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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	NO. CR 05-085 RSM
)	
v.)	SEATTLE, WASHINGTON
)	July 16, 2010
DOUGLAS SPINK,)	
)	Sentencing
Defendant.)	
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Steven T. Masada and Susan Roe

For the Defendant: Howard Phillips

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PROCEEDINGS

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3 THE CLERK: This is a scheduled disposition hearing
4 in United States versus Douglas Spink 05-085. Will counsel
5 please rise and make their appearances for the record.

6 MR. MASADA: Steve Masada on behalf of the
7 government. I'm joined by Susan Roe and probation officer
8 Mike Larson.

9 MR. PHILLIPS: Good afternoon. I'm Howard Phillips,
10 I represent Douglas Spink, the gentleman seated to my left.

11 THE COURT: Counsel, we're here for disposition on
12 this matter. The court held an evidentiary hearing and found
13 Mr. Spink violated conditions of supervision in four separate
14 ways: Committing the crime of Animal Cruelty; failing to
15 submit truthful reports to probation; leaving the judicial
16 district without permission on two separate dates, that was
17 actually admitted by Mr. Spink; and associating with people
18 engaged in criminal activities or persons convicted of a
19 felony, from November 4, 2009 through December 5, 2009 as
20 well as April 14, 2010.

21 Since our hearing the court has received various materials
22 from both the government and the defense, including the
23 supplemental submissions made by counsel. The court has
24 reviewed all of that material from the government. The court
25 received two CD's or DVD consisting of the recorded phone

1 calls from the -- I think it was Marin County in Tennessee;
2 as well as the capture from, I believe it was YouTube, of Mr.
3 Spink's presentation at the Hope convention in New York City.

4 Trusting that the parties have had the same opportunity to
5 review all of those materials, if I could have the
6 government's recommendation for disposition.

7 MR. MASADA: Thank you, Your Honor.

8 As we all know the parties are here to determine the
9 proper disposition in this supervised release matter. And in
10 all honesty it is a somewhat unique case. But to be clear,
11 the government is not here to judge Mr. Spink, but rather
12 we're here to reflect upon his actions and hold him
13 accountable for conduct that violates the terms of his
14 supervision.

15 From the government's perspective this case is about a
16 severe breach of trust. And when that breach is deliberate
17 knowing and systematic as it is here, the corresponding
18 sanctions should follow: At the evidentiary hearing the
19 government presented evidence and testimony regarding Mr.
20 Spink's course of conduct that established the violations of
21 his promises to this court and the United States Probation
22 Office.

23 Now, the court is again familiar with that evidence, so I
24 won't belabor the point except to say the prohibited conduct
25 here was pervasive. What is apparent is that Mr. Spink

1 approached supervision dismissively, he treated it as an
2 obstacle to be avoided. And what the U.S. Probation Office
3 ultimately did find, what they discovered, was Mr. Spink was
4 living a double life. Superficially he appeared to be in
5 compliance, but underneath that facade it was apparent that
6 they were dealing with someone who was running a business
7 with dubious connections, using corporate entities to manage
8 unreported assets, and they were dealing with someone who was
9 himself engaging in criminal activity.

10 In determining an appropriate sentence we must look at the
11 totality of the circumstances. And that necessarily involves
12 the particular Washington State crime at issue here. But to
13 be clear, what drives the government's sentencing
14 recommendation is the egregious breach of trust that occurred
15 here and Mr. Spink's unmitigated defiance regarding
16 supervision and his denial of accountability.

17 It is his unwillingness to cooperate with the United
18 States Probation Office that exemplifies why the government
19 and probation office believe Mr. Spink is unsupervisable at
20 this current time. Now even after the court found violations
21 had occurred, we see no expression of remorse, no contrition
22 and not even so much as an acknowledgement of the severe
23 misconduct that occurred here.

24 Now, defendant's attempt to blame the probation office for
25 its level of supervision is misplaced. Mr. Spink was under

1 normal supervision but was then transferred in 2009 to the
2 care of probation officer Jeffrey Robson, because he was
3 considered a low-risk supervisee. But this low risk status
4 wasn't earned, it was obtained through fraud.

5 Now, there's no question Mr. Spink is extremely
6 intelligent, a driven individual. And it's unfortunate, but
7 those qualities contribute to the government's concern here,
8 since Mr. Spink does not want to comply with supervision. He
9 has in the past been a productive member of society, the hope
10 is he will be again. But that is going to require a
11 volitional decision on his part to alter his attitude toward
12 the authority of this court, the probation office, and the
13 laws of the United States of America. From what we've seen,
14 we expect that may be a long journey.

15 Now, with regard to the conditions suggested by the
16 probation office, the government will largely defer, since
17 again the probation office is the -- they're the soldiers on
18 the ground, they're in the best position to assess what is
19 necessary to effectively monitor Mr. Spink's behavior and
20 assist him in reentry to the law -- to being a law-abiding
21 citizen.

22 The only exception to the suggested conditions would be,
23 that the government has, would be to the restitution
24 suggestion. We think that there is a separate civil
25 proceeding, and as the defendant points out that is perhaps a

1 better venue to address the restitution issue.

2 But the remainder of the proposed special conditions are
3 appropriate here in light of Mr. Spink's qualities and
4 characteristics. They target certain behavior that the
5 probation office has identified as problematic and are
6 intended to promote his successful reentry into society.

7 Now, notably most of the terms and conditions to which Mr.
8 Spink objects to in his sentencing memorandum are not
9 complete prohibitions of conduct, rather they're qualified,
10 they merely require the permission or authorization of his
11 treatment provider and/or his probation officer.

12 Now, it is apparent Mr. Spink needs some significant time
13 to reflect upon his misconduct and hopefully when he
14 commences his new term of supervision he'll have a better
15 outlook toward the probation office and a better
16 understanding of the purpose of supervision.

17 Now, the government is recommending a revocation for a
18 term of 48 months in this case to be followed by a term of
19 supervised release of 12 months. Now, given the sizeable
20 downward departure Mr. Spink received for the underlying
21 conviction and other circumstances present here, this upward
22 departure from the advisory guideline range is more than
23 justified.

24 That being said, the probation office is recommending less
25 prison time but more supervision in this case, which in the

1 government's view indicates its willingness to try to work
2 with Mr. Spink. And the government would also add that is a
3 suitable alternative here if the court so finds.

4 Thank you.

5 THE COURT: Thank you, counsel. Mr. Phillips.

6 MR. PHILLIPS: Good afternoon, Your Honor.

7 Your Honor, first I'd like to thank the U.S. Attorneys
8 office for exhibiting respect and preserving the dignity of
9 this court in the evidence that they presented in this
10 matter. My client and I appreciate what they did was to
11 preserve the dignity of the court.

12 On the other hand, with all due respect to counsel and
13 with all due respect to the U.S. Probation Office, it is our
14 view that the prosecutor's recommendation, nearly five times
15 the guideline range; and the U.S. Probation Office
16 recommendations of three times the guideline range and
17 recommending a sentence that is equal to or greater than the
18 conspiracy sentence he received on the underlying offense,
19 the probation's recommendation is wholly unreasonable, and
20 with all due respect the prosecution's recommendation is
21 itself obscene in the defense view.

22 The most serious violation in this case, Your Honor, is a
23 crime which makes this case a Grade B, and the guideline
24 sentence is 4 to 12 months. We're asking the court to
25 sentence my client to the guideline range of 4 to 12 months

1 and we're asking for the court to sentence him to four months
2 and not the top of the range.

3 I think it's important to understand here, Your Honor, and
4 quite honestly I really don't understand the spleen or how my
5 client is being treated in this matter. There seems to be a
6 confusion between Douglas Spink and Mr. Clarke. I just want
7 to bring to the court's attention, I was planning to do this
8 later in my presentation but I wanted to do it now, because
9 Mr. Spink's crime, the evidence that's before this court, the
10 crime was being present when someone was committing a crime.
11 He is not here for violation of actually conduct, of actually
12 committing the crime.

13 When Mr. Clarke -- at our last hearing these people were
14 here, Pasado was here, whomever, at my client's hearing. His
15 case is over. He leaves. He goes back into incarceration.
16 And all the protestors leave as well. And Mr. Clarke, the
17 person who actually committed the acts, comes in to be
18 sentenced right afterwards, and the courtroom is empty. I
19 think that's a clear indication, Your Honor, maybe not how --
20 I hope not how this court perceives my client and Mr. Clarke.
21 You were here. You saw Mr. Clarke. I hope this court
22 doesn't have the same sort of attitude towards my client as a
23 lighting rod for this issue, as opposed to Mr. Clarke, or the
24 person who actually committed the crime.

25 Next I'd like to talk about the jurisdiction. If this

1 court -- if the prosecution or the government or probation
2 officer wants to punish my client for the crime that he is
3 alleged to have committed, this is not the proper venue for
4 that. If the state wants to prosecute him for abuse of,
5 cruelty to an animal, then the state should do that. We
6 provided this court with an e-mail from Mr. McEachran,
7 telling the Bellingham Herald they're going to rely on the
8 government, the federal government to do so, because they
9 don't want to spend the money to prosecute him so they'll
10 rely on you basically to punish him as the way that they see
11 fit.

12 In fact, Mr. Clarke got 30 days in jail with credit for
13 time served. And the government is asking for 36 months --
14 or probation 36 months, and the government 48 months, for
15 just being there, when Mr. Clarke got 30 days. That does not
16 seem fair to me, regardless of whether he was in -- any sort
17 of allegations regarding his beliefs.

18 Any violation of that state statute, the state statute
19 itself may be politically correct, but there's a real issue
20 of whether that state statute is constitutionally correct.
21 Because it's my understanding the intent of the statute was
22 to protect the animals from being abused, when the animals
23 were not abused. So there's a real question of whether that
24 statute is even constitutional, that's not before this court,
25 I put it in our pleadings but I'll not go any further.

1 If I could go forward now to the upward departure request.
2 The probation request is -- probation's justification for an
3 upward departure is because my client had received some sort
4 of downward departure in his underlying case sufficiently
5 because of some sort of substantial assistance or
6 cooperation. I want to make it clear for the record, his
7 downward departure was a deal, was an agreement made with the
8 government, not because of any 5K or any substantial
9 assistance or cooperation with the government, but basically
10 because there was an issue of pre-trial, a suppression issue
11 that was -- that Mr. Spink had. And there was a CI who the
12 government did not want to disclose.

13 That downward departure came out of equal parties making a
14 decision, not to benefit just him. The government benefited
15 by that as well. So I think the request that that downward
16 departure somehow benefited him so much so now you could slam
17 him and put him in jail for a longer period of time because
18 he got a break last time, I think that's totally disingenuous
19 and unfair given the nature of why he received the downward
20 departure.

21 The government, however -- I know Mr. Masada, and I
22 appreciate Mr. Masada's position. However, the government
23 seems to be asking for an upward departure because my
24 client's conduct was, "Shocking, pervasive, no remorse," and
25 because of his mental state makes him unsupervisable. None

1 of those are legal bases to sustain an upward departure, that
2 I can see in the guidelines.

3 I did provide the court with a supplemental sentencing
4 memo so I don't need to go into all those issues regarding
5 conditions and all those things. But I did want to talk a
6 little bit about my client's conduct on probation. That
7 seems to now be characterized as being stealthy, and
8 deceiving and a double life, and this sort of thing.

9 The truth of the matter is my client received no dirty
10 UA's, he had no contact with the police, he had not even a
11 traffic infraction. When he was in prison he didn't have an
12 infraction or any sort of charge against him for not being a
13 model citizen in prison. And did the same thing here. He's
14 not even had a traffic ticket or parking ticket. He has
15 abided by this court's rules. It's my understanding, Your
16 Honor, there was no prohibition against pornography and
17 obscenity. And therefore there would be no violation, even
18 if he did those things, or getting on the internet and doing
19 his business on the Web site, and that sort of thing. That
20 in itself is not a crime. Therefore he should not be
21 sentenced about that.

22 Exhibit 22, the court has the YouTube video. It's really
23 important I think that the court review that and look at --
24 if the court already has, but at point 6 hours 37 minutes Mr.
25 Spink on probation is telling a crowd of people, "Do not do

1 what I did. I did something stupid. I got involved with
2 drug smuggling. Sure, I thought it was fun with the
3 helicopters and all that. But don't do it, because you will
4 go to jail and you will hate yourself for doing it. It will
5 destroy your life." He spent a good ten minutes telling the
6 jury -- or telling the people in the audience exactly what
7 this court wished him to say. I made a mistake. I take full
8 responsibility for it. But nobody went to jail because of my
9 conduct, and he was proud of that. But he spent a good deal
10 of the time -- he was, in fact, in violation at that time,
11 because he was in New York without permission. So that was
12 part of the violation.

13 But if the court looks at that video, you will see him
14 admonishing the crowd, "Do not, please, do not do what I did.
15 I regret it for the rest of my life. And if you follow my
16 lead you will regret it as well."

17 I did, in fact, believe -- I do still believe that the
18 fact that my client was not supervised for a year and-a-half
19 may have something to do with this. With all due respect to
20 the probation office, the truth of the matter is he wasn't in
21 hiding, he wasn't trying to avoid them. They were, in fact,
22 avoiding him. They didn't go out there for 18 months. They
23 could have gone. The government is making all kinds of
24 allegations where he would hide and do all kinds of things.
25 The truth of the matter is he was living in plain sight. But

1 they never went out to see him or even ask him to come in for
2 an interview. And I addressed those things in my
3 supplemental as well, as well as the conditions proposed, so
4 I don't plan to go there any further.

5 The purpose, Your Honor, of supervised release was to
6 assist my client in integration. That has not happened. No
7 one assisted him in integration for the last 18 months. And,
8 in fact, had he not tried to help Mr. Tate with his
9 situation, to get his lawyers to work for him, this matter
10 would not have come to the attention. Because he wasn't
11 hiding, he was living his life quietly within his means.
12 Living in basically a shack, and within his means. Not doing
13 drugs. Trying to better himself and gain money and that sort
14 of thing.

15 Lastly I wanted to tell the court that the only --
16 basically, Your Honor, there is no one else in this courtroom
17 can tell you what I can tell you at this point. And that is
18 Douglas Spink is a good guy. He really, really is. I just
19 so happen to have three other clients with him in the same
20 cell. Mr. Suado (phonetic), you know him . They rely on
21 him. They think he's a great guy. One client he assisted
22 with, he said, "Howard, he types so fast all you have to do
23 is say the words and he'll type as you say them, so fast."
24 He helps them all. He gives them classes. He teaches them
25 about corporate. I have a gentleman who is on a tax case who

1 is a born again Christian for years, all his life. And he
2 thinks Doug Spink is a great guy. They all do. Because he
3 really is.

4 He's got eccentrics, there's no question about it. And
5 when I took this case I definitely had the "ewww" factor,
6 when I was told what it was. But over the course of time
7 I've gotten to know Mr. Spink. He doesn't need to go to jail
8 for three years. He doesn't even need to go to jail for four
9 years. He doesn't even need to go to jail for ten years or
10 ten months. He needs to go to jail, if the court wishes him
11 to be in jail, for four months. If the court is wishing him
12 to spend more time than that, we'd ask the court to consider
13 electronic home monitoring. We'd ask the court to consider
14 the RDAP program. We'd also ask the court to consider
15 designating him to Sheridan, recommending he goes to
16 Sheridan. But the four months incarceration with credit for
17 time served is appropriate. He is willing to continue on
18 with his supervised release.

19 And in my client's view he did not violate any
20 prohibitions except the one where he let Mr. Clarke come on
21 his property and was there when Mr. Clarke was doing those
22 nasty acts with his dogs. That was his mistake.

23 Thank you.

24 THE COURT: Thank you, counsel.

25 Mr. Spink, there is no requirement that you make any

1 statement today. But if you would like to say anything prior
2 to the court imposing its sentence or disposition here, this
3 would be your opportunity. Is there anything you would like
4 to say?

5 THE DEFENDANT: Your Honor, if it's possible, I
6 would.

7 THE COURT: Yes. I'll ask you step to the podium,
8 please.

9 THE DEFENDANT: Your Honor, five years ago I stood in
10 this courtroom, almost five years ago, and I made a
11 commitment to you. I made a commitment I was going to turn
12 my life around, that I was going to do better after my life
13 had fallen to nothing, the death of my best friend, and many
14 other friends at the time had left me in a state where I was
15 making terrible decisions. And when I was sentenced in your
16 courtroom I made you a promise I would change my life and get
17 it back on track.

18 Since that time I have worked every day to uphold that
19 commitment to you. When I did my prison time at Sheridan I
20 worked in the education department. I also taught volunteer
21 classes in the evening. I met people from all walks of life,
22 all races, and all educational background, and learned so
23 much from them at the time.

24 Since that time I've worked to improve my relationship
25 with my mother and my father, who is now deceased, with my

1 friends and my family. I found so much value and so much joy
2 in those relationships that I had let die in the years when I
3 was spiraling downwards. I returned to my career in the
4 technology industry, something I had done for 15 years
5 previously, and it's been a great blessing to be back in that
6 field, in the law-abiding field, and to be productive once
7 again in society.

8 I had no disciplinary problems in prison. Never had a
9 write-up, never had a shot. No disciplinary problems in the
10 halfway house. I am proud of that because I've worked hard
11 to do that, not just because I've avoided getting in trouble.
12 I've lived within my financial means. I've rebuilt from
13 nothing. And I've been proud to do that and have the
14 opportunity to do that. It's taken time and hard work, seven
15 days a week. I've been readmitted to my graduate school
16 program in system science. And I hope to start this winter.
17 I have continued my academic work, as I told you in court
18 five years ago that I hoped to do.

19 As my lawyer had said, I have no problems whatsoever of
20 being supervised by the probation office, in fact I welcome
21 it. For the first 18 months of my supervision my probation
22 Officer Jerrod Akins came and visited frequently. He was
23 always welcome at my place. We would have coffee. He gave
24 me very clear guidelines. He helped me with advice about
25 difficult things in my life. I considered him a friend.

1 During the time that I've been on supervised release,
2 three years, I've never had a problem. I've never been
3 unemployed. I've never done drugs. I've never done anything
4 knowingly wrong. I welcome direction and guidance from the
5 supervised release folks and from the probation office. But
6 for the last 18 months I've never seen anybody. I never
7 received a phone call. I never received any information that
8 I was doing anything inappropriately. I made no effort to
9 hide anything from supervised release. I was at my house. I
10 work from home seven days a week. I'm always there. I
11 answer the phone all the time. And I don't want it to be
12 seen that I was hiding myself from them, because I was not.

13 What mistakes I've made, and I acknowledge mistakes, were
14 not through an effort to hide or avoid supervision. I've
15 looked forward to supervised release. You sentenced me to
16 five years of supervised release as part of my case. I never
17 petitioned for it to be cut, because I didn't think that was
18 fair. That was part of the sentence you gave me and I've
19 told many of my friends that it's my job to do that five
20 years of supervised release, not for you to make it shorter
21 because it was inconvenient for me. That's why I never
22 petitioned to cut my supervised release after three years.

23 I acknowledge I was wrong to present at the Hope
24 conference in New York without getting approval. It was a
25 stupid mistake. I was given an invitation at the last minute

1 to come and present. I didn't think I could get approval in
2 time. I should have simply said no. There's no question
3 about that. I am not perfect, I have made mistakes in the
4 last three years. Those are mistakes I will not make again.

5 I do want to talk briefly about the situation with Mr.
6 Clarke. He should have never been allowed in my home and he
7 should never been allowed to visit me. Despite the fact that
8 he was traveling under a false name, I should have done
9 better research into his background in knowing he was not an
10 appropriate person to be in my home. I am completely and
11 totally accountable for that failure. It was a failure to
12 effectively manage him, to oversee him, and to supervise him
13 when he was a guest of my house. And it's a failure that
14 rests on my shoulders. It's a mistake that has cost me
15 beyond words to describe already, and it's a mistake I will
16 never make again.

17 What I hope the court can do today is to treat me fairly,
18 according to my actions, and according to my genuine
19 intentions. That's all I hope for. I hope to continue with
20 my volunteer work with human rights activists in Iran, China,
21 Tibet and Burma, using technology to avoid suppression by
22 their totalitarian governments. I hope to continue my work
23 in the technology industry.

24 I hope to continue my strong relationships with my family,
25 my friends, my colleagues and my community. I hope to

1 continue my political activism, and most of all I hope to
2 continue giving back to the community as much as I'm able to.
3 That's the challenge you gave back to me five years ago, to
4 give back. That's what I've done for the last five years to
5 the best of my ability.

6 So five years on I stand in your courtroom again, looking
7 you in the eyes and acknowledging the promise I made to you
8 five years ago. I've told so many of my friends the story of
9 standing in front of Judge Martinez and being admonished for
10 falling down and for failing with all the gifts I've been
11 given, to give back to society. I tell it because I'm proud
12 of the fact that you challenged me to get back on track after
13 the tragedies in my life.

14 I'm not perfect. I've made mistakes along the way. But
15 every day of my life since then I have worked to get back on
16 track. I welcome supervision from the probation department.
17 I have nothing against the probation department. I have
18 nothing to hide from the probation department. I'm more than
19 happy to work with them in any way to make sure I'm
20 transitioning back into society as effectively as possible.
21 That is my goal as well and has been since my release from
22 prison.

23 I will re-double my effort to avoid any problems and any
24 mistakes. One mistake is too many. One mistake in three
25 years is too many. I should have made no mistakes, and I

1 failed in that. I acknowledge that failure. I promised you
2 I would not make mistakes. And I did fail in making
3 mistakes. I will try harder to make no more.

4 What I'm asking for today and what I'm hoping for today is
5 only the chance to continue my work that I started in this
6 courtroom five years ago, to continue to rebuild a healthy,
7 law-abiding positive life for myself, and to be a productive
8 member of my community.

9 Thank you, Your Honor. Thank you.

10 THE COURT: Thank you, Mr. Spink.

11 Counsel, let me check with our probation officer. Mr.
12 Larson, thank you for filling in. I know Mr. Robson is the
13 one who wrote the recommendation from probation and is much
14 more familiar with the case. Having heard from the
15 attorneys, having heard from the defendant, is there anything
16 else you'd like to say?

17 MR. LARSON: No, Your Honor, I think most of it has
18 been said. I've been on this case from the beginning as well
19 so I'm familiar if the court has questions. Given the
20 arguments over the conditions, does the court have any
21 questions or would you like for us to justify those, the
22 conditions we've recommended?

23 THE COURT: I have no questions.

24 MR. LARSON: Thank you, Your Honor.

25 THE COURT: Thank you.

1 Counsel, let me start out by indicating that the record is
2 what the record is. I didn't interrupt counsel several
3 times, I disagree with your assertions, from defense counsel,
4 disagree with your assertion that Mr. Spink did not violate
5 the Washington State law. The court specifically found it
6 was his conduct, not simply his mere presence, that actually
7 fell within the purview of the statute itself and that was
8 the reason for the finding. I also disagree in terms of the
9 record of this, the underlying case. I had a chance to
10 review the entire file and know exactly how Mr. Spink came to
11 be sentenced to the sentence the court imposed.

12 In fact, the original sentence was for a single count of
13 Possession of Cocaine With Intent to Distribute. That
14 particular count, given the amount of cocaine involved in
15 this particular case, would have garnered him a ten-year
16 mandatory minimum sentence absent the 5K1.1 motion that was
17 submitted by the government, he would you have been sent to
18 prison for ten years.

19 In fact, even with the 5K, probation was recommending
20 60 months, almost double what the government was
21 recommending, because of the extreme seriousness of the
22 underlying offense. As Mr. Spink himself boasted on video,
23 one of the largest drug busts in the state's history.

24 The court imposed the 36 months, because of his actions
25 that he did, because of his conduct that was helpful to the

1 government, and imposed also the additional five years
2 supervised release that's mandatory by statute. There were
3 many stringent conditions imposed by the court. Conditions
4 that were also mandatory during his five-year period of
5 supervised release.

6 There are many reasons for imposing those kinds of
7 conditions for Mr. Spink. But paramount among those reasons
8 is to try to maximize your reintegration into society once
9 you transition out of custody. It is designed to help you in
10 that readjustment period with the greater hope of never
11 having you show up in court again or have to go back to
12 custody.

13 But there's also another purpose to those conditions.
14 They're there to allow probation to monitor your compliance,
15 your behavior, so they can help keep you on the straight and
16 narrow as you start deviating, if that were to happen. And I
17 acknowledge that in this particular case, you may be right,
18 they may have been able to do a little bit better job of that
19 monitoring.

20 These restrictions on your behavior are mandated by the
21 court. They are not something that you can choose to ignore
22 regardless of whether you agree with them or not. And here
23 my belief is that you have blatantly done everything possible
24 to circumvent those conditions. You've used, what everyone
25 acknowledges, is your substantial intelligence to find a way

1 to, "Get around the rules."

2 I believe you understood the rules, you just disagreed
3 with them, do not believe that those rules apply. As with
4 other rules of society, I can only imagine you agree those
5 rules should not apply to you.

6 Let me quote, 2008 July presentation, New York City.
7 "It's not as much fun to simply break the rules as it is to
8 find creative ways to get around them." Do you remember
9 saying that?

10 THE DEFENDANT: I don't remember that specifically,
11 but I do remember it in the context of always following
12 rules.

13 THE COURT: Well, the record before this court,
14 including the e-mails, the recordings, everything else,
15 including the evidence presented at the evidentiary hearing,
16 leave little doubt in this court's opinion that you, in fact,
17 practice what you preach.

18 Supervised release and remaining on supervised release is
19 a privilege. The intentional circumvention and violation of
20 those conditions, they're not laws, they're just conditions
21 set by this court, in my opinion merit severe consequences.
22 Here, in light of the extraordinary break that you received
23 at sentencing originally, 70-percent off what would have been
24 a mandatory minimum sentence, if I remember right you were in
25 possession of almost 150 kilograms of cocaine at the time of

1 your arrest. That was just that one time. The entire
2 conspiracy itself was many more times than that. But you
3 were held responsible for that amount.

4 Counsel, the court will impose the following sentence:
5 The court will revoke the term of supervised release.
6 Probation recommends 22 special conditions of supervised
7 release for him to follow during the period of supervised
8 release, that will be reimposed by the court.

9 After carefully reviewing those conditions the court feels
10 that 21 of them will be imposed exactly as set out by
11 probation. No. 8, the one restitution amount the court
12 agrees is better handled civilly. He's already been ordered
13 to pay the Whatcom County Humane Society for the expenses
14 that they incurred in dealing with the animals that were
15 seized from his farm.

16 The other 21 will be imposed exactly as set out in
17 probation's recommendation with the following change to No.
18 4. No. 4 will now read, "The defendant shall not possess or
19 peruse any authentic, altered, or manufactured in any form,
20 material that depicts and/or describes bestiality, zoophilia,
21 or any sexual contact with animals except as authorized in
22 advance by his probation officer." As indicated the rest of
23 the conditions will be imposed exactly as set out in Mr.
24 Robson's recommendation.

25 Condition No. 14, the defendant shall not own, access or

1 use any computer or electronic device with internet
2 capabilities, until granted permission by therapist and
3 probation officer.

4 No. 15, defendant shall allow probation to inspect any and
5 all personal computers owned or operated by the defendant.

6 No. 16 the defendant shall notify his or her probation
7 officer of all computer software owned or operated by the
8 defendant at the commencement of supervision and report any
9 additional software purchase, acquisition, or use during the
10 course of supervision.

11 And finally No. 17, the defendant shall consent to U.S.
12 Probation conducting ongoing monitoring of his computer,
13 hardware and software. The monitoring may include the
14 installation, at his expense, of hardware or software systems
15 which allows evaluation of his computer use. Monitoring may
16 also include the retrieval and copying of all data from his
17 computer or other electronic devices, or any other electronic
18 media. The defendant shall comply with the requirements of
19 U.S. Probation computer-monitoring program as directed.

20 Those were not original conditions but they will be
21 imposed now, because this court finds them reasonably related
22 to the offense conduct the court found you in violation of
23 here. You were involved, through that computer, and in
24 contact with other people who for whatever reason had an
25 interest in sexual acts with animals.

1 That involvement led directly to Mr. Clarke showing up on
2 your property, and led directly to your being convicted of
3 this underlying violation. So therefore the court finds
4 those conditions to be reasonably related, that's why they're
5 being imposed.

6 The same with condition No. 22. You are to shut down all
7 Web sites owned and operated under your control that promote
8 or contain any zoophilia, bestiality, or any sexual acts with
9 animals. Then it sets out a list of the Web sites that
10 probation found at the time it did their search. I don't
11 know whether they're still in existence or not, but that also
12 is a condition the court finds is reasonably related to the
13 violations here, and therefore feels it's appropriate. As
14 indicated, all the other conditions recommended by probation
15 will be imposed exactly as set out.

16 The government indicated in their oral argument they
17 believe you are not supervisable. I have serious doubt as to
18 whether that is possible or not. And I seriously considered
19 imposing the maximum five-year period of imprisonment with no
20 supervised release to follow. But I decided not to do that.

21 The court will instead, in revoking the terms of
22 supervised release, impose a period of 36 months of custody,
23 credit for time already served, with an additional 24 months
24 of supervised release to follow once you're released from
25 custody. I do believe you have the capacity, you certainly

1 have the intelligence, to follow the rules. And I do believe
2 you merit an opportunity to prove to the court that you will
3 not try to circumvent those rules, that you will live up to
4 those rules.

5 And lastly, I want you to know something else. I grew up
6 on a farm. I have always had tremendous respect for the role
7 that animals play in our lives. You and I have completely
8 different beliefs when it comes to animals. You're not being
9 punished, and the court does not punish you for your beliefs,
10 you're free to believe anything you want. But the court will
11 punish you for your actions and your conduct. Because while
12 you're on supervised release of this court you will follow
13 these conditions or else the consequences will be imposed.
14 Do you understand?

15 THE DEFENDANT: Yes I do, sir.

16 THE COURT: Mr. Masada, do you have the judgment
17 form?

18 MR. MASADA: Just a moment, Your Honor.

19 MR. PHILLIPS: Excuse me, Your Honor, would the court
20 consider our recommendation for the court to consider
21 recommending that he goes to RDAP, and Sheridan also be --

22 THE COURT: I don't have any problem making that
23 recommendation, counsel. The record that I have does not
24 really seem to support that he has any drug or alcohol
25 problem at this point in time. You also requested

1 recommendation to placement at Sheridan. I have no objection
2 to him being placed there. I think it's probably a very
3 appropriate setting for him.

4 MR. PHILLIPS: Thank you, Your Honor. And may I have
5 one second?

6 Is there a chance, Your Honor, that some of the 36 months
7 can be done at the RRP or halfway house?

8 THE COURT: One of the conditions actually set out by
9 probation, No. 7, is that he shall reside in and
10 satisfactorily participate in a residential reentry program
11 for up to 180 days. So that's part of it already, counsel.

12 MR. PHILLIPS: Very well, Your Honor.

13 MS. ROE: There was a request by probation for some
14 placement at FTC for psychiatric help. Would the court
15 include that in the recommendation if Mr. Spink is willing to
16 do so?

17 THE COURT: Everything again that I've seen tells me
18 that Mr. Spink will not. I don't have any objection to
19 including it. If the defendant is willing to participate
20 then I think it would certainly be very helpful, especially
21 to -- towards any compliance in the future. But I think it's
22 truly his choice. If he doesn't want -- everything I know,
23 counsel, tells me if he doesn't want to participate it's not
24 going to work.

25 So I don't know if you have any comment on that, Mr.

1 Phillips. We can put it in there that if he's willing to
2 participate I'd be more than happy to make that
3 recommendation. I'm not going to say that he has to against
4 his will.

5 MR. PHILLIPS: I think that's appropriate, Your
6 Honor, if the language is if he's willing to do that it
7 should go forward, if not then not.

8 THE COURT: All right.

9 MR. MASADA: Your Honor, may I approach?

10 THE COURT: Please.

11 MS. ROE: Your Honor, page four of the judgment
12 there's some interlineations as well as a part that is
13 stricken out for the court's attention.

14 THE COURT: Counsel, two final matters for the
15 record. No. 1, the court has reviewed the judgment form as
16 it accurately reflects the disposition, the sentencing and
17 has been dated and signed.

18 And No. 2, Mr. Spink, we had an evidentiary hearing. You
19 admitted one condition, the other three were hotly contested.
20 We had a lengthy evidentiary hearing. You are free to appeal
21 the court's ruling and findings that the court made. You're
22 free to appeal the conditions that the court has just imposed
23 and the sentence -- disposition this court has just imposed.
24 If you wish to take advantage of that just let your counsel
25 know. He knows fully well how to start that process.

1 There's a time frame, I believe you've got to do that within
2 ten days of today's date, file your notice of appeal within
3 ten days. If you don't do that you may forever waive or give
4 up a right to appeal any portion of this. Do you understand?

5 THE DEFENDANT: I do, sir.

6 THE COURT: The last word for the record is the court
7 carefully considered this disposition, carefully reviewed all
8 of the materials. The court recognizes the defendant has an
9 absolute right to appeal any portion of the court's ruling.
10 If on appeal, if that should happen, if the Appellate Court
11 finds any of the specific factual findings were not -- were
12 to be overturned, the court would indicate that should the
13 other findings remain, the court would still impose the same
14 sentence.

15 And the same goes for any of the conditions that were
16 imposed, should the Court of Appeals find any of those
17 conditions are not merited the court would impose the
18 remaining conditions. We'll be at recess.

19 (The proceedings were adjourned.)
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C E R T I F I C A T E

I, Debbie K. Zurn, RPR, CRR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this ^ day of ^ 2010.

/S/ Debbie K. Zurn

Debbie K. Zurn, RPR, CRR
Official Court Reporter