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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-80206-CR-RYSKAMP

UNITED STATES OF AMERICA,))	
)	
Plaintiff,)	
)	
-v-)	
)	
MARY ESTELLE CURRAN,)	
)	
Defendant.)	West Palm Beach, Florida
)	April 25, 2013
)	1:24 p.m.

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE KENNETH L. RYSKAMP
U.S. SENIOR DISTRICT JUDGE

Appearances:

For the Government:	MARK F. DALY US DEPARTMENT OF JUSTICE TAX DIVISION 601 D Street NW, Room 7334 Washington, DC 20579
For the Defendant:	BLACK SREBNICK KORNSPAN & STUMPF BY: ROY BLACK, ESQ. 201 South Biscayne Boulevard Suite 1300 Miami, Florida 33131
Reporter: (561) 514-3728	Karl Shires, RPR, FCRR Official Court Reporter 701 Clematis Street, Suite 258 West Palm Beach, Florida 33401

1 (Call to Order of the Court.)

2 THE COURT: You may be seated.

3 Good afternoon. First case will be United States
4 versus Curran.

5 Counsel state their appearance, please.

6 MR DALY: Your Honor, Mark Daly, Senior Litigation
7 Counsel, Tax Division of the US Department of Justice. With me
8 is Assistant United States Thomas Lanigan and Special Agent
9 Scott Johnson of the IRS.

10 THE COURT: All right.

11 MR. BLACK: Good afternoon, Your Honor. Roy Black,
12 Nathan Hoffman, and Jackie Perczek on behalf of Mrs. Curran,
13 who is here as well.

14 THE COURT: Okay. You've received a copy of the
15 presentence report and reviewed it with your client?

16 MR. BLACK: Yes, sir.

17 THE COURT: And there are no errors, omissions, or
18 corrections?

19 MR. BLACK: No, sir.

20 THE COURT: All right. You may proceed.

21 MR. BLACK: Your Honor, we have no witnesses to
22 present. We've sent you our sentencing memorandum.

23 THE COURT: I have read it.

24 MR. BLACK: And we have attached all of the letters.
25 All that I intended to do was make some short remarks and

1 proceed to the sentencing.

2 THE COURT: All right. I'll hear from you at this
3 time.

4 MR. BLACK: Thank you, Your Honor.

5 Mrs. Curran accepts full responsibility for these
6 offenses that she's pled guilty to. She blames nobody but
7 herself for being in this position, about being charged and
8 being subjected to sentencing before the Court today.

9 However, we believe that there are mitigating
10 circumstances that make her case different than virtually all
11 of the others who were prosecuted or not prosecuted under
12 similar circumstances as her with these offshore accounts, and
13 we believe that she has shown an extraordinary acceptance of
14 responsibility.

15 And, Your Honor, to go through just -- I'm not going
16 to go through the same things we wrote in our sentencing
17 memorandum, but I do want to highlight a couple of issues.

18 First is that this is a woman who was unsophisticated
19 in financial matters, had no training in finance or taxes or
20 handling even her own personal accounts. For the first 30
21 years of her marriage she did not even see the monthly bank
22 statements. Everything was handled by her husband Mortimer,
23 Senior, who was a financial analyst, an investment banker, a
24 man who was very well versed in finances, and he's the one who
25 handled all of their accounts.

1 She did not work outside the house at all except she
2 spent her life in volunteer work. I mean, she worked at
3 hospitals, at thrift stores, at soup kitchens, at
4 rehabilitation centers working with children, working with the
5 disabled. That was her entire life until her husband got sick
6 and died in the year 2000. And that's when she then learned
7 about the extent of their finances and learned about these
8 accounts.

9 The accounts that are in question were established
10 with funds that her husband inherited from his aunt who lived
11 in Monte Carlo and died and left part of her estate to him. It
12 was not funds that were ever in the United States. She was not
13 a US taxpayer. She was a citizen and I think she was English
14 living in Monte Carlo, and there were no tax consequences of
15 this money.

16 However, her husband left the money in Europe and it
17 grew from what was not a large amount into a very significant
18 amount of money. However, there was never any deposits put
19 into this account by her husband or after his death by
20 Mrs. Curran. Whatever money was there was left there, and
21 that's how the funds grew. And she had nothing to do with the
22 creation of the accounts, of depositing money into it and
23 growing these accounts. But she did inherit these accounts.
24 At his death in the year 2000 she inherited the accounts along
25 with other funds from her late husband.

1 And this is where she made the mistakes. You know, we
2 all make mistakes in our lives and we hope that we're not
3 judged but just on our mistakes but we're judged on how we
4 handle those mistakes. And her mistake was that when she
5 inherited these accounts and got possession of them, or at
6 least a beneficial interest in them, she did not handle it
7 correctly, did not advise her US lawyers or US accountants, and
8 had the European bankers, accountants and lawyers handle it.
9 So there's no question that's where her mistakes were in not
10 reporting the accounts when she inherited them.

11 However, she tried to rectify that mistake. In the
12 year 2000 she wanted to make a voluntary disclosure of all the
13 funds in any of these accounts. On her own she contacted the
14 bankers in Europe and asked how she could disclose this. They
15 recommended that she obtain a tax lawyer in the United States
16 to do this.

17 She then retained a tax lawyer, gave him all of the
18 information, more than sufficient, to make the voluntary
19 disclosure according to the Internal Revenue Service programs
20 that were available at the time. This is before the offshore
21 voluntary disclosure programs were created. So she was going
22 to make a regular voluntary disclosure to the IRS.

23 Unfortunately, he waited too long, over a month, and
24 during that period of time UBS, the bank in question, gave the
25 names of 250 people to the Internal Revenue Service. And by

1 the time her voluntary disclosure came in, they had already had
2 her name for some three to four weeks. And under the rules of
3 the Internal Revenue Service if they have your name before you
4 make the voluntary disclosure, you are not eligible for their
5 program.

6 So even though she tried to do a voluntary disclosure
7 and her voluntary disclosure was filed seven days before the
8 first amnesty program was put into effect by the Internal
9 Revenue Service, her application was denied. And she was not
10 able to because of that obtain any benefit for attempting to
11 disclose it or any benefit from the three voluntary offshore
12 disclosure funds that were thereafter created by the Internal
13 Revenue Service.

14 UBS for some reason reported 285 people out of the
15 some 50,000 that had accounts with them, and she was one of
16 those 250. And, of course, this caused her to be treated far
17 differently than the overwhelming majority of people. And her
18 report was seven days before the first offshore voluntary
19 program went into effect.

20 So 38,000 people went through the three offshore
21 voluntary disclosure programs after her and received immunity
22 from prosecution. They were also treated and penalized far
23 different than her. They were penalized mainly at the rate of
24 20 percent for the FBAR violation of the largest amount of
25 money in the account. She was penalized by 50 percent. She

1 has been prosecuted criminally, indicted and arrested, and the
2 38,000 were not. And she has now been adjudicated a felon, and
3 all those 38,000 people did not suffer that designation.

4 The IRS created these amnesty programs called the
5 Offshore Voluntary Disclosure Fund in 2009, 2011, and 2012.
6 The one that's been created in 2012 has no time limit. So
7 anybody from now on into the future can make a voluntary
8 disclosure and receive immunity from prosecution. And as I
9 said, some 38,000 people have taken advantage of this.

10 Every one of those people got advanced warning from
11 the Internal Revenue Service to do this, but not Mrs. Curran.
12 The IRS warned United States taxpayers the consequences of not
13 entering the program, but not Mrs. Curran. Every one of these
14 38,000 people were given a second chance three times, yet
15 Mrs. Curran never received a second chance at all. She never
16 received the benefit of any of these programs.

17 Now, Your Honor, I know that one of the important
18 concepts of sentencing in a tax case is deterrence, and we all
19 know that we have a voluntary tax program and deterrence is
20 important so people pay their taxes. However, I believe that
21 granting her probation in this case is not inconsistent with
22 the aims of the Internal Revenue Service and the idea or
23 concept of deterrence.

24 The government through the Internal Revenue Service
25 created these amnesty programs not as a matter of deterrence.

1 That was not the aim of creating the program. But as the
2 Internal Revenue Service commissioner Doug Shulman said, "as I
3 said all along, the goal is to get people into the United
4 States tax system." And so deterrence was not really the aim
5 of any of these programs. It was really to reintegrate these
6 people back into the United States tax system. And that's why
7 I think what's important here in terms of thinking about a
8 sentence that deterrence is not really the same as it would be
9 in the ordinary tax case.

10 In addition to her attempts to disclose her accounts,
11 she also has another matter she did that I think shows her
12 cooperation. Soon after being denied entrance into the
13 program, on June 4, 2009, she agreed to meet with an Assistant
14 US Attorney and agents of the Internal Revenue Service. At
15 that time she made a full disclosure to them. Long before they
16 entered into any kind of investigation or prosecution of her
17 she gave a sworn statement -- I think it was sworn. I'm not a
18 hundred percent sure -- and gave them full cooperation and
19 described everything that she did, described every person who
20 worked with her, gave the names of all of the bankers, the
21 lawyers, the managers of all of the accounts, gave the dates
22 and times and information about everything that occurred with
23 them. And this was back, as I said, in June of 2009. And she
24 did all that she could to cooperate with the United States
25 Government.

1 Your Honor, some 50 plus taxpayers have been
2 criminally prosecuted out of those 50,000, and her situation
3 also is far different than theirs. She did not use this
4 account to skim money off of a business that she was running in
5 the United States. She did not create false business documents
6 in a United States business in order to hide her income. She
7 did not funnel money back to the United States from these
8 accounts claiming they were sham loans or some other method of
9 doing it. She did none of these things. She did not make any
10 extravagant purchases. And so her situation is really far
11 different than most of the others. And yet, most of them were
12 sentenced to probation. Some with house arrest or with
13 community service, but almost all were sentenced to a period of
14 probation. And I think that's why the probation officer in
15 this case has recommended probation and why the government is
16 not objecting to it.

17 Just two other personal matters, and then I will
18 conclude. In our memorandum we listed out many charitable
19 works that Mrs. Curran has done. As I said, she spent her
20 entire working life doing volunteer work. But she is not a
21 person who only donated money. This is a woman who spent her
22 time and effort from feeding people in soup kitchens to
23 visiting them in the hospitals and working with the disabled.

24 And the one that I particularly believe is worthy of
25 note is she worked with the Rehabilitation Center for Children

1 and Adults that's located here in Palm Beach. She worked there
2 for 32 years. For 32 years she worked with the children in the
3 preschool. And these are children who suffer from mainly
4 neurological disorders, from Down's syndrome to other
5 neurological disorders, which are incurable. And she worked
6 with children trying to assist them in doing such things as we
7 take for granted, like climbing the stairs, being able to go to
8 the playground, trying to work with them so they could go to a
9 normal kindergarten class. And this is very hard work. Most
10 people don't want to do this. People do not want to see
11 severely disabled children for which there is no cure and some
12 of whom the families are desperate. But she spent 32 years not
13 just making donations but 32 years of herself. And I think
14 that's probably one of the most noteworthy things that I have
15 seen that people do.

16 One last matter which I think sort of sums up how
17 seriously Mrs. Curran treats this case that's before Your Honor
18 this afternoon. Before we first came to this courthouse she
19 called us and asked us the address of the courthouse. And then
20 the next time we saw her we asked her, well, why did you want
21 to know where the courthouse was? And she said that she was so
22 anxious and worried that she wanted to practice driving to this
23 courthouse because she did not want to keep the prosecutors and
24 the Court waiting for her and she was so afraid that she might
25 be late. And I think that sort of sums up what her attitude

1 is, what her attitude to this case is, and tells you who she
2 is.

3 And I would echo what the Probation Department has
4 said. I would humbly ask the Court to sentence her to a period
5 of probation.

6 THE COURT: I had a couple of questions.

7 MR. BLACK: Yes, sir.

8 THE COURT: The account that was in Switzerland, it
9 had a foundation named in it?

10 MR. BLACK: Yes. The husband set up what was called
11 a -- some type of a foundation, and at their death the money
12 was to go to three different universities.

13 THE COURT: The foundation wasn't giving regularly, it
14 was just being held, accumulated, and then to be distributed
15 upon their death?

16 MR. BLACK: Yes.

17 THE COURT: So her name wasn't on the account nor was
18 her husband's name?

19 MR. BLACK: No.

20 THE COURT: I guess they would have a record of them
21 as being the principals in the foundation, right?

22 MR. BLACK: Right. They were the beneficial owners of
23 the case. Their name was not on the case. It was in the name
24 of the foundation.

25 THE COURT: But it was a revocable thing, I image.

1 MR. BLACK: Yes, it was revocable.

2 THE COURT: And apparently they traveled in Europe and
3 sometimes they used some of this money, did they?

4 MR. BLACK: Yes, Your Honor. Somewhere, depending on
5 the trip, 10, 15, or \$20,000. And what Mrs. Curran thought,
6 which whether it is accurate or not, as long as the funds were
7 spent in Europe it did not violate US law. That's what she
8 thought at one time.

9 THE COURT: I think maybe a lot of people think that,
10 and maybe reasonably so.

11 MR. BLACK: Yes, sir. But unfortunately that's not
12 the law.

13 THE COURT: At what point did she make this payment?
14 Was it after the indictment -- or is it an information? Before
15 the information?

16 MR. BLACK: Well, she made a deposit -- she had paid
17 taxes before she was charged, and then we had to wait for the
18 Service to create what's called a closing statement to get all
19 of the figures together. But she made deposits and made
20 payments before she was charged. In fact, when we were
21 undergoing this process. And now she has fully paid everything
22 prior to today.

23 THE COURT: All right. Let me hear from the
24 government at this time.

25 MR. BLACK: Thank you, Your Honor.

1 THE COURT: Let me ask you at the outset, do you
2 basically disagree with anything Mr. Black said?

3 MR DALY: We don't disagree with anything that
4 Mr. Black says. Based on many of the factors that he
5 highlighted as well as within the presentence investigation
6 report, the government doesn't oppose the variance downward.
7 Factually, Mr. Black has made a correct presentation.

8 THE COURT: Based upon those facts, did it ever occur
9 to the government this case ought to be dismissed and let this
10 thing go?

11 MR DALY: No, Your Honor.

12 THE COURT: It's totally consistent with all of the
13 amnesty programs the government has been running.

14 MR DALY: Your Honor, there is a certain level of
15 randomness to the level of government prosecution, but the
16 government drew a bright line in February 2009 in which it said
17 if at this point you haven't told the government about your
18 foreign bank account, you cannot, you cannot seek amnesty with
19 the IRS to the DOJ.

20 THE COURT: What Mr. Black said was she had already
21 turned it over to a lawyer to handle it. Apparently the lawyer
22 delayed it, and she would have qualified under it.

23 MR DALY: Had she come in prior to the production of
24 her name she would have qualified. But at that point she
25 hadn't. And the government has to draw bright lines as to

1 where --

2 THE COURT: I don't know if the government has to do
3 anything. It seems to me the government has a lot of
4 discretion and the government decided they wanted to make a
5 felon out of this woman.

6 MR DALY: Well, Your Honor, I think that's -- I think
7 while the fact of when the information was handed over, it
8 ignores the fact of when the US investigation of UBS AG came to
9 light. Starting in June 2008 there were numerous articles in
10 the Wall Street Journal, in the New York Times about the
11 government's investigation of foreign bankers. Bradley
12 Birkenfeld was prosecuted here.

13 THE COURT: This case is totally out of the scope of
14 all of your others case where people are skimming, were trying
15 to hide funds. I mean, this was an inheritance over there, and
16 I think a lot of reasonable people would think you don't have
17 to report this.

18 MR DALY: Your Honor, Mr. Curran, the late Mr. Curran
19 was a very wealthy man. They had attorneys and they had
20 accountants at the time of his death in 2000. Mrs. Curran at
21 that time had every opportunity to tell those accountants I
22 have tens of millions dollars in Switzerland.

23 THE COURT: Didn't she have advisers in Switzerland
24 also who --

25 MR DALY: Right, but no reasonable person would ignore

1 the US tax lawyers and accountants that they have. You don't
2 turn to a foreign national to ask you for an interpretation of
3 US law.

4 THE COURT: All right. Anything else you want to say?

5 MR DALY: No, Your Honor.

6 THE COURT: Mr. Black, does your client wish to
7 address the court? It's not necessary. She may not care to.

8 (Defendant and counsel conferring sotto voce.)

9 MR. BLACK: Your Honor, I think she is a little too
10 nervous to say anything.

11 THE COURT: I understand. I have to always give them
12 the opportunity if they would like to.

13 MR. BLACK: Yes, sir.

14 THE COURT: Well, this is really a tragic situation.
15 It's unfortunate and it seems to me the government should have
16 used a little more discretion in handling this.

17 Did you ever suggest to the government, Mr. Black,
18 that they should dismiss this case and settle for the -- what,
19 21 million did she pay?

20 MR. BLACK: Your Honor, I think -- we did have long
21 discussions with them. However, I cannot criticize the
22 government because I think they were within their discretion
23 and in their rules.

24 THE COURT: Within their discretion, but they could
25 exercise some discretion.

1 MR. BLACK: Yes, Your Honor. But I find it hard to
2 criticize them for what they did. And we had many
3 conversations, but I think that they have their rules and they
4 proceeded ahead. And I don't want to criticize them for that.

5 THE COURT: Okay. The Court has considered the
6 statements of all parties, the presentence report which
7 contains the advisory guidelines and the statutory factors as
8 set forth in Title 18 United States Code § 3353(a).

9 Pursuant to the Title 18 United States Code §
10 3553(a)(1) and (2), a variance from the advisory guideline
11 range of 30 to 37 months is warranted in this case.

12 Based upon the history and characteristics of the
13 defendant, a sentence of probation will provide for just
14 punishment for this offense. A term of imprisonment would be
15 unnecessarily harsh.

16 It is the finding of the Court that the defendant is
17 not able to pay a fine.

18 It is the judgment of the Court that the defendant,
19 Mary Estelle Curran, is placed on probation for a period of one
20 year. This term consists of a term of one year as to Counts 1
21 and 2, all such terms to run concurrently.

22 Now, you understand you're under probation, don't you,
23 Mrs. Curran?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I'm now revoking probation. Probation is

1 terminated. You were on probation for about five seconds
2 there.

3 THE DEFENDANT: Thank you.

4 THE COURT: The law requires me to put you on -- if I
5 don't put you in jail, I've got to put you on probation. It
6 doesn't say how long you have to stay there. So you are
7 officially off probation now.

8 The defendant shall immediately pay to the United
9 States a special assessment of \$100 as to each of Counts 1 and
10 2 for a total of \$200.

11 Now that sentence has been imposed, does the defendant
12 or her counsel object to the Court's finding of fact or to the
13 manner in which the sentence was pronounced?

14 MR. BLACK: No, Your Honor.

15 THE COURT: You have a right to appeal the sentence
16 imposed. Any notice of appeal must be filed within 14 days
17 after the entry of judgment. If you are unable to pay the
18 costs of an appeal, you may apply for leave to appeal without
19 payment of cost.

20 Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Black, I would urge you to file a
23 petition for a pardon with the executive branch. You can tell
24 them the Court thinks that this woman's felony should be
25 removed. And if the government doesn't join it, then it's just

1 spiteful I think.

2 MR. BLACK: Thank you, Your Honor. We certainly
3 appreciate Your Honor's comments today and that as well.

4 THE COURT: All right. Anything further?

5 MR DALY: No, Your Honor.

6 THE COURT: Thank you.

7 (Proceedings concluded at 1:49 p.m.)

8

9

10 C E R T I F I C A T E

11 I, Karl Shires, Registered Professional Reporter and
12 Federal Certified Realtime Reporter, certify that the foregoing
13 is a correct transcript from the record of proceedings in the
14 above-entitled matter.

15 Dated this 25th day of April, 2013.

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Karl Shires, RPR FCRR

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37 [1] 16/11	April [2] 1/8 18/15	characteristics [1] 16/12	defendant [8] 1/8 1/19 15/8 16/13 16/16 16/18 17/8 17/11
3728 [1] 1/24	arrest [1] 9/12	charged [3] 3/7 12/17 12/20	delayed [1] 13/22
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5	articles [1] 14/9	children [6] 4/4 9/25 10/2 10/3 10/6 10/11	DEPARTMENT [3] 1/17 2/7 11/3
50 [1] 9/1	asked [3] 5/14 10/19 10/20	circumstances [2] 3/10 3/12	depending [1] 12/4
50 percent [1] 6/25	assessment [1] 17/9	citizen [1] 4/13	deposit [1] 12/16
50,000 [2] 6/15 9/2	assist [1] 10/6	claiming [1] 9/8	depositing [1] 4/22
514-3728 [1] 1/24	Assistant [2] 2/8 8/13	class [1] 10/9	deposits [2] 4/18 12/19
561 [1] 1/24	attached [1] 2/24	Clematis [1] 1/24	described [2] 8/19 8/19
6	attempting [1] 6/10	client [2] 2/15 15/6	designation [1] 7/3
601 [1] 1/18	attempts [1] 8/10	climbing [1] 10/7	
7	attitude [2] 10/25 11/1	closing [1] 12/18	
701 [1] 1/24	Attorney [1] 8/14	Code [2] 16/8 16/9	
7334 [1] 1/18	attorneys [1] 14/19	come [1] 13/23	
A	aunt [1] 4/10	comments [1] 18/3	
able [3] 6/10 10/7 16/17	available [1] 5/20	commissioner [1] 8/2	
above-entitled [1] 18/14	B	community [1] 9/13	
acceptance [1] 3/13	back [3] 8/6 8/23 9/7	concept [1] 7/23	
accepts [1] 3/5	bank [3] 3/21 5/24 13/18	concepts [1] 7/18	
	banker [1] 3/23	conclude [1] 9/18	
		concluded [1] 18/7	
		concurrently [1] 16/21	

D	14/8 17/12 factors [2] 13/4 16/7 facts [1] 13/8 Factually [1] 13/7 false [1] 9/5 families [1] 10/12 far [4] 6/16 6/22 9/3 9/10 FBAR [1] 6/24 FCRR [2] 1/23 18/17 February [1] 13/16 February 2009 [1] 13/16 Federal [1] 18/12 feeding [1] 9/22 felon [2] 7/2 14/5 felony [1] 17/24 figures [1] 12/19 file [1] 17/22 filed [2] 6/7 17/16 finance [1] 3/19 finances [2] 3/24 4/7 financial [2] 3/19 3/23 find [1] 16/1 finding [2] 16/16 17/12 fine [1] 16/17 first [6] 2/3 3/18 3/20 6/8 6/18 10/18 five [1] 17/1 FLORIDA [4] 1/1 1/8 1/21 1/25 foregoing [1] 18/12 foreign [3] 13/18 14/11 15/2 forth [1] 16/8 foundation [5] 11/9 11/11 11/13 11/21 11/24 four [1] 6/2 full [3] 3/5 8/15 8/18 fully [1] 12/21 Fund [1] 7/5 funds [8] 4/10 4/12 4/21 4/25 5/13 6/12 12/6 14/15 funnel [1] 9/7 further [1] 18/4 future [1] 7/7	guideline [1] 16/10 guidelines [1] 16/7 guilty [1] 3/6	investigation [4] 8/16 13/5 14/8 14/11 investment [1] 3/23 IRS [5] 2/9 5/22 7/4 7/12 13/19 issues [1] 3/17 it's [4] 13/12 15/7 15/15 17/25
desperate [1] 10/12 deterrence [6] 7/18 7/19 7/23 7/25 8/4 8/8 Didn't [1] 14/23 died [2] 4/6 4/11 different [5] 3/10 6/23 9/3 9/11 11/12 differently [1] 6/17 disabled [3] 4/5 9/23 10/11 disagree [2] 13/2 13/3 disclose [3] 5/14 6/11 8/10 disclosure [13] 5/12 5/19 5/21 5/22 6/1 6/4 6/6 6/7 6/12 6/21 7/5 7/8 8/15 discretion [5] 14/4 15/16 15/22 15/24 15/25 discussions [1] 15/21 dismiss [1] 15/18 dismissed [1] 13/9 disorders [2] 10/4 10/5 distributed [1] 11/14 DISTRICT [3] 1/1 1/1 1/13 DIVISION [2] 1/17 2/7 documents [1] 9/5 doing [3] 9/9 9/20 10/6 DOJ [1] 13/19 dollars [1] 14/22 donated [1] 9/21 donations [1] 10/13 Doug [1] 8/2 Down's [1] 10/4 downward [1] 13/6 draw [1] 13/25 drew [1] 13/16 driving [1] 10/22	H handed [1] 14/7 handle [4] 5/4 5/6 5/8 13/21 handled [2] 3/22 3/25 handling [2] 3/20 15/16 hard [2] 10/9 16/1 harsh [1] 16/15 hear [2] 3/2 12/23 held [1] 11/14 hide [2] 9/6 14/15 highlight [1] 3/17 highlighted [1] 13/5 history [1] 16/12 Hoffman [1] 2/12 Honor [2] 2/6 2/11 2/21 3/4 3/15 7/17 9/1 10/17 12/4 12/25 13/11 13/14 14/6 14/18 15/5 15/9 15/20 16/1 17/14 18/2 18/5 Honor's [1] 18/3 HONORABLE [1] 1/12 hope [1] 5/2 hospitals [2] 4/3 9/23 house [2] 4/1 9/12 humbly [1] 11/4 hundred [1] 8/18 husband [7] 3/22 4/5 4/10 4/16 4/19 4/25 11/10 husband's [1] 11/18	J Jackie [1] 2/12 jail [1] 17/5 Johnson [1] 2/9 join [1] 17/25 Journal [1] 14/10 JUDGE [1] 1/13 judged [2] 5/3 5/3 judgment [2] 16/18 17/17 June [3] 8/13 8/23 14/9 June 2008 [1] 14/9 June 4 [1] 8/13 JUSTICE [2] 1/17 2/7	
E echo [1] 11/3 effect [2] 6/8 6/19 effort [1] 9/22 eligible [1] 6/4 English [1] 4/13 entered [1] 8/16 entering [1] 7/13 entire [2] 4/5 9/20 entitled [1] 18/14 entrance [1] 8/12 entry [1] 17/17 errors [1] 2/17 ESQ [1] 1/20 established [1] 4/9 estate [1] 4/11 ESTELLE [2] 1/7 16/19 Europe [4] 4/16 5/14 12/2 12/7 European [1] 5/8 executive [1] 17/23 exercise [1] 15/25 extent [1] 4/7 extraordinary [1] 3/13 extravagant [1] 9/10	I I'll [1] 3/2 I'm [3] 3/15 8/17 16/25 I've [1] 17/5 idea [1] 7/22 ignore [1] 14/25 ignores [1] 14/8 image [1] 11/25 immediately [1] 17/8 immunity [2] 6/21 7/8 important [3] 7/17 7/20 8/7 imposed [2] 17/11 17/16 imprisonment [1] 16/14 income [1] 9/6 inconsistent [1] 7/21 incurable [1] 10/5 indicted [1] 7/1 indictment [1] 12/14 information [5] 5/18 8/22 12/14 12/15 14/7 inherit [1] 4/23 inheritance [1] 14/15 inherited [4] 4/10 4/24 5/5 5/10 intended [1] 2/25 interest [1] 5/6 Internal [10] 5/19 5/25 6/3 6/8 6/12 7/11 7/22 7/24 8/2 8/14 interpretation [1] 15/2	K keep [1] 10/23 KENNETH [1] 1/12 kind [1] 8/16 kindergarten [1] 10/9 kitchens [2] 4/3 9/22 know [5] 5/1 7/17 7/19 10/21 14/2 KORNSPAN [1] 1/19	
F fact [4] 12/20 14/7	G give [1] 15/11 given [1] 7/14 giving [1] 11/13 go [6] 3/15 3/16 10/7 10/8 11/12 13/10 goal [1] 8/3 going [2] 3/15 5/21 Good [2] 2/3 2/11 government [19] 1/16 7/24 8/25 9/15 12/24 13/6 13/9 13/13 13/15 13/16 13/17 13/25 14/2 14/3 14/4 15/15 15/17 15/22 17/25 government's [1] 14/11 granted [1] 10/7 granting [1] 7/21 grew [2] 4/17 4/21 growing [1] 4/23 guess [1] 11/20	L Lanigan [1] 2/8 large [1] 4/17 largest [1] 6/24 late [3] 4/25 10/25 14/18 law [4] 12/7 12/12 15/3 17/4 lawyer [4] 5/15 5/17 13/21 13/21 lawyers [4] 5/7 5/8 8/21 15/1 learned [2] 4/6 4/7 leave [1] 17/18 left [3] 4/11 4/16 4/20 letters [1] 2/24 level [2] 13/14 13/15 life [3] 4/2 4/5 9/20 light [1] 14/9 limit [1] 7/6 line [1] 13/16 lines [1] 13/25 listed [1] 9/18 Litigation [1] 2/6 little [2] 15/9 15/16 lived [1] 4/10 lives [1] 5/2 living [1] 4/14 loans [1] 9/8 located [1] 10/1 long [5] 5/23 8/15 12/6 15/20 17/6 lot [3] 12/9 14/3 14/16	M majority [1] 6/17

M	O	principals [1] 11/21 prior [2] 12/22 13/23 probably [1] 10/14 probation [15] 7/21 9/12 9/14 9/14 9/15 11/3 11/5 16/13 16/19 16/22 16/25 16/25 17/1 17/5 17/7 proceed [2] 2/20 3/1 proceeded [1] 16/4 proceedings [3] 1/11 18/7 18/13 process [1] 12/21 production [1] 13/23 Professional [1] 18/11 program [7] 6/5 6/8 6/19 7/13 7/19 8/1 8/13 programs [8] 5/19 5/21 6/21 7/4 7/16 7/25 8/5 13/13 pronounced [1] 17/13 prosecuted [5] 3/11 3/11 7/1 9/2 14/12 prosecution [4] 6/22 7/8 8/16 13/15 prosecutors [1] 10/23 provide [1] 16/13 punishment [1] 16/14 purchases [1] 9/10 Pursuant [1] 16/9 put [5] 4/18 6/8 17/4 17/5 17/5	18/11 18/12 reporting [1] 5/10 requires [1] 17/4 responsibility [2] 3/5 3/14 retained [1] 5/17 Revenue [10] 5/19 5/25 6/3 6/9 6/13 7/11 7/22 7/24 8/2 8/14 reviewed [1] 2/15 revocable [2] 11/25 12/1 revoking [1] 16/25 right [10] 2/10 2/20 3/2 11/21 11/22 12/23 14/25 15/4 17/15 18/4 Room [1] 1/18 ROY [2] 1/20 2/11 RPR [2] 1/23 18/17 rules [3] 6/2 15/23 16/3 run [1] 16/21 running [2] 9/4 13/13 RYSKAMP [2] 1/2 1/12
<p>making [1] 10/13 man [2] 3/24 14/19 managers [1] 8/21 manner [1] 17/13 MARK [2] 1/16 2/6 marriage [1] 3/21 MARY [2] 1/7 16/19 matter [4] 7/25 8/11 10/16 18/14 matters [2] 3/19 9/17 mean [2] 4/2 14/15 meet [1] 8/13 memorandum [3] 2/22 3/17 9/18 method [1] 9/8 Miami [1] 1/21 million [1] 15/19 millions [1] 14/22 mistake [2] 5/4 5/11 mistakes [5] 5/1 5/2 5/3 5/4 5/9 mitigating [1] 3/9 money [11] 4/15 4/16 4/18 4/20 4/22 6/25 9/4 9/7 9/21 11/11 12/3 Monte [2] 4/11 4/14 month [1] 5/23 monthly [1] 3/21 months [1] 16/11 Mortimer [1] 3/22 Mr [1] 14/18 Mr. [8] 13/2 13/4 13/7 13/20 14/18 15/6 15/17 17/22 Mr. Black [7] 13/2 13/4 13/7 13/20 15/6 15/17 17/22 Mr. Curran [1] 14/18 Mrs [1] 2/12 Mrs. [10] 3/5 4/20 7/11 7/13 7/15 9/19 10/17 12/5 14/20 16/23 Mrs. Curran [10] 3/5 4/20 7/11 7/13 7/15 9/19 10/17 12/5 14/20 16/23</p>	<p>object [1] 17/12 objecting [1] 9/16 obtain [2] 5/15 6/10 occur [1] 13/8 occurred [1] 8/22 offense [1] 16/14 offenses [1] 3/6 officer [1] 9/14 Official [1] 1/24 officially [1] 17/7 offshore [6] 3/12 5/20 6/11 6/18 6/20 7/5 Okay [2] 2/14 16/5 omissions [1] 2/17 opportunity [2] 14/21 15/12 oppose [1] 13/6 order [2] 2/1 9/6 ordinary [1] 8/9 ought [1] 13/9 outset [1] 13/1 outside [1] 4/1 overwhelming [1] 6/17 owners [1] 11/22</p>	<p>qualified [2] 13/22 13/24 question [3] 4/9 5/9 5/24 questions [1] 11/6</p>	<p>S saw [1] 10/20 says [1] 13/4 scope [1] 14/13 Scott [1] 2/9 seated [1] 2/2 second [2] 7/14 7/15 seconds [1] 17/1 see [2] 3/21 10/10 seek [1] 13/18 seen [1] 10/15 SENIOR [3] 1/13 2/6 3/23 sent [1] 2/22 sentence [6] 8/8 11/4 16/13 17/11 17/13 17/15 sentenced [2] 9/12 9/13 sentencing [6] 1/11 2/22 3/1 3/8 3/16 7/18 seriously [1] 10/17 service [12] 5/19 5/25 6/3 6/9 6/13 7/11 7/22 7/24 8/2 8/14 9/13 12/18 set [2] 11/10 16/8 settle [1] 15/18 seven [2] 6/7 6/18 severely [1] 10/11 sham [1] 9/8 short [1] 2/25 shown [1] 3/13 shows [1] 8/11 Shulman [1] 8/2 sick [1] 4/5 significant [1] 4/17 similar [1] 3/12 sir [7] 2/16 2/19 11/7 12/11 15/13 16/24 17/21 situation [3] 9/2 9/10 15/14 skim [1] 9/4 skimming [1] 14/14 Soon [1] 8/12 sort [2] 10/16 10/25</p>
<p>N name [7] 6/2 6/3 11/17 11/18 11/23 11/23 13/24 named [1] 11/9 names [2] 5/25 8/20 Nathan [1] 2/12 national [1] 15/2 necessary [1] 15/7 nervous [1] 15/10 neurological [2] 10/4 10/5 never [3] 4/18 7/15 7/15 New [1] 14/10 normal [1] 10/9 note [1] 9/25 noteworthy [1] 10/14 notice [1] 17/16 numerous [1] 14/9 NW [1] 1/18</p>	<p>P p.m [2] 1/9 18/7 paid [2] 12/16 12/21 Palm [3] 1/8 1/25 10/1 pardon [1] 17/23 part [1] 4/11 particularly [1] 9/24 parties [1] 16/6 pay [5] 7/20 15/19 16/17 17/8 17/17 payment [2] 12/13 17/19 payments [1] 12/20 penalized [3] 6/22 6/23 6/25 people [18] 5/25 6/14 6/17 6/20 7/3 7/9 7/10 7/14 7/20 8/3 8/6 9/22 10/10 10/10 10/15 12/9 14/14 14/16 percent [3] 6/24 6/25 8/18 Perczek [1] 2/12 period [4] 5/24 9/13 11/4 16/19 person [3] 8/19 9/21 14/25 personal [2] 3/20 9/17 petition [1] 17/23 placed [1] 16/19 Plaintiff [1] 1/5 playground [1] 10/8 please [1] 2/5 pled [1] 3/6 plus [1] 9/1 point [3] 12/13 13/17 13/24 position [1] 3/7 possession [1] 5/5 practice [1] 10/22 preschool [1] 10/3 present [1] 2/22 presentation [1] 13/7 presence [3] 2/15 13/5 16/6</p>	<p>Q qualified [2] 13/22 13/24 question [3] 4/9 5/9 5/24 questions [1] 11/6</p> <p>R randomness [1] 13/15 range [1] 16/11 rate [1] 6/23 read [1] 2/23 really [5] 8/4 8/5 8/8 9/10 15/14 Realtime [1] 18/12 reason [1] 6/14 reasonable [2] 14/16 14/25 reasonably [1] 12/10 receive [1] 7/8 received [4] 2/14 6/21 7/15 7/16 recommended [2] 5/15 9/15 record [2] 11/20 18/13 rectify [1] 5/11 Registered [1] 18/11 regular [1] 5/22 regularly [1] 11/13 rehabilitation [2] 4/4 9/25 reintegrate [1] 8/5 remarks [1] 2/25 removed [1] 17/25 report [5] 2/15 6/18 13/6 14/17 16/6 reported [1] 6/14 Reporter [4] 1/23 1/24</p>	

<p>S</p> <p>sotto [1] 15/8 soup [2] 4/3 9/22 South [1] 1/20 SOUTHERN [1] 1/1 special [2] 2/8 17/9 spent [5] 4/2 9/19 9/21 10/12 12/7 spiteful [1] 18/1 SREBNICK [1] 1/19 stairs [1] 10/7 Starting [1] 14/9 state [1] 2/5 statement [2] 8/17 12/18 statements [2] 3/22 16/6 STATES [16] 1/1 1/4 2/3 2/8 4/12 5/15 7/12 8/4 8/6 8/24 9/5 9/6 9/7 16/8 16/9 17/9 statutory [1] 16/7 stay [1] 17/6 stores [1] 4/3 Street [3] 1/18 1/24 14/10 STUMPF [1] 1/19 subjected [1] 3/8 suffer [2] 7/3 10/3 sufficient [1] 5/18 suggest [1] 15/17 Suite [2] 1/21 1/24 sums [2] 10/16 10/25 sure [1] 8/18 Switzerland [3] 11/8 14/22 14/23 sworn [2] 8/17 8/17 syndrome [1] 10/4 system [2] 8/4 8/6</p>	<p>Thomas [1] 2/8 thought [2] 12/5 12/8 three [5] 6/2 6/11 6/20 7/14 11/12 thrift [1] 4/3 time [12] 3/3 5/20 5/24 6/1 7/6 8/15 9/22 10/20 12/8 12/24 14/20 14/21 times [3] 7/14 8/22 14/10 Title [2] 16/8 16/9 today [3] 3/8 12/22 18/3 told [1] 13/17 total [1] 17/10 totally [2] 13/12 14/13 tragic [1] 15/14 training [1] 3/19 transcript [2] 1/11 18/13 traveled [1] 12/2 treated [2] 6/16 6/22 treats [1] 10/17 tried [2] 5/11 6/6 trip [1] 12/5 trying [3] 10/6 10/8 14/14 turn [1] 15/2 turned [1] 13/21 two [1] 9/17 type [1] 11/11</p>	<p>W</p> <p>wait [1] 12/17 waited [1] 5/23 waiting [1] 10/24 Wall [1] 14/10 want [7] 3/17 10/10 10/10 10/20 10/23 15/4 16/4 wanted [3] 5/12 10/22 14/4 warned [1] 7/12 warning [1] 7/10 warranted [1] 16/11 Washington [1] 1/18 We've [1] 2/22 wealthy [1] 14/19 weeks [1] 6/2 well [8] 2/13 3/24 10/20 12/16 13/5 14/6 15/14 18/3 went [2] 6/19 6/20 were [22] 3/11 4/9 4/12 4/14 5/9 5/20 5/21 6/12 6/22 6/23 7/2 7/14 9/8 9/11 9/13 11/22 12/6 12/20 14/9 14/14 15/22 17/1 West [2] 1/8 1/25 wish [1] 15/6 witnesses [1] 2/21 woman [3] 3/18 9/21 14/5 woman's [1] 17/24 work [5] 4/1 4/2 9/20 10/8 10/9 worked [6] 4/2 8/20 9/25 10/1 10/2 10/5 working [4] 4/4 4/4 9/20 9/23 works [1] 9/19 worried [1] 10/22 worthy [1] 9/24 wrote [1] 3/16</p>
<p>T</p> <p>take [1] 10/7 taken [1] 7/9 tax [11] 1/17 2/7 4/14 5/15 5/17 7/18 7/19 8/4 8/6 8/9 15/1 taxes [3] 3/19 7/20 12/17 taxpayer [1] 4/13 taxpayers [2] 7/12 9/1 tell [2] 14/21 17/23 tells [1] 11/1 tens [1] 14/22 term [3] 16/14 16/20 16/20 terminated [1] 17/1 terms [2] 8/7 16/21 Thank [5] 3/4 12/25 17/3 18/2 18/6 theirs [1] 9/3 thing [2] 11/25 13/10 things [4] 3/16 9/9 10/6 10/14 think [19] 4/13 8/7 8/11 8/17 9/14 10/13 10/16 10/25 12/9 12/9 14/6 14/6 14/16 14/16 15/9 15/20 15/22 16/3 18/1 thinking [1] 8/7 thinks [1] 17/24</p>	<p>U</p> <p>U.S [1] 1/13 UBS [3] 5/24 6/14 14/8 unable [1] 17/17 undergoing [1] 12/21 understand [3] 15/11 16/22 17/20 unfortunate [1] 15/15 unfortunately [2] 5/23 12/11 UNITED [16] 1/1 1/4 2/3 2/8 4/12 5/15 7/12 8/3 8/6 8/24 9/5 9/6 9/7 16/8 16/9 17/8 universities [1] 11/12 unnecessarily [1] 16/15 unsophisticated [1] 3/18 urge [1] 17/22 use [1] 9/3</p>	<p>Y</p> <p>year [5] 4/6 4/24 5/12 16/20 16/20 years [5] 3/21 10/2 10/2 10/12 10/13 York [1] 14/10</p>
	<p>V</p> <p>variance [2] 13/6 16/10 versed [1] 3/24 versus [1] 2/4 violate [1] 12/7 violation [1] 6/24 virtually [1] 3/10 visiting [1] 9/23 voce [1] 15/8 voluntary [14] 5/12 5/18 5/21 5/22 6/1 6/4 6/6 6/7 6/11 6/18 6/21 7/5 7/7 7/19 volunteer [2] 4/2 9/20</p>	