 multiple signatures. Government's Exhibit 133-8, multiple
23 signatures. Government's Exhibit 132-1, multiple signatures.
24 Government's Exhibit 132-2, multiple signatures.

25 That's the sum total, Your Honor.

1 THE COURT: All right. The jury is so informed.
2 And as I said, members of the jury, you may accept without
3 necessity of additional proof or evidence that Mr. Snipes
4 signed each of those exhibits where his signature appears.

5 Is there any further examination of Mr. Lesnevich,
6 Mr. O'Neill?

7 MR. O'NEILL: Your Honor, that concludes the
8 government's examination. Thank you.

9 THE COURT: Any cross-examination, counsel?

10 MR. BARNES: No, Judge.

11 MR. WILSON: Just briefly, Your Honor.

12 THE COURT: Mr. Wilson.

13 CROSS-EXAMINATION

14 BY MR. WILSON:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q With respect to Mr. Rosile -- I am David Wilson, I am
18 Mr. Rosile's attorney -- you discussed a number of what you
19 indicated were known handwriting samples that you used for
20 comparison or analysis in this case; correct?

21 A That's correct.

22 Q Okay. Besides utilizing those known handwriting samples
23 to compare with the unknown handwriting sample for purpose of
24 your analysis, was there any other purpose that you used those
25 known samples?

1 A No.

2 Q Okay. When you --

3 MR. WILSON: Could you please put 64-2 up. And if
4 you could enlarge the signature block.

5 BY MR. WILSON:

6 Q I just want to make sure I heard you correctly. You
7 indicated that you conducted analysis of the signature of
8 Mr. Rosile itself and the address that was handwritten below
9 it; is that correct?

10 A That's correct.

11 Q Okay. Did you conduct -- beside Mr. Snipes' signature,
12 you see a date of 4/11/01. Did you actually conduct an
13 analysis of that date?

14 A By itself, no, I did not.

15 Q Okay. And there is another date next to Mr. Rosile's name
16 of 4/11/01 again. Did you conduct analysis of that specific
17 date?

18 A No, I did not.

19 Q Okay. With respect to the actual ink that's used in these
20 signatures, is there a way that you can determine whether two
21 handwriting samples are done at the same time?

22 A No.

23 Q In other words, irrespective of the dates "4/11/01" that
24 are handwritten on there, in your analysis, is there a way for
25 you to say definitively whether Mr. Snipes' signature was

1 actually affixed to that document on April 11th, 2001?

2 A I have no idea when it was put on the document.

3 Q Okay. And, likewise, Mr. Rosile's signature?

4 A That's correct.

5 MR. WILSON: Thank you. Thank you, sir.

6 THE COURT: Thank you, Mr. Lesnevich. You may step
7 down, sir.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: And that brings us almost to the middle
10 of the afternoon, members of the jury. Let's pause for our
11 afternoon break.

12 (Short recess taken.)

13 (Jury present.)

14 THE COURT: Thank you. Be seated, members of the
15 jury, please.

16 Mr. McLellan, will you call your next witness,
17 please?

18 MR. MCLELLAN: The government calls Kathleen Arth.

19 MR. WILSON: Your Honor, I have a motion with
20 respect to this witness.

21 THE COURT: Well, all right. Come to sidebar,
22 Mr. Wilson, please.

23 AT SIDEBAR:

24 MR. WILSON: First of all, Judge, I apologize to
25 keep having us to come back to sidebar. If I was able to make

1 this objection otherwise, I would.

2 The witness that's being called by the government is
3 a revenue agent who is involved in the investigation of the
4 civil enforcement action against Mr. Rosile that resulted in
5 the civil injunction having been entered against him.

6 To the extent that she is going to testify about
7 matters that occurred outside the scope of this conspiracy, it
8 is 404(b), and it's not relevant.

9 To the extent that she wishes to testify about
10 anything that was involved during the course of this
11 conspiracy -- because the injunction actually was granted on
12 grounds that were part of the conspiracy as well as activities
13 well outside of the scope of the conspiracy -- to the extent
14 that she wants to testify about matters that related to the
15 ARL investigation, she wasn't an agent. All she can -- she
16 wasn't an investigator. Everything would be cumulative and
17 supplemental or a rehashing of what's already been testified
18 to, Judge.

19 She also has information regarding the disbarment of
20 Mr. Baxley, and that, again, is also outside the scope of the
21 conspiracy. It's not relevant, and it's highly prejudicial
22 against Mr. Rosile.

23 THE COURT: Well, I don't know how to pass on
24 whatever this is, Mr. Wilson, whether it's a motion or an
25 objection.

1 MR. WILSON: It's a --

2 THE COURT: I suggest you raise objections to
3 discrete or individual questions as we go along and we'll see.

4 MR. WILSON: Okay, Your Honor.

5 IN OPEN COURT:

6 *** KATHLEEN ARTH was sworn by the Deputy Clerk ***

7 THE DEPUTY CLERK: Please have a seat.

8 Please state your full name, and spell your last
9 name for the record.

10 THE WITNESS: My name is Kathleen Arth, A-R-T-H.

11 KATHLEEN ARTH,

12 being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. McLELLAN:

15 Q. Good afternoon, Ms. Arth.

16 A. Good afternoon.

17 Q. How are you employed?

18 A. I'm employed as an Internal Revenue agent with the IRS.

19 Q. And how long have you been with the IRS?

20 A. I started in June of 1978, so 29 and a half years.

21 Q. What is your -- I'm sorry. You -- please tell me your job
22 title that you currently have.

23 A. I'm an Internal Revenue agent, and I work in the Small
24 Business Self-employed Division, Examination.

25 Q. Okay. And were you in that same position in the 2000,

1 2004 time frame?

2 A. Yes, I was.

3 Q. And where is your office located?

4 A. It's in Sarasota, Florida.

5 Q. Now, do you know the name Douglas Rosile?

6 A. Yes, I do.

7 Q. How did you come to know that name?

8 A. In the summer of 2001, we started getting a steady stream
9 of amended returns from the Ogden Service Center, Frivolous
10 Return Unit, prepared by Douglas Rosile, and they all
11 reflected the 861 position as an explanation.

12 Q. Now, as a consequence of what you've just described, did
13 you receive some assignment in your duties to address that?

14 A. Yes. As we continued to get more and more of these
15 claims, they were determined that we should start an abusive
16 tax --

17 MR. WILSON: Objection, relevance, 404(b).

18 THE COURT: Well, I'm inclined to sustain the
19 objection as to that explanation, Mr. McLellan. Put another
20 question and go ahead.

21 BY MR. McLELLAN:

22 Q. What was wrong with the returns being prepared by Douglas
23 Rosile?

24 A. Well, a number of things. They all appeared to zero out
25 the total income that was previously reported for that period.

1 And as a consequence of zeroing out the income, the tax was
2 totally zeroed out also, and then they -- the claim would ask
3 for the tax previously paid to be refunded to the -- to them.
4 And then as an explanation for the amended return, there was a
5 cite on the back or on the second page that would say "amounts
6 previously reported not from a taxable source, per IRC
7 1.861-8F."

8 Q. Did the IRS have a problem with that explanation?

9 A. Well, that code section --

10 MR. WILSON: Objection to the form of the question,
11 "problem."

12 BY MR. McLELLAN:

13 Q. May I ask what the IRS's position was with respect to this
14 explanation found on these returns.

15 A. Well, 861 doesn't normally dictate whether income is from
16 a taxable source or not. It was included to support the
17 position that wages and income from sources within the
18 United States are not taxable -- are not subject to income
19 tax, because the code only imposes tax on certain sources from
20 foreign-based activities, and that's a totally false use of
21 code Section 861. It has -- it's a totally false
22 misrepresentation or misapplication of that code section.

23 Q. Directing your attention to Government's Exhibit 60-2, you
24 should have that in front of you.

25 MR. McLELLAN: May we have it published, please?

1 BY MR. McLELLAN:

2 Q. I think probably the fourth page in you should see a
3 return at that point.

4 A. Yes, I do.

5 Q. What is that?

6 MR. WILSON: I would object on 404(b) grounds,
7 Your Honor. This is outside ARL conspiracy.

8 THE COURT: Well, I'm inclined to overrule that
9 objection since it relates specifically to Mr. Rosile. Go
10 ahead -- and you can make it the motion -- the subject of a
11 motion to strike if it isn't connected up as to relevancy at
12 least, Mr. Wilson.

13 Go ahead, Mr. McLellan.

14 MR. BERNHOFT: Judge, we would respectfully object
15 on 403 grounds.

16 THE COURT: Well, I'm also inclined to overrule that
17 objection at the moment. And it, too, may be made the
18 motion -- subject of a motion to strike. Go ahead.

19 BY MR. McLELLAN:

20 Q. What is this document?

21 A. It's a Form 1040X filed for the period 1999 for Eileen
22 Rosile.

23 Q. And directing your attention to the preparer identified at
24 the bottom, who is the preparer?

25 A. It states "Douglas Rosile," and he signed.

1 Q. And taking a look at the columns -- there's a Column A, B
2 for net change and C for correct amount -- is this one of the
3 returns that would have come up in -- in your looking into
4 these affairs?

5 A. Yes. Yes, it is. All of them were very similar, exactly
6 like this that were forwarded from the Ogden Service Center.

7 Q. So taking a look at -- I guess it's Line 10 -- what --
8 what effect does this amended return purport to have on the
9 tax?

10 A. Well, it zeros out the tax that was originally reported on
11 her 1999 return of \$1,894. It totally zeros that out.

12 Q. And what effect does it have, if any, on the refund?

13 A. They are requesting the total -- that total amount be
14 refunded also.

15 MR. McLELLAN: Moving forward in that document, this
16 is at Bates Number DR-05038.

17 BY MR. McLELLAN:

18 Q. Ms. Arth, you should see it as a letter from the
19 Department of the Treasury, Internal Revenue Service, Atlanta,
20 Georgia. It's addressed to Eileen Rosile.

21 Is that what you're also seeing on --

22 MR. WILSON: Objection, relevance, to the extent
23 this was addressed to Eileen Rosile.

24 THE COURT: I'll make the same ruling presently.

25 What exhibit number is this, Mr. McLellan?

1 MR. McLELLAN: This is Government's Exhibit 60-2.

2 BY MR. McLELLAN:

3 Q. Do you have that document, Ms. Arth?

4 A. Not quite.

5 Q. We can take a look at it as it's projected.

6 A. Okay.

7 Q. To whom is that addressed?

8 A. It's addressed to Eileen Rosile.

9 Q. And at what address?

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

11 Q. And what is the -- what is the date on this document in
12 the upper right corner, if you can make it out?

13 A. January 17, 2001.

14 Q. And does it -- can you read what it specifies in the
15 caption there for amount of claim?

16 A. Amount of claim: \$1,165.21.

17 Q. And when was the claim received, according to this?

18 A. Claim received November 16, 2000.

19 Q. Okay. And please read the first paragraph of this letter.

20 A. "We are unable to process your claim for the tax period
21 shown above."

22 Q. And the second paragraph.

23 A. "The law allows you to file a claim for refund of taxes
24 you paid. The law does not allow you to file a claim to
25 reduce the tax you owe. If you disagree with the amount of

1 tax you owe, you may appeal our decision. To appeal our
2 decision, you must first pay the tax you owe, then file an
3 amended return with the supporting information to claim a
4 refund. We must receive your claim within three years from
5 the date you filed your return or two years from the date you
6 paid your tax."

7 Q. And what does the next sentence say?

8 A. Your claim has no merit or basis.

9 Q. And who's the signatory here? You'll see that on the next
10 page.

11 A. Ellen C. Bell.

12 Q. And what's her position?

13 A. Field director, accounts management.

14 MR. BERNHOFT: Your Honor, we respectfully request a
15 105 instruction to the extent this document survives the
16 motion to strike.

17 THE COURT: Well, I'll come to that if and when a
18 motion to strike is granted, I think, Mr. Bernhoft. At the
19 moment I'll decline to give the instruction.

20 The exhibit is in evidence and has been for some
21 time.

22 BY MR. McLELLAN:

23 Q. Taking a look at Bates-stamped image DR-05051, let's take
24 a look at the letterhead on that. Please read what the
25 letterhead says.

1 A. "Douglas P. Rosile, 452 Glen Oak Road, Venice, Florida,
2 34293."

3 Q. And what is the date on this letter?

4 A. January 29, 2001.

5 Q. Okay. And please read just the first sentence.

6 A. "The person to whom the attached letter was sent is my
7 wife."

8 Q. Okay. And skipping down to the second paragraph, please
9 read that paragraph and the following paragraph.

10 A. "The letter signed by someone calling herself Eileen" --
11 "Ellen C. Bell is a classic case of the bureaucratic runaround
12 and IRS stonewalling by an incompetent employee."

13 MR. WILSON: Judge, I would object. This is
14 cumulative. This document has already been read into evidence
15 previously. This is the second reading.

16 THE COURT: What do you say to that, Mr. McLellan?
17 I believe that's correct, is it not?

18 MR. McLELLAN: That is -- that is correct,
19 Your Honor. I'm having the witness address this letter in the
20 context of her particular involvement in looking into the
21 affairs of Mr. Rosile.

22 THE COURT: Then I suggest you get to that. It's
23 cumulative. It's been published to the jury. Let's see if we
24 can move along a little bit.

25 MR. McLELLAN: Yes, Your Honor.

1 BY MR. McLELLAN:

2 Q. Taking a look at the signature -- I'm sorry -- two more
3 items on this letter. What is that letter said to be in
4 regard to, R-E?

5 A. Regarding letter of 1-17-01.

6 Q. Okay. And taking a look at the name written at the
7 bottom, who appears to have sent it?

8 A. It's signed by Douglas P. Rosile.

9 Q. Directing your attention to Exhibit 61-2, if you flip
10 forward in the document, you'll see a 1040X, 1998. This is at
11 DR-05323.

12 A. Okay.

13 MR. BERNHOFT: Judge, we'd request a Rule 105
14 limiting instruction with respect to this document.

15 THE COURT: What do you say to that now,
16 Mr. McLellan? How does this relate to anyone perhaps other
17 than Mr. Rosile?

18 MR. McLELLAN: Your Honor, as regards Mr. Snipes,
19 this -- this evidence has a different relevance than it has
20 for Messrs. Rosile and Mr. Kahn.

21 The government would have no objection to an
22 instruction as to this exhibit with regard to Mr. Snipes.

23 THE COURT: All right. Then the jury is instructed,
24 please note, members of the jury, that with respect to
25 Government Exhibit 61-2, the exhibit should be considered only

1 with respect to your consideration of the evidence as it
2 relates to the defendants Rosile and Kahn and should not be
3 considered with respect to the case of Mr. Snipes.

4 Go ahead, then, with your examination.

5 BY MR. McLELLAN:

6 Q. Ms. Arth, is this one of these returns zeroing out the
7 income?

8 A. Yes, it is.

9 Q. And when is this stamped as received at the Internal
10 Revenue Service?

11 A. August 14, 2000.

12 Q. Okay. And taking a look at Government's Exhibit
13 DR-0531 -- I'm sorry. What -- who's the taxpayer here?

14 A. Douglas and Barbara Harms.

15 Q. Okay. And taking a look at Government's Exhibit
16 DR-05317 -- you should be able to see it on the projection.

17 A. Oh.

18 Q. -- who's the sender of this document, apparently, from the
19 upper left-hand corner?

20 A. Douglas R. Harms.

21 Q. Okay. And taking a look at the lower right-hand corner,
22 when was it received in Exam?

23 A. May 2, 2000 -- is that 2000? I'm not sure. Yes, 2000.

24 Q. And please, if you will, read the first sentence.

25 A. "Enclosed, please find a power of attorney form

1 authorizing those listed to serve as my attorney in fact
2 regarding any IRS matters that may arise."

3 Q. Okay. Turning to Government's Exhibit DR-05324, who is
4 the sender of this document?

5 On the upper left -- you can just see it on the screen in
6 the upper left-hand corner, if you will.

7 A. Internal Revenue Service, Doraville, Georgia.

8 Q. And on what date?

9 A. Sent January 5, 2001.

10 Q. And in the middle of the -- beneath where it says
11 "certified mail," in the middle there there's some
12 information. What kind of tax is being dealt with here?

13 A. Individual income tax.

14 Q. What was the amount of the claim?

15 A. Claim: \$10,322.

16 Q. And when was the claim received?

17 A. August 14, 2000.

18 Q. Okay. What is the -- what does the first sentence say
19 after "Dear Mr. and Mrs. Harms"?

20 A. "This letter is your legal notice that we have disallowed
21 your claim. We cannot allow your claim for the refund or
22 credit for the period shown above for the reasons listed
23 below."

24 Q. Thank you.

25 Directing your attention to the lower left-hand corner --

1 A. Uh-huh.

2 Q. -- who does it list there for the power of attorney?

3 A. Ray Pope.

4 Q. Okay. Moving forward to DR-05335 --

5 THE COURT: Tell us what the exhibit number is as
6 well, please, Mr. McLellan, so the record is clear about it.

7 MR. McLELLAN: Yes, Your Honor. These are exhibits
8 that are contained in a single document that's designated as
9 61-2.

10 THE COURT: All right. Go ahead.

11 BY MR. McLELLAN:

12 Q. To whom is that letter addressed?

13 A. It's addressed to Ray Pope, power of attorney.

14 Q. And taking a look back at DR-05324, does it look like just
15 another copy of the same letter?

16 A. Yes. Yes. It's just probably his copy for the power of
17 attorney.

18 Q. And moving to DR-05340, please take a look at the -- who's
19 the sender, in the upper left-hand corner?

20 A. Internal Revenue Service, Quality Measurement Staff,
21 Fort Lauderdale, Florida.

22 Q. And moving to the addressee, to whom is it addressed?

23 A. Doug Rosile.

24 Q. And taking a look at the letter that follows, is that from
25 the Internal Revenue Service?

1 A. Yes, it is.

2 Q. And to whom is it addressed?

3 A. It's addressed to Douglas and Barbara Harms.

4 Q. Okay. And moving to the second page of the document, who
5 are the CCs?

6 A. CC to Ray Pope and Douglas Rosile.

7 Q. Okay. And please read the first two sentences.

8 A. "We previously reviewed your claim for refund that you
9 filed on August 14, 2000. We notified you on January 5, 2000
10 (sic), that your claim had been disallowed."

11 Q. And the second sentence, please?

12 A. "Please see the enclosed copy of the certified letter
13 dated January 5, 2001, notifying you of the disallowance."

14 Q. Okay. And turning to DR-05348, please, on whose -- on
15 whose letterhead is this, at the top?

16 A. Douglas P. Rosile.

17 Q. And please read the rest of the letterhead.

18 A. "Accountant, tax" -- "tax consultant, 452 Glen Oak Road,
19 Venice, Florida."

20 Q. And what's the date of the letter?

21 A. April 19, 2001.

22 Q. And to whom is this letter addressed?

23 A. Internal Revenue Service, Office of Taxpayer Advocate,
24 Atlanta, Georgia.

25 Q. And in -- in whose -- in whose regard is this letter?

1 A. It's regarding Douglas and Barbara Harms.

2 Q. And please read the first sentence of the letter.

3 A. "I'm writing on behalf of the above-captioned taxpayers to
4 protest the fact that three previous letters to the Internal
5 Revenue Service related to a balance due -- see attached --
6 have been ignored."

7 Q. Let's take a look at the upper right-hand corner of that
8 first paragraph, please.

9 MR. McLELLAN: Can we focus on the second line of
10 the first paragraph, the second word, right beneath "Dear
11 Sir"?

12 THE WITNESS: Yes. I'm sorry.

13 BY MR. McLELLAN:

14 Q. I think you may have misspoke.

15 A. Yes, I misspoke. It's "Infernal Revenue."

16 Q. Okay. Moving to DR-05350, let's take a look at the
17 letterhead of this letter.

18 MS. AMBURGEY: What was the page number?

19 MR. McLELLAN: It's DR-05350.

20 THE WITNESS: The letterhead?

21 BY MR. McLELLAN:

22 Q. What does the letterhead say?

23 A. "Douglas P. Rosile, tax consultant," same address, "452
24 Glen Oak Road, Venice, Florida."

25 Q. And what is the date of the -- of the sending of this

1 letter?

2 A. It's dated February 27, 2001.

3 Q. And to whom is it being sent?

4 A. Internal Revenue Service, 4800 Buford Highway, Chamblee,
5 Georgia.

6 Q. Okay. And this is in regard to which taxpayers?

7 A. Douglas and Barbara Harms.

8 Q. Taking a look at the fifth paragraph down, please read
9 that paragraph.

10 A. Starting with...

11 Q. The fifth paragraph down, yes, please.

12 A. "The Service Center's letter dated January 5, 2001, signed
13 by someone stamped the name Gwen Krausee on" -- "on it is
14 nothing more than an attempt to bully my clients into
15 withdrawing a legitimate claim and availing themselves of a
16 refund opportunity already given other taxpayers."

17 Q. Okay. And taking a look at the next page, whose name
18 appears in the signature block?

19 A. Douglas P. Rosile.

20 Q. Once you began looking into the tax preparation activities
21 of Douglas Rosile, what was your first notice to him that you
22 were engaged in this investigation?

23 A. It was -- my initial letter was an appointment letter
24 requesting him to come in for an appointment.

25 Q. Could I direct your attention to the document marked 122-1

1 for identification? Is that the letter?

2 A. Yes, that is the letter.

3 Q. And to whom is it addressed?

4 A. It's addressed to Mr. Douglas Rosile, 452 Glen Oak Road,
5 Venice, Florida.

6 MR. McLELLAN: The government offers the document
7 previously marked Number 122-1 for receipt into evidence.

8 THE COURT: Any objection?

9 MR. WILSON: Objection, relevance, 404(b), 403.
10 This is outside the scope of the ARL relationship or the ARL
11 case. She was not investigating ARL at this time.

12 THE COURT: I'm inclined to overrule the objection
13 on that ground.

14 I take it the government is pursuing this line as it
15 relates to the state of mind or understanding of the
16 defendant?

17 MR. McLELLAN: That is correct, Your Honor.

18 MR. BERNHOFT: Your Honor, we would request a 105
19 instruction.

20 THE COURT: Well, that would seem appropriate,
21 Mr. McLellan.

22 MR. McLELLAN: Yes, Your Honor.

23 THE COURT: I'll receive in evidence Government
24 Exhibit 122-1, members of the jury, but instruct you that it,
25 too, should be limited to your consideration of the case of

1 Mr. Rosile and give it such weight as you think it entitled to
2 receive concerning any of the issues of the case relating to
3 him but should not be considered with regard to the other
4 defendants, namely, Mr. Snipes and/or Mr. Kahn.

5 You may proceed, Mr. McLellan.

6 MR. McLELLAN: May 122-1 please be published?

7 BY MR. McLELLAN:

8 Q. Taking a look at the middle of the letter, who does it
9 list here as the examiner?

10 A. The examiner is myself, Kathleen Arth.

11 Q. Okay. And please read the first paragraph -- or actually
12 the salutation and the first paragraph of the letter.

13 A. "Dear Mr. Douglas Rosile: We have reviewed certain
14 materials with respect to your tax shelter promotion. We are
15 considering possible action on your Section 6700, 6710 and
16 7408 of the Internal Revenue Code relating to penalties and an
17 injunction action for promoting abusive tax shelters.

18 "In addition, we plan to consider issuing pre filing
19 notification letters to the investors who have invested in
20 this promotion."

21 Q. And please continue.

22 A. "You are requested to meet with the examiner at the date
23 and time indicated below. Enclosed is a list of documents,
24 books and records that you should have available and questions
25 you should be prepared to reply to at that time.

1 "Date and time of exam: September 11, 2001, 10:00 a.m.,
2 at the Sarasota office," "examiner," myself, my I.D. number,
3 and a telephone number for contact.

4 "If we conclude that penalties, injunction and/or pre
5 filing notification action is appropriate, you will be
6 afforded an opportunity to present any facts or legal
7 arguments which you feel indicate that such action should not
8 be taken. Sincerely yours, Ted F. Brown."

9 Q. Who is Ted F. Brown?

10 A. He was at the time the Small Business Self-employed Area
11 Director.

12 Q. Now, your first paragraph refers to Mr. Rosile's tax
13 shelter promotion. Which tax shelter promotion is this in
14 reference to?

15 A. Well, it's a -- it's a form letter, and I'm referring to
16 his preparation of returns using the 861 argument.

17 Q. And generally what was Mr. Rosile supposed to bring in to
18 this examination?

19 A. There was an attachment, an information document request
20 that it -- it requested that he bring in basically anything
21 related to this promotion: pamphlets, promotional
22 information, people connected with himself as far as promoting
23 this position, a list of people that he had prepared tax
24 returns for or claims, how he perhaps gained clients, how they
25 heard of him, monies he would have received or monies he paid

1 to associates in connection with these amended returns.

2 Q. Did Mr. Rosile come in to the scheduled examination?

3 MR. WILSON: Objection, relevance.

4 THE COURT: Overruled.

5 THE WITNESS: No, he did not appear, nor did he make
6 other arrangements for another time.

7 BY MR. McLELLAN:

8 Q. Did you receive any written response?

9 A. Not from Mr. Rosile, no.

10 Q. Did you receive a written response from anyone purporting
11 to represent Mr. Rosile?

12 A. I received after this date, I believe it was,
13 correspondence from both his power of attorneys.

14 Q. Okay. And do you know -- do you recall the names of those
15 powers of attorney?

16 A. Yes, Milton Baxley and Bryan Malatesta.

17 Q. And do you know what Milton Baxley and Bryan Malatesta
18 have in common, any kind of link between the two?

19 A. They were power of attorneys for many of the people who
20 filed claims for...

21 Q. Was this -- was this in respect to any organization?

22 A. I didn't know it at the time, but later I knew that they
23 were --

24 MR. WILSON: Objection.

25 THE WITNESS: -- powers of attorneys used --

1 MR. WILSON: Relevance, speculation.

2 THE COURT: Well, I'll sustain the objection. She
3 said she didn't know it at the relevant time, Mr. McLellan.
4 Go ahead to something else.

5 BY MR. McLELLAN:

6 Q. Did there come a time when you came to know the
7 organizational link between these two powers of attorney?

8 A. Yes.

9 MR. WILSON: Objection. It's the same question
10 asked again, Your Honor, with all due respect.

11 THE COURT: But now it is a question. I'll overrule
12 the objection, Mr. Wilson.

13 BY MR. McLELLAN:

14 Q. What year was it that you came to know the organizational
15 link?

16 A. I would say later in 2001.

17 Q. And what was the organizational link?

18 A. They were connected with ARL.

19 Q. And what is ARL?

20 A. American Rights Litigators.

21 Q. And do you know who the operator of ARL was?

22 A. Yes. I've seen Eddie Kahn on -- on their literature.

23 Q. Taking a look at Government's Exhibit 86-6, is that the
24 response you received?

25 A. Is that in -- let's see.

1 Q. You can look at it as it's projected.

2 (Pause.)

3 A. Yes, this is -- this is the response that I received.

4 Q. And who is the sender?

5 A. Bryan Malatesta.

6 Q. And what was the date of this response?

7 A. It's dated September 13, 2001.

8 Q. Okay. And in the middle there it has some text about "you
9 have made an assumption." Could you please read that?

10 A. "You have made an assumption that, number one, my client
11 has a federal income tax liability and, two, that you are a
12 federal agent that has the authority to conduct an
13 examination."

14 Q. Okay. And taking a look at the text below there where it
15 says "the documents I need" -- do you see that text?

16 A. Yes.

17 Q. Okay. Does -- how many items does this letter call for?

18 A. It calls for 11 items.

19 Q. Okay. And what are these things supposed to -- I'm sorry.

20 What is the nature of these things, just generally, that
21 it's calling for?

22 A. I take it that they are questioning my ability to -- that
23 they are questioning that I am a commissioned --

24 MR. WILSON: Objection --

25 THE WITNESS: -- agent.

1 MR. WILSON: -- to the use of the word "they" when
2 only one individual wrote this letter. She's saying "they."

3 THE COURT: Sustained.

4 BY MR. McLELLAN:

5 Q. Let me ask you this: Taking a look at the second page of
6 the document, what does the -- what does the last sentence
7 say?

8 A. "As soon as I receive these documents and verify them, I
9 will give you the information requested."

10 Q. Okay. And to whom is this cc'd?

11 A. Douglas P. Rosile.

12 Q. Taking a look at Government's Exhibit -- I'm sorry --
13 Document Number 122-3 -- do you have that document in front of
14 you?

15 A. Yes.

16 Q. -- what is the date on there?

17 A. The date is September 18, 2001.

18 Q. Is that a letter you sent to Douglas Rosile?

19 A. Yes.

20 MR. McLELLAN: The government offers the document
21 previously marked 122-3 for receipt into evidence.

22 THE COURT: Any objection to this exhibit?

23 MR. WILSON: Yes, Your Honor, objection, relevance,
24 404(b).

25 THE COURT: I'll make the same ruling and receive it

1 in evidence for the same reasons.

2 MR. BERNHOFT: Judge, we would also request a 105
3 instruction with respect to this exhibit.

4 THE COURT: All right. And I'll instruct the jury,
5 once again, ladies and gentlemen, that Government Exhibit
6 122-3 is received in evidence for your consideration only with
7 respect to the case of Mr. Rosile and should not be considered
8 with respect to the cases of Mr. Snipes or Mr. Kahn.

9 BY MR. McLELLAN:

10 Q. Ms. Arth, please read the first paragraph of the letter.

11 A. "Dear Mr. Rosile: We are in the process of reviewing
12 certain materials with respect to your promotion of the IRC
13 Section 861 position. Generally our practice is to deal
14 directly with a taxpayer or a taxpayer's duly-authorized
15 representative. However, we sometimes talk with other
16 persons, for example, when we need information that a taxpayer
17 has been unable to provide or to verify information we have
18 received."

19 Q. And who is the signatory of the letter?

20 A. I wrote the letter, Kathleen Arth.

21 Q. Now, taking a look at Government's Exhibit 86-3 -- do you
22 have that in front of you? We could show it on the screen.

23 A. Yes.

24 Q. -- what is that document?

25 A. That's a summons that I issued to Mr. Rosile.

1 Q. And what is the date of the summons on the face of it?

2 A. I issued it on September 17, 2001.

3 Q. Okay. Is that your signature --

4 A. Yes, it is.

5 Q. -- down there below?

6 A. Yes.

7 Q. And who else has signed it?

8 A. My acting group manager, Mary Russer.

9 Q. Okay. Let's take a look at the address to which this
10 summons was sent. This is Douglas P. Rosile, Sr., at what
11 address?

12 A. 452 Glen Oak Road, Venice, Florida.

13 Q. Do you recall the circumstances of the service of this
14 summons?

15 A. Yes. I went to his residence, and his wife informed me
16 that he was not there. And so I left the summons with her on
17 that date.

18 Q. And please read the text at the top of the summons that
19 starts with "you are hereby summoned."

20 A. "You are hereby summoned and required to appear before
21 Kathleen Arth or her designee, an officer of the Internal
22 Revenue Service, to give testimony and to bring with you and
23 to produce for examination the following books, records,
24 papers, and other data related to the tax liability or the
25 collection of the tax liability or for the purpose of

1 inquiring into any offense connected with the administration
2 or enforcement of the Internal Revenue laws concerning the
3 person identified above for the periods shown."

4 Q. What is your job title, again?

5 A. Internal Revenue agent.

6 Q. Okay. As an Internal Revenue agent, do you have authority
7 to issue summons?

8 A. Yes.

9 Q. Was this a properly-issued summons?

10 A. Definitely.

11 Q. Do you have any occasion or frequency to issue summonses?

12 A. Yes. It's not unusual.

13 Q. Okay.

14 MR. McLELLAN: Let's take a look at Exhibit A of the
15 summons. This is at SW-120-00463.

16 BY MR. McLELLAN:

17 Q. Is this the exhibit that lists what the summons was
18 commanding Mr. Rosile to bring in?

19 A. Yes. Exhibit A is referred to on the very front page, and
20 this is the -- this is Exhibit A.

21 Q. Okay. Just read the first paragraph, please.

22 A. "All manuals, operations handbooks, prospectuses, offering
23 documents or other documents written by you or provided by you
24 as an individual or acting on behalf of any other group which
25 were offered to any investors, clients, or purchasers and

1 which describe the plans, operations, theories and/or evidence
2 supporting your use and advocacy of the income tax laws under,
3 but not limited to, IRC Section 861 claiming that wages are
4 tax exempt and not gross income, hereafter referred to as the
5 IRC 861 position. This shall include all such items provided
6 by you to any employees, agents, staff, or clients that either
7 work with you, for you, or on your behalf."

8 Q. Why did you issue this summons to Mr. Rosile?

9 A. Because this is exactly the information that I requested
10 that he bring to the initial meeting, and that was not
11 furnished, so my next step was to summons it.

12 Q. Okay. So just generally, what is Mr. Rosile supposed to
13 do once he gets the summons?

14 A. Well, ideally, he would gather this information and bring
15 it to the office on October 1.

16 Q. Did he gather the information and appear on October the
17 1st, 2001?

18 A. He did not appear on October 1, 2001, no.

19 Q. Did you get some response in his regard?

20 A. Not from him personally but from Milton Baxley.

21 Q. Okay. Taking a look at a document previously marked for
22 identification 122-6 -- do you have that in front of you?

23 A. Yes.

24 Q. Okay. -- is this the letter you received?

25 A. Yes, it is.

1 Q. And what -- on what date?

2 A. I received it on -- September 21 it was stamped in.

3 Q. And was this in regard to Douglas P. Rosile?

4 A. Yes, it is.

5 MR. McLELLAN: The government offers the document
6 previously marked for identification 122-6 into evidence.

7 MR. WILSON: Objection, Judge, 404(b), relevance.
8 There's no indication that Mr. Rosile authored this document
9 or adopted it. This was sent by a third party. Granted, it's
10 a POA on behalf of Mr. Rosile. But I think for purposes of
11 this proceeding, this document is irrelevant.

12 THE COURT: All right. Members of the jury, there's
13 a matter I -- I need to discuss this a bit with counsel. And
14 as a matter of convenience to us, and rather than keep you
15 just sitting there, why don't you withdraw to the jury room
16 for a few moments at this time for a short break, and I'll
17 have these conversations with counsel.

18 (Jury absent.)

19 THE COURT: Be seated, please.

20 Let me see a copy of this exhibit, please.

21 THE WITNESS: This one?

22 THE DEPUTY CLERK: Yes.

23 (Pause.)

24 THE COURT: What is the government's theory
25 concerning the admissibility of this exhibit, Mr. McLellan?

1 MR. McLELLAN: Your Honor, the government has the
2 obligation to prove willfulness in this case, and this is part
3 of a chain of conduct and correspondence on the interaction
4 between Mr. Rosile and the Internal Revenue Service and also
5 people at American Rights Litigators and the Internal Revenue
6 Service with regard to the 861 scheme.

7 This is -- the text of this letter essentially
8 defies the efforts of the Internal Revenue Service to collect
9 information with regard to the scheme. It's -- it's direct
10 evidence of willfulness, Your Honor, and the involvement of
11 the -- of ARL in the generation of this correspondence is also
12 evidence of the conspiracy in this case.

13 THE COURT: Well, what is the object of the
14 conspiracy charged in Count One of this Indictment,
15 Mr. McLellan?

16 MR. McLELLAN: May I refer to the Indictment itself,
17 Your Honor?

18 THE COURT: Please do.

19 MR. McLELLAN: Your Honor, the -- at Page 5 of the
20 Indictment the manner and means are laid out that --

21 THE COURT: Let me perhaps focus the discussion that
22 is a matter of some curiosity by me. Count One of the
23 Indictment begins with the center heading "introduction,"
24 after which there are 11 numbered paragraphs which describe
25 with particular reference to the so-called 861 theory or

1 contention at Paragraphs 9 and 10 of the introduction to
2 which, it seems to me, this exhibit and a large part of the
3 examination of the witness and earlier witnesses might relate.

4 But then starting at the top of Page 5, immediately
5 before Paragraph 12, under the heading "conspiracy," we get to
6 what I would describe as the operative penal allegations of
7 Count One, and that charges, in the manner and means and overt
8 acts that follow, a scheme to impair, obstruct and defeat the
9 IRS with respect to the collection of tax from Mr. Snipes, a
10 much narrower scope than one might have suspected was coming
11 after reading Paragraphs 9 and 10 of the -- of Count One of
12 the Indictment.

13 Also, Government Exhibit 122-6 is dated in September
14 of 2001 which is after or subsequent to the commission of the
15 alleged substantive offense as charged in Count Two of the
16 Indictment which is alleged to have occurred on or about
17 April 11 of that year, 2001.

18 And I'm just thinking out loud as we go here.
19 Taking that view, or those views, of the case, it seems to me
20 that Government Exhibit 122-6 could only have relevance which
21 outweighs its potential prejudice, perhaps, to other
22 defendants as it would relate to the knowledge, state of mind
23 or intent of Mr. Rosile in his participation in the alleged
24 conspiracy offense relating to the tax obligation of
25 Mr. Snipes, especially with respect to tax years coming after

1 the year 2001 but would not itself be an overt act, charged or
2 uncharged, in furtherance of the conspiracy offense alleged in
3 Count One or otherwise have any relevance with respect to
4 Mr. Rosile's state of mind in committing the alleged
5 substantive offense given the date of the transaction or the
6 event.

7 If all of that is true and it comes down to
8 admission as to Mr. Rosile's state of mind or understanding,
9 then it seems to me to be quite attenuated because this
10 particular document was prepared by Mr. Baxley, albeit as a
11 stated agent for Mr. Rosile, is cumulative in relation to
12 other exhibits and comes after the commission of the alleged
13 substantive offense. I wonder whether it ought to be admitted
14 under all those circumstances.

15 What do you say to those thoughts, Mr. McLellan?

16 MR. McLELLAN: The government withdraws the exhibit,
17 Your Honor.

18 THE COURT: All right. How much more, then, do we
19 have of this witness?

20 MR. McLELLAN: One more document that I would
21 present to the witness to make inquiry of, Your Honor.

22 THE COURT: Well, so that we don't get into an
23 argument about that as soon as the jury is seated, what
24 exhibit is that?

25 MR. McLELLAN: Begging the Court's indulgence?

1 (Pause.)

2 MR. McLELLAN: I'm sorry, Your Honor. This is
3 government's exhibit previously marked 86-2. It's in
4 evidence, Your Honor.

5 THE COURT: Is there any objection to examination of
6 the witness concerning that document? It is in evidence,
7 counsel.

8 MR. WILSON: Your Honor, in all candor, I am not
9 able to pull that particular document up on my computer. I --
10 if I could see it...

11 (Pause.)

12 MR. WILSON: Your Honor, again, this is the same
13 document that I objected to previously on the grounds of
14 relevance and 404(b). She was investigating Mr. Rosile on a
15 matter outside his relationship with ARL. For purposes of
16 this proceeding it's -- it's not relevant.

17 THE COURT: Well, from the description in the
18 exhibit list, Mr. McLellan, it would seem to be subject to the
19 same infirmities of the exhibit we were just discussing.

20 It's a letter from Ms. Arth to Mr. Rosile, but it's
21 dated in December of 19- -- of 2001, rather, which would have
22 been after the commission of the alleged offense in Count Two.
23 And unless it relates in some way to Mr. Snipes and the
24 object -- the specific object of the conspiracy charged in
25 Count One, it seems to me that what little probative value it

1 might have as to his knowledge or intent is overcome by its
2 cumulative nature and its potential prejudice to other
3 defendants.

4 MR. McLELLAN: Begging the Court's indulgence,
5 Your Honor?

6 THE COURT: All right.

7 (Pause.)

8 MR. McLELLAN: The government has no further
9 questions for this witness, Your Honor.

10 THE COURT: All right.

11 MR. WILSON: Your Honor, I have a motion.

12 THE COURT: What's your motion, Mr. Wilson?

13 MR. WILSON: Your Honor, with respect to Exhibit
14 60-2 -- that was the 1040X that was prepared by Mr. Rosile in
15 behalf of his wife -- the government indicated that it would
16 connect that particular document up to something that would
17 make it relevant. At this point I believe that they have not
18 done so and would ask that that document be stricken.

19 THE COURT: Well, I'll deny that motion. I think
20 the government is entitled to some evidence with respect to
21 Mr. Rosile's knowledge, intent, understanding or frame of mind
22 with respect to the so-called "861 argument," which is dealt
23 with by those exhibits.

24 And since they are his own declarations or
25 statements -- at least one could so construe the exhibit --

1 I'll overrule the motion as to that exhibit and will exclude
2 the others.

3 Before we seat the jury again, where are we in the
4 government's case, gentlemen?

5 MR. McLELLAN: Your Honor, I defer to colleagues.

6 THE COURT: Mr. Morris?

7 MR. MORRIS: Your Honor, I believe we're at the
8 point where Ms. Arth would be our second-to-last witness. The
9 next witness we would intend to call would be our summary
10 expert revenue agent. And after Ms. Arth's cross, we would be
11 prepared to call him.

12 But given the hour, given the fact that we need to
13 review with the clerk the exhibit list to make sure that we're
14 on the same page with regard to what exhibits have come in, I
15 would respectfully suggest that after cross-examination of
16 Ms. Arth that we adjourn for the day, and we'll be prepared to
17 call him first thing in the morning with the understanding
18 that the defense can then put on their case.

19 THE COURT: All right. Well, the defense, then, is
20 so informed.

21 How long do you expect to be on your direct
22 examination, would you say, of the summary witness,
23 Mr. Morris?

24 MR. MORRIS: Your Honor, my best estimate would be
25 about an hour.

1 THE COURT: Okay. Well, it sounds very much as
2 though we may get to the defense case tomorrow before the
3 close of business, counsel, so be ready to proceed.

4 MR. BERNHOFT: Yes, Judge. Might I request that,
5 given the unexpected truncation of the government's
6 case-in-chief with respect to Mr. Lokeitz, Mr. Wayne Rebeck, a
7 number of other witnesses, might I respectfully suggest the
8 defense could begin its defense in chief first thing Monday
9 morning? Is that possible?

10 THE COURT: Well, let me see. Just a moment.

11 (Pause.)

12 THE COURT: As you see it now, Mr. Bernhoft, if the
13 government does, indeed, rest tomorrow, as has been announced
14 and anticipated, how long will it take to put on the defense
15 case, do you think?

16 MR. BERNHOFT: Your Honor, our best estimate is
17 about two days maximum. This might also give us an
18 opportunity to make Rule 29 arguments Friday at the close of
19 the government's case-in-chief.

20 THE COURT: So you would anticipate that if we start
21 with the defense on Monday morning, we would -- unless there's
22 some lengthy government rebuttal, we would finish all the
23 evidence next week?

24 MR. BERNHOFT: Absent lengthy government rebuttal,
25 we would be concluded, Your Honor.

1 THE COURT: Mr. Wilson, what do you say?

2 MR. WILSON: I agree, Your Honor.

3 THE COURT: Mr. Nielsen, you're standing.

4 MR. NIELSEN: Yes, sir. Good afternoon.

5 Your Honor, since we're talking scheduling, I had a
6 request -- and I feel kind of awkward. I realize I'm the, you
7 know, weakest spoke here in the wheel, but I was hoping
8 perhaps Friday you could accommodate a personal request.

9 I coach my nine-year-old son's basketball team, and
10 their first game is tomorrow night at 6:30. And I told him I
11 would ask the Judge if I could make it. He said, Do you think
12 he'll let me go, dad -- or do you think he'll let you go? I
13 said, Bryce, he's the nicest and most considerate judge in --

14 (Laughter.)

15 MR. NIELSEN: He said, Good luck, daddy.

16 The game's at 6:30 in Orlando. And if you could
17 make 4:30 the end of the day tomorrow, I would greatly
18 appreciate it, Your Honor.

19 THE COURT: In other words, I've been lifted as the
20 bogeyman with your son.

21 All right. I will take all these things into
22 consideration. If, in fact, the defense case would not take
23 as long as might have been anticipated, we can finish the
24 evidence next week, it makes some sense to start again on
25 Monday morning. We obviously can't finish the case, in any

1 event, this week. So that's what we'll plan to do. We'll try
2 and finish the government's case-in-chief tomorrow, and I'll
3 excuse the jury, then, until Monday morning.

4 But for now let's finish with this witness, if we
5 can. Seat the jury, please, Marshal.

6 (Jury present.)

7 THE COURT: Thank you. Be seated, please, members
8 of the jury. I appreciate your patience.

9 Mr. McLellan, you had announced that you completed
10 your examination of the witness?

11 MR. McLELLAN: Yes, Your Honor.

12 THE COURT: All right. Mr. Barnes, cross-examine.

13 Mr. Bernhoft. I'm sorry. Mr. Bernhoft.

14 MR. BERNHOFT: Thank you, sir. No questions.

15 THE COURT: Mr. Wilson?

16 CROSS-EXAMINATION

17 BY MR. WILSON:

18 Q. Good afternoon, Agent Arth.

19 A. Good afternoon.

20 Q. My name is David Wilson. I am the attorney for
21 Mr. Rosile, and I just have a few questions to ask you.

22 MR. WILSON: Can you please put up Exhibit 60-2,
23 please?

24 BY MR. WILSON:

25 Q. Ma'am, your correct title is agent, is it not?

1 A. Yes, it is.

2 MR. WILSON: Can you go to the next page, please,
3 the next page?

4 Okay. Could you enlarge that, please?

5 BY MR. WILSON:

6 Q. Agent Arth, this is the 1040X that you testified about
7 previously that was prepared by Mr. Rosile on behalf of his
8 wife, Eileen, correct?

9 A. Yes, it is.

10 Q. Okay.

11 MR. WILSON: Could you go to the next page, please?

12 BY MR. WILSON:

13 Q. And if I'm not mistaken, what we're looking at here is a
14 document that was attached to that 1040X claim, correct?

15 A. Yes. It's the third page in my documents.

16 Q. Okay. So even though I can't read it from here but you
17 have it in front of you, would it be fair to say that this
18 document outlines or states the position upon which the
19 taxpayer is relying in submitting this 1040X form?

20 A. I would assume that because it was attached, yes.

21 Q. Have you read it?

22 A. Not for a long time.

23 Q. Okay. Well, if it would assist you in answering the
24 question as you have it in front of you, please take the time
25 to read it. I don't want to put words in your mouth.

1 THE COURT: Well, put your question so the witness
2 can tell, Mr. Wilson.

3 BY MR. WILSON:

4 Q. Would it be fair to say that that document that you're
5 looking at that's on the screen there puts the Internal
6 Revenue Service on notice of the theory that is being adopted
7 or put forth in that 1040X, that being the 861 position?

8 A. I don't know that I would call it the theory, but that
9 code section, you know, 861 is cited as the explanation, and
10 then this was attached to it. And it's called Section 861,
11 income from sources within the United States, so I -- I don't
12 know what their intent was when they filed -- or when she
13 filed it and Mr. Rosile prepared it.

14 Q. Does it appear to be support for the proposition that's
15 being advanced in the 1040X form?

16 A. It appears to be.

17 Q. Thank you.

18 MR. WILSON: Can we go to Exhibit 61-2, please?

19 Go you go to the next page, please, the next page?

20 Thank you. Can you enlarge that page, please?

21 BY MR. WILSON:

22 Q. This is a Form 1040 that was -- I think you testified
23 about this document, did you not, the 1040 form or the 1040X
24 that you referred to?

25 A. I believe it was the 1040X.

1 Q. Okay.

2 MR. WILSON: Can we go forward to the 1040X?

3 Okay. Thank you.

4 BY MR. WILSON:

5 Q. This is the document you testified about, that is, the
6 1040X prepared by Mr. Rosile in behalf of Mr. and Mrs. Harms,
7 is it not?

8 A. Yes.

9 Q. Okay.

10 MR. WILSON: Can we go to the next page, please?

11 BY MR. WILSON:

12 Q. This is a document -- a correspondence that you indicated,
13 I believe, was sent by the Internal Revenue Service to Mr. and
14 Mrs. Harms, is that correct?

15 A. Yes.

16 Q. Okay.

17 A. Yes.

18 Q. Do you know whether Mr. Rosile actually received this
19 correspondence?

20 A. From just looking at this particular page or --

21 Q. Well, ma'am, you can look at another page if that would
22 help you answer the question as to whether you know whether
23 Mr. Rosile himself received this document.

24 (Pause.)

25 A. I don't -- I don't know for a fact. I don't -- it doesn't

1 appear that he received this particular document.

2 Q. Okay. And, in fact, I believe that there's a designation
3 of a power of attorney, is that correct, on behalf of the
4 Harms?

5 A. Yes.

6 Q. Okay.

7 A. The CC --

8 Q. Okay.

9 A. -- yes.

10 Q. And the individual who was designated as their power of
11 attorney to handle tax matters was Mr. Pope, was he not?

12 A. As of this date, from this letter, it appears that would
13 be so.

14 Q. Okay.

15 MR. WILSON: Can we go to Exhibit 122-1?

16 BY MR. WILSON:

17 Q. Ma'am, this is a document that you testified about that
18 you scheduled an appointment with Mr. Rosile for him to bring
19 certain documents and come to your office --

20 A. Yes.

21 Q. -- correct?

22 A. Yes.

23 MR. WILSON: Could you please highlight the date and
24 time of the examination that was scheduled?

25 BY MR. WILSON:

1 Q. September 11th of 2001 --

2 A. Yes.

3 Q. -- at 10:00 a.m.?

4 Ma'am, are you aware of anything else that was going on
5 right about that date and time?

6 A. Yes, I am.

7 Q. Okay.

8 MR. WILSON: Could we go to DR-05335, please?

9 BY MR. WILSON:

10 Q. This is a -- this is a certified mail correspondence that
11 was addressed to Mr. Pope, is that correct?

12 A. That's correct.

13 Q. Okay. Do you know --

14 MR. WILSON: Can we scroll to the bottom of the
15 page, please?

16 BY MR. WILSON:

17 Q. Okay. Now, there's a CC on there to Mr. and Mrs. Harms,
18 correct?

19 A. Yes.

20 Q. Do you know whether Mr. Rosile received a copy of this
21 letter?

22 A. From looking at that letter, it appears he did not.

23 Q. Okay.

24 MR. WILSON: Can we go to DR-05340, the next page,
25 please?

1 BY MR. WILSON:

2 Q. This is a letter that, again, was sent to Mr. and Mrs.
3 Harms.

4 MR. WILSON: Can we scroll to the bottom? Is there
5 a signature line?

6 MS. AMBURGEY: No.

7 MR. WILSON: Okay. Can we go to the next page,
8 please?

9 BY MR. WILSON:

10 Q. Okay. Now, this document was accompanied by a letter that
11 appeared -- or an envelope that was addressed to Mr. Rosile.

12 A. Correct.

13 Q. Now, given that fact, do we -- do we know whether this
14 letter was actually received by Mr. Rosile?

15 A. Well, it was sent to him as indicated by the CC.

16 Q. But do you know that he received it?

17 A. Is it a certified letter?

18 MR. WILSON: If we could scroll back to the prior
19 page?

20 BY MR. WILSON:

21 Q. It doesn't appear to be --

22 A. It doesn't appear to be. I mean, that's the only way I
23 would be able to track whether it was.

24 Q. Okay. So we don't know whether Mr. Rosile actually
25 received this letter?

1 A. No.

2 Q. Okay.

3 MR. WILSON: Can we go to DR-5351?

4 MS. AMBURGEY: What was the number?

5 MR. WILSON: I'm sorry. DR-5351.

6 BY MR. WILSON:

7 Q. This is the signature page of a letter that was sent by
8 Mr. Rosile to --

9 MR. WILSON: If we can go back to the prior page,
10 please, ma'am? Okay.

11 BY MR. WILSON:

12 Q. This was a letter you testified about that was apparently
13 sent by Mr. Rosile to the Internal Revenue Service on behalf
14 of Mr. and Mrs. Harms. Do you recall testifying about that
15 letter?

16 A. Yes.

17 Q. Okay.

18 MR. WILSON: Can we go to the next page, please?

19 BY MR. WILSON:

20 Q. Okay. Does it bear a signature?

21 A. No.

22 Q. Okay. And in the "CC" section, can you tell to whom this
23 letter was cc'd?

24 A. File, client, Senator Graham and Senator Nelson.

25 Q. So based upon that, it would appear, even though we don't

1 know for sure -- but it would appear that this letter was
2 actually sent not only to the IRS but to Senator Graham and
3 Senator Nelson?

4 A. Yes.

5 Q. Okay.

6 MR. WILSON: Can we show Exhibit 122-3, please?

7 BY MR. WILSON:

8 Q. Now, this was a letter that you sent to Mr. Rosile on or
9 about September 18th of 2001; is that not correct?

10 A. That's correct.

11 Q. Okay. Would it be fair to say that you had received some
12 notification that Mr. Rosile had designated powers of attorney
13 before you sent that letter to Mr. Rosile?

14 A. This is according to my memory, but I did receive initial
15 power of attorney forms that were not correctly filled out.
16 So I know I sent a letter telling them the correct way to fill
17 it out, and they were to resign them and send them back.

18 Q. Okay.

19 A. So I believe this is a letter in that interim period.

20 Q. But you knew that he had designated at least one
21 individual as his power of attorney?

22 A. I knew he intended to, yes.

23 Q. Okay. And that third party was the individual who sent
24 you the power of attorney that you contend was incorrectly
25 completed, right?

1 A. Yes.

2 Q. Okay. And you sent that back to the individual who was
3 designated as the power of attorney, is that correct?

4 A. I believe I would have sent it to Mr. Rosile because he's
5 the one that is trying to designate a power of attorney.

6 Q. Okay.

7 A. So if it's not a perfected power of attorney, it would go
8 back to him, because they don't have any right to receive
9 anything.

10 Q. Okay. Do you have records to reflect that that letter --
11 that incorrect power of attorney went back to Mr. Rosile as
12 opposed to the gentleman who had signed it -- or sent it to
13 you?

14 A. I have an activity record that I believe does say that.

15 Q. Do you have that activity record with you?

16 A. Not -- no.

17 Q. Okay.

18 A. I don't have it with me.

19 Q. All right.

20 MR. WILSON: Can we go to Exhibit 86-3, please?

21 BY MR. WILSON:

22 Q. Now, this is the summons that you testified that you left
23 at Mr. Rosile's residence with his wife, correct?

24 A. Yes.

25 Q. Okay. Do you know whether he actually received this?

1 A. No.

2 Q. Okay. And was this also delivered to Mrs. Rosile after
3 the date that you had received the initial power of attorney
4 designation that was incorrect?

5 (Pause.)

6 A. After the initial power of attorney --

7 Q. Yes, ma'am.

8 A. -- that was incorrect? Probably.

9 Q. Okay. At the time that you were conducting this
10 particular investigation of Mr. Rosile, were you aware of any
11 ongoing criminal investigation involving American Rights
12 Litigators?

13 A. No.

14 Q. Okay. Were you involved in any type of an investigation
15 of American Rights Litigators?

16 A. No.

17 Q. Were you involved in any type of investigation into the
18 activities of Eddie Kahn?

19 A. No.

20 Q. Okay. Were you involved in any type of an investigation
21 into any activities of Wesley Snipes?

22 A. No.

23 Q. Okay. Thank you.

24 MR. WILSON: Your Honor, I have no more questions.

25 THE COURT: Any redirect, Mr. McLellan?

1 MR. McLELLAN: Just briefly, Your Honor.

2 Could we please have DR-05335?

3 REDIRECT EXAMINATION

4 BY MR. McLELLAN:

5 Q. Revenue Agent Arth, is this the January 5 disallowance
6 letter that counsel was asking you about?

7 A. Yes, it is.

8 Q. Okay. Taking a look at DR-05350, taking a look at the
9 heading on that, is this from -- who is this from?

10 A. Douglas P. Rosile.

11 Q. Okay. What's the date on this letter?

12 A. The date is February 27, 2001.

13 Q. And is it in regards to these clients -- what are their
14 names?

15 A. Yes, Douglas and Barbara Harms.

16 Q. And taking a look at the fifth paragraph down, please read
17 that paragraph.

18 A. "The Service Center's letter dated January 5, 2001, signed
19 by someone stamping the name Gwen Krausee on it is nothing
20 more than an attempt to bully my clients into withdrawing a
21 legitimate claim and availing themselves of a refund
22 opportunity already given other taxpayers."

23 Q. Okay. Let's take a look back at DR-0535 -- I'm sorry --
24 DR-05335. Let's take a look at the name of the sender, in the
25 lower right-hand corner of the document.

1 MR. McLELLAN: Could we focus on that, please?

2 THE WITNESS: Gwen Krausee.

3 BY MR. McLELLAN:

4 Q. Okay. With regard to this date of September the 11th,
5 2001, did Mr. Rosile at any time attempt to reschedule that
6 proposed meeting?

7 A. No, he did not.

8 Q. You left the summons to Mr. Rosile at his house with his
9 wife; is that accurate?

10 A. That's correct.

11 Q. Okay. However, did you subsequently receive
12 correspondence that had to do with that summons?

13 A. Yes.

14 Q. And who was that correspondence from?

15 A. That was from Milton Baxley.

16 Q. Did you send a copy of that summons to Milton Baxley?

17 A. No.

18 MR. McLELLAN: No further questions of this witness,
19 Your Honor.

20 THE COURT: Anything further of the witness,
21 counsel?

22 MR. WILSON: No, Your Honor.

23 THE COURT: All right. Thank you, Agent Arth. You
24 may step down.

25 THE WITNESS: You're welcome.

1 THE COURT: And, members of the jury, it's a little
2 early; but rather than get started with another witness, I
3 think it appropriate that we stop today.

4 And discussions I've had with counsel while you were
5 out of the room earlier lead me to believe that we're making
6 very good progress in the case. And, frankly, we hope to
7 finish it now next week rather than a week or two after that,
8 as had been thought possible when we began. So we're making
9 good progress, and I hope you can take some encouragement from
10 that. And we'll stop now and resume again tomorrow morning at
11 9:00.

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

14 C E R T I F I C A T E

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

17
18
19

20 -----
Dennis Miracle Date

21
22
23

24 -----
25 Kelly Owen McCall Date

I N D E X

1		
2	Witness:	Page No.
3	Michael Anderson	
4	Continued Direct by Mr. McLellan	3
	Cross by Mr. Barnes	13
5	Cross by Mr. Wilson	15
6	Shauna Henline	
7	Direct by Mr. McLellan	18
	Cross by Mr. Barnes	69
8	Redirect by Mr. McLellan	101
9	Gus Robert Lesnevich	
10	Direct by Mr. O'Neill	103
	Cross by Mr. Wilson	129
11	Kathleen Arth	
12	Direct by Mr. McLellan	133
13	Cross by Mr. Wilson	168
	Redirect by Mr. McLellan	179

* * * * *

21	Exhibit	Admitted:
22	Government's Exhibit 112	7
	Government's Exhibit 113	9
23	Government's Exhibit 137-2	27
	Government's Exhibit 122-1	148
24	Government's Exhibit 122-3	154

* * * * *