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

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

January 28, 2008
Ocala, Florida

UNITED STATES OF AMERICA,

Plaintiff,

vs.

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

Defendants.

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

Appearances of Counsel:

For the Government:

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

For Defendant Snipes:

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

1 Appearances of Counsel (continued):

2 For Defendant Kahn:

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

5 For Defendant Rosile:

6 Mr. David Anthony Wilson

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

P R O C E E D I N G S

(Jury absent.)

THE COURT: Thank you. Be seated, please, and good morning, everyone.

On Friday, before the jury was excused, the United States announced rest with respect to the presentation of its case in chief, and the defense asked for the opportunity to file over the weekend written motions for judgment of acquittal under Rule 29.

I am conscious of two motions that were then filed, one on behalf of Mr. Snipes, which is document Number 389, seeking judgment of acquittal as to Counts Two and Three of the indictment; and then a separate motion for judgment of acquittal filed on behalf of Mr. Rosile for judgment of acquittal as to Counts One and Two, the counts of which he is charged.

Who speaks for Mr. Snipes on the motions?

MR. BARNES: I do, Your Honor.

THE COURT: Mr. Barnes, has any other motion been filed, other than the one I just mentioned?

MR. BARNES: No, Your Honor.

THE COURT: All right. Well, I have had an opportunity to examine those motions over the weekend. At the risk of oversimplification, as I understand the argument with respect to Count Two of the indictment made by Mr. Snipes, it

1 is that the subject tax return, the 1040X return, was filed
2 with an altered jurat, stating that it was not filed under
3 penalty of perjury; and, in that form, could not be a valid
4 tax return as a matter of law because it doesn't meet the
5 requirements of 26 USC Section 6065, which requires that
6 returns be made subject to penalty of perjury.

7 The argument then advances that since it was not a
8 valid tax return, as a matter of law, it could not form the
9 basis of a prosecution under Section 287 of Title 18, as I
10 understand the argument.

11 But so far as I can tell, there is no decision
12 squarely on that point that so holds. And it seems to me that
13 a false or fraudulent claim made against the United States in
14 violation of Section 287 of Title 18 is, by definition, an
15 invalid claim, and is made with the requisite willful intent
16 constitutes the offense, the fact, if it is a fact, that the
17 claim or the form of the claim is also deficient with respect
18 to form or other requirements may be germane to the jury's
19 consideration of the intent of the person making the claim --
20 that is to say the state of mind or willfulness with which the
21 claim is made -- but does not foreclose prosecution as a
22 matter of law. Presumably, any claim that would violate
23 Section 287, as I say, is an invalid claim.

24 So I am inclined to and will overrule and deny the
25 motion for judgment of acquittal as to Count Two on that

1 basis.

2 The motion for judgment of acquittal made by
3 Mr. Snipes as to Count Three is predicated on the applicable
4 statute of limitations, three charges of failure to file for
5 the tax year 1999, and alleges that the return should have
6 been filed on or before October 16, 2000, which would have
7 been the extended date for filing for that tax year.

8 The indictment was returned on October 12, 2006,
9 which would have been four days before the limitations period
10 would have expired.

11 As I understand the argument, however, the defendant
12 contends that the evidence now shows that the limitations
13 period, in fact, expired in April of 2006, because the
14 extension of his filing date from April to October was secured
15 without his authority by his former agent, who had terminated
16 the agency relationship, and was no longer empowered to seek
17 the extension for Mr. Snipes at the time it was sought and
18 granted.

19 This is, if I do say so, a clever point, but I think
20 it's also unpersuasive on the evidence, as I understand it
21 thus far, anyway, because whatever the legal relationship
22 between Mr. Snipes and his agent may have been when the
23 extension was applied for, and whatever their respective
24 rights and obligations may have been inter se, or between
25 themselves, the evidence demonstrates that the agent was still

1 authorized to represent the Defendant Snipes in his dealings
2 with the IRS, because it does not appear that the termination
3 of the agency relationship had been communicated to the IRS.

4 Is that a fair statement of the evidence,
5 Mr. Barnes? Is there evidence that that termination of the
6 agency relationship had been communicated to the IRS at any
7 relevant time?

8 MR. BARNES: I would have to re-look at the power of
9 attorney that was filed by Mr. Snipes through ARL in March of
10 2000. On that form, it has a check-in-the-box, and I have not
11 actually looked at that precise exhibit to see what that
12 exhibit shows.

13 That would be -- if that was checked, that he was
14 revoking prior power of attorneys, then it would be a notice
15 to the IRS prior to that date. But to be honest with you,
16 Your Honor, I have not had an opportunity to look at that part
17 of that exhibit.

18 THE COURT: In March of 2000, you said?

19 MR. BARNES: Yes, Your Honor. I believe there was a
20 power of attorney filed -- I think one was filed March 2nd,
21 but I think there was another one filed on March 16th. And
22 the -- and I think that -- I am not sure whether he revoked it
23 or didn't. He may have revoked it.

24 And then there is a separate termination between the
25 two of them. But if he did revoke the power of attorney, then

1 that would revoke it for IRS purposes. And then there was the
2 subsequent agency termination between the two of them.

3 THE COURT: Who speaks for the government on this?

4 Mr. Morris, come to the lecturn.

5 What does the evidence show with respect to the
6 communication with the IRS concerning the revocation by
7 Mr. Snipes of the authority of Mr. Starr?

8 MR. MORRIS: Your Honor, I am not aware of any
9 evidence showing revocation of authority by Mr. Snipes as to
10 Starr & Company. It would not be necessary, though, for
11 someone to be authorized as a power of attorney to seek an
12 extension on behalf of a client. An attorney or a CPA can do
13 that without having filed a 2848, power of attorney.

14 Furthermore, the evidence is undisputed that the
15 IRS, in fact, granted the extension, regardless of whatever
16 may have been communicated to some section of the IRS.

17 THE COURT: Well, as to that latter point, I would
18 be hesitant to believe that the government could bootstrap
19 itself into an extension of the statute of limitations in that
20 way.

21 But acting on the belief that there was no
22 communication at any relevant time to Count Three of the
23 revocation of the agency that is notice to the IRS, it seems
24 to me that the government's legal position is the better of it
25 with respect to the limitations issue, whatever the result may

1 have been as between the parties themselves, of course.

2 So I am inclined to overrule and deny at this point
3 the motion for judgment of acquittal made by Mr. Snipes as to
4 Count Three, as well.

5 There is a separate motion by Mr. Rosile to -- on
6 behalf of Mr. Rosile, as I mentioned, with respect to Counts
7 One and Two, essentially taking the position that the evidence
8 is insufficient as to Count One to show that he entered into
9 any agreement to defraud the United States; or that, as to
10 Count Two, that the evidence is sufficient to show willful or
11 fraudulent intent to cause the amended tax return that's the
12 subject of Count Two, disclosed on its face that it was
13 grounded in the so-called 861 argument.

14 But it seems to me here, again, at this stage of the
15 proceeding, the Court is required to view the evidence in the
16 light most favorable to the position of the government, making
17 all credibility determinations in favor of the United States
18 and drawing all reasonable inferences from the evidence that a
19 reasonable jury might draw.

20 And it seems to me, on that basis, that there is
21 evidence as to Mr. Rosile from which a reasonable jury might
22 conclude beyond a reasonable doubt that he did, indeed, enter
23 into a conspiracy, as charged in Count One, with respect to
24 the filing of the amended tax return that's the subject of
25 that count.

1 And the fact that it disclosed on its face that it
2 was grounded in a so-called 861 argument does not necessarily
3 negate the required state of mind or willfulness on the part
4 of the defendant, because of evidence that that argument
5 itself was false and fictitious as a matter of law, and that
6 that information was known to the defendant at the time.

7 So it comes down to a state of mind issue for the
8 jury, I think, to determine, and the defendant would not be
9 entitled to judgment as a matter of law.

10 So I will deny the motions for judgment of
11 acquittal, Documents 389 and 390, in all respects, and we will
12 proceed with the case and submit it to the jury.

13 MR. BERNHOFT: Your Honor, may I approach the
14 podium, please?

15 THE COURT: Yes, Mr. Bernhoft.

16 MR. BERNHOFT: Thank you, Judge. I wanted to advise
17 the Court, after discussions over the weekend and after
18 careful review of all the evidence and testimony in the
19 government's case in chief and consultations with our client,
20 a decision made late last evening that the defense intends to
21 rest this morning without calling any witnesses.

22 I am similarly advised on behalf of Mr. Wilson,
23 counsel for Mr. Rosile, that that is Mr. Rosile's intent, as
24 well. And I wanted to advise the Court of that.

25 In terms of procedures and where we go this morning,

1 we would respectfully suggest that perhaps the jury would be
2 brought in, and Mr. Wilson and I would be successively invited
3 to the podium to rest the defenses on behalf of our respective
4 clients, and then proceed further after the jury is
5 discharged.

6 THE COURT: All right. Thank you, Mr. Bernhoft.

7 MR. BERNHOFT: Thank you, Judge.

8 THE COURT: Mr. Kahn, good morning. During your
9 absence from the proceeding last week, and especially on
10 Friday, as you have heard from this discussion already, the
11 United States has announced rest with respect to the
12 presentation of its case in chief.

13 So this being a critical juncture of the trial, I
14 thought it best that I have you invited back to court this
15 morning so that you can either participate, present evidence
16 or testify, if you wish to do so, or continue not to
17 participate in the trial or waive your presence, if that is
18 your pleasure or intent.

19 But it seems to me you should be given this
20 opportunity here in open court.

21 What is your pleasure, sir? Do you wish to rejoin
22 us or do you wish to continue to waive your presence?

23 DEFENDANT KAHN: Well, I wasn't waiving my presence.
24 What I was doing --

25 THE COURT: Come to the lecturn, if you would,

1 please, sir.

2 DEFENDANT KAHN: I have a question, Judge Hodges. I
3 want to know by what authority you, as an officer of the
4 executive branch of government, has to force me to come to
5 this administrative court to submit to your advance?

6 THE COURT: Well, let me suggest to you, Mr. Kahn,
7 that you are simply wrong with respect to my status. As I
8 understand your argument, it is that I did not take the oath
9 of office as required by the statute.

10 DEFENDANT KAHN: No, sir, that's not it.

11 THE COURT: Oh, it isn't? Well, what is it?

12 DEFENDANT KAHN: No, sir. It's your appointment
13 affidavit. Your appointment affidavit, you signed a standard
14 Form 61, which is a U.S. civil service commission form, on
15 28th of December 1971. That's for the executive branch
16 offices; not judicial.

17 THE COURT: Well, what did I need to do to qualify
18 as an Article III judge then on that date?

19 DEFENDANT KAHN: You needed to take the proper oath,
20 which is in the first Judiciary Act of 1789, number one.

21 But it clearly shows that you are a civil servant,
22 not an executive -- or not an Article III judge.

23 THE COURT: Well, the records of the court reflect
24 that on the afternoon of December the 28th, 1971, Mr. Kahn, I
25 stood in open court in Tampa, and took the oath prescribed by

1 the statute to do equal justice to the rich and to the poor;
2 to protect and defend the Constitution of the United States
3 against all enemies, foreign and domestic; and that I took
4 that oath freely, without mental reservation or purpose of
5 evasion; and swore that I would faithfully discharge the
6 duties of the office upon which I was about to enter, so help
7 me God.

8 That's shown by the records of the court and the
9 commission hangs in my office.

10 DEFENDANT KAHN: That's correct. That's for
11 administrative court.

12 THE COURT: So if you intend to go forward from here
13 to the court of appeals on the basis that you have not been
14 tried in an Article III court, let me suggest to you, sir,
15 that the likelihood that that argument is going to prevail is
16 almost infinitesimal, and you might wish to pursue some other
17 theory or line of defense, or at least an alternative one.

18 DEFENDANT KAHN: Okay, sir.

19 THE COURT: Anyway, what is your pleasure?

20 DEFENDANT KAHN: For the record, sir, I do not
21 accept this offer, I do not consent to this proceeding, and I
22 demand to be released.

23 THE COURT: All right.

24 DEFENDANT KAHN: That's all I have to say on the
25 matter.

1 THE COURT: You don't wish to participate any
2 further?

3 DEFENDANT KAHN: I have never participated.

4 THE COURT: Do you wish to be present during trial?

5 DEFENDANT KAHN: I have no desire to be present.

6 THE COURT: All right. Then, marshal, at a
7 convenient moment, you may withdraw Mr. Kahn from these
8 proceedings.

9 (Defendant Kahn excused.)

10 THE COURT: Now, given the announcement that's been
11 made, counsel, I assume that after we settle instructions that
12 you will be ready to go forward today with the summations,
13 Mr. Bernhoft.

14 MR. BERNHOFT: Judge, what we had contemplated and
15 would respectfully suggest, I think that both parties, the
16 prosecution and the defense, contemplated submitting some
17 supplemental jury instructions requests based on the
18 evidentiary predicates that have been educed in the case. We
19 would like the opportunity to do that today.

20 And then the jury instruction charging conference,
21 where we can make our record with respect to any supplementals
22 or objections that we might have to the instructions the Court
23 distributed on January 25th. And then after that the Court
24 might distribute final instructions, and whether the Court
25 chooses to include or not include any of the supplemental

1 requests.

2 And I understand it is a voting day tomorrow morning
3 here in Ocala, and we would respectfully request that we
4 commence closing arguments first thing Wednesday morning,
5 after the final JI's would be distributed.

6 That would be our respectful request with respect to
7 scheduling the remainder of the matter.

8 Under that proposal, the jury would be charged and
9 deliberating by Wednesday afternoon, which would still be well
10 in advance of initial projected scheduling in terms of the
11 length of trial, et cetera.

12 I have discussed that matter with Mr. Wilson. I
13 have not had an opportunity to discuss that issue with the
14 prosecution because of the issue of advising the Court of the
15 defense position on the defense in chief.

16 THE COURT: Mr. Morris.

17 MR. MORRIS: Your Honor, the United States would
18 request that we have the charging conference today, and that
19 the decisions on the instructions be made today, and we are
20 prepared to go forward with closing arguments tomorrow
21 morning.

22 If the Court wants to -- would be inclined to start
23 the proceedings a bit late, as I think the Court has said it
24 might intend to do so because of voting, that would be fine.
25 But I see no reason why we can't go forward with closing

1 arguments tomorrow morning.

2 THE COURT: All right. Thank you.

3 I think that's a reasonable and prudent way to
4 proceed in order to avoid any significant interruption or
5 hiatus in the case. It is best to submit the matter to the
6 jury while the evidence is still fresh on the jury's mind and
7 avoid, as much as possible, any unnecessary delays or
8 interruptions.

9 And tomorrow, of course, is election day. But
10 starting at 9:30, rather than 9:00, should give all members of
11 the jury an adequate opportunity to go to the polls and vote
12 before they come to court.

13 And the balance of the day is, I should think, more
14 than ample to settle the instructions and so forth and make
15 ready for their return. So that will be my intent.

16 Mr. Snipes, you have heard all of this discussion.
17 Mr. Bernhoft has announced that it has been your decision to
18 rest your case this morning without presenting any evidence or
19 testifying yourself.

20 And, of course, that's your absolute right. You
21 have the absolute right to testify before this jury, or not
22 testify. You have the absolute right to present other
23 evidence, or not to do so.

24 Either way, it's your constitutional right and your
25 election. And I need to make sure that, since you are waiving

1 or giving up your constitutional right to present evidence
2 and/or to testify yourself before the jury, that that's your
3 free and voluntary choice, reached on the advice of counsel
4 with which you are satisfied as to its competence.

5 You understand, sir?

6 THE DEFENDANT: It is, sir.

7 THE COURT: And that is your decision?

8 THE DEFENDANT: It is, sir.

9 THE COURT: Thank you, Mr. Snipes.

10 Mr. Rosile, I ask you the same questions. You have
11 a constitutional right to testify, or not, as you see fit; to
12 present other evidence, or not, as you see fit. And these are
13 absolute constitutional rights, which, by not testifying
14 and/or by not presenting evidence, you will be waiving or
15 giving up.

16 Do you understand?

17 DEFENDANT ROSILE: Yes, sir.

18 THE COURT: And do I understand that that is your
19 voluntary choice, after discussing it with Mr. Wilson as your
20 counsel, and that you are satisfied with the representation,
21 advice of counsel you have received in that respect?

22 DEFENDANT ROSILE: Yes, sir.

23 THE COURT: Thank you.

24 Do we know, marshal, whether the jurors are all here
25 yet?

1 THE COURT SECURITY OFFICER: I believe so. I will
2 check. They should all be here.

3 THE COURT: If they are all here, please seat the
4 jury.

5 (Jury present.)

6 THE COURT: Thank you. Be seated, members of the
7 jury, and good morning to you. I appreciate your customary
8 promptness.

9 Now, as you heard on Friday, the United States
10 announced rest, bringing to a close the presentation of
11 testimony and evidence for your consideration during what's
12 commonly called the government's case in chief.

13 And as I explained to you then, and as you were told
14 in the process of your selection, it is not the obligation or
15 responsibility of a defendant or an accused person in a
16 criminal proceeding to call any witnesses or present any
17 evidence whatsoever, because the burden of proof or burden of
18 persuasion lays exclusively upon the United States.

19 On the other hand, when the United States has
20 announced rest, as in this instance, an opportunity is
21 afforded to the defendant or defendants to call witnesses or
22 present evidence, if they choose to do so. So we will now
23 proceed in that respect.

24 Mr. Bernhoft.

25 MR. BERNHOFT: Thank you, Your Honor.

1 Your Honor, ladies and gentlemen of the jury, on
2 behalf of Mr. Snipes, the defense rests.

3 THE COURT: Very well.

4 Mr. Wilson.

5 MR. WILSON: Thank you, Your Honor.

6 On behalf of Mr. Rosile, the defense rests.

7 THE COURT: All right. Now then, members of the
8 jury, you have heard all parties announce rest, signaling the
9 close of those phases of the trial during which testimony and
10 evidence is presented. In other words, you have now heard all
11 of the testimony and evidence to be presented for your
12 consideration in this case.

13 That doesn't mean, however, that we are ready as yet
14 to submit the case to you for your deliberations upon your
15 verdict, because, as I explained earlier when we began, there
16 are still two important phases of the trial to be accomplished
17 before you will be asked to retire to deliberate upon your
18 verdict.

19 The first of those remaining phases will be another
20 opportunity on the part of counsel, who will speak to you,
21 each in turn, and to make their closing arguments and final
22 summations in the case, followed, secondly and lastly, by the
23 Court's instructions or my explanations to you concerning the
24 law that governs this case and that you will apply to the
25 facts as you find them from the evidence in reaching your

1 decision.

2 Fortunately or unfortunately, we are not ready to
3 proceed immediately into those final stages of the case,
4 however, because there are some matters that I need to take up
5 with counsel at this point, chiefly the question of what the
6 content of my final instructions to you will be, so that they
7 are informed in that respect and can then fashion their
8 arguments or summations accordingly.

9 And rather than keep you waiting here this morning
10 while I am having those discussions, although I don't think
11 it's going to require the remainder of the entire day for us
12 to settle that matter, we have agreed that it would be more
13 convenient for all of us if I excuse you now for the balance
14 of the day, ask you to return tomorrow morning at 9:30, in
15 recognition of the fact that tomorrow morning is election day,
16 and we will start 30 minutes later in order to give you an
17 extra half-hour, as it were, to go to the polls and cast your
18 votes tomorrow morning.

19 And then we will proceed at that time, 9:30 in the
20 morning, with the summations of the lawyers, followed by my
21 instructions to you on the law. And then the case will be
22 submitted to you for your deliberation upon your verdict.

23 I do want to caution you, however, that even though
24 you have now heard all of the testimony and evidence, as I
25 have just explained to you in length, you have not heard all

1 there is because we have yet to hear the summation of the
2 lawyers, and you have yet to hear my instructions on the law.

3 So until all of that is accomplished tomorrow, you
4 should continue to be bound by all of the instructions I have
5 previously given you concerning avoiding any outside
6 information or influences of any kind.

7 I realize that you have come for a very short time
8 this morning, but, as I have tried to explain, I think
9 proceeding in this way is the most judicious way to approach
10 the matter. And we will recess now, so far as you are
11 concerned, until 9:30 tomorrow morning.

12 (Jury absent.)

13 THE COURT: Be seated a moment, please.

14 Who speaks for the United States on jury
15 instructions?

16 MR. O'NEILL: I will, Your Honor.

17 THE COURT: Mr. O'Neill.

18 MR. O'NEILL: Yes, sir.

19 THE COURT: Does the government have any requested
20 instructions prepared?

21 MR. O'NEILL: Yes, Your Honor. The government
22 previously submitted some proposed supplemental jury
23 instructions in this case, Your Honor. Specifically --

24 THE COURT: What document number was given to those
25 requests, if you have it in front of you?

1 MR. O'NEILL: I do not, Your Honor, but -- I have an
2 extra copy of the document, Your Honor, but, I apologize, I do
3 not have the electronic number.

4 THE COURT: Well, I'll find it. That's all right.

5 And you are requesting still the entire package that
6 you presented at that time? Or do you wish me to focus on
7 some specific instructions in that package?

8 MR. O'NEILL: Your Honor, I do wish you to focus on
9 some specific ones. It may be starting out of order, but in
10 the Court's instructions to the jury, for the instruction for
11 Title 26 United States Code Section 7203, the threshold amount
12 is still listed as 8,450 dollars.

13 And I believe the evidence at trial was that there
14 were varying amounts, depending on the years, 1999 through
15 2004. And they are listed in the Government's Requested Jury
16 Instruction 26 USC 7203. Unfortunately, Your Honor, the
17 instructions are not numbered, but they are listed that way.

18 And there is some other language in that, so --
19 within that charge, requested charge that the government would
20 feel appropriate.

21 Your Honor, I would also note that in the
22 instructions, we have an instruction on flight, which I don't
23 believe has been incorporated in the Court's jury
24 instructions. And that would be as to Defendant Kahn or Kahn
25 only.

1 THE COURT: Well, let's pause there and dispose of
2 that one, Mr. O'Neill.

3 MR. O'NEILL: Yes, sir.

4 THE COURT: I would be disinclined to give an
5 instruction concerning any inference the jury might draw with
6 respect to a defendant's guilt of knowledge based on flight.
7 In effect, that instruction tends to create a rebuttable
8 presumption, which arguably shifts the burden of proof to the
9 defendant.

10 And to be sure, there are some authorities out there
11 in the circuit which have approved such instructions. On the
12 other hand, there are some authorities that would draw in
13 question the propriety of any instruction that tends to
14 create, as I said, a rebuttable inference.

15 And there is no pattern instruction in the circuit
16 on that subject, or any other that relates to a rebuttable
17 inference precisely because of the issues that arise
18 concerning the shifting of the burden. And the better view is
19 to simply leave that matter to the argument of counsel and not
20 to include it in the jury instructions.

21 So my ruling will be that I will not instruct the
22 jury specifically with regard to any inference that might be
23 drawn from a defendant's flight, but counsel is free to argue
24 it as a matter of fact to the jury, if you wish to do so.

25 MR. O'NEILL: Yes, Your Honor. Understood. Thank

1 you very much.

2 Your Honor, that concludes what the government would
3 request.

4 THE COURT: Mr. Barnes.

5 MR. BARNES: Yes, Judge.

6 THE COURT: You had said, or Mr. Bernhoft had said
7 that you wished to submit some -- in writing, some
8 supplemented requests. Do you have them available to do so?
9 What is your desire?

10 MR. BARNES: I do not have them with me right now.
11 We would ask that we be allowed to go back, submit them, and
12 re-adjourn after lunch, if that works for the Court.

13 THE COURT: Adjourn until after lunch?

14 MR. BARNES: Yes, Your Honor.

15 THE COURT: All right. We can do that then. We
16 will adjourn until 1:30 this afternoon and we will have a
17 charge conference in the case.

18 And by 1:30, I will expect all parties to have in
19 written form any proposed jury instructions that you wish to
20 have me consider in relation to the package that I have
21 previously distributed, and be prepared to make orally any
22 objections you might have to anything in that package.

23 MR. BARNES: Yes, Judge.

24 MR. MORRIS: Your Honor?

25 THE COURT: Before we recess, though, let me find

1 out who will be making argument for the United States.

2 MR. MORRIS: Your Honor, I will be taking the first
3 part of the oral argument, and Mr. O'Neill will be doing the
4 rebuttal.

5 THE COURT: How much time will the government
6 require for the total argument, Mr. Morris, your opening and
7 Mr. O'Neill's rebuttal together, would you say?

8 MR. MORRIS: Your Honor, we would estimate two
9 hours.

10 THE COURT: How do you anticipate those two hours
11 would be divided?

12 MR. MORRIS: Your Honor, I would estimate that the
13 opening portion would be approximately an hour-and-a-half with
14 a half-hour for rebuttal.

15 THE COURT: All right. That sounds reasonable to
16 me, with the understanding that the rebuttal would not be more
17 than one hour. That is to say, if you should finish in 30
18 minutes your opening, Mr. O'Neill would still be limited to an
19 hour rather than an hour-and-a-half in rebuttal. You
20 understand?

21 MR. MORRIS: Yes, Your Honor. Thank you. That's
22 fine.

23 THE COURT: Mr. Bernhoft?

24 MR. BERNHOFT: Yes, Judge.

25 THE COURT: Who will make argument for Mr. Snipes?

1 MR. BERNHOFT: With the Court's permission, it would
2 be Mr. Meachum, myself and Barnes, three attorneys sharing
3 between two and three hours of complete oral argument time,
4 with the Court's permission.

5 THE COURT: Well, that's somewhat unusual. It's not
6 uncommon for the Court to recognize two lawyers for making
7 argument. I don't know that I have ever had a case in which
8 three asked or were granted leave to make argument to the
9 jury. Give me some idea of the reason for more than two and
10 how the argument is going to be structured.

11 MR. BERNHOFT: Yes, Judge. Mr. Barnes would go
12 through some of the factual and evidentiary detail of the
13 case. And there is a substantial quantity of documents and
14 testimony that he will marshal.

15 I am going to talk about, principally, jury
16 instructions and some of the core themes of defense, whereas
17 Mr. Meachum is going to do and serve a somewhat more personal
18 aspects of the case, and also given the fact that he is
19 Mr. Snipes' long-term friend and counselor. That's how we
20 conceive allocation of the responsibility of summation.

21 THE COURT: And you would make argument in that
22 sequence; first Mr. Barnes, then you, and then Mr. Meachum?

23 MR. BERNHOFT: That's what we contemplate right now,
24 Judge, yes.

25 THE COURT: All right. Well, let me think about

1 that and then we will revisit it this afternoon at 1:30.

2 Is there anything that we need to do now before we
3 recess until 1:30?

4 MR. MORRIS: Your Honor, I don't know how long
5 Mr. Wilson is going to request.

6 THE COURT: Thank you, Mr. Morris.

7 Mr. Wilson, I assume you will make argument for
8 Mr. Rosile. Will you take more than an hour?

9 MR. WILSON: Your Honor, with all due respect, I do
10 not believe that I will take more than an hour. However, once
11 I get rolling, I would ask the Court's indulgence in granting
12 me up to an hour-and-a-half.

13 THE COURT: All right. We will recess until 1:30.

14 MR. MORRIS: Your Honor, I'm sorry. There is one
15 more point, just a clarification. With regard to our proposed
16 jury instructions, would you like them filed electronically
17 before the lunch hour?

18 THE COURT: That would be helpful, yes.

19 MR. MORRIS: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (A recess was taken.)

22 (Jury absent.)

23 THE COURT: Thank you. Be seated, please, everyone.

24 I notice some papers have been filed since we
25 recessed this morning that I have not previously seen. Let me

1 have just another moment to look at one of these documents,
2 please.

3 (Pause.)

4 THE COURT: Who speaks for the United States with
5 respect to instructions?

6 MR. O'NEILL: I do, Your Honor.

7 THE COURT: Mr. O'Neill.

8 MR. O'NEILL: Yes, sir.

9 THE COURT: I have two documents before me,
10 Mr. O'Neill. One is Document Number 364, the government's
11 proposed supplemental jury instructions filed January 11, and
12 Document 393, the United States' additional proposed jury
13 instructions filed this morning, I believe.

14 Looking first at Document Number 364, you had
15 requested the pattern instruction on expert witnesses which is
16 included --

17 MR. O'NEILL: That's correct, Your Honor.

18 THE COURT: -- in the package that I gave you
19 already, I believe.

20 Then you had requested an instruction on flight, and
21 I previously commented on that this morning and will decline
22 to give that instruction for the reasons stated. But it's a
23 matter that the United States may argue to the jury --

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

25 THE COURT: -- as a factual inference that might be

1 drawn from the evidence.

2 Next, you had requested an instruction on the
3 purpose of 18 U.S.C. 287. I'm disinclined to give that
4 instruction. It seems to me it's really unnecessary. The
5 elements of the offense speak for itself and is a matter for
6 argument of counsel as well. I mean, I would be expanding the
7 instructions to give that charge, so I'll decline to give it.

8 Then there's a requested instruction to the effect
9 that there's no legal merit to the U.S. sources argument or
10 the Section 861 argument claiming that the Internal Revenue
11 Code only imposes taxes on certain foreign-based activities.
12 It does seem to me that that instruction could and should
13 appropriately be given in the case, but I'll hear from the
14 defense if there's objection to it when I come to the
15 defendants momentarily.

16 The government is requesting that instruction, I
17 take it?

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

19 THE COURT: All right. The next instruction, having
20 to do with one's attitude toward the Internal Revenue Service,
21 I think is very near to a comment on the evidence and is not
22 an instruction that I will give. But, again, counsel is free
23 to argue the matter to the jury.

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

25 THE COURT: The next request, having to do with the

1 failure to file counts, 26 U.S.C. Section 7203 -- who speaks
2 for Mr. Snipes on jury instructions? Mr. Barnes?

3 MR. BARNES: Yes, Your Honor.

4 THE COURT: Come to the lectern a moment,
5 Mr. Barnes.

6 Bring the government's requested jury instructions
7 with you. I'm looking at the requested instruction, as I
8 said, on 26 U.S.C. 7203. A part of this instruction lays out
9 the requirements of the law for income levels triggering the
10 obligation to file.

11 Do you dispute the accuracy of any of those numbers
12 in that instruction?

13 MR. BARNES: No, Judge.

14 THE COURT: I'm looking for some way to collapse it
15 and simplify it, but I'm not sure there is one.

16 MR. BARNES: One possibility, Your Honor, would be
17 under Your Honor's current instructions, where it reads, "The
18 person is required to make a federal income tax return for any
19 tax year in which he has gross income of a certain amount,"
20 "that amount for these years was X, X, X." That might be a
21 simple way to streamline it, Your Honor.

22 THE COURT: Well, that's essentially what the
23 government has requested, but then you get into the complexity
24 of married individuals filing joint returns.

25 Mr. O'Neill, I'm curious as to why this was broken

1 up this way in the requested instruction. You would have me
2 charge the jury concerning the minimum income levels with
3 respect to a single person from 1999 through 2002 and then
4 married individuals from 2003 and 2004. What was the thought
5 behind that?

6 MR. O'NEILL: Your Honor, I believe the testimony
7 was that Mr. Snipes became married in 2003 so his filing
8 status changed. And I believe that Revenue Agent Steward
9 Stich testified that you make the election for married filing
10 jointly. Since he did not make the election, the IRS would
11 treat it as married filing separately, so we put that number
12 in.

13 However, you would also have to take into account --
14 or could take into account the fact that he's married filing
15 jointly, which brings in a different number, again. So,
16 unfortunately, there's three separate numbers.

17 THE COURT: Okay. Well, I will give that part of
18 the instruction, then, rather than the single number that was
19 in the package that I handed out. I will include the
20 government's requested instruction, that part of it which
21 relates to the minimum amounts.

22 MR. O'NEILL: Your Honor, at the appropriate time
23 the government would also direct your attention to the gross
24 income which the government believes in its requested
25 instruction includes a number of items that were mentioned

1 specifically by the evidence and are not in the instruction
2 that the Court has put forth thus far.

3 THE COURT: Well, which ones?

4 MR. O'NEILL: I believe specifically, Your Honor,
5 the interest, royalties, dividends were all mentioned in
6 Mr. Stich's testimony.

7 MR. BARNES: Your Honor, I believe interest,
8 royalties and dividends are already in Your Honor's
9 instructions.

10 MR. O'NEILL: And just as an addendum, Your Honor,
11 capital gains as well, gains derived from dealings in
12 property.

13 THE COURT: All right. I'll insert that one item,
14 then.

15 MR. O'NEILL: Thirteen -- excuse me, Your Honor --
16 13 as well, distributive share of partnership gross income.

17 THE COURT: Well, at least generically would that
18 not be included within the instruction I'm giving the jury
19 about income derived from business?

20 MR. O'NEILL: It's just more specific, Your Honor,
21 but, yes, generically gross income would include all these
22 things.

23 THE COURT: I don't anticipate there's going to be a
24 great deal of argument from the defense concerning these
25 numbers, in any event.

1 MR. O'NEILL: Right.

2 MR. BARNES: No, Judge.

3 THE COURT: Well, I'll insert the one about capital
4 gain or gains derived from dealings in property under the
5 definition of gross income in that instruction. I think that
6 will be sufficient.

7 Then you had a requested instruction, Mr. O'Neill,
8 about each year being separate. I think that's covered in the
9 package about considering each count separately and
10 independently.

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

12 THE COURT: Then you had a request -- one-sentence
13 request, quote, "Documents characterized as returns but which
14 contain no financial information are not returns within the
15 meaning of 26 U.S.C. 7203."

16 To what would that instruction relate in the
17 evidence? Is there some document which is labeled or
18 characterized as a return?

19 MR. O'NEILL: Yes, Your Honor. Counsel reminded me.
20 The purported returns that were filed and received headings
21 late in 2003, 2004, where Mr. Snipes filed matters which he
22 claimed were returns, tax returns, but just were a sequence of
23 news -- of letters with various statements, and they bore no
24 indicia of a tax return, no financial documentation as to his
25 finances but simply stated a, sort of, mission that he had,

1 but they were -- they were entitled "tax returns."

2 THE COURT: What do you say to that instruction,
3 Mr. Barnes?

4 MR. BARNES: Your Honor, two points. First, I
5 believe Your Honor's instruction already covers that. It
6 says, first, that the defendant was required by law or
7 regulation to make a return of his income for the taxable year
8 charged. Clearly Mr. O'Neill is free to argue that the return
9 submitted was not a return of his income.

10 Secondly, Your Honor, to the degree the government
11 is requesting anything that's -- a directed verdict on the
12 definition of "return," that would run into some problems
13 under the Eleventh Circuit case United States v. Goetz,
14 G-O-E-T-Z, 746 F.2d 705, Eleventh Circuit, 1984.

15 So I believe that Your Honor's instruction already
16 covers it, and he's free to argue to the degree that it's
17 appropriate. Anything further could sound like a directed
18 verdict on that issue, Your Honor.

19 THE COURT: Well, I will check the matter, but I do
20 believe that that is an appropriate instruction in elaboration
21 of the duty to file, and I'm inclined to give it over defense
22 objection. The rest is for the argument of counsel, I
23 believe.

24 Then finally, at least with respect to this package
25 of requests, Mr. O'Neill, you had an instruction on the

1 disjunctive and conjunctive scope of the statute. What does
2 that have to do with this case?

3 MR. O'NEILL: Your Honor, I looked it up quite
4 sometime ago and knew its applicability, and I think the only
5 one would be in Count Two where all of the allegations are put
6 in the conjunctive. And, again, the statute, as His Honor
7 knows, is always in the disjunctive. But there are no
8 multiple objects of the conspiracy. There are no -- there was
9 just merely on that one instance, Your Honor.

10 THE COURT: Yes. I don't think that justifies the
11 giving of that instruction in this case, and it may, indeed,
12 be more confusing than helpful.

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

14 THE COURT: All right. Now, let's go on to your
15 requested instructions filed today. You're requesting a
16 deliberate ignorance instruction. The cases say with respect
17 to this instruction, Mr. O'Neill, that it's appropriate only
18 when the evidence in the record shows that the defendant
19 purposely contrived to avoid learning the truth or the facts.

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

21 THE COURT: How does that charge relate to this
22 case?

23 MR. O'NEILL: Yes, Your Honor. The evidence will
24 show, and has shown, that Mr. Starr specifically in a
25 one-on-one conversation with Mr. Snipes told him that he

1 needed to file taxes, that the 861 position was ridiculous.

2 Subsequently after joining ARL, Mr. Snipes files a
3 notice of incompetency with the IRS detailing how he doesn't
4 understand the tax laws, that he's not capable of
5 understanding them, and he needs the IRS to explain to him why
6 he has to file tax returns.

7 Then subsequent to that, in the series of missives
8 that he sends to the IRS, it's pretty much the same theme in
9 the body of all of these that he does not understand the tax
10 laws, that he doesn't understand whether he needs to file tax
11 returns, and the IRS needs to explain to him why he -- why he
12 is subject to the tax laws.

13 THE COURT: Well, I understand everything you've
14 just said, but I still don't see how that is the functional
15 equivalent of a deliberate avoidance of knowledge or the means
16 of knowledge.

17 I'm disinclined to give that instruction in the
18 case. It's a matter, again, that you can argue with respect
19 to the knowledge and/or good faith of the accused, but I don't
20 think it warrants a specific jury instruction.

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

22 THE COURT: You then have requested an instruction
23 entitled "willfulness and good faith," which I will leave
24 aside for the moment. I believe there's a defense request on
25 the same subject.

1 MR. O'NEILL: That's correct, Your Honor.

2 THE COURT: So, Mr. Barnes, we'll turn to the
3 defense requested instructions, those put forward first in
4 behalf of Mr. Snipes. As I interpret this, Mr. Barnes, you're
5 requesting that I meld into the instruction that I had
6 included in the proposed package the additional elaboration
7 that venue for willful failure to file a return is the
8 judicial districts where Mr. Snipes, or the defendant, made
9 his legal residence. Legal residence is where Mr. Snipes made
10 his permanent home as his principal place of residence on the
11 dates at issue in each of Counts Three through Eight. The
12 question of residency is a disputed issue of fact for you, the
13 jury, to decide. Correct?

14 MR. BARNES: Yes, Judge.

15 THE COURT: What do you say to that, Mr. O'Neill? I
16 think some elaboration of the instruction with respect to the
17 place where the crime is committed is required here. We tell
18 the jury -- or I would tell the jury in the package I
19 previously distributed that venue requires proof by a
20 preponderance of the evidence, by the way, that the --

21 MR. O'NEILL: Yes, Your Honor, I do think the Court
22 should elucidate on that to some degree. However, I do not
23 believe this is a proper statement of what the law is. The
24 law is not clear as it's stated in this instruction.

25 THE COURT: How would you state it or restate it,

1 then?

2 MR. O'NEILL: If I may, one second.

3 THE COURT: Do you address that in your proposed
4 instructions?

5 MR. O'NEILL: No, Your Honor.

6 THE COURT: I don't think so.

7 MR. O'NEILL: I didn't even get these until I was in
8 the courtroom this afternoon, so we didn't have time to look
9 at that.

10 THE COURT: Well, take a minute. We have some time.
11 Take a minute --

12 MR. O'NEILL: Yes, sir.

13 THE COURT: -- to give that attention.

14 MR. O'NEILL: Yes, Your Honor. If we could pass on
15 to that one for a second and we'll come up with some language.

16 THE COURT: All right. Just a moment.

17 (Pause.)

18 THE COURT: The requested supplemental instruction
19 number two is an elaboration on a conspiracy to defraud, and
20 it seems to me it's in argumentative form; that is to say,
21 it's a matter for argument by counsel but not an appropriate
22 instruction for the jury.

23 I think the instructions I have proposed accurately
24 and fully state the law with respect to this subject, and the
25 rest is for argument, counsel. So I'll decline to give that

1 instruction over defense objection.

2 Then you had a request, Mr. Barnes, on good faith.
3 Let's leave that aside for the moment. Both parties have
4 requested an instruction with respect to that.

5 Then you have a requested instruction which was
6 dealt with in the Court's preliminary instructions to the jury
7 on the defendant's request concerning good-faith reliance upon
8 the advice of counsel.

9 What is the evidence in the case, Mr. Barnes, that
10 would warrant that instruction in addition to what I shall
11 call the more general, or generic, good faith instruction,
12 which was previously given to the jury as well?

13 MR. BARNES: Yes, Judge. The predicate facts that
14 we would identify, Your Honor, is -- one is that on the 861
15 return, it was filled out by an accountant, and that the
16 numbers put in the left-hand category accurately reported what
17 was in the prior, former '97 return, which shows that there
18 was full disclosure of financial information for the purposes
19 of asserting the 861 position, and that accountant Rosile
20 signed and submitted the return.

21 Separately, Your Honor -- secondly, we would point
22 out the letters from Mr. Snipes' attorney, Attorney Baxley,
23 who advised Snipes and the IRS with letters copied to
24 Mr. Snipes that Mr. Snipes was not required to file a return,
25 in his position, until the IRS answered his question about the

1 declaration of tax status. And so we would identify those two
2 particular facts as the predominant ones concerning this
3 particularized instruction.

4 THE COURT: What do you say to that, Mr. O'Neill?
5 Is that instruction due to be given in this instance or not?

6 MR. O'NEILL: Your Honor, I apologize. Which one
7 are you on right now?

8 THE COURT: The requested instruction on good faith
9 reliance on counsel.

10 MR. O'NEILL: Your Honor, I -- that -- that likely
11 willful blindness, to me, is a very close call here. On the
12 one hand, there is no real evidence to suggest reliance by
13 counsel. On the other, Mr. Barnes might be able to point to
14 documents that were signed by Mr. Baxley, who was represented
15 to be a counsel, or Mr. Pope. So it's right on the cusp. The
16 government has no objection to giving that one, Your Honor.

17 THE COURT: All right. Then what I will do is give
18 the jury essentially the same instructions that I gave them in
19 the preliminary charge which covered both aspects of the good
20 faith.

21 MR. O'NEILL: Just for the record, Your Honor,
22 Special Instruction Number 18 out of the pattern -- this one
23 is not complete. I'm not saying Mr. Barnes is purposely
24 trying to get an advantage with that; it's just that there's
25 another paragraph that he probably took off because it's

1 covered by other instructions.

2 THE COURT: Well -- and I'm not saying I will give
3 this in precise language. I'm going back to the instructions
4 previously given the jury in the preliminary instructions and
5 review that and give it again so as to eliminate any issue of
6 difference in meaning as between those two packages.

7 All right. Then you have a requested instruction,
8 Mr. Barnes, having to do with good-faith reliance upon the
9 Fifth Amendment privilege. What is the evidence that would
10 warrant the giving of that instruction?

11 MR. BARNES: Yes, Judge. We would point to two
12 evidentiary facts: first, the advice of rights given by
13 Special Agent Graf that referenced his Fifth Amendment right
14 to remain silent; then, secondly, Mr. Snipes asserted this
15 Fifth Amendment right as a right not to provide financial
16 information in some of the voluminous correspondence he sent
17 to the IRS in 2004. So we would establish those two facts.

18 Some of the ways in which Mr. Snipes asserted that
19 were in the forms of questions and other things like that. We
20 believe that was sufficient evidentiary predicate for that
21 particular instruction.

22 THE COURT: What do you say to that one,
23 Mr. O'Neill?

24 MR. O'NEILL: Your Honor, the evidence shows that
25 Mr. Snipes did not assert his rights against

1 self-incrimination because he continued to engage in
2 correspondence with the IRS, engaged in a colloquy with them.
3 So it's obvious he did not assert and he waived any sort of
4 privilege that he might even have had, which I'm not saying he
5 did.

6 THE COURT: Yes, I'm disinclined to give that
7 instruction here. It seems to me that if one is entitled to
8 an instruction on the privilege against self-incrimination as
9 a defense theory to a failure to file charge, there must be
10 evidence that is specifically and directly indicative of an
11 assertion of the privilege as a basis for the failure to file;
12 and I don't think there's any evidence here that could be
13 described in that way.

14 There's evidence about the defendant being cautioned
15 concerning his constitutional privilege, and there may be
16 mention of the Fifth Amendment, as counsel has said, in the
17 voluminous correspondence in evidence with respect to this.
18 And I'm not aware of any evidence in which the defendant
19 specifically and directly asserted the Fifth Amendment
20 privilege as a basis for failing to file. And even if there
21 was, there would then be an additional legal issue as to
22 whether the privilege is available to the extent being sought
23 in this case.

24 A failure to disclose financial information, on the
25 one hand, and a failure to file anything -- any return, on the

1 other, it seems to me, are two different propositions.

2 There might still be a legal obligation to file a
3 return even though the return did not disclose information
4 which could be separately incriminating in some way. So I'll
5 decline to give that instruction here.

6 Then there's a requested instruction on individual
7 intent. In the context of a conspiracy charge, I'm not
8 entirely sure that this is a correct statement of the law,
9 number one.

10 And, number two, to the extent that the request
11 might cover ground as to which the jury should be instructed,
12 I think the charge that I intend to give concerning separate
13 and individual consideration of the case of each defendant is
14 adequate to cover that ground. So I'll decline to give
15 supplemental requested instruction number six.

16 Now, we've left aside two issues here. We'll come
17 back to those in a moment.

18 Among other papers filed since we recessed this
19 morning was a motion by Mr. Snipes for reconsideration of the
20 Court's ruling on the Rule 29 motion concerning Count Three of
21 the Indictment. Lead me through this. Mr. Bernhoft, you're

22 --

23 MR. BERNHOFT: Yes, I've substituted in.

24 THE COURT: -- addressing this issue?

25 MR. BERNHOFT: Yes, sir.

1 THE COURT: Lead me through the sequence of events
2 here that are germane to this motion.

3 MR. BERNHOFT: Yes. There's the Court's probative
4 question regarding whether the IRS was notified of the
5 revocation of all previous power of attorneys, including
6 Starr. And I apologize to the Court that we were unable to
7 point to specific evidence and deal with the specific power of
8 attorney form that was filed.

9 Government's 87-4, which was attached to our motion
10 for reconsideration as Exhibit A, is the power of attorney
11 that Mr. Snipes filed with the Internal Revenue Service on
12 March 30, 2000. And he named two new powers of attorney:
13 Attorney Ray Pope and CPA Bryan Malatesta.

14 And as we articulate in the motion papers, that
15 power of attorney automatically -- the filing of a power of
16 attorney, that Form 2848, automatically, in the form's own
17 language at Section 8, revokes all previous powers of
18 attorney.

19 There's further language in Section 8, which we set
20 forth in the motion paper, that indicates if the taxpayer does
21 not wish to revoke all prior powers of attorney, that box has
22 to be checked, which Mr. Snipes did not check.

23 And then finally, there's an all capitals proviso in
24 Section 8, Page 2 of the power of attorney, that says, in
25 addition to checking the box saying --

1 THE COURT: Wait just a minute, Mr. Bernhoft.

2 MR. BERNHOFT: Yes, sir.

3 THE COURT: I'm hung up. You mentioned
4 Mr. Malatesta.

5 MR. BERNHOFT: Yes. I'm sorry. I apologize. It's
6 Mr. Robert Thomas.

7 THE COURT: All right.

8 MR. MORRIS: Thomas Roberts.

9 MR. BERNHOFT: Thomas Roberts. I apologize.
10 Attorney Pope and CPA --

11 THE COURT: I just wanted to make sure we were
12 looking at the same document.

13 MR. BERNHOFT: Yes, sir.

14 And so the final proviso on the form is, even in the
15 event the box is checked, the taxpayer is advised in all caps
16 that they must attach any previous power of attorney form that
17 they wish to remain in force and effect.

18 So by operation of the form and the signing of the
19 form and the filing of the form on March 30, 2000, without
20 doubt, the Starr & Company authority to act on behalf of
21 Mr. Snipes with respect to tax matters relating to income tax
22 and 1040 matters relating to year 1999 was revoked
23 unambiguously and explicitly.

24 It also bears noting that those power of attorney
25 forms are inputted into the Integrated Data Retrieval System.

1 That's the system of records that several IRS revenue agents
2 testified about. That's the IDRS system. And the POAs are
3 inputted there, such that any IRS employee, whether it would
4 be criminal investigation or audit or exam, the first thing
5 they would pull up is the master file. And IRS employees, as
6 a matter of policy and Internal Revenue Manual imperative,
7 have to check that POA. So the IRS was unambiguously notified
8 of the revocation of Starr and the appointment of new powers
9 of attorney.

10 The second exhibit is Exhibit B, and that's
11 identified as Government 67. And that was attached to the
12 motion to reconsider. In there it's undisputed that the
13 request for the extension was filed by Starr & Company, signed
14 by CPA Michael Canter on August 3, 2000, a little over four
15 months after the IRS was notified of the revocation of Starr's
16 power of attorney to act for Snipes with respect to 1999
17 income tax matters.

18 So we respectfully submit that it is undisputed and
19 a reasonable fact-finder could not conclude that there was an
20 extension of time until October 16, and consequently Count
21 Three fails as having been charged outside of the statute of
22 limitations.

23 THE COURT: Mr. Morris, what do you say to this?

24 MR. MORRIS: Your Honor, there's a couple of
25 problems with that argument. The first is that Exhibit A, or

1 1, that is, the 2848 form, as one can tell by the Bates
2 numbering which begins with an SW, was something that was
3 found during the search warrant. And so this is a copy of a
4 power of attorney that was in the files of ARL, but it is not
5 clear that it was actually filed and submitted with the IRS.

6 More importantly, though --

7 THE COURT: Well, wait a minute.

8 (Pause.)

9 THE COURT: You say this document was government
10 exhibit number what, Mr. Bernhoft?

11 MR. BERNHOFT: Government 87-4, Your Honor.

12 If I could point out, Judge, that the proof that the
13 IRS received the letter is they regarded the appointment of
14 those powers of attorney, and there's correspondence and
15 evidence in the file that they corresponded with the two newly
16 named powers of attorney. And as we heard from Special Agent
17 Lalli, the IRS under certain circumstance can disregard a
18 power of attorney appointment, but they did not do that in
19 this instance.

20 THE COURT: Wait a minute, then. Let's pursue that
21 for a moment. What exhibit is there that the Court can refer
22 to that is dated subsequent to March 31, 2000, and before
23 August 3, 2000, reflecting that the Internal Revenue Service
24 communicated in some way with either Mr. Pope or Mr. Roberts
25 as the POA of Mr. Snipes?

1 MR. BERNHOFT: Moment to confer?

2 (Pause.)

3 MR. BERNHOFT: Judge, after conferring with
4 Mr. Barnes, I'm advised that attorney Pope sent a letter to
5 the IRS on June 28, 2000, with respect to a frivolous notice
6 that he had received from the IRS -- and I am -- I cannot
7 specifically identify that exhibit, Judge -- it was our
8 understanding --

9 MR. MORRIS: Your Honor, if I might assist? I
10 believe that's 87-7. But I'm not sure that that's responsive
11 to the Court's inquiry because that was a letter from Mr. Pope
12 to the IRS. What the Court was asking about, if I understood,
13 was a letter from the IRS back to Mr. Pope acknowledging him
14 as a power of attorney. I'm not aware of such correspondence.

15 THE COURT: Let me see a copy of Government Exhibit
16 87-7, please.

17 (Pause.)

18 THE COURT: This exhibit bears at the end,
19 Mr. Morris, the notation, quote, enclosure, equal sign, IRS
20 letter. Is there another exhibit that would reflect whatever
21 that was?

22 MR. MORRIS: Your Honor, I believe that's 87-6.
23 It's addressed to Starr & Company. It's not addressed to a
24 power of attorney.

25 THE COURT: You were about to add something else a

1 few minutes ago, Mr. Morris. What was that?

2 MR. MORRIS: Yes, Your Honor. Even if one were to
3 assume for the sake of argument that the 2848 that's attached
4 as Exhibit A was, in fact, sent to the IRS and that that did
5 revoke all prior powers of attorney, it still would be
6 irrelevant to the issue of whether the application for
7 additional extension of time, which is Form 2688 attached as
8 Exhibit B to their motion, was valid or not.

9 I have a copy of the 1999 version of the 2688 form
10 with the instructions that come with it, and the instructions
11 state --

12 THE COURT: Wait a minute. Let's don't go beyond
13 the record here. Is the document you're referring to in
14 evidence or not?

15 MR. MORRIS: No, Your Honor.

16 The 2688 form that was sent in on behalf of
17 Mr. Snipes is in evidence, and the portion of the form that
18 was returned to Starr & Company authorizing the extension is
19 in evidence.

20 What Mr. Bernhoft has been arguing is sort of an
21 argument of the operation of how the 2848 form works, and what
22 I would like to argue, Your Honor, is that the instructions
23 for the 2688 form indicate very clearly that someone with a
24 power of attorney can sign for you to request an extension,
25 but it also explicitly states, "The following can sign for you

1 without a power of attorney." And it lists attorneys, CPAs
2 and enrolled agents.

3 I don't believe that there is evidence in the
4 case -- it certainly has not been brought up or published --
5 but I'm not aware of any evidence that Starr & Company was
6 operating under a 2848 power of attorney. Starr & Company was
7 operating as the accountants and attorneys for Mr. Snipes and
8 they had -- they had a basis to be able to seek an application
9 for extension of time simply based on that status, not based
10 on their having filed a 2848 power of attorney form.

11 And, again, the -- I could submit this for the
12 Court's perusal. The instructions for that form do make that
13 clear. So whether the power of attorney form was revoked or
14 not with regard to all prior powers of attorney, they still
15 had a valid basis for seeking an application for an extension.

16 Furthermore, Your Honor, the evidence in the case,
17 including Government's Exhibit 69, which was the letter from
18 Starr & Company where Ken Starr fired Mr. Snipes as a client,
19 indicates that --

20 THE COURT: What's the date of that?

21 MR. MORRIS: That is June 29, 2000, Your Honor.

22 And that indicates in that letter that they will
23 work with all of the individuals associated with him to make a
24 smooth transition to ensure that your work is continued
25 uninterrupted.

1 There was also testimony from Carmen Baker that
2 Starr & Company continued to try to prepare the 1999 return,
3 with follow-up phone calls to Mr. Snipes' firm as to whether
4 he had, in fact, signed the 1999 return that had been prepared
5 by them. So there is an ongoing effort and there's evidence
6 in the record of an ongoing relationship to try to transition
7 the matters.

8 MR. BERNHOFT: May I comment on that, Judge?

9 THE COURT: Yes, Mr. Bernhoft.

10 MR. BERNHOFT: Not as of August 3, 2000, Judge. The
11 government has argued strenuously that this discharge letter
12 of June 29, 2000, terminated the relationship. And, indeed,
13 as Mr. Morris has indicated, there is language in there
14 talking about a smooth transition.

15 But what we have here at base -- we don't dispute
16 the fact that attorneys, CPAs and enrolled agents can sign
17 extensions for return without having filed a formal 2848. We
18 don't dispute that.

19 What we're talking about here is the discharge
20 letter and then the affirmative act that Mr. Snipes does about
21 filing that POA. The IRS had notice of that. And if there
22 was any doubt about who represented him, it was resolved in
23 favor of the newly named powers of attorney.

24 And as of August 3, 2000, I'd respectfully disagree
25 with Mr. Morris, there -- we don't see any evidence in the

1 record as of -- by that date that there's some sort of
2 cooperation going on here. In fact, there was a split and
3 a -- a finance split.

4 I cannot recollect any evidence in the record that
5 there were continuing relationships or transition matters
6 being conducted in June or July, much less August 3, 2000.

7 MR. MORRIS: Your Honor, it's worth pointing out, I
8 believe, that the 2848 power of attorney that's been
9 referenced here was dated back in March of 2000. This
10 precedes the split. It does not evidence any intent on the
11 part of Mr. Snipes to change who he is going to have
12 contacting the IRS on his behalf after the split-up in June.

13 THE COURT: I don't think there's any need to pursue
14 the matter, counsel. I think I understand now what the
15 circumstances are. And whether or not Mr. Snipes had -- had
16 or had not terminated his relationship with Mr. Starr or Starr
17 & Company, or vice versa, whether Mr. Starr had terminated his
18 relationship with Mr. Snipes, seems to me to be a bit of a red
19 herring on this issue because there doesn't appear to be any
20 issue of law that the request for the extension was within the
21 authority of Starr & Company or Mr. Starr to file, and it was,
22 in fact, granted.

23 So as a matter of law, regardless of who had agency
24 authority to represent Mr. Snipes, the result was, in the year
25 2000, that Mr. Snipes had until October the 16th within which

1 to file his return.

2 And that being so, October 16 of the year 2000 would
3 be the operative date that one would look to to determine the
4 expiration of the statute of limitations with respect to a
5 prosecution under Section 7203(4), a failure to file, it seems
6 to me.

7 So for those reasons I will adhere to the ruling I
8 previously made denying motion for judgment of acquittal as to
9 Count Three of the Indictment based upon the running of the
10 statute of limitations.

11 MR. MORRIS: Thank you, Your Honor.

12 MR. BERNHOFT: We appreciate the Court's
13 consideration, Judge.

14 THE COURT: All right. Now, Mr. O'Neill, let's go
15 through the Indictment a moment.

16 MR. O'NEILL: Yes, sir.

17 THE COURT: Have you correlated each of the overt
18 acts with specific exhibits or items of testimony in the
19 record? Do you have an annotated copy of the Indictment that
20 would reflect that information as the government sees it?

21 MR. O'NEILL: No, Your Honor, not an annotated copy.
22 No, sir. We could furnish -- we could put that together, if
23 the Court would -- if it would be beneficial to the Court.

24 THE COURT: Well, I need to make a determination, I
25 think, as to the overt acts that are going to be submitted to

1 the jury. Some of these I have noted as we went through the
2 evidence. But not having examined all of the exhibits, I'm
3 uncertain about some of the others.

4 MR. O'NEILL: Your Honor, if the Court --

5 THE COURT: Has the defense attempted this,
6 Mr. Barnes?

7 MR. BARNES: No, Judge.

8 MR. O'NEILL: Your Honor, if the Court would give us
9 access to the courtroom after this hearing, I'm sure we could
10 do that in pretty quick time.

11 THE COURT: All right. Then I'll reserve ruling on
12 that.

13 It might save you some time -- well, no, I'll just
14 let the government do that. Let me have an annotated copy of
15 the overt acts alleged in the Indictment -- of the overt acts
16 alleged in Count One so that I can make a determination as to
17 whether or not there's a paucity of evidence supporting any of
18 the overt acts such that they should be stricken from the
19 Indictment before it's submitted to the jury.

20 Now let's go back to the venue instruction. The
21 defense requested instruction, Mr. O'Neill, is that the Court
22 instruct the jury as to Counts Three through Eight, that venue
23 for willful failure to file a return is the judicial district
24 where Mr. Snipes made his legal residence. "Legal residence"
25 is where Mr. Snipes made his permanent home as his principal

1 place of residence on the dates at issue in each of the Counts
2 Three through Eight.

3 And cited in support of that requested instruction
4 is 26 U.S.C. 6091 which is cited for the proposition that the
5 place of filing of an individual income tax return is the
6 legal residence or principal place of business of the person
7 making the return.

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

9 THE COURT: What does the government say to that?

10 MR. O'NEILL: Your Honor, the government thinks that
11 the definition is not -- it's close but not quite on point.
12 The defense cites United States versus Calhoun, an old Fifth
13 Circuit case. For the record, it's 566 F.2d 969, 1978.

14 At Page 973, Your Honor, it gives a definition of
15 "legal residence." And so what the government would suggest
16 is within the definition as for Counts Three through Eight,
17 venue for willful failure to file a tax return is proper in
18 the judicial district where the defendant has a legal
19 residence.

20 And then turning to Calhoun, "legal residence means
21 the permanent fixed place of abode which one intends to be his
22 residence and to return to it despite temporary residences
23 elsewhere," comma, "or absences."

24 THE COURT: What are you quoting from there?

25 MR. O'NEILL: That is United States versus Calhoun,

1 Your Honor; again, 566 F.2d 969 at 973. It's an old Fifth
2 Circuit, 1978 decision, Your Honor.

3 THE COURT: You say that a 1978 decision is an old
4 decision, Mr. O'Neill? Is that what you said?

5 MR. O'NEILL: Older, maybe, Your Honor.

6 It's out of the Orlando Division, Your Honor.

7 THE COURT: Well, back to you, Mr. Barnes. That
8 sounds right. What do you say to that?

9 MR. BARNES: I have no objection, Your Honor.

10 THE COURT: All right. I will supplement the venue
11 instruction by that language taken from that decision.

12 Just a minute.

13 (Pause.)

14 THE COURT: And I'll note for the older members of
15 the jury that that law was settled in 1978 and that the
16 government thinks it's ancient.

17 Now let's turn to -- well, I don't think there's
18 anything left to turn to that we haven't.

19 MR. O'NEILL: Your Honor, good faith.

20 THE COURT: I'm sorry, Mr. O'Neill?

21 MR. O'NEILL: I believe good faith is still -- the
22 initial good faith request by Mr. Barnes.

23 Oh. You'll encompass that with the one for advice
24 of counsel as well.

25 THE COURT: Yes.

1 MR. O'NEILL: Very good, Your Honor. Then I think
2 we are complete with Mr. Barnes' --

3 MR. BARNES: Yes, Your Honor. I think the only
4 other thing is Mr. Wilson's proposed jury instructions.

5 THE COURT: All right. Mr. Wilson?

6 MR. WILSON: Good afternoon, Your Honor.

7 THE COURT: Good afternoon, Mr. Wilson.

8 MR. WILSON: Earlier I noticed a leaf that had been
9 caught in my jacket, and I was afraid I was becoming a potted
10 plant. But I realized it was just merely the fact that I
11 parked under a tree.

12 THE COURT: I hadn't noticed the leaf, Mr. Wilson,
13 although there may have been some other evidence pointing that
14 direction.

15 How is this requested instruction any different from
16 the one that I already have in the package concerning Section
17 287, Mr. Wilson?

18 MR. WILSON: Your Honor, it is very close with the
19 exception of the last sentence wherein the instructions that
20 the Court had proposed indicated -- the last phrase, "The
21 decision of the department or agency in making a determination
22 required to be made" -- I have modified that language to read
23 instead -- this is with respect to what is a material fact --
24 if the fact was capable of influencing the ability of the
25 Internal Revenue Service to audit or verify the accuracy of a

1 tax return.

2 It seemed to me that that was -- that language is a
3 little more concise and on point to what the functions of the
4 Internal Revenue Service are in this matter, as opposed to the
5 language of the -- that the Court had proposed, which seemed a
6 little amorphous.

7 THE COURT: What do you say to this request,
8 Mr. O'Neill?

9 MR. O'NEILL: Your Honor, in keeping with the other
10 requests, it appears that this might be more in line with
11 argument to the government that these are just two
12 possibilities, to audit or to verify. Another one would be to
13 pay the amount requested. And I'm sure I could think of
14 several others. And that's why the jury instruction usually
15 just leaves it more broad as to limit the various
16 possibilities.

17 THE COURT: You don't cite any authority here,
18 Mr. Wilson, for this.

19 MR. WILSON: Your Honor, that is correct. However,
20 I did take the language from a case, United States versus
21 Tarwater. This is a -- the citation for this is 308 F.3d 494.
22 This is a -- this case is a violation of 26 U.S.C. 7206.
23 However, I felt that the language that was used in that case
24 was probably also applicable to the matter before the Court
25 today with respect to the functions of the Internal Revenue

1 Service.

2 THE COURT: Well, I think Mr. O'Neill has the better
3 of this argument. I'm a little concerned that the
4 modification of the language as suggested might understate the
5 reach of Section 287. It seems to me that it is legally
6 possible for one if the taxpayer acts willfully to hamper or
7 impede the functions of the Internal Revenue Service by filing
8 a document or a return which requires an audit or verification
9 of the accuracy. And this instruction would tend to say
10 otherwise as I read it. And it might be more confusing than
11 helpful to the jury in the circumstances of this case.

12 I, over defense objection, will adhere to the form
13 of the pattern instruction included in the package and will
14 decline to give this modification.

15 MR. WILSON: Your Honor, there is also just a
16 comment with respect to the actual instructions the Court
17 had --

18 THE COURT: Pull the mike down, Mr. Wilson. Say it
19 again now.

20 MR. WILSON: Yes, Your Honor. There was a comment
21 that I wanted to make with respect to the instruction that the
22 Court has given for us to review which -- with respect to the
23 elements of the -- of this particular count of the Indictment.
24 There's three --

25 THE COURT: Count Two?

1 MR. WILSON: This is Count Two, Your Honor. I
2 apologize.

3 THE COURT: Okay. Go ahead.

4 MR. WILSON: Count Two -- I don't know if this was
5 stressed earlier. However, in the first and third elements,
6 the language of willfulness and knowledge -- I'm sorry -- the
7 falsity and fraudulent nature of the claim is in the
8 conjunctive. In the first element, the language is in the
9 conjunctive, that being a false and fraudulent claim against
10 the United States.

11 In the second element, it is stated in the
12 disjunctive, the false or fraudulent aspect of a claim related
13 to material fact. It seems to me that to indicate in two
14 elements in the conjunctive and one element in the disjunctive
15 may be confusing to the jury.

16 THE COURT: Well, thank you, Mr. Wilson. You're
17 probably correct.

18 Well, the statute is couched in the disjunctive
19 sense prohibiting claims that are false, fictitious or
20 fraudulent. The Indictment alleges in the conjunctive sense
21 that the defendants in this case allegedly presented a
22 materially false, fictitious and fraudulent claim.

23 I think it appropriate to avoid possible jury
24 confusion to strike the word "and" in the first element of the
25 charge and put -- make it read "a false or fraudulent claim."

1 It's of little consequence because in this instance, at least,
2 immediately following the articulation of the elements of the
3 offense, the terms "false or fraudulent" are defined in the
4 same way so that it should not really make any difference.

5 MR. WILSON: Your Honor, I think if that's the case,
6 then the third element also --

7 THE COURT: Yes. I agree. I will change the word
8 "and" to "or" in the first and third elements of the offense
9 charged in Count Two.

10 What else do you have in relation to the
11 instructions, Mr. Wilson?

12 MR. WILSON: Your Honor, I would respectfully object
13 to the Court's granting the instruction the Court previously
14 discussed with respect to the 861 argument. I don't have that
15 document in front of me, but I do believe that for the Court
16 to instruct the jury that that argument is -- I forget the
17 Court's phrasing.

18 THE COURT: Well, let me help. The requested
19 instruction was simply, "There is no legal merit to the,"
20 quote, "U.S. sources argument," close quote, "or the," quote,
21 "Section 861 argument," close quote, "claiming that the
22 Internal Revenue Code only imposes taxes on certain
23 foreign-based activities."

24 MR. WILSON: Your Honor, to the extent that the
25 elements of the offense refer to false or fraudulent claims, I

1 think for the jury to be instructed that a particular return
2 or particular theory is meritless may serve to confuse the
3 jury.

4 I certainly don't intend to argue that that theory
5 has merit. However, I think that for the Court to instruct
6 the jury that a particular position taken by the defense in
7 the documents that were filed that gave rise to this action is
8 without merit borders on invading the province of the jury to
9 determine the veracity of the claim that was made. And I
10 think that I would ask the Court not instruct the jury and
11 allow that to be something that the government can argue in
12 its close.

13 THE COURT: Well, it does relate to a matter of law
14 and not a matter of fact because I think a distinction has to
15 be drawn between the status of the law and the status of the
16 defendant's state of mind or intent, and this instruction
17 addresses only the former and not the latter.

18 And as I previously indicated, I will give the
19 instruction, and the record will note the objection by the
20 defense.

21 MR. WILSON: Thank you, Your Honor.

22 And the Court had indicated in its discussions with
23 counsel for Mr. Snipes a discussion of the overt acts
24 contained in the Indictment. I also wish to bring to the
25 Court's attention that I had previously filed a motion to

1 strike certain language in the Indictment and at some point --

2 THE COURT: All right. What document is that,
3 Mr. Wilson? Do you have the document number?

4 MR. WILSON: Your Honor, I do not have the document
5 number in front of me. I apologize. However --

6 THE COURT: When was it filed?

7 MR. WILSON: This document was filed approximately a
8 week or two prior to the trial.

9 I apologize, I didn't know we were going to get to
10 the point today where we were going to be discussing this.
11 However, I had asked that the language in the Indictment that
12 related to Mr. Rosile's status as a Certified Public
13 Accountant, that being Paragraph 6 of the Indictment, be
14 stricken. There has been no evidence presented that he was a
15 former CPA who continued to work as an accountant after CPA
16 licenses were revoked.

17 Additionally, in the Indictment it refers to the tax
18 return that was filed as fraudulent, and I would ask that that
19 language be stricken from the Indictment, if we're going to
20 argue that point now, Your Honor. There is simply no evidence
21 that was presented regarding his license. That was objected
22 to, and it was kept out by the Court.

23 THE COURT: Mr. Morris, what do you say to that?

24 MR. MORRIS: Your Honor, I agree to some extent. I
25 would propose that, rather than striking the entire

1 paragraph -- I think that's unnecessary, and it would leave
2 the Indictment in the state where certain defendants are
3 defined and Mr. Rosile would not be -- I would propose that
4 the first sentence of Paragraph 6 be revised to say defendant
5 Douglas P. Rosile, paren, quote, defendant Rosile, quote, end
6 paren, was an accountant, period.

7 THE COURT: What did the exhibits show with respect
8 to Mr. Rosile's professional status? Does he not sign some of
9 the documents as a Certified Public Accountant?

10 MR. WILSON: No, Your Honor. I believe that there
11 are some documents -- letters that were presented that his
12 letterhead referred to himself as an accountant. He was also
13 referred to as a tax preparer.

14 I believe that the evidence with respect to this
15 alleged conspiracy show that he was a tax preparer and not an
16 accountant. There was no evidence that was presented that he
17 at any time had been designated as a Certified Public
18 Accountant.

19 THE COURT: Well, I'm inclined to grant the
20 defendant's motion and simply strike the first sentence of
21 Paragraph 6 under the heading "introduction" in Count One of
22 the Indictment.

23 Make note, Madam Clerk, that in preparing the copy
24 of the Indictment for the jury that the first sentence of
25 Paragraph 6 of Count One is to be redacted.

1 What else do you have, Mr. Wilson?

2 MR. WILSON: Your Honor, I believe that's all I have
3 at this point in time.

4 MR. MORRIS: Your Honor, if I may?

5 THE COURT: Yes, Mr. Morris.

6 MR. MORRIS: Your Honor, I have undertaken to come
7 up with at least one exhibit or a witness who testified with
8 regard to each of the overt acts. I'm prepared to enumerate
9 those for the Court, if you would like.

10 THE COURT: All right. Let's do that. Just a
11 moment.

12 (Pause.)

13 THE COURT: All right. We're starting, then, with
14 Paragraph 19 under the heading "overt acts" on Page 6 of the
15 Indictment.

16 MR. MORRIS: Yes, Your Honor.

17 THE COURT: Go ahead.

18 MR. MORRIS: With regard to Paragraph 19, Exhibit
19 4-1, specifically Bates Number WS-04902, since that is a
20 voluminous exhibit.

21 With regard to Paragraph 20, it would be Exhibit
22 87-1.

23 With regard to Paragraph 21, the testimony of Ken
24 Starr.

25 With regard to Paragraph 22, Exhibits 72 and 103.

1 With regard to Paragraph 23, Exhibit 87-5.

2 With regard to Paragraphs 24 and 25, the testimony
3 of Carmen Baker.

4 With regard to Paragraph 26, the testimony of Ken
5 Starr.

6 With regard to Paragraph 27, Exhibit 87-7.

7 With regard to Paragraph 28, Exhibit 87-10.

8 Paragraph 29, Exhibit 118.

9 Paragraph 30, Exhibit 119.

10 Paragraph 31, Exhibit 87-16.

11 Paragraph 32, Exhibit 87-17.

12 Paragraph 33, Exhibit 64-1.

13 Paragraph 34, Exhibit 87-20.

14 Paragraph 35, Exhibit 87-26.

15 Paragraph 36, Exhibit 87-28.

16 Paragraph 37, Exhibit 87-29.

17 Paragraph 38, Exhibit 87-1.

18 Paragraph 39, Exhibit 117.

19 Paragraph 40, Exhibit 87-42.

20 Paragraph 41, Exhibit 139.

21 And Paragraph 42, Exhibit 140.

22 THE COURT: All right. Counsel are so informed.

23 (Pause.)

24 THE COURT: Well, I mislaid the note I made this
25 morning when we were talking about argument, but let's start

1 again with it anyway.

2 I believe you said, Mr. Morris, this morning that
3 the government requested two hours for argument?

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

5 THE COURT: You're going to open; Mr. O'Neill is
6 going to rebut, and I think I said that, that being so,
7 Mr. O'Neill should not use more than one hour for rebuttal.

8 MR. MORRIS: Understood.

9 THE COURT: Defendant Snipes had asked for three
10 lawyers to participate in the argument, Mr. Bernhoft.

11 MR. BERNHOFT: Judge, if I might, we've conferred
12 additionally. And with the Court's permission, we'd modify
13 that request. Mr. Barnes and I will close for Mr. Snipes.
14 Mr. Barnes would go first; I would go second, according to the
15 times that we've discussed.

16 THE COURT: And what was that? I don't remember.

17 MR. BERNHOFT: Two to three hours.

18 THE COURT: All right. I can't say that that's
19 unreasonable in this case given the volume of paper and the
20 amount of evidence, but it does seem to me to push the
21 envelope a bit. And if I hear repetition after two and a half
22 hours, I may suggest to counsel that you are repeating
23 yourself.

24 MR. BERNHOFT: Understood, Judge.

25 THE COURT: All right. Who's going first?

1 MR. BERNHOFT: Mr. Barnes.

2 THE COURT: Barnes. And then Mr. Bernhoft.

3 MR. BERNHOFT: Yes, sir.

4 THE COURT: Mr. Wilson?

5 MR. WILSON: Yes, Your Honor.

6 THE COURT: What did we agree upon this morning?

7 MR. WILSON: We agreed that I would have no more
8 than an hour and a half.

9 THE COURT: All right. Give me just a minute here,
10 please.

11 (Pause.)

12 THE COURT: Well, it looks as though in all
13 probability if counsel use the time requested that we should
14 be able to finish the arguments tomorrow, but it will take all
15 day. And the jury would then be excused, and I would instruct
16 them Wednesday morning.

17 We're starting at 9:30 with the jury. So as I have
18 sketched it out here roughly, it looks as though Mr. Morris
19 will be arguing the case from 9:30 to roughly 10:30;
20 Mr. Barnes will then be arguing the case from 10:45 or perhaps
21 as late as 11:00 for as long as he wishes until we stop for
22 lunch, and then Mr. Bernhoft will begin after lunch and use
23 the balance of the defense time, which will bring us to at
24 least 3:00, or thereabouts; and then, Mr. Wilson, you'll be
25 heard -- if you use your full allotted time, given breaks and

1 whatnot, it would take us to about 5:00 in the afternoon.

2 That's the way it looks. And that's the way we will proceed.

3 Is there anything else to take up today before we
4 recess until tomorrow?

5 MR. MORRIS: Not that I'm aware of, Your Honor.

6 MR. BERNHOFT: Not from the defense, Judge.

7 MR. WILSON: Nothing from Mr. Rosile, Judge.

8 THE COURT: Let the record reflect that I deem all
9 prior motions made by the defendants, or any of them, during
10 the course of the trial to be restated and repeated upon the
11 conclusion of all of the evidence with the ruling of the
12 Court, as previously announced, being the same in each
13 instance, which I think will set the record straight, because
14 of the government's resting, the making of the defense motion,
15 and then the defense resting, and no specific reiteration of
16 the motions for judgment of acquittal, but I deem that they
17 were made.

18 And we'll recess until 9:30 tomorrow morning. I
19 will have copies of the Court's revised instructions carrying
20 into effect all of the rulings that have been made during the
21 charge conference available to counsel at or before 9:30 in
22 the morning.

23 Thank you, counsel. We'll recess until then.

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

C E R T I F I C A T E

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

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Dennis Miracle

Date

Kelly Owen McCall

Date