

NO. 11-10384

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA

APPEAL NO.: 11-10384

Plaintiff/Appellee,

vs.

District Court Case No.: 2:06-CR-186-
PMP/PAL

FREDRICK RIZZOLO aka RICK
RIZZOLO

Defendant/Appellant.

APPELLANT'S REPLY IN SUPPORT OF
EMERGENCY MOTION FOR RELEASE PENDING APPEAL OF
REVOCATION OF SUPERVISED RELEASE

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1 COMES NOW Defendant/Appellant, Fredrick Rizzolo, aka Rick Rizzolo
2 (hereinafter "Defendant"), by and through his attorneys of record, Dominic P.
3 Gentile, Esq., Paola M. Armeni, Esq., and Margaret W. Lambrose, Esq., of the law
4 firm of Gordon Silver, and files the following Reply to Appellee's Response in
5 Opposition to Appellant's Emergency Motion for Release Pending Appeal of
6 Revocation of Supervised Release (DktEntry 9) filed on October 11, 2011.

7 This Reply is made and based upon all pleadings and papers on file herein,
8 the exhibits appended hereto, and the following Memorandum of Points and
9 Authorities.

10 Dated this 18th day of October 2011.

11 GORDON SILVER

12 /s/ DOMINIC P. GENTILE
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24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I.**

26 **THE GOVERNMENT DOES NOT DISPUTE APPELLANT'S**
27 **CONTENTION THAT HE IS NOT LIKELY TO FLEE OR POSE A**
28 **DANGER TO ANY OTHER PERSON OR THE COMMUNITY IF**
RELEASED PENDING APPEAL.

As a threshold matter, in its Response in Opposition to Appellant's
Emergency Motion for Release Pending Appeal of Revocation of Supervised
Release (hereinafter "Government's Response"), the government does not

1 challenge the Appellant's contention that he is not likely to flee or pose a danger to
 2 any other person or the community if he is released from custody pending his
 3 appeal in this Court of the revocation of his supervised release, and concomitant
 4 imposition of a term of 9 months of incarceration by the lower court. See 18 U.S.C.
 5 Section 3143(b)(1).

6 II.

7 APPELLANT NEED NOT ESTABLISH THAT "EXCEPTIONAL 8 CIRCUMSTANCES" JUSTIFY HIS RELEASE PENDING APPEAL.

9 Appellant continues to respectfully maintain that, as a *non-violent* offender,
 10 he is not in fact required to establish that his release from custody pending this
 11 Court's disposition of his appeal from the revocation of his supervised release and
 12 concomitant imposition of a term of 9 months of incarceration by the lower court is
 13 justified by "exceptional circumstances." *United States v. Koon*, 6 F.3d 561, 563 (9th Cir.
 14 1993) (Rhymer, J., concurring) ("A *non-violent* offender may be released pending
 15 appeal if he shows that he is not likely to flee or pose a danger to the safety of
 16 anyone else or the community, and that the appeal raises a substantial question . . .
 17 . A *violent* offender, on the other hand, may only be released when he meets those
 18 same conditions *and* if it is clearly shown there are exceptional reasons why
 19 detention would not be appropriate"). (Emphasis in original.)

20 III.

21 "EXCEPTIONAL CIRCUMSTANCES" JUSTIFY APPELLANT'S 22 RELEASE PENDING APPEAL.

23 Assuming *arguendo* that Appellant is required to establish that his release
 24 pending appeal is justified by "exceptional circumstances," he respectfully submits
 25 that such circumstances are shown in this case.

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A.

Appellant Raises Substantial Issues On Appeal.

As the government acknowledges in its Response, this Court explained in *United States v. Bell*, 820 F.2d 980, 981 (9th Cir. 1987) that: “Examples of exceptional circumstances include: . . . raising substantial claims upon which the appellant has a high probability of success” Government’s Response page 7, paragraph 2. And as the Second Circuit has since held in *United States v. DiSomma*, 951 F.2d 494, 497 (2d Cir. 1991): “an unusual legal or factual question can be sufficient” to meet the “exceptional reasons” test, or “a merely substantial question may be sufficient, in the presence of one or more remarkable and uncommon factors, to support a finding of exceptional reasons for the inappropriateness of detention.”

Appellant respectfully submits that the appellate issues he has identified in the case at bar are implicate “unusual legal questions” and constitute “substantial claims upon which the appellant has a high probability of success;” and therefore, that exceptional circumstances militating against the imposition of detention pending appeal obtain in the instant case.

1.

**Appellant Was Prejudiced By The Lower Court’s
Erroneous Grant Of Leave To Counsel For A Non-
Victim To Address The District Court At Sentencing
And Urge Appellant’s Incarceration.**

Following the evidentiary hearing before the lower court conducted in the supervised release revocation proceedings in this federal income tax case, counsel for Kirk and Amy Henry, third-party civil plaintiffs in an independent state tort action against Appellant Rizzolo, filed a motion in the instant matter requesting leave to be heard in respect to the sentencing of the Appellant. Appellant opposed this request on grounds that Mr. and Mrs. Henry were not victims of the criminal offense of conviction in this case; to wit: Conspiracy to Defraud the United States

1 within the meaning of the "Crime Victim's Rights Act" (codified at 18 U.S.C.
2 Section 3771) (hereinafter "CVRA"); and therefore, did not have standing to
3 address the court in respect to the matter of the revocation of the Appellant's
4 supervised release. See Defendant Fredrick Rizzolo's Opposition to Kirk and Amy
5 Henry's Memorandum Regarding Their Right to be Reasonably Heard at
6 Defendant Rick Rizzolo's Revocation Proceedings (appended hereto and
7 incorporated herein by reference as Exhibit 1). Indeed, as the district court
8 explained at the sentencing hearing in these revocation proceedings: "[T]here was
9 filed on behalf of the Henrys . . . a motion to be heard from the perspective or
10 position as a victim and I asked that that matter be briefed [And Defendant
11 Rizzolo] filed [an] opposition" Transcript of Sentencing re Revocation of
12 Supervised Release page 4, line 24 – page 5, line 22, (appended hereto and
13 incorporated herein by reference as Exhibit 2).

14 The district court ultimately agreed with the Appellant's position that Mr.
15 and Mrs. Henry did not qualify as "victims" under the CVRA.

16 "THE COURT: The defense is correct that under The
17 Crime Victims' Rights Act, 18 U.S. Code, Section 3771,
18 the Henrys are not victims of the crime of conviction
19 which brings the case before the Court, the defrauding –
20 or conspiracy to defraud the United States of tax revenue
21 basically. So they're not victims of that crime" Exhibit 2 page 6, line 21-page 7, line 1.

22 "THE COURT: I don't characterize them as victims
23 under The Crime Victims' Rights Act. I think Defendants
24 are correct. They don't enjoy that status." Exhibit 2 page
25 7, line 24-page 8, line 1.

26 Nevertheless, the district court allowed counsel for the Henrys to be heard.
27 Exhibit 2 page 7, lines 6-24. Moreover, the court allowed him to be heard *first*.
28 Exhibit 2 page 8, lines 2-5.

Prefacing his remarks with the proposition that "the Henrys' opinion in this

1 is very important,” (Exhibit 2 page 17, line 16), C. Stanley Hunterton, Esq.,
 2 counsel for the Henrys, thereupon proceeded to launch into an extremely
 3 inflammatory *ad hominem* attack upon Appellant Rizzolo; lambasting the
 4 Appellant in gratuitously pejorative terms; vociferously urging the sentencing court
 5 to incarcerate the Appellant for failure to have paid-off his unrelated civil
 6 indebtedness to Mr. Hunterton’s clients.

7 “[T]he first point of business is to **send this**
 8 **gangster¹ back to jail** [To him] everything is a game
 9 about how much can I get away with, how can I cheat the
 10 squares because that’s what all of us are to him. Okay.
 11 And the only thing that he will understand, **as Mr.**
 12 **Campbell and I pursue him through this and on**
 13 **through the gates of hell to get the Henrys their**
 14 **money, is being incarcerated** He is a professional
 15 criminal. **Send him back to jail.**” Exhibit 2 page 18, line
 16 4-page 19, line 5. (Emphasis added.)²

17 ¹ At no time during the revocation proceedings in this case did counsel for the
 18 government ever refer to Appellant Rizzolo in such pejorative terms.

19 ² The following facts are undisputed. Appellant Rizzolo was the principle
 20 shareholder of The Power Company, Inc. d/b/a “Crazy Horse Too” of Las Vegas,
 21 Nevada, a now-defunct “gentlemen’s club.” As a result of personal injuries
 22 sustained there by civil plaintiff Kirk Henry, Mr. Henry and his wife sued The
 23 Power Company, Inc. and the Appellant; which lawsuit was settled for the total
 24 sum of \$10,000,000.00. Pursuant to the express terms of the settlement agreement,
 25 The sum of \$1,000,000.00 was paid immediately by the defendants into a
 26 settlement trust fund established for the benefit of the plaintiffs; the club was to be
 27 sold; and the balance was to become **“due and owing upon the closing of the sale**
 28 **of THE POWER COMPANY, INC., dba CRAZY HORSE TOO**
GENTLEMEN’S CLUB.” Release of all Claims and Agreement to Indemnify
 page 1, paragraph 1 (appended hereto and incorporated herein by reference as
 Exhibit 3). Appellant Rizzolo was permitted a time certain within which to
 consummate a private sale of the club (during which period of time Appellant was
 also sentenced to serve a term of imprisonment imposed by the district court of 1
 year and 1 day); and when he was unable to achieve a sale of the business within
 that time, the Appellant agreed to the seizure of the club by the government in
 order to permit the government to sell the business for the benefit of the Henrys.
 The government thereupon assumed that right and corresponding obligation but

Appellant respectfully submits that there is no authority for the district court to have permitted counsel for a non-victim to address the tribunal in these criminal supervised release revocation proceedings for the purpose of imploring the court to incarcerate his client's debtor; and that, in so doing, the district court committed an abuse of discretion.³ Thus, Rule 32(i)(1)(C) of the Federal Rules of Criminal Procedure ("FRCrP") provides, in pertinent part, that, at sentencing, the court must allow "the *parties*' attorneys" to comment on matters relating to an appropriate sentence; FRCrP 32(i)(4)(A)(i) provides that the court must allow "the defendant's attorney" to speak on the defendant's behalf; FRCrP 32(i)(4)(A)(ii) provides that the court must allow "the defendant" to speak; FRCrP 32(i)(4)(A)(iii) provides that the court must allow "an attorney for the government" to speak; and FRCrP 32(i)(4)(B) provides that the court must allow any "*victim of the crime*" to be reasonably heard. (Emphasis added.)

And as this Court explained in *United States v. Burkholder*, 590 F.3d 1071, 1074 (9th Cir. 2010), under the CVRA, "crime victims have '[t]he right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.'" (Citing 18 U.S.C. § 3771(a)(4)). However, as the *Burkholder* Court made abundantly clear: "The CVRA defines 'crime victim' as '*a person directly and proximately harmed as a result of the commission of a Federal offense....*'" (Citing 18 U.S.C. § 3771(e)). (Emphasis

(continued)
thereafter failed to timely renew the privileged licensure of the business despite an available "grandfather" provision under local ordinance and the club became unsellable, fell into disrepair, and has since been foreclosed upon by the mortgagee. See Exhibit 2 pages 12-15, 38-41. See also Partial Transcript of Supervised Release Revocation Hearing (Day 5): Judgment page 7 (appended hereto and incorporated herein by reference as Exhibit 4).

³ As pointed out by the government, "in reviewing a district court's denial of release pending appeal [this Court] consider[s] the district court's determinations de novo" Government's Response pages 5-6. (Citing *United States v. Garcia*, 340 F.3d 1013, 1015 (9th Cir. 2003)).

1 added.) *Accord, e.g., In re Rendon Galvis*, 564 F.3d 170, 174-175 (2d Cir. 2009)
 2 (“The CVRA guarantees to the victims of federal crimes an array of substantive
 3 and participatory rights, including the rights ‘to be reasonably heard at any public
 4 proceeding in the district court involving release, plea, sentencing, or any parole
 5 proceeding,’ ‘to confer with the attorney for the Government in the case;’” “A
 6 ‘crime victim’ is defined in the CVRA as ‘a person directly and proximately
 7 harmed as a result of the commission of a Federal offense’”); *United States v.*
 8 *Sharp*, 463 F. Supp. 2d 556 (E. D. Va. 2006).

9 Pursuant to the above-quoted governing authorities, counsel for the Henrys
 10 clearly had no right to address the sentencing court in these criminal revocation
 11 proceedings, and the lower court had no right to permit them to do so. And there is
 12 no accounting for the impact Mr. Hunterton’s vitriolic, “fugitive” remarks had
 13 upon the sentencing court.⁴

14 Furthermore, Mr. Hunterton and his client both have a *personal financial*
 15 *interest* in the coercive incarceration of the Appellant, to be followed by yet
 16 another term of supervised release, and to again seek its revocation and, in turn, the
 17 imposition of yet another deprivation of liberty upon the Appellant should he have
 18 not yet paid-off his indebtedness to Hunterton’s client, *ad infinitum*. Thus, with due
 19 respect, Appellant Rizzolo submits that as in *Securities and Exchange Commission*
 20 *v. Moss*, 644 F.2d 313, 317-318 (4th Cir. 1981), “the district court’s action raises
 21 the specter of the debtor’s prison this country long ago outlawed.” See also *e.g.*
 22 *United States v. Big Crow*, 327 F.3d 685, 689 (8th Cir. 2003) (“Although Big Crow
 23 knowingly and substantially underpaid the rent on the unit he leased from the
 24 Housing Authority, his failure to pay the full amount of rent owed on the leasehold
 25 did not constitute criminal conduct proscribed by § 1163. “[O]ur society closed its
 26

27 ⁴ In sentencing the Appellant to, *inter alia*, an additional term of incarceration, the
 28 district court specifically made the observation that “the Defendant has paid very
 little in the way of restitution to . . . the Henrys” Exhibit 4 page 13, lines 15-
 17. See also *id.* at page 16, lines 6-24.

debtor's prisons long ago.' Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1094 (4th Cir.1993); see also Freeman v. United States, 217 U.S. 539, 544, 30 S.Ct. 592, 54 L.Ed. 874 (1910) ('Statutes relieving from imprisonment for debt were not intended to take away the right to enforce criminal statutes and punish wrongful embezzlements or conversions of money.... Such laws are rather intended to prevent the commitment of debtors to prison for liabilities arising upon their contracts'); United States v. Banks, 614 F.2d 95, 100 note 13 (6th Cir. 1980) ("The attitude of the United States Attorney's Office for the Western District of Kentucky notwithstanding, there are no debtor's prisons in this country"); United States ex rel. Schuster v. Herold, 410 F.2d 1071, 1074 (2nd Cir. 1969) (to be "threatened to . . . [be] jailed for contempt of court if [one] does not pay [is the] equivalent of the debtor's prison").

The government's suggestion that "it was perfectly appropriate for the district court -- in fashioning a high-end, but within-guidelines sentence -- to consider the effect Rizzolo's concealment of assets had upon civil plaintiff Kirk Henry, who is still seeking money damages for the beating he suffered in Rizzolo's strip club over five years ago" is quite beside the point. Government's Response page 11, paragraph 2. For, even assuming *arguendo* the integrity of that assertion as a general proposition, it is a matter that can only be *offered* for consideration by a sentencing court by an attorney for the government. Thus, the government's argument in this regard fails entirely to address the issue of the impropriety of such a submission by counsel for a non-victim.

Appellant respectfully submits that this sets a very bad precedent, and clearly constitutes a substantial issue on appeal upon which the Appellant is likely to prevail on the merits.

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2.

**The Government is Estopped From Seeking the
Revocation of Appellant's Supervised Release.****(a.)**

**Appellant was affirmatively provided
with erroneous instructions by his
probation officer with respect to his
obligations of compliance under the
conditions of his supervised release.**

As Probation Officer Christiansen candidly testified at the evidentiary hearing conducted in these revocation proceedings, he affirmatively provided Appellant Rizzolo with what turned out to be erroneous instructions with respect to his obligations of compliance with the conditions of supervised release imposed by the district court, due and owing to his own misapprehension of those terms and conditions. And Appellant respectfully submits that this likewise constitutes a substantial issue on appeal upon which he is likely to prevail on the merits. See Exhibit 2 pages 41-46.

(b.)

**Appellant was not provided with proper
notice and demand for payment by the
Internal Revenue Service with respect to
unpaid tax arrearages.**

As the evidence adduced at the evidentiary hearing further showed, Appellant Rizzolo was never provided with appropriate notice and demand by the Internal Revenue Service regarding his payment of back taxes. And Appellant respectfully submits that this likewise constitutes a substantial issue on appeal upon which he is likely to prevail on the merits. See Exhibit 2 pages 52-55, 60-62.

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3.

**The Evidence Adduced at the Evidentiary Hearing
Was Not Sufficient to Establish the Alleged Violations
of Supervised Release Found by the District Court.**

Appellant continues to maintain that the evidence adduced at the evidentiary hearing was not sufficient to sustain the revocation of his supervised release with respect to any of the 3 violations found by the district court. And Appellant respectfully submits that this likewise constitutes a substantial issue on appeal upon which he is likely to prevail on the merits. See *e.g., United States v. Di Somma*, 951 F.2d 494 (2d Cir. 1991).

B.

**Appellant Is Likely To Be Deprived Of His Right Of Appeal By
Inevitable Mootness.**

Finally, Appellant continues to maintain that the foreseeable likelihood of inevitable mootness with respect to the appeal at bar implicates the same values inherent in the concept of exceptional circumstances based upon "unusual delay." See *United States v. Bell*, 820 F.2d 980 (9th Cir. 1987). And Appellant respectfully submits that the government's suggestion that "[if] the disposition of Rizzolo's appeal exceeds his projected release date of June 12, 2012, then Rizzolo can reassert his 'mootness' claim at that point" obviously reflects rather an obtuse misapprehension of this issue.

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CONCLUSION

For all the foregoing reasons, it is respectfully requested that Defendant Frederick Rizzolo's Motion for Release Pending Appeal of Revocation of Supervised Release be Granted.

Dated this _____ day of October 2011.

GORDON SILVER

/s/ DOMINIC P. GENTILE
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2011, I electronically filed a true and correct of the foregoing Reply with the Clerk of the Court for the United States District Court, District of Nevada by using the Court's CM/ECF system.

/s/ ADELE L. JOHANSEN

An Employee of Gordon Silver

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EXHIBIT “1”

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9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
12

13 UNITED STATES OF AMERICA

CASE NO. 2:06-CR-186-PMP/PAL

14 Plaintiff,

15 vs.

16 FREDRICK RIZZOLO aka RICK RIZZOLO

17 Defendant.
18

19 **DEFENDANT FREDRICK RIZZOLO'S OPPOSITION TO**
20 **KIRK AND AMY HENRY'S MEMORANDUM REGARDING THEIR**
21 **RIGHT TO BE REASONABLY HEARD AT DEFENDANT RICK**
RIZZOLO'S REVOCATION PROCEEDINGS

22 COMES NOW the Defendant, Fredrick Rizzolo, by and through counsel, Dominic P.
23 Gentile, Esq., Paola M. Armeni, Esq., and Margaret W. Lambrose, Esq., of the law firm of
24 Gordon Silver, and hereby opposes Kirk and Amy Henry's Memorandum Regarding Their Right
25 ...
26 ...
27 ...
28 ...

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1 to Be Reasonably Heard at Defendant Rick Rizzolo's Revocation Proceedings.

2 Dated this 13th day of June, 2011.

3 GORDON SILVER

4 

5 DOMINIC P. GENTILE

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16 **I**

17 **INTRODUCTION**

18 The Henrys' Memorandum is entirely based on the incorrect proposition that they are
19 "crime victims" as the term is defined in the Crime Victim's Rights Act ("CVRA") (codified at
20 18 U.S.C § 3771). As will be detailed below, in order to be a crime victim for purposes of the
21 CVRA, the victim must have been directly and proximately harmed as a result of the federal
22 offense to which the defendant pled guilty. The Henrys were not directly and proximately
23 harmed by Mr. Rizzolo's conviction of conspiracy to defraud the United States; thus, they are
24 not crime victims as the term is defined by the CVRA. Therefore, the Henrys do not have
25 standing to argue at Mr. Rizzolo's revocation hearing.

26 However, despite the fact that the Henrys do not have standing to argue at the revocation
27 hearing, it should be noted that the Henrys do not request this Court to revoke Mr. Rizzolo's
28 supervised release, presumably because even the Henrys recognize that nothing productive will
be achieved if Mr. Rizzolo's supervised release is revoked. In sum, they are clearly aware that if
Mr. Rizzolo is remanded, the Henrys may not receive any restitution payments in the near future
as Mr. Rizzolo will be unable to work.

Additionally, it must be noted that the Henrys make a point of the fact that, to date, they

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1 have received approximately \$4,000 in restitution from Mr. Rizzolo. What the Henrys fail to
2 mention is that the \$4,000.00 they have received is in fact \$4,000.00 more than is currently due
3 and owing to them pursuant to a binding settlement agreement that the parties entered into in
4 August 2006. See Binding Settlement Agreement attached hereto as "Exhibit 1." Under the terms
5 of the agreement, the Henrys received \$1 million dollars in exchange for dismissing all state tort
6 claims against Mr. Rizzolo in a civil case styled as Henry v. The Power Company et. al., Clark
7 County District Court, Nevada, Case No. A440740. The settlement agreement specifically
8 states:

9 For the total sum of TEN-MILLION DOLLARS (\$10,000,000.00),
10 ONE-MILLION DOLLARS (\$1,000,000.00) of which will be
11 deposited forthwith into the Henry Qualified Settlement Fund, with
12 the agreement between the parties that an additional NINE-
13 MILLION DOLLARS (\$9,000,000.00) will be paid to the Henry
Qualified Settlement Fund, *due and owing upon the closing of the*
sale of THE POWER COMPANY, INC., dba CRAZY HORSE
TOO GENTLEMEN'S CLUB. (emphasis added).

14 After the Henrys received their \$1 million dollars pursuant to the settlement agreement,
15 they filed a motion requesting that the settlement be reduced to a judgment. See minutes from
16 June 29, 2007 hearing on the Henrys' Motion to Reduce Settlement to Judgment attached hereto
17 as "Exhibit 2." The state court denied the Henrys request. Specifically, it found that as the Club
18 had not yet sold, Mr. Rizzolo was not in breach of the settlement agreement; thus, the court did
19 not have jurisdiction to enter a judgment against Mr. Rizzolo. Id. Despite the state court's
20 holding, the Henrys continue to attempt to collect the \$9 million prior to the sale of the Crazy
21 Horse Too; however, now they do so in this Court as their attempt failed in state court.

22 It is important to mention this because, throughout the history of this case, it has been
23 the practice of the Henrys to paint Mr. Rizzolo in the worst possible light by conveniently
24 omitting material information when coming before this Court. As Mr. Rizzolo's liberty is at
25 stake, he can longer afford to sit by and passively accept these disingenuous attacks.

26 ...

27 ...

28

1 II

2 STATEMENT OF RELEVANT FACTS

3 Six years before Mr. Rizzolo was sentenced in this case, Mr. Henry was injured while
4 visiting The Crazy Horse Too in the early morning hours of September 20, 2001. Mr. Rizzolo
5 was never charged with any crime stemming from Mr. Henry's injury. On January 26, 2007,
6 Mr. Rizzolo was sentenced in this case pursuant to a binding plea agreement wherein Mr.
7 Rizzolo pled guilty to one count of conspiracy to defraud the United States in violation of Title
8 18, United States Code, Section 371, as it was charged in count two of the Information. See
9 Binding Plea Agreement attached hereto as "Exhibit 3" (#8). The five essential elements of
10 conspiracy to defraud the United States are: (1) that the defendant entered into an agreement; (2)
11 to obstruct a lawful function of the government; (3) by deceitful or dishonest means; and, (4)
12 thereafter performed at least one overt act in furtherance of the conspiracy. Id.

13 To demonstrate that it could prove the essential elements of conspiracy to defraud the
14 United States, the Government set forth the factual basis for the charge in the plea agreement.
15 Specifically, the conviction was based on the assertion that The Crazy Horse Too paid some of
16 its employees on a cash basis and as a result, those receiving cash salary payments generally
17 under-reported amounts received to the Crazy Horse Too's bookkeeping staff. Notably, Mr.
18 Rizzolo's plea agreement is completely devoid of any reference that violence was used in
19 furtherance of the conspiracy. Id.

20 It is imperative to set out the factual basis of the crime for which Mr. Rizzolo was
21 convicted because the Hernys are not mentioned a single time. The reason the Henrys are not
22 mentioned is because the injury that Mr. Henry sustained while visiting the Crazy Horse Too
23 during the early morning hours of September 20, 2011, is in no way connected to the federal
24 crime for which Mr. Rizzolo pled guilty. In fact, Mr. Rizzolo was never arrested, much less
25 convicted, of any crime related to the injury Mr. Henry sustained while at the Crazy Horse Too.

26 III.

27 ARGUMENT

28 The CVRA affords crime victims a panoply of substantive and procedural rights

1 including the right “to be reasonably heard at any public proceeding in district court involving
 2 release, plea, sentencing, or any parole proceeding,” and “to confer with the attorney for the
 3 Government in the case.” 18 U.S.C. § 3771(a)(4)-(6). As will be shown below, the Henrys are
 4 not crime victims under the CVRA because the injury Mr. Henry sustained was not the direct
 5 and proximate result of conspiring to defraud the United States, which is the crime of conviction
 6 here. Therefore, the Henrys do not have standing to argue at Mr. Rizzolo’s revocation hearing
 7 and must be prohibited from conferring with the attorney for the Government in this case.

8 **The Henrys are not Crime Victims Pursuant to the CVRA as They are not**
 9 **Persons who were Directly and Proximately Harmed by the Federal Crime**
 10 **Committed by Mr. Rizzolo.**

11 The CVRA defines a “crime victim” as “a person directly and proximately harmed as a
 12 result of the commission of a Federal offense or an offense in the District of Columbia.” 18
 13 U.S.C. § 3771(e). See also U.S. v. Buckholder, 390 F.3d 1071, (9th Cir. 2010) (“The CVRA
 14 defines a crime victim as a person directly or proximately harmed by the commission of a
 15 Federal offense”). Therefore, in order to be considered a crime victim, not only must there be
 16 some federal crime involved, but the crime must also be the proximate cause of a plaintiff’s
 17 harm. See In re Rendon Galvis, 564 F.3d 170, 175 (2d Cir. 2009) (“The requirement that the
 18 victim be ‘directly and proximately harmed’ encompasses the traditional ‘but for’ and proximate
 19 cause analyses.”). Proximate cause requires “some direct relation between the injury asserted
 20 and the injurious conduct alleged, and excludes only those link[s] that are too remote, purely
 21 contingent, or indirect.” Staub v. Proctor Hosp., 131 S.Ct. 1186, 1192 (2011)(internal quotes
 22 admitted).

23 “The CVRA only permits a victim to ‘be heard’ at a...proceeding if the victim is ‘directly
 24 and proximately harmed’ by the defendant’s federal criminal act.” United States v. Sharp, 463
 25 F.Supp. 2d 556, 568 (E.D. Va. 2006)(emphasis in original). In Sharp, the defendant pled guilty
 26 to conspiracy to possess with intent to distribute marijuana. Sharp, 463 F.Supp.2d at 558. A
 27 woman, who formally dated one of the defendant’s customers, requested the court to allow her to
 28 speak at the defendant’s sentencing pursuant to the CVRA. Id. The woman asserted that she was

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1 a crime victim of the defendant because he sold her boyfriend marijuana and, when her boyfriend
2 was under the influence of marijuana, he would physically assault the woman. Id. at 559.

3 The Sharp court determined that the woman was not a crime victim as defined by the
4 CVRA as the woman's harm was too attenuated from the conspiracy to satisfy the CVRA. Id. at
5 566. Specifically, the court found "[The victim] has been unable to demonstrate that her injuries
6 would not have occurred but for the defendant's drug conspiracy...Nor is there evidence tending
7 to suggest that the defendant's conspiracy was a substantial factor in causing [the victim's]
8 alleged harm. [The victim] must show more than a mere possibility that the (defendant's federal
9 crime) caused her boyfriend to physically and emotionally abuse her." Id. at 567.

10 In order to determine that a person is a crime victim as defined by the CVRA, there must
11 be a "sufficient evidence of a nexus" between the crime committed by the defendant and the
12 harm caused to the victim. US v. Murillo-Bejerano, 564 F.3d 170, 174 (2nd Cir. 2009). In
13 Murillo-Bejerano, the defendant, an admitted leader of a terrorist group that organized an attack
14 in Columbia which resulted in the death of the victim, was extradited to the United States where
15 he pled guilty to one count of conspiracy to import cocaine into the United States. Murillo-
16 Bejerano, 564 F.3d at 172.

17 At the time of sentencing the victim's mother requested to be classified as a "crime
18 victim," on behalf of her son, so as to be provided the rights afforded by the CVRA. Id. at 172-
19 3. Using the rationale set forth in Sharp, the court determined that the mother was not a crime
20 victim as the term is defined by the CVRA. Id. at 173-4. The court reached this conclusion
21 finding, "the [victim's mother] did not establish direct and proximate harm either to herself or
22 her son resulting from [the defendant's] participation in the drug conspiracy with which he has
23 been charged and to which he has pled guilty." Id. at 175-6. The court stated that "[w]hile the
24 evidence may suggest some linkages between the victim's death and the drug conspiracy," the
25 mother failed to show the requisite causal connection between her son's death and the drug
26 conspiracy. Id. at 175. In sum the court determined, "there are too many questions left
27 unanswered concerning the link between the defendant's federal offense and [the petitioner's
28 harm]." Id.

1 Here, using the analysis provided by Sharp and Murillo-Bejerano, it is clear that the
2 Henrys are not "crime victims" as the term is defined by the CVRA. Mr. Henry was injured
3 while a customer at the Crazy Horse Too in 2001. Mr. Rizzolo was never charged with any crime
4 as a result of Mr. Henry's injury. Six years after Mr. Henry was injured, in 2007, Mr. Rizzolo
5 was convicted of conspiracy to defraud the United States. The plea agreement contains
6 absolutely no allegation that violence was used in furtherance of the conspiracy and the plea
7 agreement is completely bereft of any assertion that the harm Mr. Henry suffered was in any way
8 connected to Mr. Rizzolo's conspiracy conviction. Mr. Henry is not mention for one simple
9 reason- there is no causal link between Mr. Henry's injury and Mr. Rizzolo's federal conviction.

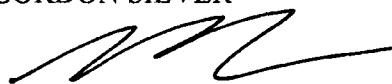
10 IV

11 CONCLUSION

12 For these reasons, it is respectfully requested that the Henrys are not permitted to argue at
13 Mr. Rizzolo's revocation hearing as they do not have standing to do so under the CVRA.
14 Additionally, as the Henrys are not "crime victims" as defined by the CVRA, it is further
15 requested that they be prohibited from conferring with the attorney for the Government in this
16 case.

17 Dated this 13th day of June, 2011.

18 GORDON SILVER

19 

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EXHIBIT “2”

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 2:06-CR-186-PMP-PAL
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Las Vegas, Nevada
)	
FREDERICK JOHN RIZZOLO,)	Wednesday, July 20, 2011
)	(9:03 a.m. to 10:38 a.m.)
Defendant.)	(10:39 a.m. to 10:39 a.m.)
		(10:50 a.m. to 11:01 a.m.)

SENTENCING RE REVOCATION OF SUPERVISED RELEASE

BEFORE THE HONORABLE PHILIP M. PRO,
UNITED STATES DISTRICT JUDGE

JUDGMENT FROM 11:01 A.M. TO 11:38 A.M.
TRANSCRIBED UNDER SEPARATE COVER)

Appearances: See Next Page

Law Clerks: Kara Rickey / Mehdi Eddebbbarh

Courtroom Administrator: Donna Sherwood

Court Reporter: Joan Quiros; Digital

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U.S. Probation: Eric Christiansen

1 Las Vegas, Nevada; Wednesday, July 20, 2011; 9:03 a.m.

2 (Call to Order)

3 THE COURT: All right. We are convened in
4 06-Criminal-186, *United States of America versus Frederick*
5 *Rizzolo*. The record should reflect the presence of the
6 Defendant Mr. Rizzolo together with Counsel Dominic Gentile and
7 Margaret Lambrose. On behalf of Plaintiff United States, Eric
8 Johnson is present. Eric Christiansen is present on behalf of
9 the Department of Probation. I apologize. I don't know the
10 other folks seated with you. Mr. Johnson?

11 MR. JOHNSON: You know, I've always called Nicole
12 Nicole so I'm not a hundred percent sure of her last name.

13 MS. RITZ: Nicole Ritz.

14 THE COURT: Your last name?

15 MS. RITZ: Ritz.

16 THE COURT: Ritz? Okay, Ms. Ritz.

17 MR. JOHNSON: And Tom Meister who's a certified law
18 clerk with us this summer.

19 THE COURT: All right, fine. And Ms. Ritz is also a
20 law clerk with --

21 MR. JOHNSON: No, she is automatic litigation support
22 specialist.

23 THE COURT: Your automatic what?

24 MR. JOHNSON: The automated litigation -- litigated
25 support specialist.

1 **THE COURT:** Oh, all right.

2 **MR. JOHNSON:** She runs the computer.

3 **THE COURT:** All right, fine. Thank you. And we have
4 on behalf of the Henrys, Stan Hunterton, Don Campbell and
5 Philip Erwin as well.

6 Counsel, I want to try to proceed as expeditiously as
7 possible. There's been a lot filed and a lot more said and
8 written about the case. On January 12 of this year, the
9 Department of Probation filed a petition alleging violations of
10 two of the special conditions of supervised release by the
11 Defendant. That's at Document 389. On April 1st, the
12 probation office filed an addendum to the petition at Document
13 425 supplementing those two violations and adding a third
14 violation pertaining to Special Condition Number 6.

15 On May 11th, we completed four days -- one in March
16 and the others in May -- of hearings, evidentiary hearings on
17 the petition and the addendum and at the end of that hearing, I
18 directed filings of supplemental sentencing memoranda by the
19 parties. The parties wanted to review the transcript of the
20 proceedings in aid of that and it made sense to do so. Those
21 supplemental filings were made both by the Defense and by the
22 Government on the same date, July 13th at Documents 455 and 456
23 on the Court's Docket.

24 In the interim as well, there was filed on behalf of
25 the Henrys, which we had talked about -- Mr. Hunterton had

1 addressed at the hearing on May 11th -- the desire to file a
2 motion to be heard from the perspective or position as a victim
3 and I asked that that matter be briefed. That filing was made
4 and was fully briefed on June 8th, the motion at Document 449
5 and finally on June 22nd, Defendant Rizzolo filed a motion to
6 permit negotiations with the Internal Revenue Service
7 concerning payment of taxes for the year 2006, I believe is
8 what it was directed to or limited to, and that matter is also
9 briefed though I don't think I have the position of the United
10 States on that and I'll want to get that in a moment.

11 But I want to make sure that I haven't missed any of
12 the supplemental filings since the 11th of May when we finished
13 the hearing. Is there any other filing that the parties have
14 made that pertains to the days' proceedings or other matters
15 that you have to bring to my attention before we address those
16 matters I've referenced?

17 **MR. JOHNSON:** Not that I'm aware, your Honor.

18 **MR. HUNTERTON:** Not for the Henrys, Judge.

19 **THE COURT:** All right.

20 **MR. GENTILE:** Your Honor, I believe we filed that
21 opposition to the Henrys.

22 **THE COURT:** Oh, you did.

23 **MR. GENTILE:** Oh, I didn't hear you say that.

24 **THE COURT:** No, no, it's fully briefed. As I
25 mentioned, it was -- that was fully briefed, regarding the

1 motion to be heard.

2 **MR. GENTILE:** Right.

3 **THE COURT:** Yeah, exactly. No, I will address that
4 but I just wanted to make sure there wasn't something else
5 filed that I haven't seen or haven't -- am not privy to. Okay.
6 Well, let me then go back to the topic because this is the time
7 set for argument as well on the issue of whether violations
8 have occurred of the special conditions of supervised release
9 as alleged and if so, what should be done about it is also the
10 other motion that -- motions that I've referenced.

11 And let me turn to those other motions and start with
12 Mr. Hunterton's filing on behalf of the Henrys to be heard at
13 the hearing today. I know in the past when the motion was
14 filed for action on supervised release by the Henrys, the
15 Government took a position adverse to that and I ruled against
16 the Henrys, would not let them and they found they didn't have
17 standing to bring a motion for such relief. This request is a
18 little bit different and what it seeks is the ability to be
19 heard. They've been heard by the filing in written form and
20 I'm assuming Mr. Hunterton wants to say something as well.

21 The Defense is correct that under The Crime Victims'
22 Rights Act, 18 U.S. Code, Section 3771, the Henrys are not
23 victims of the crime of conviction which brings the case before
24 the Court, the defrauding -- or conspiracy to defraud the
25 United States of tax revenue basically. So they're not victims

1 of that crime and so classically don't fall into the category
2 we so typically see the victims before the Court allocuting or
3 speaking on behalf of themselves or someone on their behalf
4 pertaining to a sentencing proceeding or some other aspect of
5 the case.

6 But given the highly unusual nature of the plea
7 agreement in this case -- I've never seen one quite like it --
8 which rolled into it civil litigation that was then pending in
9 State court or at least in part did so and sought to resolve
10 claims entirely as regards the Henrys and Mr. Rizzolo and the
11 Crazy Horse -- or the Power Company, I should say, Corporation,
12 I think that they have kind of a hybrid, unusual status. I am
13 going to allow the filing that they made, that is the
14 memorandum that was filed at Document 449 on June 8th, 2011 to
15 remain as part of the record.

16 I have read it and will consider it and I will also
17 allow Mr. Hunterton or Mr. Campbell, whoever -- or Mr. Erwin.
18 You can choose but not all of you -- to briefly address the
19 matter to state the Henrys' position in a few minutes but I
20 don't want to repeat everything that's already contained. I
21 mean, we -- a lot has been said. I don't need to hear a lot
22 more. I appreciate that the Henrys have a strong feeling about
23 this, understandably so, and I certainly will allow them to
24 speak to it but I don't characterize them as victims under The
25 Crime Victims' Rights Act. I think Defendants are correct.

1 They don't enjoy that status.

2 Before turning to that though -- and I'll let them
3 address the matter first and then I'll hear from the Government
4 and then I'll hear from the Defense regarding disposition of
5 the matter -- I want to turn to that other motion that I
6 referenced which was filed by Defendants. The Henrys also
7 filed a response to that. Basically what Defendant Rizzolo did
8 with regard to this motion was to seek permission first from
9 the Department of Probation to enter into negotiations with the
10 Internal Revenue Service concerning satisfying part of the tax
11 obligation due and owing for 2006 by employing when -- if and
12 when it comes, monies that would flow from the Lions-Piazza
13 purchase agreement funds that are still coming down the road --
14 apply it towards tax liability or at least open negotiations to
15 address that.

16 The Henrys responded in their filing, you know, hold
17 on. This shouldn't be allocated to the Internal Revenue
18 Service. It should be allocated to the Henrys or at least not
19 exclusively to the Internal Revenue Service. The reply filed
20 by the Defense states, well, you know, we're not saying who
21 gets it. We're putting it out here like an interpleader. This
22 money is going to be coming in. You tell us who it goes to and
23 that's, you know, whether it's the Henrys, it's the Internal
24 Revenue Service, whatever, somebody else.

25 You know, I went back through the file and of course

1 I remember the -- in fact, I pulled out a copy of it -- the
2 Court's order on -- the seconded amended order of forfeiture
3 entered on October 15th, 2008. I know you're all familiar with
4 that. It's at Document 242 in the Court's file and at that
5 time, I set forth a priority of distribution of proceeds from
6 the sale of the Crazy Horse. That was the forfeited property
7 and in that, the Henrys stood in front of the Internal Revenue
8 Service. Now, I don't know, other than Mr. Johnson, if we have
9 the Internal Revenue Service otherwise represented here today.

10 As Counsel for the Government, certainly that would
11 extend to the Internal Revenue Service, Mr. Johnson. I don't
12 have the Government's position on the matter but I do want to
13 hear that. The Henrys have stated their position. Rizzolo --
14 Defendant Rizzolo has stated his position. Essentially want --
15 this money is coming. He wants to be able to allocate it
16 somewhere in discharging his obligations. Mr. Johnson, what's
17 the Government's position on the direction of those funds? If
18 you filed a response on that, I didn't see it. So that's --

19 **MR. JOHNSON:** We did not file a response, your Honor.
20 Essentially, you know, we're prepared to do whatever the Court
21 feels is appropriate here. Obviously if you were to treat this
22 money as coming in as part of the restitution order of the
23 Court, it would -- the Court's prior orders would suggest that
24 the priority would lie to the Henrys. If it was treated as an
25 offer in settlement to the IRS, obviously the IRS sits there

1 and takes money from any people that come in who owe taxes.

2 So --

3 **THE COURT:** What I'm trying to avoid and what I don't
4 want to do -- because you're right. I have expressed myself
5 previously and my order of priority would be the same as in the
6 order of forfeiture. It would be the Henrys and then the
7 Internal Revenue Service but I don't want to set up then
8 satellite -- I'd like to put an end to it now if there's going
9 to be satellite litigation, if the IRS is then going to get
10 into a fight with the Henrys over --

11 **MR. JOHNSON:** Certainly if the Court assumes the
12 money that's coming into the -- to Lions as part of
13 Mr. Rizzolo's restitution obligation, then I would think the
14 priority that the Court set with the Henrys being first in line
15 would --

16 **THE COURT:** No, that's my view.

17 **MR. JOHNSON:** Yeah.

18 **THE COURT:** I just want to make sure that the
19 Government doesn't have a contrary view.

20 **MR. JOHNSON:** Yeah. And that's -- you know --

21 **THE COURT:** Okay.

22 **MR. JOHNSON:** -- certainly if it comes -- if -- you
23 know, the money right now is sitting out there --

24 **THE COURT:** Yeah.

25 **MR. JOHNSON:** -- and it hasn't taken the form of just

1 being given to the probation or the Government as restitution.

2 It hasn't taken the form of being offered --

3 **THE COURT:** Right.

4 **MR. JOHNSON:** -- specifically yet to the IRS.

5 **THE COURT:** No. Directions have been to hold it in
6 an account to --

7 **MR. JOHNSON:** So however it's brought into the system
8 obviously will impact upon how it's going to be treated --

9 **THE COURT:** Right.

10 **MR. JOHNSON:** -- and if it's brought in as
11 restitution, then clearly I think the Court's order and I think
12 statute provides that victims of crime take priority over the
13 Government as it relates --

14 **THE COURT:** All right.

15 **MR. JOHNSON:** -- to restitution proceeds.

16 **THE COURT:** And Mr. Gentile, on behalf of
17 Mr. Rizzolo, did you have anything to add to your filing which
18 again was kind of akin to an interpleader?

19 **MR. GENTILE:** Well, the original contemplation was
20 Ms. Kovos is seeking to collect at this point in time the 2006
21 taxes.

22 **THE COURT:** Yeah, I remember her testimony and --

23 **MR. GENTILE:** All right. And so that was the intent
24 of the motion but again when we came -- when it came time for a
25 reply, you're correct. We basically said to you, we've been

1 holding this money. We know that there are multiple claims for
2 it.

3 **THE COURT:** You tell us where it's going.

4 **MR. GENTILE:** Well, what -- you know, here's the
5 problem. Last -- I don't remember which time it was but one
6 time we were standing before you and you made it really clear
7 that you weren't in the business of assisting collections.

8 **THE COURT:** Yeah.

9 **MR. GENTILE:** Okay. So we were hesitant to suggest
10 to you after that statement --

11 **THE COURT:** Okay.

12 **MR. GENTILE:** -- okay, anything other than an
13 affirmative position which we did at our opening pleading.
14 Okay. I'm not going to suggest that the Court is modifying its
15 earlier statement by what you said today but then again it
16 wouldn't be the first time. So --

17 **THE COURT:** Well, you know, we all -- Mr. Gentile, I
18 think you and probably everybody in the room is sometimes a bit
19 inconsistent but I think that I have been consistent --

20 **MR. GENTILE:** Well, the --

21 **THE COURT:** -- in the case with regard to the
22 priority of payments in this case. I know what you're talking
23 about --

24 **MR. GENTILE:** That's if it were, in fact, from the
25 sale. The restitution is tied to the sale. Okay --

1 **THE COURT:** Yeah.

2 **MR. GENTILE:** -- the restitution is not tied to
3 Philadelphia. All right.

4 **THE COURT:** Not tied to what, I'm sorry?

5 **MR. GENTILE:** The restitution was tied to the sale of
6 the Power Company --

7 **THE COURT:** No, I think I'm --

8 **MR. GENTILE:** -- until April of last year.

9 **THE COURT:** Yeah, Mr. Gentile, I think I'm being
10 consistent with rulings that I made in the past year --

11 **MR. GENTILE:** Right.

12 **THE COURT:** -- where I did made a modification. Now,
13 from your --

14 **MR. GENTILE:** Yes, you did.

15 **THE COURT:** -- perspective, I changed the plea
16 agreement. I don't agree with that but -- no, I don't agree
17 with you. So okay. Well, that answers my question and it's a
18 simple matter then for me. Consistent with the order that I
19 entered with regard to forfeiture and as Mr. Gentile said, the
20 preference to compensate those who have lost or victims of --
21 in cases notwithstanding the rather hybrid nature of the Henrys
22 and again reiterating, you're right, the Court is not a
23 collection agency. The Henrys now -- the Crazy Horse has been
24 sold and --

25 **MR. GENTILE:** Your Honor, it has not been sold.

1 **THE COURT:** Well, it's been auctioned --

2 **MR. GENTILE:** No, it has not, your Honor.

3 **THE COURT:** All right, well, what happened?

4 **MR. GENTILE:** The real estate was auctioned.

5 **THE COURT:** Okay.

6 **MR. GENTILE:** The Power Company has not been sold.

7 **THE COURT:** Oh, fine. Okay. But the property has
8 been auctioned. That may alter the position of the Henrys to
9 go back to State court with regard to seeking it -- or maybe
10 you've already done it. You'd had efforts to go before the
11 State court and obtain a judgment in your case twice, I think.
12 Where does that stand? Are you still before the State court on
13 that matter?

14 **MR. HUNTERTON:** We have active litigation pending
15 before the Supreme -- or State District court. We have not
16 been back since the day of the auction.

17 **THE COURT:** Does the sale of the property, the land,
18 as Mr. Gentile said -- does that impact your status in the
19 State court with regard to seeking the judgment?

20 **MR. HUNTERTON:** No, it was a credit move by
21 Mr. Mushkin's client. So there isn't any money that came out
22 that we can --

23 **THE COURT:** No, I understand that but does it alter
24 your ability to obtain -- as I recall from reading the
25 transcripts of the State court proceedings, you'd made efforts

1 twice to obtain judgments and you wouldn't get it because the
2 property had not been disposed of. Now it has. Whether
3 there's money or not, are you in a position to go back and get
4 your judgment so you can begin executing wherever you can
5 execute?

6 **MR. HUNTERTON:** I'm going to ask Mr. Erwin to address
7 that.

8 **THE COURT:** Yeah.

9 **MR. ERWIN:** I've already filed a motion to reduce the
10 supplemental agreement, the judgment. It will be heard in less
11 than a week.

12 **THE COURT:** Okay. Well, that's an important point
13 and that again goes back to what you'd referenced, Mr. Gentile,
14 about collection agency. I mean, the State court proceeding is
15 where that matter will be pursued, not here but as regards this
16 circumstance of the so-called Philadelphia property that's been
17 much discussed during the hearings, I'll make it clear that the
18 priority would remain the same as that articulated in the
19 Court's order on October 15th, 2008, second amended order of
20 forfeiture and the Henrys would have priority over the Internal
21 Revenue Service with regard to those funds and so to that
22 extent, the motion -- that doesn't mean that Mr. Rizzolo can't
23 negotiate with the Internal Revenue Service. Part of the
24 obligation of the Supervised Release Number 6 is specifically
25 that that occur but as regards that particular question

1 concerning those particular proceeds, that will be the order.

2 So I think we've addressed those.

3 Now, I want to turn then to the issue of violations
4 of supervised release as alleged and the position of the
5 parties on that based upon the evidence that's been adduced
6 over those four days of hearings and any other issues that you
7 have in connection with that. So as I indicated briefly,
8 Mr. Hunterton and Mr. Campbell, I'll let you speak -- or
9 Mr. Erwin, whoever is going to, not all of you -- to articulate
10 the Henrys' position regarding this. You've been in
11 attendance, Mr. Hunterton -- I think Mr. Erwin has, too, but I
12 know you have -- at each of the four days of the hearing.
13 So --

14 **MR. HUNTERTON:** Respecting as always your Honor's
15 admonition to be brief on the at least locally famous sign on
16 the lectern here, I will be less than, I think, four or five
17 minutes.

18 **THE COURT:** It took Lincoln two but it took Edward
19 Evert two hours. So go ahead.

20 **MR. HUNTERTON:** I know but that two minutes was
21 really extraordinary.

22 **THE COURT:** Yes, it was.

23 **MR. HUNTERTON:** You can't hold the rest of us mere
24 mortals to that standard.

25 **THE COURT:** No. Nobody in this room could do it.

1 **MR. HUNTERTON:** I saw it again a few nights ago again
2 on the new Ken Burns Civil War documentary and was struck again
3 as I am every time I hear it. What an extraordinary two
4 minutes.

5 There was just one document when your Honor came on
6 the bench and summarized here the filings here, the hearings we
7 had, am I missing anything and that is the document that
8 actually brings us all here ultimately even though your Honor
9 has ruled that the Henrys don't have standing and we respect
10 that. In October of 2010 prior to the probation office filing,
11 prior to the Government filing anything, the Henrys filed their
12 own private, if you will, motion to revoke because we had --

13 **THE COURT:** Right. I referenced that. I denied
14 that. The Government also opposed it, as I recall.

15 **MR. HUNTERTON:** It's -- I only begin with that to
16 emphasize that the Henrys' opinion in this is very important
17 because Mr. Campbell and Mr. Erwin primarily and myself in the
18 secondary role spent a year and a lot of money to establish in
19 a nutshell that Mr. Rizzolo had ridden roughshod over the
20 probation or the supervised release process. He had done
21 virtually nothing that was required in the standard orders. He
22 didn't have a job. He didn't look for a job. He manipulated
23 overseas money. He didn't pay the IRS. He didn't pay the
24 Henrys anything. We discovered all of this.

25 We discovered the Cook Islands account and on behalf

1 of both Mr. and Mrs. Henry, we feel very strongly that the only
2 remedy here that is appropriate other than the one your Honor
3 has already articulated saying that the Henrys have priority
4 over the IRS -- the first point of business is to send this
5 gangster back to jail. It's the only thing he understands. If
6 he understood the rules of law and regulated society, he
7 wouldn't have hidden the Cook Islands money from probation and
8 forced Mr. Campbell to uncover it in a deposition. He wouldn't
9 have avoided anything as simple as even applying for a job.

10 He doesn't live by the rules of law, the rules that
11 the rest of us in the room live. He lives on the fringes and
12 everything is a game about how much can I get away with, how I
13 can I cheat the squares because that's what all of us are to
14 him. Okay. And the only thing that he will understand, as
15 Mr. Campbell and I pursue him through this and on through the
16 gates of hell to get the Henrys their money, is being
17 incarcerated. There isn't any cure short of that.

18 There isn't any admonition as there is with what we
19 might call the typical supervised release violator who has had
20 a dirty urine sample three times, has gotten fired from the job
21 he got stocking shelves at Albertson's and often in that case,
22 you bring him in and you make it very clear to him that if he
23 tests dirty again, he's going to go to jail. If he doesn't get
24 a job, he's going to go to jail. If he doesn't make his child
25 support payments, he's going to go to jail and there's a fairly

1 high degree of success with that. It's not perfect but there's
2 a fairly high degree of success with that. There is no
3 admonition that your Honor can articulate to Mr. Rizzolo which
4 will make him obey the law. He is a professional criminal.
5 Send him back to jail.

6 The only other thing I want to say is with respect to
7 your Honor's order that the Henrys have priority over the IRS
8 on the Philadelphia money, is that your Honor take great pains
9 to craft that order. Remember, this is the man who has taken
10 great pains to take all of the Philadelphia money that he
11 received before we caught him at it and give it to his father,
12 give it to his alleged ex-wife, give it to anybody, his
13 lawyers, give it to anybody except the IRS and except the
14 Henrys.

15 **THE COURT:** What do you mean by "great pains"? The
16 greatest pain I can go through is to make it simple and I tried
17 to do that by ordering so there's no confusion as to where it
18 goes. So what are you suggesting by way of a form of order
19 that does something other than that?

20 **MR. HUNTERTON:** We would like to suggest some
21 language. If we could be given even 24 hours but just from the
22 top of my head as I was thinking about this this morning before
23 court, all of these things that he did and has done already
24 with the money were in violation of the plain and simple
25 written rules of probation to which Mr. Gentile responds on his

1 behalf, I didn't know, nobody told me, I thought that started
2 next week, I didn't know I had to do this.

3 I think your Honor's order ought to include
4 Mr. Rizzolo, his agents and assigns which would include his
5 ex-wife, which would include Mr. Gentile, that nobody, agents,
6 or assigns does anything with this Philadelphia money other
7 than turn it over to the Henrys. So if it arrives in
8 Mr. Gentile's trust account, we certainly -- on a Friday, we
9 certainly trust him to have it in Mr. Campbell's trust account
10 on Monday.

11 **THE COURT:** Yeah, I don't recall the specifics but
12 the third exhibit to one of the filings made on behalf of
13 Mr. Rizzolo by Mr. Gentile included -- this is something which
14 changed when Mr. Gentile got involved in the case but he gave
15 direction to those who were dealing with it to make sure that
16 the money went into a separate account that Mr. Rizzolo could
17 not take it out of and so forth. So that gave me some comfort
18 but now exactly the train is on that track and we know that
19 that money, if and when it arrives, is set aside to be
20 allocated at the direction of the Court. So -- all right, I
21 understand what you're saying about -- not with Mr. Rizzolo but
22 anyone -- agents or anyone on his behalf, something to that
23 effect. All right, fair enough.

24 **MR. HUNTERTON:** That's it.

25 **THE COURT:** I don't need 24 hours to deal with that.

1 **MR. HUNTERTON:** Okay.

2 **THE COURT:** Okay.

3 **MR. HUNTERTON:** Thank you. I have nothing further.

4 **THE COURT:** All right, thank you.

5 **MR. HUNTERTON:** And we thank the Court for letting us
6 be heard.

7 **THE COURT:** Thanks. Thank you. Mr. Johnson, let me
8 hear from you. I know you filed your sentencing memorandum.
9 You don't have to repeat it.

10 **MR. JOHNSON:** That's what I was going to comment on
11 as far as --

12 **THE COURT:** You've got that cart full of documents.
13 It kind of made me wonder.

14 **MR. JOHNSON:** Well, I found it better to come
15 prepared. When asked how long I thought this proceeding would
16 go when I -- when people saw me load up the documents, I said I
17 didn't think it should go any more than an hour but --

18 **THE COURT:** All right.

19 **MR. JOHNSON:** -- I've been surprised before and so --

20 **THE COURT:** All right.

21 **MR. JOHNSON:** -- I don't want to be --

22 **THE COURT:** Well, you've got ten minutes.

23 **MR. JOHNSON:** Your Honor, this case was initiated in
24 late 2010 after the development primarily through the Henrys'
25 deposition. Mr. Rizzolo demonstrated that Mr. Rizzolo had

1 failed repeatedly over the course of his three years on
2 supervised release to report his financial transactions and in
3 large part failed to report the receipt of the million dollars
4 and then subsequent payments set up for potentially up to \$2
5 million concerning the sale of the Tez Real Estate Partnership
6 interest that Lions had in Philadelphia.

7 The Government subsequently revised the petition in
8 large part because of preparing for the hearing that was
9 initially set in February and then in March. We found that the
10 Defendant had engaged in what's essentially a long-standing
11 pattern of deceit and efforts to hide and evade the payment of
12 restitution and taxes that were owed to the IRS and ultimately
13 to the Henrys. We've got --

14 **THE COURT:** Yes. The addendum to the petition in
15 April -- April 1st asserting violations or alleging violations
16 of Special Condition 6 did crystalize at the March hearing. I
17 do recall that.

18 **MR. JOHNSON:** Yeah. We have gone through four days
19 of hearings. We filed a detailed memorandum with the Court in
20 terms of our position as to how we view the evidence. You
21 know, rather than going through the litany again, which I could
22 do almost now from, you know, the back of my mind, is there any
23 questions the Court in particular has in regards to the
24 evidence or how the Government's perspective of that
25 evidence --

1 **THE COURT:** No, I understand the Government's
2 position and if you want to highlight anything, go ahead and do
3 it. You argue in your supplemental memorandum. We have -- of
4 course, these are Grade C violations that are alleged. The
5 Department of Probation's summary recommendation notes that the
6 sentencing guideline -- advisory guideline range for those
7 Grade C violations are in the Criminal History Category I,
8 which is where Mr. Rizzolo is, would be three to nine months,
9 that additional supervised release would be available of up to
10 33 months and it's my understanding from your memorandum, your
11 position that a nine-month sentence should be imposed upon
12 finding violations and 24 months of supervised release.

13 **MR. JOHNSON:** That is the Government's position. We
14 expect that in terms of how the petition was alleged in this
15 case that it is a Grade C violation. We believe that looking
16 at the evidence here in terms of Mr. Rizzolo's repeated and
17 long-term pattern of activity, you can make a pretty good
18 argument that what is engaged here is a new law violation in
19 the evasion of taxes but that's a separate issue for a separate
20 time but what we're focusing on here is his repeated failure --

21 **THE COURT:** Yeah, I knew it was Grade C violations.

22 **MR. JOHNSON:** All right. We -- well, I -- what we're
23 focusing on here is this pattern that has gone on literally
24 from the Defendant's participation in the Presentence Report
25 where he notes the Lions partnership bank account as an asset

1 of his with a million dollars but fails to report anything in
2 regard to Lions' interest in Tez, a partnership in Philadelphia
3 which had a potential value of \$3 million and you see
4 throughout this entire period of time a total failure to touch
5 upon the Tez interest or the Tez monies or the monies that are
6 due out of Tez and I think that's the real key here in that we
7 -- there's this argument about how, you know, Mr. Christiansen,
8 you know, mentioned that he wasn't that concerned about what
9 went on prior to the beginning of supervised release but
10 Mr. Christiansen was very clear in his testimony that he was to
11 be considered by Mr. Rizzolo as explained in conversation after
12 conversation his silent partner and wanted to know what was
13 going on in the future.

14 They sat down with Mr. Rizzolo at the first of his
15 supervised release and went through and read through each of
16 the conditions which specifically says that he has to provide
17 full and complete monthly reports, that he has to let Probation
18 approve prior to entering into any financial contracts that
19 require him to cooperate with the IRS as to any taxes owed or
20 that are due and these are all pretty straightforward
21 statements that are made to the Defendant that Mr. Christiansen
22 reinforces as he explains the silent partner and that he wants
23 to be kept in the loop on everything.

24 When you start going on down the line and you start
25 getting into 2010, 2009, again you have this whole series of

1 conversations that Mr. Christiansen discusses with Mr. Rizzolo
2 as to, do you have any assets? How are you living? Where is
3 your money coming from? And at no point in this process is
4 anything ever expressed as to this money potential coming out
5 of Tez Real Estate, the assignment of close to \$800,000 of the
6 money that's due coming out of Tez Real Estate, the potential
7 of \$1.2 million once the assignment is done coming out of Tez
8 Real Estate and this is what isn't ever disclosed.

9 So you can sit there and say, oh, you know,
10 Mr. Rizzolo is a simpleton. He's not that smart a guy. You
11 know, I would say if you look at what he's done here, he's been
12 pretty sharp in terms of how he's manipulated his responses,
13 how he's handled his discussions. You go to the Henry
14 deposition, there is a guy who can lie straight face and act
15 like he doesn't care one bar sitting there in the deposition
16 talking about how he doesn't have any idea what Lions Limited
17 Partnership does, where it got its money coming into the
18 account when only just a few months earlier he used it as his
19 own private bank account, brought in a million dollars into it,
20 assigns \$800,000, was entitled to receive \$1.2 million after
21 the 800,000. He has no idea where the money came from or what
22 the account was for or what Lions did or what assets that it
23 has.

24 He sits there in the deposition and is asked about
25 whether -- you know, money coming out of it. That's like

1 pulling teeth to get him to admit that there was \$1 million
2 that he got in the very beginning and that was only because the
3 Henrys had documentation that they were able to put together to
4 show it and then says initially that that was the only money
5 that he was entitled to get. It isn't until they show him a
6 email from one of his attorneys, Mr. Hafer, where he talks
7 about, hey, is there any way we can assign some of this money
8 before Rick gets it into his hot little hands to avoid it being
9 attached by any parties? Then Mr. Rizzolo finally admits,
10 yeah, I was supposed to get some more money out of the deal.

11 Well, what does Mr. Rizzolo explain as to why this
12 whole setup was done? He explains it's done because he's
13 afraid that the IRS is going to attach it or the Henrys are
14 going to attach it or somebody is going to come in and take the
15 money. He admits that his whole process here in terms of how
16 he handles this Tez money is to avoid it being grabbed upon by
17 the IRS and his specific condition as to Point 6 of these
18 conditions is that he's supposed to cooperate with the Internal
19 Revenue Service in the payment of taxes and he can sit here and
20 argue, oh, well, you know, they didn't make a proper notice and
21 demand even though they're levying on my bank accounts, even
22 though they are putting -- taking money out of them, even
23 though the day before they're levying on the money, I'm pulling
24 out all the money from two bank accounts so that they can't
25 grab that and that the notices are going out, as Ms. Kovos

1 testified, to addresses that he is reporting or utilizing.

2 He can sit there and say, oh, I didn't -- you know, I
3 didn't get the proper notice and demand. He knew darn well
4 they were wanting to get the money from it but he can't argue
5 that he owed nearly \$900,000 in taxes on 2006 but he filed in
6 February of 2008, the same time that his father filed and then
7 he manipulates pursuant to his father's request to pay his
8 taxes in March and April for the father to get that \$200,000 to
9 pay his taxes out of the Lions money which the father then uses
10 to pay off his taxes on May 8th of 2008. So he's good in terms
11 of making sure that his father is taken care of but the other
12 money, let's take it over and send it to his attorneys. Let's
13 send it to the ex-wife. Let's do it to anyone else other than
14 the IRS who's going to be able to attach on it.

15 That's not what Condition 6 provides or requires and
16 if you're sitting there and you're saying, okay, you know, you
17 -- I wasn't getting notice correctly, as Mr. Lusk was saying,
18 well, that's fine. He's not in this instance just not paying
19 the IRS and saying, well, I'm not paying you this money because
20 you didn't send me the proper notice that I think I should get.
21 He's actively going out and hiding the money. He's going out
22 and putting it into foreign bank accounts. He's going out and
23 not recording it coming into the Lions Limited Partnership
24 account, an account that he initially in his PSR said was
25 treated as his personal account. He's comingling money that

1 he's getting from his car sale with the Demaneys (phonetic) and
2 he is failing to report any of these transactions to the -- to
3 his probation in a clear effort to avoid having any of this
4 come back to him.

5 You see him in 2009 set up the assignment so that the
6 Piazza family pays directly to Bart Rizzolo. The money doesn't
7 come through Rick so that no one can grab it as it hits his
8 accounts. You see him taking the money from the supposed sale
9 of jewelry and the money due to him from Bart leaving it with
10 Bart and now we have this series of transactions over the
11 course of the next two years where Rick goes and tells Bart or
12 his widow, pay, you know, this money to one of my attorneys and
13 the money is paid to the attorney and supposedly it's coming
14 out of the jewelry but, again, it's not going through Rick
15 Rizzolo's hands to avoid having it being seized.

16 You see him closing down his bank accounts and as I
17 note, closing them down the day before the IRS was going to
18 levy on the Nevada State Bank account and essentially drawing
19 out all the money except for 1 or \$2,000 in those accounts --
20 again, actions designed to preclude the IRS from making any
21 sort of collection attempt. So this isn't someone who's
22 sitting there going, I don't think you're doing the right --
23 this is someone who is affirmatively taking steps in order to
24 avoid being required to pay his taxes, both the taxes due and
25 clearly due under the settlement agreement that was attached to

1 the plea agreement in this case irrespective of the sale of the
2 Crazy Horse Too and the taxes that were due in 2006.

3 And to make this all work, he needed to cover up his
4 access to these funds and to the future funds with the Internal
5 Revenue -- with probation and you have Mr. Christiansen
6 explaining how over and over they asked, you know, any other
7 assets? No mention of the Tez money, no mention of the \$1.2
8 million, no mention that he was going to get it starting in
9 October, no mention of the 800,000 that was assigned to Bart
10 Rizzolo and you have then in 2010 the financial statement which
11 is designed clearly to deceive whatever reader in terms of the
12 nature of potential assets that Mr. Rizzolo could get out of
13 Lions Limited Partnership. I -- that statement in any context
14 was designed solely to mislead the reader into believing that
15 Lions Limited Partnership had no meaningful assets and Demole
16 had no meaningful value.

17 And then that is the same financial statement that
18 Mr. Gentile essentially dumps off on the Internal Revenue
19 Service in August and perpetuates the deception over what
20 Mr. Rizzolo potentially has and the memo that Mr. Gentile's
21 office files on Mr. Rizzolo's behalf which suggests that in the
22 August 10 meeting of -- August 2010 meeting with the IRS that
23 he somehow disclosed that there was going to be this potential
24 for 2 -- \$1.2 million coming down the line and that somehow
25 there's a notation of it on the IRS form that Ms. Kovos was

1 filling out isn't supported in any way by the record and, in
2 fact, it's particularly not supported by the record, as
3 Ms. Kovos explained that on Page 181 of her direct testimony.

4 "And the documents that were provided in Exhibit 48,
5 these were the documents that Mr. Gentile after the
6 meeting provided as it related to Lions and Demole.
7 Was there anything indicating that Lions Limited
8 Partnership was potentially entitled to start
9 receiving monthly payments in and around October 2010
10 from the Piazza Family Partnership?

11 ANSWER: No."

12 And if you look at Exhibit 48, all it is is
13 essentially the creation papers for Demole, Inc. or Lions
14 Limited Partnership, Inc., nothing showing the relationship as
15 it related to Tez Real Estate Partnership, the extent and value
16 of that interest or the subsequent sale of the interest. The
17 only thing included in there is a reference by Rick's in his
18 filings with the SEC as to the original October 2007 agreement
19 between Rick's and the Piazza Family Partnership as to the sale
20 of the Philadelphia club. Nothing is explained in terms of
21 what Rizzolo is supposed to get out of it. Nothing is
22 explained in terms of what potential monies he's going to get
23 out of it and nothing is provided in terms of the subsequent
24 amendments in 2008 and 2009 which set up this whole set of
25 deferred payments to Mr. Rizzolo based upon the sale of the put

1 options between the Piazza family and Rick's.

2 And if you look at Ms. Kovos in terms going further
3 in her testimony on Page 182, specifically she was asked about
4 the blank in the IRS form where it says, "Any investments
5 including stocks, bonds, mutual funds, stock options,
6 certificates of deposits or retirement assets such as
7 IRAs, 401(k) plans. Include all partnerships,
8 corporations, limited liability companies and other
9 business entities in which the individual is an
10 officer, director, owner, member or otherwise have
11 financial interest" and how did Mr. Rizzolo answer
12 that?

13 "ANSWER: That is contingent to any leftovers from
14 the sale of the club.

15 "QUESTION: By the 'club,' you mean the Crazy Horse
16 Too?

17 ANSWER: The Crazy Horse Too, yes."

18 And subsequently, Page 80 -- 183, "All right. And, again,
19 there wasn't any reference made to Lions Limited
20 Partnership having any potential investment value?

21 ANSWER: No."

22 To suggest as Mr. Gentile does in his memo that
23 somehow there was something conveyed at that August meeting
24 that there was this valuable asset that's potentially sitting
25 out there is nowhere supported by Mrs. Kovos. It's simply a

1 false statement. The reference on the form that the IRS was
2 filling out, which was Exhibit 47 where it references the sale
3 of the club, doesn't relate to the sale of stock out of the
4 Philadelphia club. That's clear from Ms. Kovos. It's clear if
5 you look at all the other financial forms that are filled out
6 in this case because they never, ever mentioned the Tez
7 interest. They always talk about how any time you want to
8 throw something contingent out there, that is contingent upon
9 what ultimately sells out of the Crazy Horse Too club.

10 And if the -- Mr. Rizzolo had expressed at the August
11 meeting that by the way, in a couple of months, I'm going to
12 start getting five -- close to \$60,000 a month for a total of
13 1.2 million, you don't think the IRS would have queued on that
14 just a little bit? This is a series of deceptions the entire
15 way from the beginning with the PSR ultimately until October of
16 2010 when the check starts coming to Mr. Rizzolo and
17 Mr. Gentile does send a -- after being contacted by the Piazza
18 family lawyers and saying, hey, Kim Tan -- Kim Tran Rizzolo
19 sent back this check made out to Lions Limited Partnership with
20 a request that it be filled out in her name. What's going on
21 here?

22 Mr. Rizzolo -- or Mr. Gentile says, yeah, put the
23 money for now in a separate account but no one tells anyone.
24 There's no communication with the IRS. Oh, by the way, Rizzolo
25 is starting now to get, you know, close to \$60,000 a month.

1 It's going to start coming in for 1.2. Nothing is said to the
2 IRS. Nothing is said to the Henrys especially after
3 interrogatory after interrogatory after interrogatory filed in
4 their case which shows essentially no assets that are sitting
5 out there contingent or available to do any sort of
6 restitution. Nothing is said to anyone in regard to this.
7 There is no disclosure as to the extent and amount of monthly
8 payments and the extent of the account that's holding these
9 payments until subpoenas are issued in the course of this case
10 in February and March of this year.

11 Your Honor, this has been a deliberate, long-standing
12 effort on the part of Mr. Rizzolo in large part aided by a
13 number of people who questionably should have aided it to hide
14 substantial assets from both the Internal Revenue Service and
15 from the Henrys or anyone else who wanted to get their hands on
16 them rightfully under the law. We've seen the use of foreign
17 bank accounts. We've seen the use of hiding money, putting it
18 in nominees. We've seen the use of repeated lies to the
19 probation, to IRS and to the Henrys in the course of meetings,
20 depositions, interviews, financial statements.

21 That's why the Government believes that in the
22 context of this case, the flagrant disregard for the conditions
23 of release and the purpose that they were being done justifies
24 a sentence at the upper end of the guidelines for this type of
25 Class C violation of nine months and justifies in particular in

1 terms of trying to secure restitution for the Henrys in the
2 future the continuation for 24 months of Mr. Rizzolo's
3 supervised release after release from confinement.

4 The Government agrees in whole heart with
5 Mr. Hunterton that looking at Mr. Rizzolo's conduct in this
6 case, the only thing that's going to sink into him that this is
7 serious and not a joke and a responsibility that he needs to
8 take on is if he goes and takes -- and goes to jail and begins
9 to appreciate the significance of his conduct. Otherwise, all
10 he's done is say, oh, I didn't understand this. Oh, I'm too
11 stupid to know that. Gee, just let me off and let's not forget
12 about it. That's what he's saying. The evidence clearly
13 doesn't show this.

14 This is a man who knows what he's doing. This is a
15 man who has a purpose and it's also a man, as we note in our
16 supplemental filing, who doesn't really appreciate what he was
17 in for supervised release and convicted of in the first part
18 which is conspiracy to defraud the United States with his
19 cohorts at the Crazy Horse Too of a substantial amount of taxes
20 because as he in the deposition with the Henrys makes clear
21 repeatedly he doesn't really think that he did anything. He
22 just was told to plead guilty and he did. It's time for him to
23 start realizing that there is something significant here with
24 the law. He has responsibilities. He has expectations and
25 he's violated the law.

1 And the Government would request that he be sentenced
2 to nine months imprisonment, 24 months additional supervised
3 release and then we have provided the Court with some
4 recommended changes in the supervised release conditions.

5 **THE COURT:** And what are those?

6 **MR. JOHNSON:** They're noted in the -- our
7 supplemental, your Honor. One -- sorry --

8 **THE COURT:** I had it a minute ago myself.

9 **MR. SPEAKER:** Page 30.

10 **MR. JOHNSON:** Page 30 of it --

11 **MR. SPEAKER:** Number 456, Judge.

12 **THE COURT:** No, I've got the motion. Page 30?

13 **MR. JOHNSON:** Page 30, starting at Line 6. "One,
14 require Rizzolo to arrange for payments from the
15 Piazza Family Partnership due Lions to be paid toward
16 restitution owed to the Henrys."

17 **THE COURT:** Well, I've already done that.

18 **MR. JOHNSON:** You've already done that.

19 **THE COURT:** Yeah, just when I granted the -- or
20 addressed the motion as to the direction of those monies.

21 **MR. JOHNSON:** "Two, require Rizzolo to pay the Henrys
22 monthly restitution based on any employment or other
23 income and any available assets." And I would just
24 note here, your Honor, as points in terms of Mr. Rizzolo's
25 attempt to evade taxes that the IRS did attempt to garnish

1 Mr. Rizzolo's wages to pay for his income taxes that are due or
2 owed and when the IRS went out in May and made notice of
3 garnishment of wages, Mr. Rizzolo stopped working at that point
4 in time. So, again, another example of his total, complete
5 refusal to meet any part of obligation toward the IRS.

6 "Three, require Rizzolo to find employment and once
7 he finds employment, to remain in the employment
8 unless he obtains approval from the probation officer
9 to quit or is otherwise terminated by his employer."

10 It was clear when he -- the IRS went out and met with his
11 employer regarding the cellular service that Mr. Rizzolo just
12 stopped working supposedly for personal reasons after the
13 garnishment of wages was filed with the employer. We would
14 want it so that there has to be a darn good reason for him to
15 quit working or that he's being actually legitimately
16 terminated from his employment in order for him to stop
17 working.

18 "Three -- or four, require Rizzolo to move the
19 location and management of any foreign trust in which
20 he is or possibly could be directly or indirectly a
21 beneficiary to the United States. Five, require
22 Rizzolo to provide waivers to the probation office,
23 IRS and the Henrys allowing any foreign trust in
24 which Rizzolo has had any interest to provide records
25 and any other information to the probation office,

1 IRS and the Henrys. Six, require Rizzolo to obtain
2 prior approval of any financial contract or
3 transaction involving over \$200 in assets unless the
4 probation office allows a higher limit and, seven,
5 require Rizzolo to keep a record and provide the
6 probation officer all means of support including any
7 assets regardless of whether they were obtained -- or
8 when they were obtained, income, (indiscernible)
9 gifts."

10 **THE COURT:** All right, thank you.

11 **MR. JOHNSON:** Are there any other questions, your
12 Honor?

13 **THE COURT:** No. Thank you, Mr. Johnson. And,
14 Mr. Gentile, let me hear from you and then of course I'll hear
15 anything Mr. Rizzolo himself wishes to say as well.

16 **MR. GENTILE:** Thank you, your Honor. It's
17 interesting a little while ago when addressing our motion with
18 respect to the -- well, actually with respect -- it was
19 actually addressing Mr. Hunterton's motion to speak to the
20 Court and you were talking about the distinction here that the
21 Henrys were not a victim of the charged offense but that in
22 reading the plea agreement here, I believe what you said --
23 because I wrote it down as you said it -- was I have never seen
24 one quite like it. I think this case can be in general
25 described that way from its inception through the history of

1 it. Most of the history of it I only know from reading. I was
2 not percipient and I was not in it contemporaneously. I
3 believe my office represented -- I don't even remember the
4 man's name. I think I had an associate actually represent
5 him --

6 **THE COURT:** Right.

7 **MR. GENTILE:** -- step up on the case but since about
8 last May I've done what I can do to catch up and frankly I
9 don't think it's been a complete job. I've done the best that
10 I could to catch up on all of the reading that needed to be
11 done, at least with respect to the criminal case and some on
12 the civil cases but there are nuances that I'm sure that only
13 somebody who's been involved in this from the beginning can
14 really see. You, of course, have been involved in it from the
15 beginning.

16 I think what has happened from my point of view is
17 that almost -- in fact, from the beginning in this case, there
18 have been a lot of mixed signals sent by the participants in
19 it, all of them, including yourself, to be candid. I'm going
20 to address those now but I think they need -- I think this
21 truly is a totality-of-the-circumstances situation and I think
22 that the circumstances begin well before Rick Rizzolo was
23 placed on supervised release.

24 When supervised release started, Mr. Christiansen
25 testified that both Mr. Rizzolo and Mr. Christiansen felt that

1 the club would sell and pay off all the obligations. You have
2 said on the record on at least three occasions that I've heard
3 it and probably more before I came in that that was everybody's
4 intention at the beginning of all of this. On the -- at the
5 May 10th hearing at Pages 83 and 85, Mr. Christiansen said, "I
6 was under the opinion that all of these things would resolve
7 themselves with the sale of the club." At 86 he said, "Rizzolo
8 and I believed that nothing was due until then" and at 87 --
9 and I want to read from that. I brought the wrong document up.
10 The reason I want to read from this is because this wasn't a
11 question I asked. It was a question you asked and I am
12 summarizing this but I think you will find it at the May 10th
13 hearing at Page 87.

14 At Page -- excuse me. At Page 85, Mr. Christiansen
15 said, "Just for the record, my supervision focus changed from
16 the beginning until at the end and I know we
17 requested guidance from the Court but initially I was
18 under the opinion that all these things would resolve
19 itself with the sale of the club." You then asked
20 him, "Do I understand that shortly before April 10th from your
21 perspective as the supervising probation officer,
22 collection of restitution and tax liability for
23 paying taxes and penalties was wrapped up into the
24 plea agreement?" to which Mr. Christiansen responded,
25 "Other than his 2006 taxes."

1 And you said, "Okay, but everything else was
2 basically waiting for the sale of the Crazy Horse Too" and
3 Mr. Christiansen said, "And I was assured it would sell. Ben
4 Hollingsworth assured me." Okay. So I bring that up because I
5 think the start of the focus here in terms of some clarity has
6 to be April of last year. I think it's only fair that we're
7 going to proceed in terms of what else is in this record that
8 supports that.

9 At Exhibit 510 in this case -- and the testimony
10 relating to it is at Page 155 of the May 10th hearing. Exhibit
11 510 is the Hafer letter and the Hafer letter has attached to it
12 a tape with handwriting on it that summarizes the amount that
13 is due and owing to be 18 million and change. I'm not going to
14 go through the -- it's in the record but among the entries on
15 there are two IRS entries, 1,734,000 and 1,032,000 and change.
16 And so one can see based on this letter that Mr. Hafer wrote to
17 the Financial Litigation Unit at the United States Attorney's
18 office that Mr. Christiansen perhaps was wrong. I think he was
19 wrong. I think that the -- I agree with you.

20 I think that the order that was originally entered
21 did not state certainly not the 2006 taxes because they weren't
22 even involved, okay, but from my reading of it -- and by the
23 way, my reading of it is in this agreement with my clients --
24 but from my reading of it, I think the 2002 taxes were
25 immediately due and owing. The problem with that is when you

1 entered your order setting up the priorities in terms of
2 distribution from the sale, you included the Internal Revenue
3 Service as one of the priorities, okay, and so we get back to
4 mixed signals.

5 The -- Number 2, I think because of these mixed
6 signals, Mr. Christiansen treated this case differently from
7 all others that he has ever been involved with, that anybody
8 else in that office has been involved with, that the
9 supervisors in the office were ever involved with and now that
10 I know that a -- I never knew that the Court had access to this
11 chronology, this chrono, that this -- I learned that for the
12 first time in this case and so I'm inferring --

13 **THE COURT:** The Court doesn't. The Court can order
14 that it be produced. It's a probation document.

15 **MR. GENTILE:** I see. Okay, all right. But it is my
16 impression at least in this case that there was some
17 communications throughout between the probation officer
18 Mr. Christiansen and the Court and that they preceded April of
19 last year.

20 **THE COURT:** Certainly --

21 **MR. GENTILE:** Okay.

22 **THE COURT:** -- certainly.

23 **MR. GENTILE:** Well, it -- see, I'm --

24 **THE COURT:** With regard to supervising anyone, there
25 can be --

1 **MR. GENTILE:** I understand that.

2 **THE COURT:** -- probation is part of the court.

3 **MR. GENTILE:** I understand that --

4 **THE COURT:** There's frequently communication in most
5 cases.

6 **MR. GENTILE:** -- but I never embraced it as I have in
7 this case. It never sank in as it has in this case, all right.
8 Now, why is that important? Well, I'm going to make an
9 assumption and the assumption I'm going to make is that
10 sometime toward the end of the year 2009 -- and that assumption
11 is based -- it's an inference really from some of the things
12 that Mr. Christiansen said. Sometimes toward the end of --
13 sometime toward the end of 2009 is when the seed was planted in
14 terms of changing the restitution in terms of when it was going
15 to be paid.

16 I'm making that inference because my memory is that
17 it was in late 2009 that Mr. Christiansen went to Mr. Rizzolo
18 and asked him to sign off on that and Mr. Christiansen said in
19 the -- in this case on the 29th of March, our first hearing at
20 Page 81 to 87 -- he said that he didn't care -- and again I'm
21 summarizing but I think it's a fair reading of it.
22 Mr. Christiansen didn't care how Rick made a living. He
23 understood that he had assets and was using them and he didn't
24 care about a job, restitution, taxes, fine, et cetera because
25 of the fact that everyone was looking to the sale of the club.

1 At Page 139 on that occasion, he said he didn't care
2 what happened before April 3rd of 2008. That's Mr.
3 Christiansen. At Page 175, he says he didn't care what he did
4 with -- what Rick Rizzolo did with what he had prior to
5 supervised release. You'll find that at Page 175. Okay. At
6 Page 111 -- and I think I may have -- that Page 175 may be a
7 different date, your Honor. I'm looking at my notes but it's
8 at -- it said Page 175 on one of these dates, okay. Page 111
9 on the 29th, Mr. Christiansen said that he was told by Rick
10 that he was living off of savings and Christiansen accepted
11 that.

12 Now, if you look at Exhibit 508 -- and this came in
13 at the May 10th hearing at Page 77. Exhibit 508 is the letter
14 that Anthony Sgro, who was in this from the beginning that
15 isn't in it now, sent -- excuse me just a moment -- sent to
16 Mr. Christiansen April 3rd, 2008 and in there it says,

17 "Additionally you and I spoke regarding how
18 Mr. Rizzolo was to fill out Section B of his personal
19 monthly supervision report. We agreed that
20 Mr. Rizzolo would fill out the section which asks,
21 'Do you have any checking accounts' based on what he
22 has personally as opposed to listing the various LLCs
23 that he may own and/or be a member of. If there is
24 ever a need for more information, we will certainly
25 cooperate fully."

1 And so from the beginning, not just Mr. Sgro is
2 telling Mr. Rizzolo this but Mr. Christiansen is confirming it
3 and I think that that's supported in the record at Page 77 in
4 this document and so once again we have what I think can
5 appropriately be called a mixed signal. Now, one of the
6 advantages of doing something the same way every time is that
7 it results in clarity. One of the disadvantages of varying
8 from it, even in a very well-meaning and at the time
9 understandable -- for an understandable purpose -- and I'm not
10 being critical here. I want to make that really clear. I'm
11 just trying to get a dispassionate view of the facts and I
12 suppose prompt the Court to take a totality-of-the-
13 circumstances approach to this as it evolved.

14 One of the disadvantages of handling this case the
15 way that it was handled, with no criticism being intended, is
16 that there were mixed signals. It wasn't done the same way as
17 the others ones were, okay, and that absolutely has to spill
18 over to the person on supervised release. It has to.
19 Mr. Christiansen conceded that when -- at Page 180 of the March
20 29th hearing. He admitted that behaving in that fashion has an
21 impact on a guy like Rick when the probation officer does that.
22 It appears as though -- even to this day, even with all of this
23 litigation, even with the danger of Rick Rizzolo being revoked,
24 the danger of him going to prison if the Government's request
25 is granted by the Court, it appears as though the relationship

1 between Mr. Christiansen and Mr. Rizzolo is still a good one.

2 I think Mr. Christiansen has said that over and over again.

3 An example, Mr. Christiansen did not record in his
4 chronology the discussions between Rick Rizzolo and him asking
5 for permission to sell the Corvette but Mr. Rizzolo asked for
6 permission to sell the Corvette. You'll find that at Page 114
7 of the 29th of March. At Page 115, Mr. Christiansen concedes
8 that Mr. Rizzolo asked him if he could sell his jewelry and he
9 gave him permission to sell the jewelry. He said he didn't
10 care. Okay, so it's pretty clear that the sale of those items
11 and the proceeds from them were used -- were, in fact, used to
12 pay off personal obligations of Rick Rizzolo. There is no
13 issue about that, okay, but if the probation officer knew that
14 he was living off of that stuff and he gave him permission to
15 make those sales, you know, the -- it is my understanding from
16 my reading of the guidelines -- excuse me just a moment.

17 The guidelines manual, Chapter 7, Part A, Number 3B
18 addresses what apparently has been accepted as the theory of
19 hearings such as this. They are clearly not intended, based on
20 the manual, to punish somebody for criminal conduct, new
21 criminal conduct. In this instance, there is no new criminal
22 conduct. He hasn't turned up dirty in a urine, which is
23 criminal conduct. All right, these are strictly violations --
24 alleged violations of conditions and it accepts and embraces a
25 breach of trust theory, the question being, was there trust

1 placed in the person on supervised release and did he breach
2 that trust in the ordinary, clear-cut, run-of-the-mill not this
3 case, not this sui generis situation that we're standing here
4 in this courtroom about and have been now for I think now our
5 fifth day on this hearing alone.

6 One, I believe, must look at these mixed signals in
7 terms of trying to fathom if this was an act that took place
8 because there's not much issue there and what was the basis.
9 Was it really a breach of trust not to make some of these
10 reports when you're told that you don't have to report money in
11 LLC accounts, you don't have to report this, you don't have to
12 report that, I don't care what you do with what you had before
13 you were on Supervised Release and things of that nature.

14 The manual says that the nature of the conduct
15 leading to the revocation would be considered in measuring the
16 extent of the breach. Okay, so it seems to me that that
17 implies the totality-of-the-circumstances test and it goes on
18 to say that at the revocation, the Court should sanction
19 primarily the Defendant's breach of trust while taking into
20 account to a limited degree the seriousness of the underlying
21 violation and the criminal history of the violator. Now,
22 again, any violation is a serious violation. Some are more
23 serious than others, okay, so -- but in terms of reaching that
24 first level, was there a breach of trust in this conduct?

25 I don't know how on the facts of this case given the

1 way that it's been treated you can get around these mixed
2 signals and these changes that have taken place legitimately.
3 You know, you have to modify it as you go along. I understand
4 that. I don't like it after jeopardy attaches in a trial but
5 other than that situation, I understand that. I think we all
6 understand that and that has happened here and it seems that
7 when changes occur, Mr. Rizzolo complies.

8 I'm going to address that. You know, the fact that
9 Mr. Christiansen believed that the Internal Revenue Service
10 didn't have to be paid until later is really borne out by the
11 sale of the car and the sale of the jewelry and those kinds of
12 sales. I mean, he knew there was a hundred thousand dollars
13 coming in at that point in time. So I think it's absolutely
14 certain that that was the belief of everybody involved here.
15 At -- on the May 10th hearing at Page 127 through Page 130,
16 Mr. Christiansen was asked why he didn't insist upon
17 Mr. Rizzolo paying the IRS and paying restitution sooner than
18 April of 2010 and he responded that he was concerned -- he,
19 Mr. Christiansen, was concerned that he'd be violating the plea
20 agreement if he tried to collect those things. Mixed signals.

21 Now, at some point in time he gave them 48A -- a 48A
22 form and at Page 126 of that May 10th hearing, he concedes that
23 he didn't tell Rick precisely why he wanted him to fill it out
24 but he told me -- he conceded telling me that he was looking
25 for what Rick had that he could get money from him right now.

1 MR. JOHNSON: Where are you looking on Page 146?

2 MR. GENTILE: No, I said Page 126.

3 MR. JOHNSON: One twenty-six?

4 MR. GENTILE: One twenty-six, he said the he admits
5 not telling Rick why he wanted him to fill out the 48A and I
6 have to tell you, Mr. -- well, I'm not supposed to address
7 counsel. You -- there may be some problems with respect to my
8 Bates here but I have it on my outline here that that's at --
9 on the May 10th hearing. At Page 181 is where Mr. Christiansen
10 said that he had conversations with me talking about -- he was
11 interested in what Rick can pay now. That's what he wanted.

12 Now, I've got to -- I have to digress a little bit
13 here. I've already told the Court the reason for submitting it
14 to the bankruptcy department, okay, and sometimes experience
15 dictates how you respond to a situation. I also don't view
16 this case or, for that matter, the Government's interest in
17 Rick Rizzolo as an ordinary situation. It seems like given the
18 length of time that went into the investigation -- over a
19 decade, from I'm able to gather -- the amount of resources that
20 were spent in the investigation including electronic
21 surveillance, video surveillance, things of that nature, it
22 wasn't an ordinary case.

23 One of the problems that one has with experience is
24 that experiences tend to stay with you. From the very, very
25 first or second year as an attorney, I learned of a case that

1 was filed in the Federal District -- the Northern District of
2 Illinois where a person who the Government was interested in,
3 as opposed to that person's conduct in general, was indicted
4 for filing a false statement with the bank and the false
5 statement that he filed with the bank, unlike the ones that we
6 hear today on the mortgage fraud cases, it was the opposite.
7 This person understated his assets. The person obtained the
8 loan and paid the loan back.

9 The case went to trial in front of Richard Austin.
10 You may have never heard of him. He was a Federal District
11 Court judge in the Northern District of Illinois in the 1960s
12 and early '70 and there was a conviction of that person. At
13 the end of the case, Judge Austin fined that guy two bucks but
14 it was his first felony conviction. Okay. I can't help it
15 that I know that and so when you're going to file something,
16 you're going to do the best that you can to be accurate with it
17 and if you don't think that you can, you turn it over to
18 somebody and that's what happened here.

19 Mr. Christiansen testified at the May 10th hearing
20 regarding new lines of credit and although I don't see the
21 Government bring that up in terms of fact, it is, in fact, part
22 of that condition. Mr. Christiansen testified that it wasn't
23 until September of 2010 that he told Rick that he couldn't use
24 his old credit cards anymore and Rick stopped using his old
25 credit cards. Now, it was April 26th of last year that we

1 changed the restitution conditions. So all of these things
2 came into play, all of these signals were in play. Rick
3 Rizzolo certainly thought, as did Mr. Christiansen, that none
4 of it kicked in. April of last year you changed the conditions
5 and that's when the changes started coming and Mr. Rizzolo has
6 been in compliance with them.

7 Now, I want to talk a little bit about asset
8 protection. I don't believe in it. I don't think you ought to
9 ever advise anybody to become involved in it because when you
10 need it -- if it ever comes around to you needing it, it's
11 going to look like you're trying to hide things and that's
12 never good, okay, but in this instance, he went to -- in 2001
13 -- and the record is clear. In 2001, he went to a very
14 qualified attorney with a very qualified law firm now. He
15 wasn't with that firm then but he is now in this community and
16 he was brought there by his attorney.

17 Mr. Patti brought him there and that attorney,
18 Mr. Dawson, put together a structure. The problem with that,
19 in my view, is it's like giving a loaded gun to a two-year-old.
20 Whereas there are plenty of legitimate reasons, I suppose, for
21 asset protection or certainly a few and whereas certainly in
22 2001 he couldn't have foreseen 2011. The problem is that
23 unless you have somebody managing it day by day, transaction by
24 transaction, you're going to run the risk of not staying within
25 the four corners of the claim.

1 Let's talk about the evidence in this case about
2 that. On the 10th of May, Mr. Dawson said that he was the
3 protector of the trust and that the trustee can refuse to make
4 a distribution. Well, you and I might know about that, might
5 have some idea of what they means but I don't think it is fair
6 to conclude without more that a person whose estate has been
7 protected through this structure would necessarily know so as
8 to be able to answer questions relating to precisely what the
9 structure is and precisely what the various roles are and what
10 that person's role is.

11 The smart response would be, ask my lawyer. In this
12 instance, Mr. Johnson is saying that Mr. Rizzolo answered some
13 questions at a deposition about not having knowledge about the
14 trusts and what can be done and who can do what. I submit to
15 you that that's not an untruthful answer, not when accuracy is
16 the touchstone. At -- on that same day at Page 195, Mr. Dawson
17 told the Court that it was him that told Rick Rizzolo that this
18 money that was received by Lions had to be sent offshore and
19 then repatriated and so whereas Mr. Rizzolo is, in fact, the
20 person who had that transaction occur, it's not the same as
21 saying that he sent it offshore because it was his desire to
22 send it offshore or that he initiated it or started the ball
23 rolling in that regard.

24 And let's remember something, probably the most
25 important thing. At the time of that transaction, the receipt

1 of the initial \$990,000, he was not as yet on supervised
2 release and there was no obligation to pay anybody anything as
3 it related to this Court's order of restitution and fines and
4 penalty. Now, again, that was the mindset. I agree with the
5 Court. At that time, there probably was, from my reading of
6 it, an obligation to the Internal Revenue Service and I don't
7 remember if your priority was -- as I stand before you, I don't
8 remember if your order that involved the priorities and where
9 the IRS fit in it -- I don't remember if that order was in
10 existence in April of 2008 or not. I guess the Court will have
11 to check the record in that regard.

12 **THE COURT:** I've got it in front of me or had it a
13 minute ago and that was the amended order that I read this
14 morning and I'm not sure where it is in the stack of papers now
15 but it's a matter of record. I documented --

16 **MR. GENTILE:** Right. And I'm sure the Court will
17 reference it but the point is that I don't think there's any
18 doubt that at least in terms of the mindset of Mr. Rizzolo, the
19 mindset of Mr. Christiansen as augmented by advice from
20 counsel, the money to the Internal Revenue Service wasn't due
21 at that time, even if the original order says that it was and
22 then to the extent that the subsequent amendment set up
23 priorities, we get back to the mixed signal issue.

24 Mr. Dawson also said that the reason -- this is at
25 Page 229. He was asked, you know, why did you set up an

1 offshore account when Nevada had a statute at that point in
2 time and I think as an experienced lawyer, his answer made some
3 sense. What he said was at Page 229, he felt that it was more
4 prudent to go offshore because the Nevada statute was new which
5 meant that there was no jurisprudence that had been developed
6 around it. Now, I don't know if he's right not. I didn't go
7 and research the Nevada law with respect to our statute and
8 whether there was any jurisprudence. That was his testimony
9 and I don't think there's any reason to believe that he lied.

10 It was his choice to go offshore as opposed to using
11 Nevada and when you go to hire a lawyer, you go to hire a
12 lawyer for, I assume, his best advice. If the lawyer is wrong,
13 the lawyer is wrong, not the client. And we see a pattern of
14 that here over and over again. You know, my firm and I have
15 been -- shall we say castigated and challenged by Mr. Johnson
16 in terms of Mr. Van's work in this case? That's certainly the
17 way I feel about it, all right, but all you can do is what you
18 can do.

19 Let me address that because that dovetails with the
20 next step. That's the August 2010 meeting with the Internal
21 Revenue Service. Ms. Kovos and Mr. Christiansen were present
22 at that. At the April 9th hearing at Page 185, Ms. Kovos said
23 that she was told by me that Rick had no money "right now." I
24 think you'll find that in the transcript. The next day she
25 said at Page 23 that I told her, "You're asking for money he

1 doesn't have right now." Now, let me remind you. We're
2 talking August of 2010, the assignment to Bart, his father. I
3 was under the impression in August of 2010 that it wasn't going
4 to terminate until the following month, March of 2011 -- March
5 or April and August of 2010.

6 So the answer to Kovos at that point, because she was
7 looking for money right now as was Mr. Christiansen, money
8 right now -- I got the impression, by the way, with respect to
9 Mr. Christiansen that he felt that he was under a little bit of
10 pressure probably from the Court, in all candor, and there's
11 nothing wrong with that but the point is that it was, like,
12 right now. What's he got right now that I can get my hands on?

13 On the 10th of May at Page 21, Exhibit 46 --
14 Government's Exhibit 46 was entered into evidence and that's
15 the one where she makes a handwritten notation that there was
16 some additional money forthcoming that was contingent on the
17 sale of the club. Now, there is definitely a difference of
18 opinion between Ms. Kovos and myself in terms of what was
19 discussed but I'm going to suggest to you at Page 74 of that
20 May 10th hearing, she admits that Rick's Cabaret was discussed
21 during the conversation but she didn't know what it was or that
22 it was a strip club and she also admits at Page 75 that the
23 Crazy Horse Too was not the only club mentioned at the meeting.

24 And so I suggest to you that, you know, one of the
25 problems that you run into -- and although I have to say I did

1 not ask that the meeting be recorded -- I did not ask for that
2 but in the past when I have asked Federal agents if a meeting
3 can be recorded, not one time have I ever gotten them to record
4 it. I don't know if that's a policy, all right, but it really
5 makes one concerned later on when you run into these
6 differences of memory and differences in terms of, you know,
7 what I said, what I meant to say, things of that nature but I
8 think that the record does bear out that Ricks Cabaret -- she
9 said that Rick's Cabaret was discussed and she admitted that
10 there was more than one club discussed.

11 Since October 10th, Rick Rizzolo has been directed by
12 probation to have a complete detail on a weekly basis of
13 inflow-outflow statements. Now, you'll recall -- maybe you
14 don't recall but I recall asking Mr. Christiansen what "inflow"
15 meant as used in 48A -- no, excuse me, as used in the monthly
16 report and his response was he didn't know but in October --
17 apparently since October of 2010, he's satisfied that whatever
18 it means, it's being complied with and that's when the
19 condition was first added and so as I said to you, as things
20 have been added, Mr. Rizzolo has, in fact, complied.

21 One other, I think, important fact that came out at
22 the hearing -- Mr. Christiansen said that had he been advised
23 in April or May of 2008 that Mr. Rizzolo was going to
24 distribute this \$900,000 in the way that it was, in fact,
25 distributed, his testimony is that he would have approved it

1 and it makes senses that he would have because at that point in
2 time, he and Mr. Rizzolo were under the impression that there
3 was no restitution to be made as yet because there was a
4 condition preceding the payment of the restitution.

5 The Henrys got the first million dollars when the
6 deal went down. The remainder of it was supposed to be paid
7 when the Power Company, the Crazy Horse Too operation --
8 business sold and so, sure, he would have approved it and this
9 Court hadn't modified that order yet. That was two years
10 before this Court modified the order.

11 You know, we filed a motion submitting to the Court
12 the remaining money in the Tez-Piazza-Rick's Cabaret deal and
13 assuming that Rick's Cabaret stays in business and that their
14 stock continues to trade and that they don't run for the hills
15 with respect to this agreement and they have closed the Nevada
16 club and I have no idea what's going on in Philadelphia any --
17 not now I don't. As I said to you before, at the time of all
18 of this, I did have some information about it. Then that money
19 is there and we've tendered it to the Court.

20 But there's a real question in my mind as to the use
21 that's been made by Rick Rizzolo despite its design by
22 Mr. Dawson of Lions. The moment that I was made aware that
23 Mr. Rizzolo -- Rick Rizzolo might start getting paid in October
24 as opposed to the following March, I did all that I could think
25 of doing in terms of seeing to it that that money was not going

1 to get into Mr. Rizzolo's hands. Your Honor, I don't think I
2 had any obligation whatsoever to go to anybody at that point in
3 time because it was a confusing situation and the key to it
4 was, don't let Rick Rizzolo get it because there are other
5 people out there that have claims.

6 Mr. -- the Henrys have claims. The IRS has claims
7 and there are other claims and so the last thing that we needed
8 was for him to put his hands on that money and if you take a
9 look at it, Judge, other than the money that was originally
10 distributed, the first million dollars which was before the
11 supervised release occurred and the money assigned to Bart
12 Rizzolo, none of that money has gotten into Rick Rizzolo's
13 hands.

14 Now, the money was, in fact, used to pay obligations
15 of Rick Rizzolo, some of it was. One obligation, Lisa Rizzolo
16 loaned money to Lions. So that was a direct payment back from
17 Lions. The others were used to pay Rick Rizzolo obligations.
18 There's no denying that. So to that extent, it was to the
19 benefit of Rick Rizzolo but none of it -- none of it except for
20 whatever payments Bart Rizzolo got after this Court modified
21 the order. You modified the order April 26th of last year. So
22 Bart's estate or Kim Rizzolo -- Kim Tran was probably paid in
23 May, June, July, August and September.

24 All right, arguably had that been a new transaction
25 at that point in time -- had Rick -- if Rick was going to be

1 making the assignment at that point in time -- if it wasn't
2 governed by the earlier document which preceded it by a long
3 time, that arguably that money might have gone to restitution
4 but prior to your modifying that order, there was no reason for
5 anyone to believe that that money would be going toward payment
6 of restitution, assuming the validity of your order until you
7 changed it and as Mr. Christiansen said to you, he thought he
8 might be in violation of your original order if he started
9 demanding Rick to start paying restitution.

10 So that money has been tendered to the Court. You've
11 now decided that you're going to order that it be distributed
12 to the Henrys. I think that's what I heard you say.

13 **THE COURT:** Correct.

14 **MR. GENTILE:** But, you know, he's not standing here
15 with his heels dug in taking a position that that trust --
16 there doesn't have to be a distribution on it. Whether there
17 does or doesn't, he's going to sign off on the distribution and
18 he did that and indicated that to the Court without the Court
19 ordering it. All he asked you was, can I do it. Can I use it
20 for this? So I kind of want to get to -- just a second here.

21 **THE COURT:** Let's take ten minutes.

22 **MR. GENTILE:** Okay.

23 **THE COURT:** We've been at it for a long time. To
24 keep everybody comfortable --

25 **MR. GENTILE:** I don't mean to be windy but there's a

1 lot to cover.

2 **THE COURT:** All right. Well, it's important. I'm
3 not cutting you off. Let's take a ten-minute break and we'll
4 reconvene at a quarter to the hour, Ms. Clerk.

5 **(A recess was taken from 10:38 a.m. to 10:39 a.m.)**

6 **THE COURT:** Yeah.

7 **MR. GENTILE:** Okay. So --

8 **THE COURT:** October 15th, 2008.

9 **MR. GENTILE:** Okay, 2008.

10 **(A recess was taken from 10:39 a.m. to 10:50 a.m.)**

11 **THE COURT:** That's all right. Have a seat. All
12 right, Mr. Gentile?

13 **MR. GENTILE:** The Government has contended that Rick
14 Rizzolo never disclosed payments made by Kim Tran for his
15 attorneys' fees. That's not accurate. In the record, the
16 October -- from October 2010, there has been -- in fact, you
17 saw that. You saw that there were three-thousand-dollar
18 payments to Gordon & Silver noted in -- several in a row.
19 Okay, prior to that, that's true but it wasn't until the
20 inflows-outflows issue came up that that -- and he has complied
21 with it since then.

22 The Government contends that it's -- well, the
23 Government is not moving to revoke based on the failure to pay
24 the 2002 taxes apparently. At least that's my reading of his
25 document.

1 **MR. JOHNSON:** I'm sorry, what'd you say?

2 **THE COURT:** 2002 taxes.

3 **MR. JOHNSON:** I'm sorry. What is he saying?

4 **MR. GENTILE:** Well, let me just address the tax
5 issue. Okay. I'm not going to get into this question of what
6 is proper notice and demand. Mr. Lusk testified as to what he
7 thought it meant and what he advised Mr. Rizzolo that it meant
8 and candidly, again because of the nature of this hearing and
9 the question of the breach of trust and the totality of the
10 circumstances, whether Mr. Lusk is correct or not while it's --
11 it is important in the sense of if he didn't owe it because
12 there hadn't been a proper notice and demand, well, then he
13 didn't owe it and there couldn't have been a violation but
14 assuming that he did owe it -- assuming that Mr. Lusk is
15 incorrect -- not owing but that it was immediately due and
16 owing because there having been a proper notice and demand.
17 Then the real issue is that Rick Rizzolo knew that.

18 You know, if you modified your order in October of
19 '08 -- in your order for October of '08, I believe if you -- I
20 don't have it in front of me but I believe you included the
21 2006 taxes in it which wasn't even part of the original
22 litigation. If the Court wouldn't mind, would you tell me if
23 I'm correct on that?

24 **THE COURT:** Tell you if you're correct about what --

25 **MR. GENTILE:** About --

1 THE COURT: -- whether it's in the 2008 order?

2 MR. GENTILE: Yeah.

3 THE COURT: Subpart F on Page 12, the restitution of
4 1,000 -- I'm sorry -- 1,734,000 plus accruals to the Internal
5 Revenue Service.

6 MR. GENTILE: That was the 2006 return.

7 THE COURT: Well, it doesn't specify that --

8 MR. GENTILE: It doesn't.

9 THE COURT: -- but I believe it is and of course
10 there was the agreement -- as part of the plea agreement, the
11 supplemental agreement --

12 MR. GENTILE: That's right.

13 THE COURT: -- that the parties worked out with the
14 Internal --

15 MR. GENTILE: Which were for the 2002 taxes.

16 THE COURT: -- Revenue Service, exactly.

17 MR. GENTILE: See, and that's what I'm trying to get
18 at, Judge, okay? It's easy to take a look at this and find
19 that if it were handled like any other case -- if there hadn't
20 been these mixed signals and all of these changes and
21 modifications, it's easy to say no brainer. There's a
22 violation here. Okay, it may still be easy for you. I don't
23 know that but I would suggest to you that you can't ignore
24 these mixed signals when it comes to making the
25 determination --

1 **THE COURT:** You're not talking about the closing
2 agreement?

3 **MR. GENTILE:** No, I'm not talking about the closing
4 agreement.

5 **THE COURT:** All right.

6 **MR. GENTILE:** No. No, I'm not. I'm not. You know,
7 again I reference the record and then I'm going to close.
8 Special Condition Number 6 requires cooperation in the
9 collection. We know that up until April of 2010,
10 Mr. Christiansen, Mr. Rizzolo and some of the Court's orders
11 would have created at least the impression that it was tied to
12 the restitution -- tied to the sale of the club. Okay.
13 Whether the original intent was that, whether the original
14 order was that, whether in fact it was accurate or not, you
15 could see the confusion and so under the circumstances, take
16 that and couple it with on the 11th of May at Page 10, John
17 Lusk opined that there was no proper notice and that Rick -- at
18 Page 30, he said Rick asked if he should pay it and Lusk told
19 him not to pay it and at Page 37, John Lusk says that when he
20 stopped representing Rick Rizzolo, the last thing he told him
21 was not to pay the taxes. This was the 2002 we're talking
22 about, not the '06.

23 So at the end of the day here, you have a Grade C
24 violation if there's a violation and you have some options. I
25 think one of the things we have to take a look at --

1 Mr. Hunterton and Mr. Johnson are arguing vigorously for
2 incarceration in this case. I of course am not going to adopt
3 that by any stretch of the imagination and I think when you're
4 making that decision -- when you're making a decision as to
5 what -- in your words, what to do about it, is there a
6 violation and what to do about it, the what to do about it is
7 not to remand Rick Rizzolo to custody because it's not a clean
8 case. It's not black and white. You don't have that clear-cut
9 intentional in-the-absence-of-advice-of-counsel misbehavior,
10 not criminal misbehavior but misbehavior nonetheless because
11 there are conditions that are supposed to be followed.

12 You don't have that kind of forcefulness coming from
13 the probation officer in this case and when you really reduce
14 it to the bottom line on a day-to-day basis in our system, the
15 probation officer and his relationship with the person on
16 supervised release is the ground floor. The person is supposed
17 to listen to what his probation officer tells him to do. In
18 this instance, the probation officer and Rick Rizzolo were
19 under the same impressions that grew from the same mixed
20 signals and so under the circumstances -- you know, if the --
21 if the purpose -- yesterday -- oh, it's not in this record but
22 we know that felons don't easily go out and find jobs. We also
23 know that those jobs when they do find them don't have a
24 tendency to pay a lot of money.

25 You could take the approach, well, then, let the --

1 you know, let's just throw him in the can because if he's not
2 working, he's not going to make any money and so the Henrys
3 won't benefit from it but is that really true? You know, there
4 was an implied -- a plea agreement is a contract and in a
5 contract, there's an implied covenant of good faith and fair
6 dealing. I submit to you that had that covenant been adhered
7 to by the Government in this case, we wouldn't be here and so
8 at the end of the day, even the Government bears some of the
9 responsibility here.

10 I see nothing other than hyperbole that would mandate
11 custody in this case. I think that an argument can be made and
12 I've tried to make it as best I could that you could view this
13 as not a violation and yet there are some facts that cannot be
14 ignored but when you're talking about what to do about it --
15 when you're talking about breach of trust, you have to factor
16 into the sui generis into this case the fact that it is like no
17 other and so I'm going to suggest to you that while you can
18 find the absence of a violation, it's my understanding of the
19 law that you don't have to find a violation at all and the
20 reason you don't is because your original imposition of three-
21 year supervised release was less than the five years that could
22 have been imposed and it's my understanding the case law,
23 although it's not in this circuit but there is some case law
24 that says that you don't have to find a violation at all.

25 So even if you don't find a violation, you have the

1 ability to extend the supervised release. I suggest to you
2 that that's the appropriate disposition in this case.

3 **THE COURT:** All right, thank you, Mr. Gentile.

4 **(Transcription concluded at 11:01 a.m.)**

5 **(Judgment followed; transcribed under separate cover)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

September 9, 2011

TONI HUDSON, TRANSCRIBER

EXHIBIT “3”

RELEASE OF ALL CLAIMS AND AGREEMENT TO INDEMNIFY**FOR AND IN CONSIDERATION OF THE ISSUANCE OF A DRAFT**

For the total sum of TEN-MILLION DOLLARS (\$10,000,000.00), ONE-MILLION DOLLAR (1,000,000.00) of which will be deposited forthwith into the Henry Qualified Settlement Fund and, with the agreement between the parties that an additional NINE-MILLION DOLLARS (\$9,000,000.00) will be paid to the Henry Qualified Settlement Fund, due and owing upon the closing of the sale of THE POWER COMPANY, INC., dba CRAZY HORSE TOO GENTLEMEN'S CLUB, consistent with the terms of those certain guilty plea agreements made between THE POWER COMPANY, INC, FREDERICK RIZZOLO, and THE UNITED STATES OF AMERICA; Although it is anticipated that the NINE-MILLION DOLLARS (\$9,000,000.00) will be paid from the proceeds of the sale, the obligation to make said payment upon the closing is not contingent upon the realization of net proceeds from the sale sufficient to make the NINE-MILLION DOLLARS (\$9,000,000.00) payment.

KIRK & AMY HENRY, upon payment of the aggregate amount of TEN MILLION DOLLARS (\$10,000,000) to the Henry Qualified Settlement Fund, do hereby forever fully release, acquit and discharge THE POWER COMPANY, INC. dba CRAZY HORSE TOO GENTLEMEN'S CLUB, FREDERICK RIZZOLO and their reinsurers, subsidiaries, agents, employees, attorneys, assigns, and all other persons, firms, associations and corporations interested and concerned, of and from all known and unknown claims, actions, causes of action and suits for damages, at law and in equity, filed or otherwise, including without limitation personal injury; uninsured/underinsured claims; loss of compensation, profits, interest, use, consortium, services, society, contribution and support; loss or diminishment of ability, capacity, function, earning potential or capacity, or estate, and associated costs and expenses which they now have or may hereafter acquire by reason of any loss of or damage to any property, property right, injury to their person, or the death of their person as a result of that certain accident, casualty, incident or event that occurred on or about the 20th day of September, 2001, in Clark County, Nevada, which was the basis of Case No. A440740 in District Court, Clark County, Nevada.

IT IS UNDERSTOOD AND AGREED, AND MADE A PART HEREOF:

That the issuance of said draft is not, nor is it to be construed as, an admission of liability on the part of any releasee, but is in compromise, settlement, accord and satisfaction, and discharge of loss, damages, claims, actions, causes of action, suits and liability which are each and all uncertain, doubtful and disputed;

That this Release extends, applies to, coheres and includes all unknown, unforeseen, anticipated and unsuspected injuries, damages, loss and liability, and the consequences hereof, as well as those now alleged, disclosed and known to exist;

That the "Henry Qualified Settlement Fund" shall mean the Qualified Settlement Fund to be established by the Court and Trustee for the purpose of receiving and distributing the funds to be paid by Defendants The Power Company, Inc. and Frederick "Rick" Rizzolo as provided by

his Agreement. Defendants shall have no financial obligation to the Settlement Fund other than to make payment as explicitly set forth above;

That the Trustee of the Settlement Fund shall take all necessary steps to ensure that the Settlement Fund that is to receive the payments to be made by Defendants is established and maintained as a Qualified Settlement Fund in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. The Qualified Settlement Fund will provide claimants with lump sum settlements and/or periodic payment settlements. If periodic payment settlements are provided then the obligation to make the periodic payments shall be assigned to a qualified assignee in accordance with Sections 104(a)(2) and 130(c) of the Internal Revenue Code of 1986, as amended. The proceeds of an periodic payments shall represent damages on account of personal injuries or sickness within the meaning of the above referenced provisions of the Internal Revenue Code of 1986, as amended;

That this Release, in conjunction with those certain guilty plea agreements made between The Power Company, Frederick Rizzolo, and the United States, is the entire, complete, sole and only understanding and agreement of, by, and between or among the undersigned and releasees pertaining to and concerning the subject matter and things expressed herein. Other than Defendants' obligation to pay the remaining settlement balance of NINE MILLION DOLLARS (\$9,000,000), there are no independent, collateral, different, additional or other understandings or agreements, oral or written, or obligations to be performed, things to be done, or payments to be made; and, further, no promise, inducement or consideration other than the issuance of said draft has been made or agreed upon by or on behalf of releasees, or any of them; and

That each releasee shall be held harmless of and from and indemnified for and against all losses, damages, costs and expenses, including reasonable attorney's fees, and all other sums which each releasee may hereafter incur, pay, be required or become obligated to pay on account of any and every further, additional or other demand, claim or suit by or on behalf of KIRK AND AMY HENRY, for any loss of or damage to any property or property right, injury to or the death of any person as provided in this Release, or for any contest or attempt to modify, change, reform, break, set aside, nullify, cancel or negate this Release, or any part or provision of this Release, for any reason whatsoever. The indemnification provisions of this paragraph shall not apply to (i) any efforts by Kirk and Amy Henry to enforce the terms of this Agreement should it become necessary to do so.

That KIRK AND AMY HENRY, hereby accept responsibility for and agree to pay, compromise or discharge by court order, from the consideration for this Release, any lien or subrogation right which may be enforceable under the laws of the State of Nevada, or any other State, or any federal law. KIRK AND AMY HENRY further agree to accept responsibility for and agree to pay, compromise or discharge by court order, from the consideration of this Release, any trustee or counsel compensation for administration of the Qualified Settlement Fund, and any outstanding expense for past or future medical or hospitalization costs which arises as a result of treatment rendered arising from the acts complained of in this case and further, any common law lien or subrogation right, including any assignment of such right whatsoever related to the incident described above.

BY SIGNING THIS RELEASE KIRK AND AMY HENRY DO HEREBY ACKNOWLEDGE AND

WARRANT:

That this Release was read carefully in its entirety by them, with the assistance of their counsel, and was and is understood and known to be a full and final compromise, settlement, release, accord and satisfaction, and discharge of all claims, actions and causes of action, suits and liability, as above stated; That neither Frederick Rizzolo, nor The Power Company Inc. nor their counsel have warranted, advised, or counseled Kirk & Amy Henry on the use of a Qualified Settlement Fund, and have made no representations or warranties regarding said vehicle, or the appropriateness of its use herein. That Kirk & Amy Henry have relied solely upon their legal counsel and advisers in deciding to utilize a Qualified Settlement Fund, and should said vehicle fail to achieve the expected or anticipated goals of Kirk & Amy Henry, then there shall be no further obligation of the releasees pursuant to this agreement, and each releasee shall be held harmless of and from and indemnified for and against all losses, damages, costs and expenses, including reasonable attorney's fees, and all other sums which each releasee may hereafter incur, pay, be required or become obligated to pay on account of any and every further, additional or other demand, claim or suit by or on behalf of the Trustee KIRK AND AMY HENRY or their respective advisers and representatives.

That this Release was signed and executed voluntarily and without reliance upon any statement or representation of or by any releasee, or any representative, agent, or adviser of same, concerning the nature, degree and extent of said damages, loss, or legal liability therefor;

That this Release, in conjunction with those certain guilty plea agreements made between The Power Company, Frederick Rizzolo, and the United States, contains the entire agreement of and between or among all of the parties mentioned herein;

That all of the terms and provisions of this Release are contractual, not a mere recital; and

That KIRK AND AMY HENRY are of legal age and capacity, and are competent to sign and execute this Release, and accepts full responsibility therefor.

READ AND SIGNED THIS 26 day of July, 2006 at Arnold's Park, Iowa.

Kirk Henry

KIRK HENRY

Amy Henry

AMY HENRY

STATE OF IOWA)

) ss:

COUNTY OF DICKINSON)

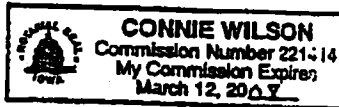
On this 26th day of July, 2006 before me appeared KIRK HENRY, who personally known and who acknowledged the execution of the foregoing instrument as his free act and deed, to

the consideration set forth therein.

Connie Wilson

NOTARY PUBLIC

STATE OF IOWA)



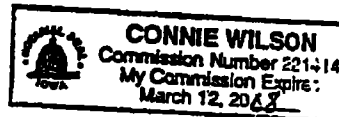
) ss:

COUNTY OF DICKINSON)

On this 26th day of , 2006 before me appeared AMY HENRY, who personally knowr and who acknowledged the execution of the foregoing instrument as her free act and deed, t the consideration set forth therein.

Connie Wilson

NOTARY PUBLIC



APPROVED AS TO FORM AND CONTENT this 28th day of July, 2006.

CAMPBELL & WILLIAMS

By 


Donald J. Campbell, Esq., #1216
700 South Seventh Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Kirk Henry

HUNTERTON & ASSOCIATES

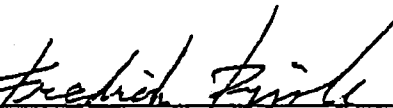
By 

C. Stanley Hunterton, Esq. #1891
333 South Sixth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Amy Henry

READ AND SIGNED this ____ day of August, 2006.


FREDERICK RIZZOLO, Individually

THE POWER COMPANY, INC. dba
CRAZY HORSE TOO GENTLEMEN'S CLUB

By 
FREDERICK RIZZOLO

APPROVED AS TO FORM AND CONTENT this 9 day of August, 2006.

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

By 

Daniel E. Carvalho, Esq., #5600
300 S. Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorneys for Defendants

PATTI & SGRO

By 

Anthony P. Sgro, Esq., #3811
720 S. Seventh Street, Suite 300
Las Vegas, Nevada 89101
Attorney for Defendants

EXHIBIT “4”

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 2:06-CR-186-PMP-PAL
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Las Vegas, Nevada
)	
FREDERICK JOHN RIZZOLO,)	Wednesday, July 20, 2011
)	
Defendant.)	(11:01 a.m. to 11:38 a.m.)

PARTIAL TRANSCRIPT OF SUPERVISED RELEASE REVOCATION HEARING
(DAY 5): JUDGMENT

BEFORE THE HONORABLE PHILIP M. PRO,
UNITED STATES DISTRICT JUDGE

Appearances: See Next Page

Law Clerks: Kara Rickey / Mehdi Eddebbbarh

Courtroom Administrator: Donna Sherwood

Court Reporter: Joan Quiros; Digital

Transcribed by: Exceptional Reporting Services, Inc.
P.O. Box 18668
Corpus Christi, Texas 78480-8668
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

EXCEPTIONAL REPORTING SERVICES, INC

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PHILIP R. ERWIN, ESQ.
DONALD CAMPBELL, ESQ.
Campbell & Williams
700 S. Seventh St.
Las Vegas, NV 89101

Frederick Rizzolo,
et al.: DOMINIC GENTILE, ESQ.
MARGARET LAMBROSE, ESQ.
Gordon & Silver, Ltd.
3960 Howard Hughes Pkwy.
Ninth Fl.
Las Vegas, NV 89169

U.S. Probation: Eric Christiansen

1 Las Vegas, Nevada; Wednesday, July 20, 2011; 11:01 a.m.

2 (Partial transcript; Judgment)

3 THE COURT: Does Mr. Rizzolo wish to make a
4 statement?

5 MR. GENTILE: No, your Honor.

6 THE COURT: All right.

7 Well counsel, let me try -- and there's been much
8 said about discussions that were had that -- meetings that took
9 place between the parties and so forth that, as Mr. Gentile
10 said, his meeting with the IRS wasn't recorded and so forth.
11 Luckily, you know, everything that occurs in the courtroom is.
12 And so I want to take some pains to make sure that I state my
13 findings clearly, as clearly as I can, not only so the parties
14 understand how I see the situation, but so that, frankly, if
15 there is a subject of review on appeal it will be clear as well
16 in the record; as clear as I can make it.

17 So let me go back to the -- and Mr. Gentile started
18 his argument by talking about the fact that he wasn't here at
19 the beginning but that I was. And he's right, half right. He
20 wasn't here at the beginning. I realize he's stepped in and
21 made tremendous efforts to try to correct things that maybe
22 needed correction. But, you know, I wasn't here at the
23 beginning either with regard to the investigation or when the
24 parties negotiated their Plea Agreement, but I certainly did
25 receive the Plea Agreement and have been residing ever since.

1 And I did characterize this agreement as highly
2 unusual and it is. I mean, there's just no two ways about it.
3 And I think that there were expectations of the parties at the
4 time that agreement was reached, that unusual agreement, that
5 you know, turned out not to play out as the parties had
6 anticipated; no question about that. People don't know what
7 they don't know. And there was much uncertainty, it turns out,
8 that I think the parties didn't anticipate that's developed
9 over the ensuing years.

10 But on January 23rd of 2007, pursuant to that binding
11 agreement, I sentenced Mr. Rizzolo to a term of imprisonment of
12 12 months and a day, followed by three years of supervised
13 release. And in addition to the standard terms and conditions
14 of supervision, there were six special conditions enumerated;
15 six conditions tailored, not the standard conditions but
16 tailored to the needs of this particular case.

17 On January 12, 2011, as I mentioned earlier, the
18 Department of Probation filed the petition alleging violations
19 of Condition Number 3: that Mr. Rizzolo failed to report on his
20 May 2, 2008 monthly supervision report the receipt of one
21 million dollars; and a violation of Condition 4: that he failed
22 to disclose and to obtain approval from the Probation Office
23 certain financial activities relating to the Lyons (phonetic)
24 Limited Partnership.

25 On April 1, 2011, after the March hearing that was

1 referenced earlier, the Probation Office filed an addendum,
2 Document 425, expanding those two violations and setting forth
3 a third alleged violation of Special Condition Number 6, which
4 unambiguously provides: "You shall cooperate and arrange with
5 the Internal Revenue Service to pay all," all, "past and
6 present taxes, interest and penalties owed." It doesn't speak
7 to which year. It doesn't speak to what was the subject of the
8 supplement to the Criminal Plea Agreements filed on July 26,
9 2006 and the attached closing agreement on final determination
10 covering specific matters executed on June 1, 2006. It doesn't
11 confine itself to any other particular date or tax return,
12 notwithstanding the fact that the 2006 tax return is the
13 subject of the Plea Agreement, is the subject, in part, of the
14 various orders regarding forfeiture, including the second
15 supplemental order issued in October of 2008.

16 "Further provide you shall file timely, accurate and
17 lawful income tax returns and shall show proof of the same to
18 the Probation Officer."

19 Now as I stated, I find that these particular alleged
20 violations allege Grade C violations. Mr. Johnson makes the
21 argument that at least the third one, the violation of Number 6
22 could be viewed as a new crime violation. He doesn't seriously
23 argue that and indicates that should be reserved for another
24 time. I don't think it has to because I'm not treating it in
25 that fashion. We're talking about Grade C violations and all

1 that that implies.

2 Now I want to also begin by addressing a couple of
3 other points that were raised. And, you know, I understand
4 Mr. Gentile's argument and I think it's particularly
5 understandable coming into the case years after things had
6 developed and providing a fresh look at it, I'm sure, about
7 mixed signals. And I'm sure there have been plenty of signals;
8 people have impressions. We're stuck with the things that are
9 said. I'm just glad that they're here in Court, for the most
10 part. But there are a lot of things that the parties have said
11 to one another and have discussed that I'm sure left a lot of
12 different impressions with people. I'm mindful of that as I
13 analyze the conduct here and the intent with which that conduct
14 was engaged in and the consequences for that conduct.

15 But I've got to reject a basic notion I hear coming
16 on behalf of Mr. Rizzolo that because from April 2008 through
17 April 2010 he and his Probation Officer has testified to
18 thought that restitution to the Henry's was to be paid
19 exclusively from the proceeds of the sale of the Crazy Horse
20 Too or perhaps that other obligations, including tax
21 obligations, were similarly to be discharged; that Mr. Rizzolo
22 was somehow relieved of his obligations to fully comply with
23 the requirements of Special Conditions 3, 4 and 6, or any of
24 the special conditions or general conditions of supervision.
25 That simply is not the case and cannot be the case.

1 So much has been discussed about the Crazy Horse Too
2 and its disposition. And anyone who's ever seen the Plea
3 Agreement and familiar with the status of the case when it was
4 originated and the Plea Agreement was reached can appreciate
5 that it reflected -- as Mr. Gentile says, it's a contract of
6 sorts -- it reflected expectations of parties; it did. And I
7 think and I've said previously that I think that those
8 expectations were genuine that -- from the Government to the
9 Defendant to the Henry's to the banks to the Internal Revenue
10 Service, they all thought things would be resolved, at least
11 financially, by the sale of that property. As I also said at
12 just about every single hearing we had when I reminded everyone
13 concerned that you needed to keep moving and get this property
14 disposed of, that it was going to turn in to a pile of sand;
15 which in many respects is basically what has happened.

16 And again, I'm not here to go back through the
17 history of that or to lay blame for that. So much has been
18 written, so much has been said about that. And whether it's
19 viewed as simply ineptness, whether it's viewed as a tragic
20 reflection of a collapsed economy in Southern Nevada that's
21 still in freefall, if the caseload I see every day in this
22 courtroom is any indication; whatever it is, it's an
23 unfortunate set of circumstances that is perhaps beyond the
24 control of any single person or entity involved in this
25 litigation. There's no question it frustrated the expectations

1 of all of the parties to this Plea Agreement, but again, that
2 circumstance doesn't relieve Mr. Rizzolo from complying with
3 the requirements of the special conditions of supervision that
4 are imposed in this case. And the Court has to flatly reject
5 any argument that that circumstance should be a factor, a
6 determining factor, in determining whether there's a violation
7 of the conditions. It's simply begs the question of his
8 obligation to comply with all of those requirements.

9 I also have to reject the argument made that, in
10 essence, by entering the orders that have been entered, somehow
11 the Court has, you know, become a collection agency of some
12 kind. The Court has a responsibility to enforce the orders and
13 the obligations and the agreement that the parties reached.
14 You all reached that agreement for reasons that are unique to
15 each of you. And while the circumstances may have changed, the
16 realities may have changed, the obligations do not and the
17 responsibilities do not.

18 I also have to reject the argument that the Defendant
19 was not obligated to disclose to his Probation Officers -- or
20 his Probation Officer, I'm sorry -- his financial dealings
21 including those which occurred one or two days before his
22 release from custody. This, I know, seems a pivotal point to
23 the arguments made by the Defense and that Mr. Rizzolo is told
24 by his supervising Probation Officer that, "I don't care about
25 what happened prior to today." Well again, the Probation

1 Office doesn't know what it doesn't know. And I can understand
2 such a statement being made, but I think when you look in
3 context at all of the financial dealings that have taken place
4 -- which I'm going to talk about in a moment -- it reflects
5 that the structuring that took place prior to the entry of
6 formal supervised release, a day or two before, was designed to
7 somehow insulate or put beyond the reach of the Court and
8 anyone else concerned, certain assets. Whether we call it
9 asset protection or something else, it was beyond or attempted
10 to be beyond the reach of the Court, beyond the reach of the
11 Department of Probation because they wouldn't know about it,
12 and indeed did not know about it at that time.

13 Let me turn to the specific violations that are
14 alleged because I too, just have you have -- painstakingly,
15 you've gone through the record, all of you, and cited different
16 portions of it.

17 With respect to the first alleged violation in the
18 original petition as augmented by the addendum, the Court finds
19 that the Defendant has failed to submit truthful and complete
20 written reports regarding his financial dealings within the
21 first five days of each month as charged in the petition and
22 the addendum. He concealed relevant financial information
23 relating to the October 2007 purchase agreement between Lyons
24 and the Piazza (phonetic) Partnership, which he entered while
25 still in prison through his ex-wife acting on a power of

1 attorney; and failed to disclose the March 2008 amendment to
2 the purchase agreement and the interest Lyons would have in
3 future cash flow Lyons subsequently assigned to Defendant's
4 father, Mr. Bart Rizzolo.

5 The Court finds that the failure to disclose these
6 financial activities while under sentence in this case rendered
7 his monthly reports inaccurate and mislead the Probation Office
8 and others interested, including the Internal Revenue Service,
9 by presenting a misleading impression of the Defendant's
10 financial circumstances. Even if the Defendant were found to
11 not be obligated to report his initial receipt of \$999,000
12 under the purchase agreement with the Piazza partnership
13 because the transaction occurred a day or so prior to his
14 commencement on supervised release, he was unquestionably
15 obligated in the view of the Court to disclose the disposition
16 of those funds on and after April 4, 2008 and he failed to do
17 so.

18 The Defendant's monthly report from May 2, 2008 fails
19 to disclose payments totaling \$900,000, which he authorized in
20 his April 24, 2008 letters to Capital Security Bank and which
21 were paid out through Capital Security Bank and his law firm;
22 nor did the Defendant's subsequent monthly reports disclose
23 payments made to him by his father or his father's wife,
24 Ms. Kim Tan (phonetic) Rizzolo, in supposed consideration for
25 jewelry -- watches and jewelry that had been sold to the senior

1 Mr. Rizzolo. Regardless of whether the Defendant himself made
2 such expenditures, he authorized the payment of funds owed to
3 him which should have been disclosed in the view of the Court
4 to the Department of Probation.

5 The Defendant also failed to include on his monthly
6 reports several payments made from the Lyons account in the sum
7 of over 500 dollars to his attorneys and others, as well as
8 cash withdrawals from the Lyons account.

9 In short, the Court finds the Defendant engaged in
10 several financial transactions in which he failed to disclose
11 in his monthly reports and which minimized his apparent ability
12 to pay restitution to the Internal Revenue Service and the
13 Henry's and anyone else entitled to recover funds, and which
14 therefore compromised the ability of the United States
15 Probation Office to effectively supervise his compliance with
16 the provisions of the Court's Judgment and Commitment Order.

17 The Court also finds the Defendant violated Special
18 Condition 4 of his supervised release, which prohibited him
19 from incurring new credit charges, opening additional lines of
20 credit or negotiating financial contracts without the approval
21 of the Probation Office. Again, not only did Mr. Rizzolo not
22 disclose the 990,000 -- \$999,000 received from the Piazza
23 Partnership immediately preceding his release from prison, but
24 he failed to obtain permission from the Probation Office before
25 authorizing the Cook Islands trustee to pay out \$900,000 in

1 cash proceeds as repayment of debt and services rendered.
2 Indeed, the Probation Office didn't know at that time about the
3 Cook Islands account.

4 On April 3, 2008, Mr. Rizzolo's attorney, Mr. Sgro,
5 requested that Defendant Rizzolo not be required to report on
6 his monthly reports checking accounts of LLC's in which he was
7 a member. However, when this occurred, Probation Officer
8 Christiansen was not aware that Defendant Rizzolo had recently
9 received and deposited nearly a million dollars into the Lyons'
10 Bank Account. Regardless, Mr. Rizzolo had a continuing duty in
11 the view of the Court to disclose to his Probation Officer all
12 funds received for his personal use. And again, he failed to
13 do that.

14 Additionally, he failed to obtain permission from the
15 Probation Office before executing an assignment of the first
16 \$789,000 of the sale proceeds to his father, Bart, on April 18,
17 2008; and again, when in April 2009, he executed a second
18 amendment to the purchase agreement between Lyons and the
19 Piazza Partnership providing for the Piazza Partnership to pay
20 Mr. Bart Rizzolo that sum of money directly rather than through
21 the Defendant.

22 Similarly, he violated his obligation to secure
23 approval from Probation for the April 24, 2008 payments to Lisa
24 and Bart Rizzolo and to the law firm of Patti and Sgro. In
25 doing so, Defendant Rizzolo effectively concealed from the

1 Department of Probation the means by which he carried out his
2 financial dealings, rendering the ability of Probation to
3 effectively supervise him next to impossible.

4 Finally, the Court finds Defendant Rizzolo violated
5 supervised release Condition Number 6: "to cooperate with the
6 Internal Service to pay," again to pay, "all past and present
7 taxes, interest and penalties owed." Indeed, Defendant's
8 financial dealings, structuring, machinations, consistently
9 frustrated the ability of the Probation Office to supervise
10 him, to comply with his obligations on supervised release and
11 effectively defeated the ability to ensure compliance with his
12 obligations to not only the Internal Revenue Service directly
13 and also to the Henry's, but here I'm focused on Number 6 to
14 the Internal Revenue Service.

15 Since his commencement on supervised release, the
16 Defendant has paid very little in the way of restitution to
17 anyone to whom he owed restitution, including the Henry's and
18 the Internal Revenue Service. He has consistently structured
19 and concealed his financial dealings in such a manner as to
20 frustrate, effecting the restitution and tax obligations which
21 he was ordered by the Court to comply with. And in April 2008,
22 he effectively diverted \$200,000 to his father again, Mr. Bart
23 Rizzolo, to enable Mr. Bart Rizzolo to pay his tax obligations
24 while avoiding paying his own which I find to be in direct
25 contravention of Special Condition Number 6 which the Court had

1 imposed.

2 As noted by the Government, I think in its
3 memorandum, that Mr. Rizzolo can't claim ignorance; that he
4 understood his obligations to cooperate with his Probation
5 Officer to discharge his obligations to the Internal Revenue
6 Service is really -- I mean, it's pellucid. It's just crystal
7 clear the very crime that Mr. Rizzolo plead guilty to involved
8 conspiracy to defraud revenue obligations owed to the United
9 States. And the Court finds that he acted knowingly and
10 willfully in doing so.

11 So in a nutshell, the Court finds that each of the
12 three Grade C violations alleged in the petition and the
13 addendum have been sustained and now -- by a preponderance of
14 the evidence, and that's what the Rule 32.1 and the applicable
15 provisions of Title 18, United States Code direct the Court to
16 consider in assessing that, referring specifically not only to
17 32.1, but to 18 U.S. Code 3583, which also then takes us back.
18 And there's been reference to Chapter 7 of the United States
19 Sentencing Guidelines, which the Court also consults with
20 respect to the violations but what to do about them, as I said
21 and as was picked up on.

22 And here, the Court as in every case -- and whether a
23 Grade C violation -- still calls for the Court to go back and
24 consider the 3553 factors that pertain with regard to any
25 potential sentence, consideration of penalty, to try to fashion

1 a disposition that's sufficient but not greater than necessary,
2 to reflect the seriousness of the violations, to provide just
3 punishment, to promote respect for the law, to afford adequate
4 deterrence to future criminal conduct by the Defendant, to
5 ensure that the Defendant in the future complies with the
6 special conditions and all conditions of supervision, and to
7 avoid sentencing disparities. And these are areas where the
8 United States Sentencing Guidelines, while not perfect, provide
9 necessary guidance which the Court is required to consider.
10 And I've got to consider as well whether the failure to take
11 action in the form of revocation of supervision would unduly
12 deprecate the seriousness of the violation and render less
13 effective the ability of the Department of Probation to carry
14 out its responsibilities to try to supervise a defendant.

15 Considering all of those factors, the Court finds
16 that revocation of supervised release is entirely appropriate
17 and that the proffered sentence recommended by the United
18 States of nine months followed by 24 months of supervised
19 release is warranted; and that's the judgment of the Court.
20 Now the same conditions of supervised release that the Court
21 originally imposed will continue to apply: the six that we have
22 just been reflecting on and three of them more specifically.

23 The Department of Probation has recommended an
24 additional condition relating to prohibition against gambling:
25 specifically that the Defendant not enter, frequent or be

1 involved with any legal or illegal gambling establishment or
2 activity, except for the purpose of employment as approved and
3 directed by the Probation Officer. I think that that's an
4 appropriate additional condition. I will add that to the six
5 originally imposed.

6 Mr. Johnson cited to a variety of conditions at Page
7 30 of the Government Sentencing Memorandum, Document Number
8 456. And I think, in part, these have already been addressed.
9 I don't need to make a special condition because I've already
10 ordered on the motion that was filed that arrangements that
11 Rizzolo arranged for payments from the Piazza Partnership due
12 to Lyons to be paid to the Henry's. And so I don't intend to
13 make that a separate condition of supervised release. That's
14 been the order of the Court, clarified as Mr. Hunterton argued,
15 to provide that the Defendant not take any action directly or
16 indirectly through any agents, anyone else acting on his behalf
17 to frustrate the payment of those monies to the Henry's in
18 partial satisfaction of restitution obligations to the Henry's.

19 There's next a proposal that he be required to pay
20 the Henry's monthly restitution based on any employment or
21 other income and any available assets. I find that to be
22 vague. I'm going to let the Department of Probation deal with
23 the monitoring of that monthly payment. They already have and
24 the payments were to the tune of a thousand dollars a month.

25 Third, the Government proposes that Mr. Rizzolo be

1 required to find employment. And once he finds employment to
2 remain in that employment unless he obtains approval from the
3 Probation Office to quit. Certainly, I'm going to direct as a
4 special condition that the Defendant seek and maintain
5 employment. Again, I will let the Department of Probation work
6 with Mr. Rizzolo concerning what that employment is and the
7 circumstances under which he can leave that employment.

8 Fourth, it's proposed that Rizzolo be required to
9 move the location and management of any foreign trust in which
10 he is or possibly could be directly or indirectly a beneficiary
11 to the United States. As stated, that's not really an
12 enforceable provision but I think it can be modified. And I
13 will add as a condition that Defendant Rizzolo move the
14 location, or transfer the location, and management of any
15 foreign trust in which he is directly or indirectly a
16 beneficiary to the United States and that he disclose those
17 transactions to the United States Department of Probation.

18 Fifth, the Government proposes that he be required to
19 provide waivers to the Probation Office, IRS and the Henry's to
20 allow any foreign trust in which he has an interest to provide
21 records and any other information to the Probation Office, the
22 IRS and the Henry's. I will order that additional condition.
23 I think that it is appropriate.

24 Sixth, the Government recommends that Defendant
25 Rizzolo be required to obtain prior approval of any financial

1 contract or transaction involving over 200 dollars in assets
2 unless the Probation Office allows a higher limit.

3 Mr. Christiansen, I believe there were some
4 conditions with regard to those expenditures but I'm not sure
5 it was 200 dollars. I thought it was the 500 dollars.

6 **PROBATION OFFICER CHRISTIANSEN:** Your Honor, under
7 "General" in the monthly report it is 500 dollars.

8 **THE COURT:** Fine. I'll leave it at 500 dollars. I'm
9 not going to change the monthly report requirement.

10 Seventh, that Mr. Rizzolo be required to keep a
11 record and to provide the Probation Office with all means of
12 support, including any assets regardless of when they were
13 obtained, income, loans and gifts. I suppose this goes to the
14 term "inflow" that was used earlier as to what that means,
15 trying to capture that more precisely. I will order as a
16 condition that the Defendant provide to the Probation Office,
17 or disclose monthly to the Department of Probation, all income
18 or other means of support which he receives during that
19 preceding month, whether they were obtained as income from
20 employment or otherwise, loans or gifts.

21 That's a long list of additional conditions but they
22 really are not so onerous when you think about the fact that
23 the whole goal is to make sure that there is candor --
24 disclosure and candor; no more financial transactions to
25 protect assets of any kind. They're no longer amenable to

1 that. They belong to the parties that are entitled to receive
2 the monies. And to the extent that's within the ambit or the
3 scope of supervision by the Court, that's what clearly will be
4 accomplished.

5 Mr. Johnson?

6 **MR. JOHNSON:** Your Honor, just one point on terms of
7 the amount of financial transactions. The form Probation uses
8 usually sets 500, but Probation has on occasion required
9 Mr. Rizzolo to report less than 500. I'd like to ask the Court
10 to allow them to continue to let Probation have discretion as
11 necessary to set whatever limits it feels --

12 **THE COURT:** Well, that's why I asked
13 Mr. Christiansen.

14 Have you been working at 500 or some other figure?

15 **PROBATION OFFICER CHRISTIANSEN:** Well, normally we
16 look at 500. But if -- we can work at a different figure as
17 well, but 500 is the general rule.

18 **MR. JOHNSON:** But I know that over the last -- since
19 October, they've essentially required all transactions --

20 **PROBATION OFFICER CHRISTIANSEN:** Right.

21 **MR. JOHNSON:** -- to Mr. Rizzolo, whether two dollars
22 and fifty cents up to whatever.

23 **PROBATION OFFICER CHRISTIANSEN:** We were attempting
24 to determine exactly where he gets his money from --

25 **THE COURT:** All right.

1 **PROBATION OFFICER CHRISTIANSEN:** -- so all
2 transactions were listed at that time.

3 **THE COURT:** Well what is the Probation Department
4 seeking? What do you think you need to be able to supervise?

5 **PROBATION OFFICER CHRISTIANSEN:** I think the way it's
6 going now is perfectly okay, that we have a transaction at
7 least -- all his transactions below -- or above -- below five
8 hundred dollars would be fine for us, your Honor.

9 **MR. JOHNSON:** I guess what I would just say is that
10 -- leave it up to Probation in terms of establishing what --
11 the nature of what transactions they want him to report.

12 **THE COURT:** Well, no. I want it to be not so loosey
13 goosey. I want it to be clear because I want the Defendant to
14 understand clearly what it is. I don't want any more mixed
15 signals; potential for that. So give me the precise language
16 that you want to have the ability to enforce with regard to
17 disclosure of financial transactions during any given month.

18 **PROBATION OFFICER CHRISTIANSEN:** Your Honor, could I
19 talk to my supervisor to determine exactly what ...

20 **THE COURT:** Certainly.

21 **(Pause)**

22 **PROBATION OFFICER CHRISTIANSEN:** Your Honor, we're
23 going to request that he have all monetary transactions; that
24 the -- what we're doing now is he's listing on a weekly basis
25 of income and expenses, and we'd want to continue that.

1 **THE COURT:** All expenses?

2 **PROBATION OFFICER CHRISTIANSEN:** All expenses.

3 **THE COURT:** All right.

4 All right. I will -- if that's -- and you've been
5 doing that since which -- since when?

6 **PROBATION OFFICER CHRISTIANSEN:** We've been doing
7 that for at least six months now, your Honor.

8 **THE COURT:** All right.

9 All right. I'll order that that continue: that the
10 -- all income and expenses be reported monthly to the
11 Department of Probation.

12 Now, I will allow a reasonable period for Mr. Rizzolo
13 to report to the facility designated by the Bureau of Prisons.
14 It takes a minimum 45 days, sometimes longer, so I looked at
15 the calendar. We'll make that September 14, 2011.

16 And I think that covers everything; but Mr. Johnson
17 and Mr. Christiansen and Mr. Gentile, is there --

18 And Mr. Hunterton, I see you're standing as well. Go
19 ahead.

20 **MR. HUNTERTON:** If I might, your Honor. Now that
21 Your Honor has clarified that the Henry's have a priority for
22 the money that's to come --

23 **THE COURT:** Right.

24 **MR. HUNTERTON:** -- from the sale of the club in
25 Philadelphia --

1 THE COURT: Right.

2 MR. HUNTERTON: It's our understanding that since
3 Mr. Gentile essentially sequestered, told him to pay up the
4 money, that there is in a Bank of America account in
5 Philadelphia between three and four hundred thousand dollars
6 awaiting the disposition. We would ask that the Court today
7 order that that be turned over to the Henry's forthwith.

8 THE COURT: I will so order that the money --

9 MR. GENTILE: Your Honor, could the --

10 THE COURT: Yeah?

11 MR. GENTILE: Could the order include an account to
12 which it should be sent? We don't have any opposition to this,
13 but I --

14 THE COURT: Yeah.

15 MR. GENTILE: I don't want to -- I would really like
16 to be as clear as possible.

17 THE COURT: I'll tell you what. Why don't the two of
18 you collaborate on that and propose --

19 MR. HUNTERTON: Yes, your Honor.

20 THE COURT: -- submit a proposed form of order.

21 MR. HUNTERTON: We'll provide a --

22 MR. GENTILE: Yeah. That's no problem.

23 MR. HUNTERTON: -- trust account and --

24 THE COURT: Yeah. Go ahead and do that. All right.

25 All right. Anything else then, counsel, or

1 Mr. Christiansen?

2 MR. JOHNSON: No, your Honor.

3 PROBATION OFFICER CHRISTIANSEN: Your Honor, I
4 have --

5 MR. SPEAKER: Oh, I'm sorry.

6 PROBATION OFFICER CHRISTIANSEN: I'm sorry, your
7 Honor. As of today the restitution total including interest is
8 \$14,678,200.17. There's also the matter of a fine which is
9 \$250,000 plus the interest on that comes to the total of
10 \$306,692.82.

11 THE COURT: All right.

12 All right. Well right now I'm concerned more about
13 the restitution than I am the fine. But that's a lot of money
14 and insofar as recovery can be made during the course of
15 supervision, it will be. Thereafter, the parties will be
16 dealing with their judgments that they seek.

17 PROBATION OFFICER CHRISTIANSEN: The reason I mention
18 that, your Honor, is on his supervised released J&C, it should
19 probably be listed on there.

20 THE COURT: Yes.

21 PROBATION OFFICER CHRISTIANSEN: The total amount.

22 THE COURT: Yes. All right.

23 I'll ask you to give that in written form to my clerk
24 at the end of the proceedings so she can have that recorded
25 accurately. All right?

1 All right. Anything further?

2 (No audible response)

3 THE COURT: All right. Thank you everybody.

4 (Counsel thank the Court)

5 THE COURT: The Court will be in recess.

6 (This proceeding adjourned at 11:38 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

July 26, 2011

TONI HUDSON, TRANSCRIBER