

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 6:08-CR-176-ORL-28GJK

FRANK AMODEO,

Defendant.

MAY 26, 2009

**Transcript of Proceedings
HEARING ON SENTENCING
Day 5**

**Before The Honorable JOHN ANTOON II
United States District Judge**

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
produced with computer-aided transcription.

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P R O C E E D I N G S

(CASE CALLED.)

THE DEPUTY CLERK: Will counsel please state their appearances for the record.

MR. GOLD: Good afternoon, Your Honor. Randy Gold for the United States. Seated with me at counsel table is IRS Special Agent Richard Smith and Assistant United States Attorney Anita Cream.

MR. SLAUGHTER: Good afternoon, Your Honor. Harrison Slaughter on behalf of Frank Amodeo and Kenton Sands seated behind us.

THE COURT: Since I last saw you there have been a couple motions filed and we still have some forfeiture issues. I want to take those up before I proceed to sentencing. And before I impose sentence I want to hear from counsel on two, perhaps three issues raised, but not really well discussed in the papers or in argument. And I became aware of the need for additional input from counsel too late to contact you to be prepared today. I would have interfered with your weekend. These are not new issues, they're issues that we have addressed, but I need to hear from you.

The first is with regard to the PSR and the government's position with regard to amount of loss. There seems to be a disconnect. The government argued here at sentencing that I should look at intended loss and I don't

1 think that that's the position that the probation office
2 took, and that's not the position and I think the defendant
3 argued to the contrary. If I have misunderstood from the
4 argument, then you can correct me, but that's the way I
5 understood it.

6 The second issue is with regard to obstruction of
7 justice. I have read the guidelines and the examples of what
8 constitutes obstruction of justice and those examples, of
9 course, are not on point and provide the court with some
10 discretion, I think. At sentencing the government provided
11 me with a list of statements that the defendant made that
12 were untrue or inaccurate. I want to know from the
13 government whether those statements were material, and I'm
14 referring to one of the examples that is set forth in that
15 provision.

16 And, third, if either side has any additional
17 argument with regard to sentencing disparity or other
18 sentences imposed in cases like this, I'll let you be heard
19 on that.

20 Now, the first matter I have is the preliminary
21 order of forfeiture as to 709 Euclid Avenue, Orlando,
22 Florida. Was that disposed as a result of my ruling as to
23 the amount of loss?

24 MS. CREAM: Yes, Your Honor, it was.

25 THE COURT: Good. Because I signed it already,

1 but I wanted to make sure.

2 You agree with that, don't you, Mr. Sands?

3 MR. SANDS: Yes, sir.

4 THE COURT: And I thought we had taken care of
5 the order as to the 1159 Delaney Avenue property, is that
6 correct?

7 MS. CREAM: That's correct, Your Honor. Mr.
8 Amodeo consented to the entry of that order.

9 THE COURT: And that's also the case with regard
10 to the final order of forfeiture that was proposed with
11 regard to the promissory note of \$5,500,000 and the Mercedes
12 Benz, is that correct?

13 MS. CREAM: Yes. Those assets were included in
14 the plea agreement, Mr. Amodeo consented to their forfeiture
15 previously and no third parties came forward to file claims.

16 THE COURT: Which brings me to the last of the, I
17 believe, the forfeiture issues and that's the forfeiture
18 money judgment. Has the defense had an opportunity to see
19 that?

20 MR. SANDS: I have that in front of me now, Your
21 Honor, and I have taken a quick look at it. It looks like
22 it's in order. I guess the most important point for Mr.
23 Amodeo would be the last or next to last sentence which
24 indicates that the net proceeds of any asset directly
25 forfeited is property that can be credited against the 181

1 million that I think you already made that determination. So
2 in essence --

3 THE COURT: Well, it does say that. The judgment
4 does have that language, right?

5 MR. SANDS: Yes. That was what I was looking
6 for.

7 MS. CREAM: Your Honor, I obviously don't have
8 those docket numbers, but just for the court's reference,
9 there have been four prior preliminary orders of forfeiture
10 entered in this case, they're at dockets 46, 49, 75 and 106.
11 So cumulatively those assets, the two real properties that
12 you just signed and the money judgment all need to be
13 included in the written judgment. If Your Honor wants a
14 complete list, I could email one over or I think we can do it
15 by referencing the docket numbers.

16 THE COURT: Why don't you give me a complete list
17 so there's no mistake?

18 MS. CREAM: I'll do that, Your Honor.

19 THE COURT: The other motion I received and I
20 would like to take up now is the defendant's motion for
21 release pending execution of sentence.

22 MR. SANDS: Your Honor, would you like me to
23 approach the podium or address you from here?

24 THE COURT: Wherever you're comfortable, Mr.
25 Sands. You have a good voice. If you're more comfortable

1 there.

2 MR. SANDS: Yes. We filed the motion yesterday,
3 I believe. As I understand 3143, it allows the court, in the
4 court's discretion, to continue release pending execution of
5 sentence. The standard is the same, risk of flight, danger
6 to the community, although the burden of proof is shifted and
7 heightened.

8 We believe that there isn't any real question in
9 this case that Mr. Amodeo at this point in his life, with no
10 access to public funds, on 24 hour monitoring, and under the
11 care of physicians now finally receiving the anti psychotic
12 and mood stabilizing medications that he needs, is not a
13 danger to anybody. What he is doing, as I've also pointed
14 out in the motion, is continuing, I guess whether the
15 government likes it or not, to continue to try to retrieve
16 assets that will eventually go back to the government. He's
17 involved in a couple of different cases. Obviously he's not
18 going to see those cases through to the end, but he is in the
19 middle of that right now. He's obviously in the middle of
20 also representing corporations pro se in the corporate
21 criminal cases and is working with Mr. Gold to try to resolve
22 those cases.

23 Based on all of these factors including the
24 letter that we provided to the court from his
25 psychotherapist, Dr. Choras, who indicates that he's been

1 completely compliant in his exercise regime, in his
2 medication regime, etcetera, etcetera, we don't believe that
3 there's any basis to conclude that he is any kind of a danger
4 to the community.

5 Mr. Amodeo is certainly not a risk of flight.
6 He's known about this case for years, has been working with
7 the government for years, has known that he faced a lengthy
8 potential period of incarceration for years, and has
9 continued plowing forward attempting to help the government
10 in his own way. Obviously the government has believed that
11 he's done so inartfully at times before he was actually
12 receiving the medications he receives today. But he has no
13 intention of going anywhere. He has an intention of
14 continuing to work on the corporate criminal cases,
15 continuing to be involved with and move forward on the civil
16 cases which he's trying to retrieve money on the government's
17 behalf, and, in general, to move forward with trying to make
18 sure that the government understands fully what exactly went
19 on in this case and who was involved.

20 THE COURT: Okay. Thank you, Mr. Sands.

21 Mr. Gold.

22 MR. GOLD: Your Honor, as the court knows, we are
23 seeking a remand of Mr. Amodeo. I think now that we've
24 gotten to the point of sentencing, and obviously we don't
25 know what this court's actual sentence is going to be today,

1 but I would think that the sentence alone would be enough for
2 a risk of flight, especially if it's as lengthy as the court
3 will recall we had asked for 25 years. I don't know if the
4 court is going to impose that number or a lesser number. But
5 in any event, I believe that would be the basis for a risk of
6 flight.

7 Additionally, the letter that was supplied to
8 this court by Dr. Choras gives us some cause for concern, and
9 that is it states in that letter he does best when he doesn't
10 feel trapped but still has a structured life with low stress.
11 The concern is that if he is out on bond, at some point he is
12 going to feel trapped, and at that point he may choose to
13 flee. At some point he may feel now that he's going to be
14 going off to jail that he has no reason to continue the
15 medication or the therapy. And we believe that's another
16 factor.

17 And finally, there was something that Mr. Amodeo
18 said on direct examination back on the 13th. And what he
19 stated was Miss Curry sends an email to Jim Leusner saying,
20 oh, I bet he thinks he's an agent of the IRS. The reason
21 that concerns us is that that email was a private email
22 between Mr. Leusner and Miss Curry apparently. Neither of
23 them sent Mr. Amodeo or anybody else copies of it. There was
24 a break-in at Edie Curry's house where a number of documents
25 were taken, all which relating to the litigation she had

1 ongoing with Mr. Amodeo. So I'm not pointing fingers
2 directly at Mr. Amodeo, but somehow he got a copy of that,
3 what was meant to be a personal email.

4 And for all those reasons, as well as the fact
5 that the corporate cases, I can deal with Mr. Amodeo before
6 he's ultimately transferred to a facility from the jail.

7 THE COURT: Okay. I will take the matter under
8 advisement and I will let you be heard in a second, Mr.
9 Slaughter, in rebuttal. But I will not consider, I do not
10 consider in making a decision the reference to a break-in
11 because there's no evidence to support that. It's
12 conjecture.

13 Now, did you want to be heard?

14 MR. SLAUGHTER: I can only say what Mr. Amodeo
15 just told me that it came in the discovery with the Palaxar
16 discovery.

17 THE COURT: Okay. I'm not considering that with
18 regard to the motion.

19 Now, Mr. Gold, could you clarify for me what the
20 government's position is with regard to the number of
21 victims?

22 MR. GOLD: Yes, Your Honor. Did you want me to
23 talk about the amount of loss as well because I don't think
24 there's a disconnect --

25 THE COURT: I don't need you to talk about amount

1 of loss except as it may relate to number of victims. They
2 overlap, the issues overlap somewhat, I think, and of course
3 the defense takes the position that everybody else was --
4 this is my word, not theirs -- but immune. The only real
5 victim is the government. The employers were immune because
6 they had this agreement with the PEOs, and the employees were
7 immune because of the IRS code, and the agreement also of
8 course is based on Mr. Sands' construction of the IRS code
9 that provides for the controlling employee being the person
10 responsible for the withholding, withheld taxes.

11 MR. GOLD: I'll be happy to, Your Honor.

12 With regard to the victims, they are not, the
13 employers are not off the hook. The agreement, and the way
14 the IRS looks at this, is that they are co-employers and
15 therefore, if the taxes are not paid, the IRS can go back to
16 those employers, and I believe in at least a couple instances
17 has already done so.

18 THE COURT: They have done that already?

19 MR. GOLD: I believe at least in two instances is
20 my understanding. And there's nothing that prevents them
21 once this litigation is concluded from going back against all
22 the employers. They were co-employers, both equally
23 responsible for the amount of the payroll taxes. So when we
24 talk about the intended loss, it's the intended loss to those
25 victims, even though we know there was an actual loss of 181.

1 So whether the government gets stuck, it is still possible
2 for these employers to be stuck as well.

3 THE COURT: The key is whether it's reasonably
4 foreseeable, right?

5 MR. GOLD: I have no control over the IRS civil
6 folks.

7 THE COURT: I know. But that's the test though,
8 isn't it?

9 MR. GOLD: Yes, sir.

10 THE COURT: Mr. Sands, do you wish to respond
11 briefly?

12 MR. SANDS: Yes. First of all, this is the first
13 I have heard of the IRS actually going after anybody else.
14 That was not what had been represented to me in the past.
15 Secondly, and again, this is the point I've made before. The
16 foreseeability issue, it goes to the foreseeability at the
17 time of the offense of the loss. It doesn't go to the
18 foreseeability of the loss at the time of the sentencing. At
19 the time of the sentencing Your Honor has to focus on the
20 actual loss. In this case the only entity or person who has
21 suffered any actual loss as of the time of the sentencing is
22 the IRS, the federal government. There is no other person or
23 entity who suffered any actual loss.

24 Look back at the provision. When they talk about
25 foreseeability, it's foreseeability at the time of the

1 offense, and then looking back at sentencing, when you know
2 that it's actually happened, the question is, well, was that
3 foreseeable or not. And if it is foreseeable, then it's
4 within the scope of the loss in the case. That's the
5 difference. That's why you never really get to the issue of
6 whether or not people may suffer some loss in the future,
7 although I also have arguments about that, you never get to
8 that point because the question is, and it's stated very
9 clearly in the guideline, the question is whether there has
10 been actual loss. And the actual loss is not defined as some
11 future loss that may occur at some point in the indefinite
12 future, it's actual loss occurring as of the time of the
13 sentencing.

14 Note one to 2B1.1 defines victim as any person
15 who sustained any part of the actual loss determined under
16 subsection B1. And actually that's distinguished from the
17 concept of intended loss.

18 THE COURT: Well, that's the point you made at
19 the hearing earlier and the government --

20 MR. SANDS: Your Honor, there's a statute of
21 limitations that applies with regard to these people, too.
22 We're talking about '05 and '06. There's a three year
23 statute of limitations. And, again, I would also reiterate,
24 I haven't heard word one about anybody else actually being
25 assessed any other taxes or penalties up to this very moment

1 in this courtroom.

2 THE COURT: Mr. Gold, the language that Mr. Sands
3 refers to is at the very end of the application note number
4 one, and it says victim means, A, any person who's sustained
5 any part of the actual loss determined under subsection B1,
6 and the rest of the note doesn't apply here. Why doesn't
7 that mean literally what it says?

8 MR. GOLD: Because when you look to B1 and at the
9 very beginning there, and it says specific offense
10 characteristics, if the loss exceeded, the way the term loss
11 is defined under subsection B1 is either actual or intended
12 loss under guideline note number 3. When it talks about loss
13 under subsection B1. So it's defined, it goes back to B1
14 which then defines loss as either actual or intended.

15 MR. SANDS: That's the old adjustum generis, I
16 think, specific over the general. This provision, the
17 application clearly qualifies that and it does it in a very
18 exact way. It parses out actual versus intended loss and
19 specifically says for this purpose you're looking at actual
20 loss. I mean I think that actually Mr. Gold is making my
21 point.

22 THE COURT: But then it defines actual loss as
23 reasonably foreseeable. It doesn't say already sustained, it
24 says reasonably foreseeable.

25 MR. SANDS: When they're talking about reasonably

1 foreseeable loss, Your Honor, that's reasonably foreseeable
2 loss at the time -- what they're trying to do, I believe, is
3 make clear that in cases where a loss was not reasonably
4 foreseeable at the time that it was -- at the time that the
5 crime was committed, it wouldn't be counted for purposes of
6 this particular provision. The foreseeability has to do with
7 at the time of the commission of the offense, not at the time
8 of the sentencing. Obviously at the time of the sentencing,
9 I mean what the court is looking at is what the court has in
10 front of it, the actual loss in the case.

11 And I would also say with regard to intended
12 loss, based on the contracts and based on the law, it's clear
13 that the defendant didn't intend a loss to occur to either
14 the corporations or the employees because the contracts
15 clearly carve that out and make it clear that it is the PEO
16 that's actually responsible for the taxes and not the
17 corporations or the employees, and that's consistent with the
18 idea of the controlling person being responsible.

19 THE COURT: Okay. Thank you.

20 The other issue I had had to do with the
21 obstruction of justice guideline, Mr. Gold. That's 3C1, I
22 believe. And if you look at number F under note four, it
23 seems to be what you argued at the earlier hearing, and that
24 is providing materially false information to a judge or
25 magistrate.

1 MR. GOLD: Yes, sir.

2 THE COURT: Assuming, just assume that it's, that
3 the statements he made were false. Were they materially
4 false?

5 MR. GOLD: I can cite the court to at least four
6 or five that I believe are.

7 THE COURT: Okay. Would that require that I rely
8 on them for them to be material? What would make them
9 material?

10 MR. GOLD: Can I have one second, Your Honor?

11 (DISCUSSION OFF THE RECORD.)

12 MR. GOLD: The answer is I don't think
13 necessarily the court has to rely on them. But in this case,
14 just for the sake of argument, one of the issues that was
15 discussed was, for example, the secret agreement with Mr.
16 Vanderburg. This court in reaching the determination that it
17 was 181 million dollar loss necessarily had to --

18 THE COURT: I thought it was preposterous. I
19 didn't believe it.

20 MR. GOLD: Right.

21 THE COURT: How can it be material if I --

22 MR. GOLD: But I think his intent was to make it
23 material. Because otherwise I think a defendant could come
24 in at a sentencing, lie about anything, the court says, you
25 know, I don't believe a word you're saying, and never get

1 scored for the obstruction of justice. Because I think at
2 least in this case it was very clear to Your Honor that Mr.
3 Amodeo made a number of statements --

4 THE COURT: Before you answer completely, would
5 you just take a glance at note five?

6 MR. GOLD: Yes, sir.

7 THE COURT: Because my problem is how those two
8 notes are read together.

9 MR. GOLD: Your Honor, I would cite the court to
10 note six actually. It says material evidence, fact,
11 statements or information as used in this section means
12 evidence, fact, statement or information that, if believed,
13 would tend to influence or affect the issue under
14 determination.

15 THE COURT: When you tell me what you want me to
16 consider, tell me how it would have influenced me.

17 MR. GOLD: If, for the sake of argument, if you
18 had believed Mr. Amodeo that there was a secret agreement and
19 the court had said the loss was 172 versus 181 million, then
20 it clearly would have been material. In this case it
21 intended to influence or affect the issue under
22 determination. The loss itself was important.

23 Also, when it comes down to some of the other
24 things that he lied about, more specifically, when you're
25 looking at his conduct, both in terms of his intent and in

1 terms of his acceptance of responsibility, he said that there
2 were 50 to a hundred CPAs and lawyers who said it was not
3 illegal not to pay the taxes. If this court had believed Mr.
4 Amodeo, this court may have had a very different perspective
5 on what the appropriate sentence would be in this case. So I
6 believe that application note number six, and I can go
7 through other examples, but I think those two right off the
8 bat are two that we would rely upon.

9 THE COURT: Okay. Mr. Slaughter.

10 MR. SLAUGHTER: Your Honor, you've heard
11 testimony now for four days, you heard a full day of Dr.
12 Danziger, and when I get up to speak I'm going to give you a
13 little bit of the insight of what I saw during that two and a
14 half years I worked with Mr. Amodeo. But one of the things
15 that you must keep in mind is what you heard there from the
16 bench or from the witness stand was a person that was on
17 Depakote and Geodone, these psychotropic drugs for the
18 serious bipolar condition that he has. What he was
19 recounting was what his recollection is of what the deals are
20 he had with these people. And as the court has said, you
21 took no stock in what he said because you didn't believe what
22 he said with reference to a side deal for eight and a half
23 million dollars with Vanderburg, and I assume your comment
24 would be the same when you're talking about 50 to a hundred
25 attorneys telling him it was okay.

1 So I think the way to look at this, and if you go
2 to Arthur Andersen versus the United States, this is an
3 obstruction of documents case, and remember the Supreme Court
4 reversed this case, the government must prove that the
5 defendant was conscious, he was doing wrong, something wrong.
6 I think they have to prove that he knew at the time that he
7 had this deal, so to speak, that he was not suffering under
8 bipolarism for you to find that he had obstructed justice.
9 Because this is what he believed when he was sitting here
10 when he was in full bore complete bipolar manifestations that
11 are into delusions. And you're going to hear more about that
12 from me later. But you're talking about a person who is on
13 the stand for a day and this is what he believed the truth to
14 be. And I don't think the government has proven that he was
15 consciously trying to do something wrong when he was giving
16 testimony to this court.

17 MR. GOLD: Your Honor, do you want a response?

18 THE COURT: If you would like.

19 MR. GOLD: First of all, he knew that when he
20 testified in this hearing, regardless of what he may have
21 thought back then, he knew that there was no secret agreement
22 and there was no way that 50 to a hundred attorneys told him
23 that it was okay to do what he did.

24 Also, when we were asking him about the fact that
25 he had lied to the auditors, if the court will recall that on

1 cross examination we had discussed that with him, he denied
2 that he lied to the auditors. He denied that he had made
3 statements to them, that he never owned stock or equity and
4 had never been an employee, officer or director.

5 The documents which he's had clearly contradict
6 that. He knew at the time he sat in that chair that it was
7 not true. Regardless of what he might have thought
8 originally, he knew as he sits here today that those
9 statements were not true.

10 MR. SANDS: Could we address that point briefly,
11 Your Honor?

12 THE COURT: No, that's all right. Just each side
13 gets, the party that starts gets rebuttal and the other side
14 gets to respond and then there's a reply.

15 I had also mentioned that I would allow you to
16 talk about disparity of sentence, but I'll let you do that in
17 the context of the sentencing colloquy.

18 Would counsel please accompany Mr. Amodeo to the
19 podium? And, sir, would you raise your right hand and be
20 sworn?

21 (DEFENDANT SWORN.)

22 THE COURT: Mr. Amodeo, on September 23, 2008,
23 you entered a plea of guilty to count one of the indictment
24 charging you with conspiracy to defraud an agency of the
25 United States in violation of Title 18, United States Code,

1 Section 371; counts seven, eight and ten charging you with
2 failure to collect and remit payroll taxes in violation of
3 Title 26, United States Code, Section 7202; and count 27
4 charging you with obstruction of an agency proceeding in
5 violation of Title 18, United States Code, Section 1505.

6 We've now reached that stage in the proceedings
7 where I need to ask questions of you, your attorneys, and
8 counsel for the government.

9 Have you had an opportunity to read and discuss
10 the presentence report?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Are there any objections as to the
13 factual accuracy of the report that have not already been
14 addressed?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you wish to make any objections to
17 the probation officer's application of the guidelines, other
18 than those already argued?

19 THE DEFENDANT: No, sir.

20 THE COURT: Does the government have any
21 objections other than those already raised?

22 MR. GOLD: No, Your Honor, we don't.

23 THE COURT: The court adopts the factual
24 statements in the presentence report to which there are no
25 objections.

1 With regard to the objection regarding amount of
2 loss, the United States Sentencing Guidelines, Section
3 2B1.1B1N, the court finds that 8.9 million dollars in
4 controversy was not a fee for consulting. It was money that
5 should have been paid to the IRS toward the payroll tax
6 liability of the Sunshine companies. The notion that the
7 defendant, a man who pays accountants and lawyers for tax
8 advice, would be charging 8.9 million dollars for tax
9 computation is incredulous. The method of payment of these
10 funds is inconsistent with their being fees for the
11 defendant's consulting services. The amount of payment is
12 also inconsistent with consultation fee. This is true
13 notwithstanding defendant's refusal to sign a letter of
14 instructions submitted by Mr. Vanderburg.

15 Defendant's reference to this payment as fees was
16 a ruse. The fact that Mr. Holtz and Mr. Vanderburg may have
17 acted irresponsibly or even illegally with regard to these
18 payments by acquiescing to defendant's demands and actions is
19 of no significance here. At the time the payments were made
20 defendant knew of the IRS liability that he was acquiring.
21 As indicated earlier, the court finds that the total loss for
22 guideline computations to be 181 million dollars. The
23 objection is overruled.

24 There was an objection to the number of victims
25 pursuant to USSG Section 2B1B2C. The probation office

1 maintains that Presidion Solutions has approximately 2,200
2 clients and 29,700 work site employees. All of these
3 employees had payroll taxes withheld from their pay with the
4 understanding that the payroll taxes would be paid by
5 Presidion Solutions or its successor. They and their
6 employers had no reason to believe that the withheld funds
7 would be paid to the defendant or used to purchase
8 investments by corporations he controlled.

9 The probation office determined that there were
10 at least 250 victims. Victim includes any person who
11 sustained any part of actual loss determined under Subsection
12 B1, United States Sentencing Guidelines Section 2B1.1,
13 comment note one. Actual loss means the reasonable
14 foreseeable pecuniary harm that resulted from the offense.
15 That's commentary note 3A1. Reasonably foreseeable pecuniary
16 harm is pecuniary harm that the defendant knew or under the
17 circumstances reasonably should have known was the potential
18 result of the offense. The probation often takes the
19 position that because every employee potentially suffered a
20 loss regarding the payroll taxes which were collected by the
21 defendant's companies and not remitted to the IRS, there are
22 at least 250 victims.

23 I'm not really sure that that is exactly the
24 position taken by probation. Mr. Salce, as everyone who
25 reads his reports know that he is meticulous, and it may be

1 the court's error in reading it. I think the real position
2 of the government and probation is that the victims are the
3 employers, but nonetheless, it's only 250 according to the
4 government and probation.

5 The defendant as we've heard argues that there's
6 one victim and that victim is the Internal Revenue Service.
7 The defendant argues that employees are not victims because
8 they are given credit for payroll tax collected, regardless
9 of whether the amounts are paid over to the IRS. Defendant
10 does not argue that the employers are entitled to credit by
11 the IRS, but argues that employers have not yet been required
12 to compensate the government for a loss. And I know I'm
13 oversimplifying your argument a little bit, Mr. Sands. Your
14 real position is that it's the loss at the time of the
15 offense and that the guidelines do not contemplate reasonably
16 foreseeable victims.

17 MR. SANDS: That's the primary argument, right,
18 Your Honor. The secondary argument would be --

19 THE COURT: I recited the secondary argument
20 first and I want the record to be clear that I understand
21 your primary argument which you addressed very precisely and
22 eloquently as you've done all along. I understood it better
23 today and have considered it.

24 IRS Section 3403 provides that employers are
25 liable for payroll taxes to be deducted. IRS Section 3401B,

1 however, excludes from the definition of employer any person
2 who does not have control of the payment of wages. The
3 contracts between the PEOs in this case and their client
4 companies apparently provided the PEO is the employer
5 controlling payment of wages. And, accordingly, the
6 defendant reasons with regard to the secondary argument that
7 the client companies cannot be held liable for payroll taxes
8 and therefore should not be considered victims for purposes
9 of guidelines calculation. And that is an interesting
10 argument and one that I've struggled with obviously.

11 The guideline note says that victim means, A, any
12 person who's sustained any part of the actual loss determined
13 under subsection B1. That note goes on, but the remainder of
14 it is not relevant here.

15 Under B1, loss is defined as the greater of
16 actual loss or intended loss, and actual loss means the
17 reasonably foreseeable pecuniary harm that resulted from the
18 offense. The court finds that notwithstanding an agreement
19 between the PEOs and the employers that it is reasonably
20 foreseeable that that agreement could be challenged by the
21 IRS and that the victim, that is, the employers, could be
22 responsible for payment.

23 MR. SANDS: Your Honor, could I interject just
24 one thing for the record so at least I make my position on
25 that particular point of the language clear?

1 THE COURT: I will let you do that when I'm
2 finished with all of this. Okay?

3 MR. SANDS: Sorry.

4 THE COURT: There also was an objection to
5 application of the guidelines USSG Section 2B1.1B14A
6 regarding embezzlement, fraud, deceit, etcetera. The
7 defendant objects to the two level enhancement in the
8 presentence report because the defendant derived more than
9 one million dollars from financial institutions.

10 The probation office considered the professional
11 employment organizations to be financial institutions for
12 purposes of guideline scoring. The guidelines define
13 financial institutions as institutions described by statute
14 including banks, trust companies, credit unions, insurance
15 companies, investment companies, mutual funds, savings
16 associations, union or pension funds, medical hospital
17 insurance, brokers and dealers required to be registered with
18 the SEC and those dealing with commodities, and that's not a
19 quote, that's a summary of what that provision includes, but
20 it goes on to say and any similar entity, whether required to
21 be registered or not. And that's USSG Section 2B1.1,
22 application note one.

23 What these entities all have in common is that
24 they hold in trust the funds of others with the understanding
25 that they will be used for a specific purpose. The PEOs in

1 this case had a contractual obligation to report and pay
2 payroll taxes of the work site employees. Therefore, the
3 purpose of the guideline, for purposes of guideline
4 calculation, the PEOs are financial institutions and the
5 defendant's objection is overruled.

6 There's an objection as to the scoring for
7 obstruction of justice pursuant to USSG Section 3C1.3. The
8 probation office has added a two level enhancement for
9 obstruction of justice pursuant to 3C1.3. And the defendant
10 objects to the enhancement.

11 What is interesting about this case, and I don't
12 know that I've ever seen it before -- if so, I don't
13 recall -- but all of these factors overlap with 3553 and the
14 defendant's motion for downward departure pursuant to 5K.
15 And they all have to do to one extent or another with the
16 defendant's mental capacity and the extent to which that is
17 diminished. And Mr. Slaughter tells me that he's going to
18 talk about that in allocution or in speaking on behalf of his
19 client at that point, and I'm going to pass over my ruling on
20 obstruction of justice, and by necessity acceptance of
21 responsibility, which are the remaining two objections. I
22 skip over the latter because it's somewhat contingent upon my
23 ruling on the former. And to the extent that I sustain the
24 objection with regard to the obstruction of justice, I will
25 hear from counsel on the applicability or how that affects

1 the acceptance of responsibility.

2 Mr. Slaughter, do you want to do that now?

3 MR. SLAUGHTER: Yes.

4 THE COURT: Okay.

5 MR. SLAUGHTER: Your Honor, maybe I should have
6 done this at the early onset instead of waiting for Mr.
7 Amodeo's legal judgment day, but there's a couple things I
8 want to share with you. And everything that I say I'm saying
9 as an officer of the court and I'm going to tell you some
10 things that he has waived his attorney-client privilege of
11 some of the ups and downs that I have had with him over the
12 last two and a half years. A couple of the things that I am
13 going to say I have already told you, but I'm going to repeat
14 them very quickly to bring them into context.

15 The first day I met him he looked at me and he
16 said I'm either a genius or a megalomaniac, and I had never
17 had a client look me in the eye and tell me I'm a genius or a
18 megalomaniac. In fact, I had to go look up what the exact
19 meaning of megalomaniac was. I was hired, as I've told you
20 before, to try to help him with his bar, trying to get his
21 bar license back in Georgia. And I spent some time getting
22 the facts that Mr. Gold cross examined on and started working
23 on that. And at some time in July somebody called me up to
24 go to a presentation he was making and this is the part that
25 I told you several times. I sat in there and I listened to

1 this and I kept thinking what is this. I didn't even know
2 what a PEO was. So that was the end of August.

3 And around Thanksgiving he asked me if I could
4 help him find an ex-IRS commissioner. Not an ex-IRS
5 attorney, he wanted an ex-IRS commissioner to help negotiate
6 the final outcome of this case. And that was on a Thursday,
7 and we went up to Washington to meet with an ex-commissioner.
8 And before I went I thought why don't I learn something about
9 what these companies do because I had been told they were
10 construction companies, I had been told they were insurance
11 companies, I had been told that they were companies that
12 dealt with human resources that spread out and go to other
13 companies. I really didn't know how they made their money.

14 And so I got this transcript, and it was one of
15 these transcripts that shrunk down to four pages on a page,
16 and I'm trying to read this stuff, and I read it, and I read
17 it again because, frankly, I'm thinking he's talking
18 mumbo-jumbo, but through the mumbo-jumbo it was clear to me,
19 at least I thought it was clear, that he was stealing money.
20 And I came back and I had Paul Hawkins go through the same
21 thing. He was of the same conclusion. So we went to
22 somebody at his organization that we trusted and we asked
23 them to get us documentation. And I asked Frank if I could
24 get documentation. He said sure. I don't have anything to
25 hide.

1 So we went through this documentation and we had
2 it where we were seeing just millions and millions and
3 millions of dollars not being paid over to the IRS. And once
4 we felt that we had it cold, we went and confronted him. But
5 we wanted to be sure of our facts because Frank could take a
6 little civil case and turn that little civil case into a
7 mountain and make it as appear he doesn't done anything
8 wrong. As you heard from Edie Curry, you could not pay your
9 taxes and you weren't committing a crime. And they had
10 several cases that said things to that effect. And we went
11 in there and talked to him, we said Frank, listen to us, this
12 is a major, major crime. And this was either the last week
13 of December or the first week of July. It took him one day
14 to call up and he came over and he says, you're right, it is
15 a crime. And so then we got another lawyer out of Miami and
16 we started working as to what we were going to do. And by
17 that time we had 70 subpoenas and the attorney from Miami and
18 I just started saying he's got to go in and start
19 cooperating.

20 THE COURT: You had no notice that the
21 investigation was under way?

22 MR. SLAUGHTER: No, no. He had received
23 subpoenas sometime around, after Thanksgiving, first part of
24 December, but it wasn't until we said, it was like we had to
25 shake him, this is a crime. You cannot take government

1 money, expand your business, and then pay them back when you
2 sell your company. And so we went over there and we started
3 cooperating with Mr. Gold and his team. And they quickly
4 noticed this spiraling into the ceiling and then drop,
5 spiraling into the ceiling and then dropped. I heard Special
6 Agent Smith say, he would say, oh, no, no, now, no, now, now
7 I got it.

8 Well, what Frank is saying is at that point in
9 time in his bipolar condition, I do have it. I got it. And
10 then so what he did was he went up and he got 70 computers
11 from Troy Michigan. The government, they didn't want to know
12 about it, they just wanted those computers. He hired two
13 warehouses at 10,000 apiece and it was 20,000 and 10,000. He
14 hired people to bring up the 40 or 140 pallets from South
15 Florida. We started going through those pallets and putting
16 them into Summation. He bought a Summation program that is
17 the largest database of Summation in the United States today.
18 And you heard Mr. Gold talk about the three million
19 documents. We had access to that. And what we would try to
20 do is give them boxes of stuff in an orderly fashion, stamp
21 them with CDs, etcetera, but it was an overwhelming task for
22 them and an overwhelming task for us.

23 So I got an individual by the name of Andy Denda
24 who worked for me full-time, his job was to do nothing but to
25 get -- his job was to strictly answer questions of me and

1 Special Agent Smith or Randy Gold on documents or emails that
2 they needed for their investigation. And I would sit in this
3 little room just like a scrivener and at the end of the day
4 he could tell me what he had and we would put it on an email
5 and even email it or we would send it over in books.

6 Frank at the same time had people working for him
7 and he sent over a hundred books relating to each person, how
8 much they were paid, what they were doing, etcetera, what the
9 mails were saying, etcetera. So a great deal of money, time
10 and effort was spent by this man in an effort to cooperate
11 with them.

12 Now, it's clear, at least from my standpoint, and
13 again, I say this as an officer of the court, you never knew
14 who was going to show up when you met with Frank. He was
15 either going to be so high that he couldn't concentrate, or
16 he was going to be so low that he didn't want to work that
17 day. And so a great deal of that work was done.

18 One day we were sitting in another attorney's
19 office and we were going over the first plea bargain and he
20 went through every line and he initialed it and said I did
21 it, uh-huh, initialed it, I did it, uh-huh, and then he walks
22 out of the room and starts talking to himself. Now, I'm not
23 talking about kidding around talking to one's self, he was
24 talking to himself.

25 And then the next day, later he comes back in and

1 says I have a source in Washington who tells me that Mr. Gold
2 is going to fold his cards and I'm never going to be charged.
3 Meanwhile, we're working on a plea agreement that he's
4 initialing every line. And he says, listen, I'm never going
5 to be charged. And I mean he was not kidding. He was dead
6 serious. So then he has another person that he's been
7 talking to and he says you don't understand when I tell you,
8 he's telling this to me and another lawyer, that when I say
9 I'm going to rule the world, I mean really I am going to rule
10 the world. I am going to pick the judges. And he's looking
11 at us as serious as he can look.

12 And then when he finally told us that he couldn't
13 enter that plea, that's when I sent him back up to Danziger
14 and Danziger had his wife come up. And then Danziger called
15 me on a Monday night and he says this guy is incompetent to
16 go to trial. And I say, well, would you tell that to the
17 prosecutors? Mr. Gold comes up, Steve McCabe and Rich Smith
18 come up, and Mr. Gold's wife is a psychotherapist, so he has
19 some background, but the agents, I could tell, they weren't
20 buying, they're rolling their eyes. And Danziger says I'm
21 telling you, this is a sick guy. And so he sends him over to
22 another doctor, but the whole goal was to get him to Harvard,
23 get him to the best where they can get him under control
24 where he can make decisions, where he can take -- what are
25 the drugs you take?

1 THE DEFENDANT: Geodone and Depakote.

2 MR. SLAUGHTER: Where they had him for three
3 weeks. And to Mr. Gold's credit, he let him go. And he let
4 him stay an extra week. And he let Mr. Amodeo turn himself
5 in because he was indicted the first week he was up in
6 Boston. And so the reports come back and he is a very sick
7 person.

8 The problem that the government has and the
9 problem that the court has to wrestle with is, well, when was
10 he sick? What's the nexus between the sickness and what he
11 did?

12 And one of the other things I wanted to mention
13 when Mr. Gold was saying what we did was we picked, we cherry
14 picked the videos where he was acting crazy. Well, I don't
15 have videotapes of my conferences with Mr. Amodeo, but when I
16 had him debate another attorney on what the law is, we
17 transcribed it and we videoed it, and it was something out of
18 Never Never Land. And that, that one incident, and the fact
19 that he did the bankruptcy and he had done this Sunz thing
20 was the point where I said I can't work with him if he keeps
21 doing these things, they're so counter productive. Because
22 the government was saying, we're going to pull away from him
23 if he keeps doing this stuff. And so that's when we knew we
24 had to get him under control. And I think we have him under
25 control.

1 So I think Mr. Sands can talk a little bit about
2 these ups and down days, but I can assure you, Your Honor,
3 and I mean this, I'm as serious as I can be as an officer of
4 the court, he is sick. I've seen it. I've seen it hundreds
5 of times over two and a half years working with him. Again,
6 you don't know whether he's going to be up, you don't know
7 whether he's going to be down. His attention span is that of
8 a gnat. He can't even read a one page document. He'll sit
9 for five seconds and gets up and walks around the room and
10 drinks some more tea. He's almost impossible to work with.

11 So you have heard these doctors say that he is a
12 very sick person, and I would submit to the court that in the
13 United States we do not punish sick people, so I implore you
14 that we should sympathize, we should empathize and we should
15 try to understand Frank Amodeo. He did his level best to
16 cooperate with the government. The problem is he was
17 cooperating with the government through the twisted prism of
18 this illness. And it is an illness. And I don't think
19 you'll ever see Danziger come up here and tell you he's found
20 another person that's as bipolar as Mr. Amodeo.

21 So if there's any justice to be meted out today,
22 we would really request that you take this into consideration
23 and not think it's a legal maneuver or a legal tactic or a
24 ploy by Mr. Sands and myself. We are very serious about
25 this. And at all times, at all times Frank says I want to

1 get stable so I can enter a plea. Because if he hadn't gone
2 to Harvard, no judge in the world would have taken a plea
3 from him.

4 That's all I have to say.

5 THE COURT: Okay. Mr. Gold, I will afford you a
6 opportunity to respond to Mr. Slaughter's comments. You
7 don't have to take it, but you're welcome to.

8 MR. GOLD: Well, just briefly, Your Honor.

9 We don't dispute the fact that he is bipolar and
10 has been diagnosed as such. We just don't believe that it
11 was the disease that caused him to commit these acts. From
12 our perspective it was nothing more than greed and ego, not
13 just on his part but on the part of several others.

14 You know, when Mr. Slaughter was talking about
15 just now with now I've got it, he puts his view of it on that
16 language. Our view was now they found out that I didn't do
17 what I was supposed to do. Now I'm going to have to come and
18 give them what they need. It's kind of like the Get Smart
19 routine. Would you believe this? Well, you wouldn't believe
20 that. Well, would you believe this? So every time we caught
21 him not doing what he was supposed to do, all of a sudden he
22 got it. That was not from being bipolar. He's on medication
23 now to supposedly control it and yet he's still lying to this
24 court about what we perceive to be material matters.

25 When you look at the videos, and I know the court

1 has seen them, his behavior was no different than any other
2 executive who is a white collar defendant. He was in
3 complete control, he was directing everything. This went on
4 for two years. And I don't believe that it was the bipolar
5 disorder that either caused him to commit these offenses or
6 had an effect on him continuing to do so. And I think had
7 the United States not stepped up, he would still be doing
8 them. All this discussion of the bipolar disorder and how
9 bad he was was after he had gotten caught. We're talking
10 about, I believe it was May of '08 when he finally went to
11 Harvard, which was a year and a half after the events took
12 place. And it was all after the house of cards fell. So it
13 is still our perspective that it was not the bipolar disorder
14 that led to any sort of diminished capacity.

15 THE COURT: Okay. You may approach the bench
16 again.

17 As I noted a moment ago, the probation office has
18 scored a two level enhancement for obstruction of justice
19 pursuant to Section 3C1.1 and the defendant objects to that
20 enhancement. The enhancement was based in large part on
21 defendant's filing suit against a former accountant and a
22 former lawyer claiming that they gave advice which
23 contributed to the conduct giving rise to the defendant's
24 criminal conduct for which he's now being sentenced.
25 Additionally, defendant filed bankruptcy petitions on behalf

1 of companies he controlled that have been criminally charged.
2 The latter conduct was undertaken without the knowledge of
3 the United States Attorney or defendant's attorney. The
4 bankruptcy proceedings, as Mr. Gold asserts, resulted in
5 expenditure of hundreds of hours on the part of the United
6 States Attorneys.

7 Finally, the defendant received a five million
8 dollar refund from an insurance company that should have been
9 turned over to the government but was instead used by the
10 defendant. Now, I say finally because that's what I had in
11 the written filings at our sentencing hearing. Mr. Gold also
12 raised the statements made by the defendant that were false
13 or, at best, inaccurate, and he, Mr. Gold believes were
14 misleading.

15 In resolving this issue, the court is guided by
16 the broadly worded text of 3C1.1 and that guideline section
17 provides if, A, the defendant willfully obstructed or impeded
18 or attempted to obstruct or impede the administration of
19 justice with respect to the investigation, prosecution or
20 sentencing of the instant offense of conviction, and B, the
21 obstructive conduct related to, one, the defendant's offense
22 of conviction and any relevant conduct or a closely related
23 offense, increase by two levels.

24 Now, there's no question that the conduct of the
25 defendant related to defendant's offense of conviction, but

1 there remains the question of whether the conduct was
2 undertaken to willfully obstruct or impede the administration
3 of justice with respect to the sentencing. And this is, this
4 issue is juxtaposed against his other conduct, albeit through
5 the encouragement of counsel which was generally one of
6 cooperation. Now, I understand that the cooperation wasn't
7 consistent and I understand that some of what the defendant
8 did the government does not consider all that helpful, and I
9 also have considered the fact that there was a good bit of
10 puffing in his representations to the government as well as
11 at the meetings over which he presided. It's I think the
12 defendant's nature to overstate.

13 Given all of the facts before the court with
14 regard to the defendant's negotiations with the government,
15 his conduct before the court and the evidence that the court
16 has received, both from the testimony of Dr. Danziger and the
17 report from the McLean hospital, and other evidence, it's not
18 an easy question to answer.

19 To assist the court in determining whether the
20 conduct of Mr. Amodeo rises to the level of obstructing
21 justice, the guideline manual and application note four
22 provides examples of conduct that constitutes obstruction.
23 That's what I asked Mr. Gold to look at a moment ago. If we
24 turn to that provision we find that, generally speaking,
25 examples include perjury, threatening witnesses, providing

1 false information to law enforcement, and more on point here,
2 providing materially false information to a judge or
3 magistrate.

4 The guidelines go on in the next note, that was
5 note four, in note five, to tell us what does not constitute
6 obstruction of justice, but may nevertheless warrant a higher
7 sentence within the applicable guideline range. And
8 interestingly it provides, it says lying is not necessarily a
9 basis for obstruction of justice unless it's under oath. It
10 says providing false name or identification or making false
11 statements not under oath to law enforcement officers,
12 providing incomplete or misleading information not amounting
13 to a material falsehood in respect to presentence
14 investigation, avoiding or fleeing from arrest, and then, of
15 course, the analysis concludes with the section that Mr. Gold
16 refers us to which is material evidence, facts, statements or
17 information as used in this section means evidence, facts,
18 statements or information that, if believed, would tend to
19 influence or affect the issue under determination.

20 So broadly construed, ordinarily the government I
21 think is correct. I wasn't misled, and although that may
22 have been Mr. Amodeo's intent, it was not realistic. My
23 belief is that he encouraged counsel to make the argument
24 because the argument I didn't think was as persuasive as
25 others with regard to the fee and I, to the extent I have

1 discretion, will not find that there was obstruction of
2 justice. I think that the conduct is consistent with Mr.
3 Amodeo's behavior. I believe to some extent, I'm not saying
4 to what extent, but to some extent his behavior is influenced
5 by his bipolar disorder and it includes overstating. So the
6 objection is sustained.

7 I then get to the issue of acceptance of
8 responsibility, and the information in response to the
9 objection from the government was fairly straightforward,
10 that if obstruction of justice applied, then the defendant
11 would be ineligible for acceptance of responsibility. The
12 defendant objects to not receiving the three level adjustment
13 in the total offense level as a result of what he did that
14 counsel argues was acceptance of responsibility.

15 The probation office and the government counter
16 that, as I said, that he's ineligible.

17 Now, my question at this point is the court has
18 now found that there was no obstruction of justice. Does
19 that change the government's position regarding acceptance of
20 responsibility?

21 MR. GOLD: May I have just one second?

22 THE COURT: It does necessarily change the
23 response, but my question is do you come out at the same
24 point? And I'm talking right now about the first part of 3E1
25 which is the two level reduction.

1 MR. GOLD: Your Honor, I believe he should still
2 be denied acceptance of responsibility and I'll tell you why:
3 What we saw for four days was an attempt to deflect upon
4 others what took place, and without saying, yes, I did it.
5 Again, going back to 50 to a hundred lawyers told me it was
6 okay. I mean we could go on and on with examples. But
7 attempting to deflect it on to others and saying, well, they
8 allowed me to commit this crime, to me does not warrant a
9 reduction for acceptance of responsibility.

10 THE COURT: Okay.

11 MR. SANDS: May I address that, Your Honor?

12 THE COURT: Yes, sir.

13 MR. SANDS: The sentencing memorandum and Mr.
14 Amodeo's testimony was, in large part, a desperate attempt to
15 provide and prove that he had provided substantial assistance
16 with regard to the investigation and prosecution of other
17 persons. It wasn't done to deflect responsibility on those
18 other persons. First and foremost, it was done to provide
19 the government with a road map so, we believe a road map to
20 the prosecution of other individuals. We have not, again,
21 and I have to emphasize once more, Mr. Amodeo accepted
22 responsibility for being a leader organizer of this scheme.
23 All Mr. Amodeo is saying is that there were a lot of other
24 people involved and Mr. Amodeo would like to see those people
25 investigated as well. And he has attempted to provide the

1 government with as much information as possible in order to
2 make that happen.

3 I can tell, if I make my own representation to
4 the court, I became involved with Mr. Amodeo basically more
5 post medication. Mr. Amodeo has worked with me tirelessly to
6 try to present information to the government, to try to
7 organize information, to try to make sense of exactly what
8 happened in this case. And it would be bizarre to me if that
9 attempt somehow would end up being construed as being
10 obstructive conduct. In fact, what it was was an attempt to
11 provide the cooperation that he was required to provide and
12 had an incentive to provide under the plea agreement.

13 THE COURT: Mr. Gold. Do you want to respond or
14 reply?

15 MR. GOLD: Your Honor, I don't think I need
16 further argument.

17 THE COURT: Please approach the bench.

18 As we've just established, the defendant objects
19 to not receiving the three level adjustment in the total
20 offense level as a result of having accepted responsibility.
21 The probation office and the government assert that the
22 defendant is ineligible for acceptance of responsibility
23 because he obstructed justice. Of course, I just found that
24 the defendant's conduct fell short of obstruction of justice
25 raising the question whether the adjustment otherwise

1 applies.

2 Section 3E1.1 provides that if a defendant
3 clearly demonstrates acceptance of responsibility for his
4 offense, his offense level should be decreased by two levels.
5 And, of course, there are well established and well grounded
6 policy reasons for that. As noted above, not all of
7 defendant's conduct is indicative of acceptance of
8 responsibility. Much of the sentencing hearing was, as Mr.
9 Gold points out, an effort to shift or share culpability with
10 others. He has gone so far as to initiate lawsuits blaming
11 others for his conduct, and he's frustrated the prosecutor by
12 filing bankruptcy petitions without notice to the government
13 or his own lawyers. And finally, he appropriated a large
14 refund from an insurance company that he should have turned
15 over to the government. I don't know what advice, if any, he
16 had with regard to that. I'm sure he did not get advice of
17 his counsel here today on that.

18 In deciding whether this conduct is sufficient to
19 eliminate the defendant from eligibility for any acceptance
20 of responsibility adjustment, it was necessary for the court
21 to again consult the application notes to 3E1.1. The notes
22 provide guidance, but, again, no bright line test. The notes
23 state that the adjustment is not intended to apply to a
24 defendant who puts the government to its burden of proof at
25 trial by denying the essential elements of guilt. The court

1 should consider the truthfully admitted conduct comprising
2 the offense of conviction, whether defendant voluntarily
3 withdrew from criminal conduct, voluntarily paid restitution,
4 voluntarily assisted authorities, etcetera. That is from the
5 application note number one.

6 Although the defendant has raised issues at
7 sentencing that this court has deemed invalid and is engaged
8 in conduct that has frustrated the government, and I admit,
9 at times where it tested the patience of the court, it
10 appears to this court that the defendant has admitted his
11 guilt, that he did so timely, that he did not put the
12 government to the test of proving its case. I therefore
13 sustain his objection in part and grant a two level downward
14 adjustment for acceptance of responsibility. The objection
15 is overruled, however, as to the additional requested one
16 level absent a motion from the government.

17 Finally, the defendant originally raised an
18 objection arguing that the offense should be scored using
19 sections 2T1.1 or 2T1.6. That objection is withdrawn.

20 Have I covered all the objections?

21 MR. GOLD: Yes, Your Honor, I believe you have.

22 MR. SANDS: Yes, Your Honor.

23 THE COURT: Let me add to the last finding that
24 the defendant admitted, and I assume readily admitted, that
25 he was a leader or organizer for which he was scored a four

1 level enhancement.

2 MR. SANDS: Yes, Your Honor.

3 THE COURT: Mr. Salce, are you doing the
4 arithmetic here?

5 PROBATION OFFICER: Yes, Your Honor.

6 THE COURT: Is it 39?

7 PROBATION OFFICER: I believe I had it scored as
8 a 46, Your Honor, which would remain as a 43.

9 THE COURT: You had it scored at what?

10 PROBATION OFFICER: A 46. I believe you
11 sustained the objection for the acceptance of responsibility
12 which gives him two levels off, and you sustained the
13 objection --

14 THE COURT: I'm sorry. It would still be a 43
15 total.

16 PROBATION OFFICER: Correct.

17 THE COURT: I understand. So it's 46, but the
18 total would be 43.

19 PROBATION OFFICER: Correct.

20 THE COURT: Thank you.

21 PROBATION OFFICER: You're welcome.

22 THE COURT: Now we have the motion for downward
23 departure and actually I construe there to be two motions.
24 The government objects to one being considered because it
25 takes the position that it's outside the agreement, outside

1 the plea agreement, but the first one is based on USSG
2 Section 5K2.13, and based on that guideline defendant seeks a
3 downward departure from the otherwise applicable guidelines
4 based on the argument that defendant suffers from
5 significantly reduced mental capacity that contributed
6 substantially to the commission of the offense.

7 Application note one provides that, quote,
8 significantly reduced mental capacity, end quote, means the
9 defendant, although convicted, has a significantly impaired
10 ability to understand the wrongfulness of the behavior
11 compromising the offense or to exercise the power of reason
12 or, B, control behavior that defendant knows is wrong.

13 There's no dispute from the government or from
14 probation that the defendant suffered and is suffering from a
15 mental disorder. That's true throughout all relevant times.
16 Most recently he was evaluated by the staff at McLean
17 Hospital in Belmont, Massachusetts where he was diagnosed as
18 having a bipolar disorder, manic, with psychotic features, as
19 well as a history of stimulant dependency presently in a
20 degree of partial remission. He was also found to suffer
21 from a mixed personality disorder with narcissistic and
22 antisocial features.

23 At sentencing the defendant offered the testimony
24 of Jeffrey Danziger, a forensic psychiatrist. Dr. Danziger
25 had examined defendant and also determined that he suffered

1 from a bipolar disorder causing manic episodes, creating
2 moods of euphoria, increased energy and increased self esteem
3 to the point of grandiosity. Because of the grandiosity,
4 people with bipolar disorders, according to Dr. Danziger, may
5 engage in foolish and risky behaviors seeing no obstacles or
6 barriers to that behavior. Based in part on having viewed
7 the video statements that the defendant made in business
8 settings, Dr. Danziger concluded that the defendant suffered
9 from delusional grandiosity.

10 In support of his conclusion, Dr. Danziger
11 referred to a speech given by defendant in which he stated
12 that he believed that Mirabilis would soon be larger or more
13 profitable than Citibank and that he could assist the
14 Republic of Congo become a first world country within a year.
15 Dr. Danziger, who became involved with the defendant as a
16 result of this criminal case, opined that the defendant
17 believed in time he would become emperor of the world. Also,
18 after defendant's criminal problems arose, he was the subject
19 of an involuntary guardianship proceeding through the probate
20 court here in the state court in the Ninth Circuit. The
21 guardianship was established based on the opinions of three
22 mental health experts and the conclusions of the judge.

23 In Dr. Danziger's opinion, defendant's offense
24 was committed while he was operating in a significantly
25 reduced mental capacity that contributed to his criminal

1 conduct. Dr. Danziger admitted that people suffering from
2 bipolar disease, however, may function normally, with or
3 without medication. He could not give an opinion as to
4 whether defendant would have committed the offense in the
5 absence of the disease. Dr. Danziger relied in part on
6 defendant's behavior during the video meetings where
7 defendant spoke, but he did not know the nature of at least
8 one of the meetings, that was the meeting where the defendant
9 was demonstratively angry at one of his subordinates for
10 exceeding the, in his view, the scope of her employment.

11 He also did not understand that the defendant was
12 referring to a Star Trek theme when he referred to the Terran
13 empire.

14 The court had the benefit of observing the videos
15 about which Dr. Danziger testified and it should be noted for
16 this record that those in attendance including experienced
17 lawyers, accountants and businessmen, none of whom objected
18 or left when the defendant expressed his plans and his
19 demeanor. One of the meetings during which defendant seemed
20 angry was called, as I said, because he believed I think it
21 was Miss Curry had overstepped her bounds.

22 During the course of his conduct relevant to
23 these proceedings, the defendant owned 85 companies and many
24 experienced professionals answered to him. In fact, one of
25 the people that you worked closely with is a retired

1 psychiatrist. Defendant was invited to sit two seats away
2 from the President of the United States at one point.

3 There's no doubt that the defendant knew the
4 difference between right and wrong and that he was
5 functioning at a very high level regarding complex matters.
6 It's not likely that the people he was dealing with believed
7 that he was delusional, at least with regard to his business
8 plans.

9 I find that when the defendant committed the
10 crime for which he is to be sentenced, he suffered from a
11 bipolar disorder that reduced his mental capacity and
12 contributed to the commission of the crime. Nonetheless, I
13 do not grant a motion for downward departure because I don't
14 think it's been shown that the illness contributed
15 substantially to the commission of the crime. And I am not
16 convinced that the disorder greatly reduced his mental
17 capacity to conduct the business in the way he did and commit
18 the crimes in the way he did.

19 Now, having said that, I do not exclude weighing
20 that factor as part of the 3553 analysis.

21 The defendant's counsel also suggest that the
22 court downwardly depart from the guidelines based on the
23 defendant's acceptance of responsibility, and this argument
24 is based I believe in the reasoning contained in United
25 States versus Rodriguez at 54 F.3d 638, which is an Eleventh

1 Circuit case. In that case the circuit court held that the
2 district court had discretion to reward a defendant for
3 acceptance of responsibility by departing downward when
4 5G1.1A renders Section 3E1.1 ineffectual in reducing
5 defendant's actual sentence as in the case when the guideline
6 range exceeds the statutory maximum sentence, which is what
7 happened in Rodriguez, and what the defendant argues is the
8 case here.

9 Now, I want a very limited comments on this and
10 I'm going to start with you, Mr. Sands, because I don't
11 recall that you responded to Mr. Gold's argument that a
12 departure on this ground would be outside the agreement
13 between the parties.

14 MR. SANDS: I did respond briefly to that, Your
15 Honor.

16 THE COURT: Well, I didn't understand your
17 response because I think it was colored perhaps by the
18 agreement, the other agreement that you had that the
19 diminished mental capacity was a viable argument and maybe
20 colored this.

21 MR. SANDS: Right. Part of my response to that
22 was that the, you know, the government points out that there
23 is an express provision made in the plea agreement for a
24 downward departure argument to be made with respect to
25 diminished capacity, but not on any other grounds, and that's

1 the basis of the government's position. However, there's
2 also a provision in the plea agreement that says that the
3 government's not going to oppose the defense's argument for
4 acceptance of responsibility which the government did in this
5 case.

6 THE COURT: Let me ask you this: Is there a
7 difference between an argument for acceptance of
8 responsibility and an argument for downward departure based
9 on acceptance of responsibility? I've already granted you --

10 MR. SANDS: There certainly is a difference in
11 theory and in law and in the application of the guidelines.
12 There is, obviously, in this case there's not going to be a
13 functional difference for Mr. Amodio in terms of the granting
14 of that reduction unless it actually is actualized in terms
15 of a downward departure because of the 25 year cap. And in
16 this case, because of the guidelines that you've already
17 determined, he's not going to get any benefit whatsoever from
18 the acceptance of responsibility reduction, but what he did
19 get was this long series of arguments by the government
20 against the very acceptance which, you know, the government
21 had agreed not to oppose when we entered into the agreement
22 in the first place. And that, I think, certainly colored the
23 proceedings as well.

24 THE COURT: Well, I want to be clear about this.
25 Regardless of whether they in your view violated the

1 agreement on that point, you've been granted that relief that
2 you sought with regard to acceptance of responsibility. I'm
3 looking at this as a discrete issue because it really is
4 departure and I want to know what your view is of the
5 agreement with regard to arguing departure based on
6 substantial assistance.

7 MR. SANDS: I guess really maybe boiling down to
8 the court's point would be two wrongs don't make a right in
9 that I think there was a problem with what the government has
10 done with regard to arguing against acceptance when they
11 agreed not to oppose it. However, I will certainly
12 acknowledge, it doesn't require acknowledgment from me, there
13 is a provision in the plea agreement that says with regard to
14 downward departures it only singles out the one for
15 diminished capacity. I acknowledge that. I think that in
16 fairness that, you know, the government lost the moral high
17 ground with regard to that argument when it acted completely
18 inconsistently with regard to the plea agreement by making
19 arguments about a lack of acceptance of responsibility based
20 on conduct that predated the execution of the plea agreement.
21 Clearly at the time that the government executed the plea
22 agreement they knew about the Sunz Insurance, they knew about
23 the bankruptcy, and yet they entered into an agreement that
24 basically said we're not going to oppose acceptance of
25 responsibility.

1 Now, I will acknowledge quite candidly to the
2 court that when I put that provision in, I just found the
3 case relatively recently and didn't even, as Mr. Gold may
4 well have not thought about that provision that we believe
5 that he violated the plea agreement. When I found that case,
6 I brought it to the attention of the probation office. I
7 really wasn't thinking about the provision in the plea
8 agreement that had limited us in that way, but I've got to
9 say, way back when we did the plea agreement, we also weren't
10 thinking about the government objecting to acceptance of
11 responsibility, etcetera. I thought that that was one of the
12 few things that was actually a carrot that we got as part of
13 the plea agreement. And Mr. Amodeo has been deprived of the
14 substantial assistance. The government tried, argued against
15 the acceptance of responsibility. So although I admit I
16 actually wasn't thinking about it in terms of being a
17 violation of the plea agreement, I can say in retrospect
18 that, you know, I think it's something which in fairness
19 should be considered, if not within the guidelines, then
20 perhaps as a 3553 type of a consideration.

21 THE COURT: Thank you, Mr. Sands.

22 Mr. Gold.

23 MR. GOLD: Yes, Your Honor. I just want the
24 court to understand that we did not violate the plea
25 agreement. In the section that talks about acceptance of

1 responsibility, it talks about unless other things become
2 known to the United States. One of the things that we became
3 aware of post plea was the filing of these lawsuits where he
4 attempted to distance himself from the conduct and place it
5 on others.

6 Additionally, our argument also went to what we
7 perceive to be his obstructive conduct in the sentencing
8 hearing. So I don't think that the United States did violate
9 the plea agreement on that issue. And I believe that the
10 plea agreement that discusses the downward departures, I
11 thought I heard in his previous argument that Mr. Sands had
12 been aware of this other case for some time. I mean I'm
13 hearing today that he just found it, but in any event, I
14 think that he is bound by the language of the plea agreement.

15 MR. SANDS: May I address that just very briefly,
16 Your Honor?

17 THE COURT: Yes, sir.

18 MR. SANDS: This was a case I actually brought up
19 in the aftermath of the conference we had with regard to the
20 presentence report. I know exactly when I brought it up.
21 And I actually immediately faxed over a letter to the
22 probation office and to the government indicating I've got
23 this case.

24 THE COURT: Well, I believe that the issue of
25 acceptance of responsibility for purposes of guidelines

1 scoring has already been ruled upon, notwithstanding any
2 agreements that may have existed or how they're construed. I
3 have ruled on that and it's no longer a matter of discussion.

4 To the extent that the court has discretion to
5 further grant a downward departure based on the unusual
6 circumstances of this case, that being that the statutory
7 maximum is less than the guidelines sentence, I decline to do
8 so. I decline to do so because there appears, number one,
9 the assistance is not without flaws. It's not, although I've
10 granted the reduction of the offense level, I don't think
11 it's extraordinary to the extent that it would require a
12 downward departure. And, two, it appears to be outside the
13 agreement of counsel and the parties. So the motion for
14 downward departure on both grounds is denied.

15 Mr. Rolland has an agreement with me, speaking of
16 agreements, and that is that I not keep him in this chair
17 more than an hour and a half, and I've failed to keep my end
18 of that bargain. We're going to take a very short recess,
19 just ten minutes.

20 (BRIEF RECESS.)

21 THE COURT: Does that take care of all motions
22 and objections?

23 MR. GOLD: I believe it does, Your Honor.

24 THE COURT: Do you agree, Mr. Slaughter?

25 MR. SLAUGHTER: Yes.

1 THE COURT: The court, having ruled on the
2 objections to the presentence report, determines that the
3 advisory guidelines are total offense level 43, and that is
4 because the 43 is the maximum. The actual score is 46 now
5 with my reductions, criminal history category one, 300 months
6 imprisonment, two to three years supervised release,
7 \$181,810,518.66 restitution, \$25,000 to \$125,000 fine, \$500
8 special assessment.

9 MR. GOLD: Your Honor, if we could just briefly,
10 he's actually criminal history category two.

11 THE COURT: Right. There's a mistake on this
12 sentencing statement. It is criminal history category two.

13 Thank you, Mr. Gold.

14 Is there a victim present in the courtroom?

15 Do you know of any reason why the court should
16 not now proceed with imposition of sentence?

17 MR. SLAUGHTER: No, Your Honor.

18 THE COURT: Do you wish to make a statement or
19 present any information in mitigation of sentence?

20 MR. SLAUGHTER: Mr. Amodeo declines to make a
21 statement.

22 THE COURT: Okay. Mr. Amodeo, do you understand
23 that it's your right to make a statement now?

24 THE DEFENDANT: I do, sir.

25 THE COURT: And do you understand that it's also

1 your right not to give a statement?

2 THE DEFENDANT: I do, sir.

3 THE COURT: Do you also understand that if you do
4 not make a statement, I will not hear from you later with
5 regard to sentencing? This is your only chance.

6 THE DEFENDANT: Okay, sir. So then just a brief
7 statement in that case.

8 THE COURT: Do you want to consult with your
9 counsel before you make the decision?

10 THE DEFENDANT: No, sir. I'm fine with making no
11 statement. I've done it during the proceeding. I think it's
12 fine. And Mr. Slaughter spoke earlier.

13 THE COURT: So --

14 THE DEFENDANT: No statement is required.

15 THE COURT: Okay. Okay.

16 You're making that decision of your own free
17 will, nobody's coercing you or forcing you or threatening you
18 in any way to get you to make that decision, are they?

19 THE DEFENDANT: No, sir.

20 THE COURT: The court has asked the defendant why
21 judgment should not now be pronounced, and after hearing
22 defendant's response, the court finds no cause to the
23 contrary. The parties have made statements on their behalf
24 in the sentencing hearing prior to today, but the defendant
25 has chosen not to offer any further statement today. I

1 assume the government has said all it needs to say, is that
2 true, Mr. Gold?

3 MR. GOLD: Yes, Your Honor.

4 THE COURT: And the court has reviewed the
5 presentence report. And in that report the guidelines were
6 calculated and the court made adjustments to those guidelines
7 based on its rulings. The guidelines are advisory and not
8 mandatory, but nonetheless, the district court has an
9 obligation to insure that the guidelines are properly
10 calculated. This obligation is in force even though the
11 ultimate score is not presumed to be a reasonable sentence.
12 In this case defendant has raised objections to the
13 application of the guidelines by probation office and the
14 district court, pursuant to its obligation, has ruled on
15 those objections.

16 Pursuant to Title 18, United States Code,
17 Sections 3551 and 3553 and the Sentencing Reform Act of 1984,
18 it's the judgment of the court that the defendant, Frank L.
19 Amodeo, is hereby committed to the custody of the Bureau of
20 Prisons to be imprisoned for a term of 270 months. This term
21 consists of 54 months on each of counts one, 7, 8, 10 and 27.
22 Such terms to run consecutive.

23 Upon release from imprisonment, Mr. Amodeo,
24 you'll be placed on supervised release for a term of three
25 years. This term shall consist of three years on each of

1 counts one, 7, 8, 10 and 27, all such terms to run
2 concurrent.

3 The mandatory drug testing requirements of the
4 Violent Crime Control Act are waived. However, the court
5 orders that you submit to random drug testing not to exceed
6 104 tests per year.

7 While on supervised release you shall comply with
8 the standard conditions adopted by the court in the Middle
9 District of Florida. In addition, you shall comply with the
10 following special conditions: You shall participate in a
11 substance abuse program, outpatient, inpatient or both, and
12 follow the probation officer's instructions regarding
13 implementation of this directive. Further, you shall
14 contribute to the cost of these services not to exceed an
15 amount determined reasonable by the probation office's
16 sliding scale for substance abuse treatment services.

17 During and upon completion of this program you're
18 directed to submit to random drug testing.

19 You shall participate in a mental health
20 treatment, outpatient, inpatient or both, and follow the
21 probation officer's instructions regarding implementation of
22 this directive. Further, you shall contribute to the cost of
23 these services not to exceed an amount determined reasonable
24 by the probation office's sliding scale for mental health
25 treatment services.

1 You shall cooperate in the collection of DNA as
2 directed by the probation officer.

3 You are prohibited from incurring new credit
4 charges, opening additional lines of credit, making
5 acquisitions or obligating yourself for major purchases
6 without approval of the probation officer. You shall provide
7 the probation officer access to any requested financial
8 information.

9 Based on your limited financial status, the fine
10 is waived.

11 You shall cooperate with the Internal Revenue
12 Service regarding all outstanding taxes, interest and
13 penalties relating to the offense of conviction.

14 It's further ordered that you shall pay the
15 United States a special assessments totaling \$500 which are
16 due immediately.

17 The mandatory restitution provisions of 18 U.S.C.
18 Section 3663A apply in this case. It is ordered that you
19 shall make restitution in the amount of \$181,810,518.66 to
20 the Internal Revenue Service, 329 Oak Street, Atlanta,
21 Georgia, 30303. Restitution is payable to the Clerk, U.S.
22 District Court, for distribution to the victim.

23 While in the Bureau of Prisons you shall either
24 pay at least, one, pay at least 25 dollars quarterly if you
25 have a non-Unicor job, or two, pay at least 50 percent of

1 your monthly earnings if you have a Unicolor job. Upon release
2 from custody you're ordered to begin making payments of \$200
3 per month, and this payment schedule shall continue until
4 such time as the court is notified by you, the victim or the
5 government that there's been a material change in your
6 ability to pay.

7 It is further ordered that you shall forfeit to
8 the United States those assets previously identified in the
9 plea agreement, the preliminary order of forfeiture, docket
10 75, and the final order of forfeiture, 76, that are subject
11 to forfeiture.

12 After considering the advisory sentencing
13 guidelines and all of the factors identified in Title 18,
14 United States Code, Section 3553A1 through 7, the court finds
15 that the sentence imposed is sufficient but not greater than
16 necessary to comply with the statutory purposes of
17 sentencing.

18 The factors to be considered in determining a
19 sentence that is sufficient but not greater than necessary to
20 comply with the purposes of the statutory requirements are
21 the nature and circumstances of the offense and the history
22 and characteristics of the defendant, the kinds of sentence
23 available, the need to avoid unwarranted sentence disparities
24 and the need to provide restitution. The purposes or goals
25 of sentencing are to reflect the seriousness of the offense,

1 promote respect for the law, provide just punishment, afford
2 adequate deterrence to criminal conduct, and to provide
3 effective education, care and treatment.

4 I have already touched on many of the factors to
5 be considered in crafting an appropriate sentence pursuant to
6 the statute, but it's necessary to make a few comments.

7 First, having to do with the nature and
8 circumstances of the offense. The offense was committed out
9 of greed. While defendant may be correct in his assertion
10 that others were along for the ride and to get a share of the
11 plunder, the booty, the defendant was admittedly the leader
12 and organizer of a conspiracy to defraud the government. The
13 amount of loss was as stated.

14 With regard to history and characteristics of the
15 defendant, I've already found that the defendant is mentally
16 ill and the court has considered this factor in determination
17 of an appropriate sentence. The provision for downward
18 departure on the basis of diminished capacity includes the
19 language that if a departure is warranted under this policy,
20 the extent of that departure should reflect the extent to
21 which the reduced mental capacity contributed to the
22 commission of the offense. And there's no formula that takes
23 that into account, but you've known for some time that you
24 have a mental illness and you have neglected to attend to it.
25 Even when you had ample opportunity to do so.

1 Further, you've established a history of
2 dishonest conduct leading to your suspension from the
3 practice of law followed by disbarment by the bar of the
4 state of Georgia, or by the Supreme Court of the state of
5 Georgia I should say. Before embarking on the course of
6 conduct that brings you here today, you were convicted of
7 fraud in the Northern District of Georgia and sentenced to 24
8 months imprisonment. Notwithstanding the charity that you've
9 extended to the people in the state of Louisiana during the
10 hurricane, Hurricane Katrina, you have an insatiable greed
11 and disregard for the rights of others and your obligations
12 to the United States government.

13 In striving to achieve the goals of sentencing
14 set forth in 3553A2, the court believes the sentence it
15 imposes is necessary to reflect the seriousness of the
16 offense, to promote respect for the law and to provide just
17 punishment for the offense.

18 The court also believes that the sentence is
19 necessary to protect the public from further crimes of the
20 defendant and to afford deterrence to the crime.

21 The sentence imposed by the court would be the
22 same regardless of the decisions made with regard to the
23 guideline calculations and the rulings on the objections
24 raised to the presentence report.

25 The court has accepted the plea agreement because

1 it's satisfied that the agreement adequately reflects the
2 seriousness of actual offense behavior and that accepting the
3 plea agreement will not undermine the statutory purposes of
4 sentencing. It is ordered that counts two through six, nine,
5 and 11 through 26 be dismissed.

6 You're hereby remanded to the custody of the
7 United States Marshal to await designation by the Bureau of
8 Prisons. Your motion for release pending execution of
9 sentence, document 120, is denied.

10 The court having pronounced sentence, does
11 counsel for the defendant or the government have any
12 objections to the sentence or the manner in which the court
13 pronounced sentence other than those previously stated for
14 the record?

15 MR. GOLD: No, Your Honor, although Miss Cream
16 has something to address just briefly with the court.

17 MS. CREAM: I apologize, Your Honor, and I will
18 get you a list of all of the assets, but so that the record
19 is clear, the defendant in the plea agreement agreed to the
20 fourth of a variety of assets, a 2006 Mercedes Benz CLS 55AMG
21 was inadvertently omitted from the plea agreement. That
22 asset is the subject of docket number 106. Dockets 46 and 49
23 are also preliminary orders of forfeiture the court
24 mentioned, the preliminary order of forfeiture docketed at
25 75. And then there are two additional preliminary orders of

1 forfeiture which were signed.

2 THE COURT: Those will all be reflected in the
3 judgment, Miss Cream.

4 MS. CREAM: Thank you, Your Honor.

5 THE COURT: Anything else? Do you have any
6 objections other than those previously stated for the record?

7 MR. SLAUGHTER: Just notice of appeal, Your
8 Honor.

9 THE COURT: To the extent permitted by your plea
10 agreement you're now advised that it's your right to appeal
11 from this sentence within ten days from this date or from the
12 date the judgment is recorded, whichever is later. Failure
13 to appeal within the ten day period shall be a waiver of your
14 right to appeal. The government may file an appeal from this
15 sentence. You're also advised that you're entitled to
16 assistance of counsel in taking an appeal, and if you're
17 unable to afford a lawyer, one will be appointed for you.

18 Did you need something, Mr. Slaughter?

19 MR. SLAUGHTER: I'm just wondering, is there
20 anything for him to sign what was just read by the court?

21 THE COURT: I have one other question that I'll
22 ask now.

23 Do you understand everything that's happened?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you understand your right to
3 appeal?

4 THE DEFENDANT: I do.

5 THE COURT: Thank you.

6 (SENTENCING CONCLUDED.)

7

8 I certify that the foregoing is a correct
9 transcript from the record of proceedings in the
10 above-entitled matter.

11

12

s/ Anthony Rolland

13

ANTHONY ROLLAND

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