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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 08-0115

WASHINGTON, D.C.

VERSUS

MONDAY, JUNE 8, 2009

11:00 A.M.

ANDREW BODNAR

SENTENCING

BEFORE THE HONORABLE RICARDO M. URBINA

UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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Proceedings recorded by mechanical stenography.

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P-R-O-C-E-E-D-I-N-G-S

1
2 THE DEPUTY CLERK: Matter before the Court, civil --
3 I'm sorry -- criminal case number 08-0115; United State of
4 America versus Andrew Bodnar. Appearing for the government,
5 Mr. Terzaken, Mr. Snyder, Mr. Cralle, and Ms. Brown.
6 Attorneys present for the defendant, Mr. Steigman, Mr.
7 Abramowitz, Mr. Machen, Mr. Ochoa, Mr. Juris, Mr. Bader, Mr.
8 Shapiro, Mr. Ahn; probation officer, Ms. Cave.

9 THE COURT: Did you recognize Mr. Machen?

10 THE DEPUTY CLERK: Machen; yes.

11 THE COURT: I wanted to make sure we didn't miss
12 him.

13 THE DEPUTY CLERK: No, we didn't.

14 THE COURT: All right. Counsel, good morning. Good
15 morning, Mr. Bodnar, and good morning to the representatives
16 of the probation office.

17 We are here to examine the case for sentencing
18 purposes. I'm aware Mr. Bodnar has entered a plea to one
19 count of false certificate, a misdemeanor. The parties have
20 amply supplied the Court with -- okay. Thank you. The
21 parties have amply supplied the Court with memoranda and
22 numerous exhibits to assist the Court in ascertaining what the
23 right sentence should be. The government, as well, has
24 provided a memorandum in aid of sentencing, and my discussions
25 with probation reveal nothing new that I would need to share

1 with the parties. There was no additional information
2 provided. The pre-sentence report seems pretty clearly to
3 contain everything that needs to be examined for sentencing
4 purposes.

5 So I'll hear from counsel at this point. Mr.
6 Shapiro(sic), good morning.

7 MR. ABRAMOWITZ: Good morning, Your Honor. I take
8 you at your word that you have read everything that we have
9 submitted, and I do not intend this morning to insult you by
10 repeating much of what's contained in the memoranda and in the
11 pre-sentence report and in the various letters.

12 I just want to add a personal note. At the end of
13 this year, I will have been in a practice of law for 45 years,
14 almost all of which completely devoted to the criminal justice
15 system or in large part devoted to the criminal justice
16 system. Other than the two years I was a law clerk, I was
17 prosecutor for many years, and I was a defense counsel for
18 many more years.

19 I have never met or encountered an individual of the
20 quality of Andrew Bodnar. You can tell from the letters that
21 have been submitted from people in a high station in life,
22 people in a relatively low station of life -- former judges;
23 former prosecutors; academics; scientists; people devoted to
24 the community and community service -- that Andrew Bodnar is
25 an extraordinary human being.

1 Were I to be standing here as a defendant, I could
2 not, or no one on my behalf could, submit letters of this
3 sort. We have here the confluence of an extraordinary human
4 being with an extraordinary history exemplifying the American
5 dream, who has given back through his community efforts at the
6 blood center, at the Fox Chase Cancer Center, at the homeless
7 shelter -- every ounce of his energy in the last two years,
8 particularly, has been devoted to the community and giving
9 back.

10 The confluence of an extraordinary human being with
11 what has to be deemed an unusual case, and in light of that,
12 we stand here before you in a position that Andrew Bodnar
13 could not have imagined, could not have imagined ever in his
14 life as a defendant in a criminal case.

15 We acknowledged, and I don't want to dwell on the
16 fact that the crime to which he -- for which he has pled
17 guilty is a crime that accepts responsibility, which is a very
18 important part of his character; accepts responsibility for
19 his conduct in the way the negotiations for -- with Apotex
20 took place.

21 He made certain statements during the course of that
22 negotiation which reassured or had the effect of reassuring
23 principals at Apotex that were he to be present in 2011, still
24 on the BMS board and in the same position that he was in, he
25 would advocate that BMS not launch its own authorized generic.

1 He read and many other people read, including counsel, this
2 counsel read the certification request to ask for any
3 agreements that had been made, and as Your Honor remembers
4 from the oral argument, that was a reading of the
5 certification that counsel believed in and Mr.
6 Bodnar, Dr. Bodnar, believed in.

7 Your Honor ruled that the statements as charged in
8 the indictment could be a representation within the meaning of
9 that certification. Once Your Honor ruled in that fashion,
10 Andrew Bodnar realized then that the certification that was
11 submitted, if indeed it called for the kind of representation
12 that he had made to Apotex, is wrong.

13 It did not include any of the statements that he
14 personally made to the principals and acknowledges the fact
15 that in that sense the statement is false, and he, therefore,
16 has chosen to plead guilty to the crime, the misdemeanor of
17 1018, which does not require willfulness or an intent to
18 defraud, but does require simply that he knew that this was a
19 certification, and it turns out he now knows that it is false.

20 The fact that he wants to and insisted on taking
21 responsibility for this conduct is -- as you can tell from the
22 letters and the presentence report -- perfectly consistent
23 with his character. This is an extraordinary human being
24 that's standing before you, one with many years left to devote
25 to the kind of public service and community service that he

1 has in the past performed.

2 So I urge Your Honor in taking all of these things
3 into consideration -- we have urged Your Honor to impose a
4 fine only, not any term of probation, and one of the reasons
5 that we seek that kind of a sentence as opposed to just a
6 probation sentence is that he -- as I indicated -- wants to
7 continue his good works with these charities. He's on the
8 board of the New York Blood Center and of the Fox Cancer
9 Center in Philadelphia.

10 To the extent that probation may be an impediment to
11 his continuing in that role, we urge that Your Honor consider,
12 and it's permitted under the guidelines, to give a fine only.
13 He is not in need of the type of services that the probation
14 department serve in seeking defendants' rehabilitation and
15 re-entry into society.

16 I think Your Honor can be assured and should be
17 confident that you -- Andrew Bodnar is not someone that needs
18 probation to bring home to him the seriousness of what has
19 happened to him. So I urge Your Honor, consistent with the
20 plea agreement and within the guideline range, that you impose
21 a sentence of a fine only and let Dr. Bodnar return to the
22 kind of work that he loves to do which is helping people.

23 One of the telling things in a couple of the letters
24 is he had spent so many years at Massachusetts General and as
25 a treating physician and then was persuaded that he should

1 enter the pharmaceutical industry because he said and told
2 people that he felt he could help more people in that capacity
3 than treating individual patients.

4 To that extent, he was an enormous influence on the
5 preparation of Plavix, which has been a very successful drug
6 and has saved very many lives. He's also been involved with
7 Herbatux and with Taxol and with Videx; Videx being a drug for
8 Aids. The other two being potentially very important drugs
9 for cancer. This is the kind of help he wants to continue to
10 do and perform in the community services that he has latched
11 up with.

12 So I urge Your Honor to impose a fine. You must
13 impose a fine under the guidelines, and we have agreed that it
14 has to be the guideline sentence, but I urge you even in that
15 that it be at the lenient end of the fine. You know that this
16 is an unusual case and that Dr. Bodnar's acceptance of
17 responsibility for it is an extraordinary testament to his
18 character.

19 Thank you very much.

20 THE COURT: Thank you, Mr. Shapiro(sic). All right.
21 I'll hear from the government.

22 MR. TERZAKEN: Good morning, Your Honor.

23 THE COURT: Good morning, sir.

24 MR. TERZAKEN: John Terzaken for the government.
25 The government and counsel continue to disagree over the

1 underlying intent with respect to the pending charge of a
2 false statement, which is still pending before this court, but
3 pursuant to the agreement between the parties upon sentencing,
4 the government will ask in its closing comments to the Court
5 to dismiss that charge with prejudice.

6 So we're going to put aside the arguments that we
7 may have about the relative intent because what the parties do
8 agree on and what they believe this resolution resolves is on
9 the facts that Mr. Bodnar believes them and is willing to
10 allocute, and, that is, that he does understand that the
11 certificate that he submitted to the FTC was in fact false.

12 The resolution in this case is handled by the plea
13 agreement, which is pursuant to Rule 11(c)(1) -- (c)(1)(B)
14 asks for the Court to impose a sentence consistent with the
15 guidelines which are zero to six months of incarceration;
16 supervised release of one year following any term should the
17 Court impose a term of imprisonment; a criminal fine of \$250
18 to \$5,000, and a special assessment of \$25.

19 The defendant is also eligible, as noted in the
20 probation report, for up to three years of probation. The
21 government submitted in its sentencing memorandum a discussion
22 among those terms in the plea agreement, also what are
23 considered to be the nature of the offense or a discussion of
24 that, and part of that was the government wanted to make sure
25 that the Court in determining how it impose a sentence and

1 whether the Court imposes a sentence consistent with the
2 guidelines as agreed to by the parties and in exercising it's
3 3553 discretion understands and seeks to impose a sentence
4 that promotes respect for the law.

5 Because what we have here at base is a negotiation
6 over a product that is taken by over 48 million Americans and
7 does sales of up to \$4 billion as year. This is not the run
8 of the mill aspirin product. This is a prescription drug
9 that's covered by a patent that, again, 48 million Americans
10 are taking everyday to prevent blood clots and other things.

11 What this case is about is a resolution over a
12 patent settlement. This was litigation that was occurring
13 over a patent, whether that patent was in fact valid and a
14 generic company, Apotex, was challenging that patent, and the
15 parties, as they certainly are permitted to do, sat down and
16 tried to come to a resolution of that particular patent
17 litigation.

18 Now, the incentives on both sides here are
19 important. Of course, Bristol-Myers Squibb who's on the side
20 of representing the patent wants to continue to hold that
21 patent up to the period it is set to expire, which is 2011,
22 because, among other things, it prevents then competition from
23 any generic company for that entire term of the patent.

24 Apotex, on the other sides of things, of course, is not
25 going to forego its patent challenge unless it gets something

1 in return, and, here, what it was getting in return was an
2 agreement that it would have a period of exclusivity; that is,
3 a period where it would be the only generic in the market for
4 a certain period of time at the close of the patent term. So
5 both sides had monetary interests.

6 The important piece of this case and where these
7 representations come in relating to what the parties
8 discussed, what they agreed or may not have agreed to, in
9 relation to what BMS would do and whether it would challenge
10 that generic company at the time that exclusive arrangement
11 came clear.

12 What we have here in this case, at least on the
13 facts as they were proffered by the defendant, were certain
14 statements that were made, and we can agree to disagree as we
15 have over the content, perhaps, of all of those statements or
16 the import of those statements, but they were statements that
17 went to whether or not BMS, at least in the defendant's view,
18 would compete in that generic market at the period that this
19 patent exclusivity took place, and, more importantly, he was
20 the voice of BMS and also their partner, Sanofi, at the only
21 meetings and the only person representing those companies at
22 the time that these statements were made at those meeting.
23 That's what principally this case is about.

24 Now, the FTC, for its part and where the
25 certification comes in, was responsible under the consent

1 decree that the defendant's corporation had with the
2 government to report and to monitor any patent settlements
3 that occurred between the corporation and generic companies;
4 specifically, to make sure that there were no anti-competitive
5 agreements reached by that company with generic companies that
6 would prevent Americans from getting access to affordable
7 prescription drugs.

8 Overlaid on top of that was also Congress' Act --
9 this is the Medicare -- I better read it all out because it's
10 lengthy -- Medicare Prescription Drug Improvement and
11 Modernization Act of 2003 -- which I like to simply call the
12 MMA; but this was Congress' additional attempt to ask or to
13 require, rather, patent brand name pharmaceutical companies
14 like BMS to report to the government, not only to the FTC, but
15 also to the Department of Justice, any agreements and related
16 understandings that they reached with generic companies about
17 resolving patent disputes; specifically, again, the intent to
18 insure that Americans had access to affordable drugs.

19 The government has been attempting to forego at all
20 points our agreements that would basically forestall
21 competition for a particular drug; that is, if there's a
22 patented drug, Americans want access to generics if in fact
23 that patent isn't valid or if there's a better means to get
24 that -- have that accessibility made.

25 Both of those acts -- or that is the FTC's authority

1 under the consent decree and also the Medicare Prescription
2 Drug Act or the MMA -- solely rely on the honesty and
3 integrity of the companies and individuals who were dealing
4 with the government in order to be enforced, and that's at
5 issue what's going on in this case, and, that is, there was a
6 false certification.

7 And, again, putting the intent aside, nonetheless, a
8 false certification where the government can't rely on the
9 honesty and integrity of the information being provided to it
10 compromises the government's ability to do its job, and, in
11 this case, to insure Americans have access to affordable
12 prescription drugs.

13 The government's position in this case is that --
14 given that the intent issue here has been removed, and we are
15 talking about a misdemeanor -- that the sentencing guidelines
16 calculations, as agreed to by the parties, are appropriate and
17 that is that the Court has the discretion within those
18 guidelines to fashion an appropriate remedy.

19 And what we would ask is that the Court consider its
20 3553 discretion, that the Court also consider in fashioning
21 that remedy and looking at the guidelines and whether or not
22 something within those guidelines is appropriate that the
23 Court's focus should be on promoting respect for the law, and,
24 in this instance, promoting respect for individuals who have
25 to deal with the government and where the government has to

1 rely on the honesty and integrity of those people to make sure
2 that the government can do its job appropriately.

3 With those considerations, we would ask the Court,
4 again, to impose a sentence within the guideline calculations
5 agreed to by the parties, and then, finally, the government
6 would also move for the Court's consideration following
7 sentencing to dismiss the one-count false statement charge
8 that is still currently pending before the Court with
9 prejudice, and this is the one-count false statement charge
10 that was filed with the Court on April 23rd of 2008.

11 THE COURT: Thank you.

12 MR. TERZAKEN: Thank you, Your Honor.

13 MR. ABRAMOWITZ: Your Honor, may I be heard briefly?

14 THE COURT: Yes, sir.

15 MR. ABRAMOWITZ: Mr. Terzaken persists in bringing
16 before the Court his view of what the evidence might have
17 shown. The problem with that is he has agreed with -- and
18 made part of the plea agreement -- the allocution which
19 basically tells this Court Dr. Bodnar did not enter into any
20 illicit agreement, did not cheat the government in any way, or
21 to deprive it from information which it legitimately could
22 need to determine whether there was an illicit agreement.
23 There never was an illicit agreement.

24 Dr. Bodnar simply said if he had the ability to bind
25 the company -- and he doesn't, didn't, and made clear, and

1 it's part of the allocution that he didn't have the ability to
2 bind the company -- he would advocate within the company in
3 2011 that BMS not launch an authorized generic.

4 There has been no agreement. There never was one so
5 that the public has not suffered in any way except as
6 follows: Because this agreement, whatever the agreement was,
7 was scuttled, that agreement would -- original agreement in
8 March -- would have provided for the generic of Apotex to be
9 available to the public six months earlier than the patent
10 expiration. As a result of scuttling the agreement, as a
11 matter of fact, the patent was upheld, and the public will not
12 get the benefits of Apotex's generic until November of 2011.

13 So I want to make it very, very clear that nothing
14 that Dr. Bodnar did in reference to trying to negotiate a
15 good-faith settlement with the generic, nothing that he did,
16 resulted in any harm to the public, did not result in any
17 illicit agreement, never intended to, and was an act simply of
18 trying to advance the end of that litigation so that generic
19 could be available at the appropriate time, and the government
20 has agreed that that is the statement of facts, that is part
21 of the plea agreement. Whether Mr. Terzaken personally
22 disagrees with that is irrelevant for this these purposes and
23 inflammatory, and I urge Your Honor to not take it into
24 account.

25 Thank you.

1 THE COURT: All right, Mr. Bodnar, would you like
2 to step up and speak own your behalf? Good morning, sir.

3 THE DEFENDANT: Good morning, Your Honor. As you
4 can imagine, there's a whole lot that I am tempted to say that
5 I will not say, but I will endorse everything my counsel has
6 said factually and simply say to you that it must be obvious
7 to you that it is a source of amazement and regret beyond
8 words that I find myself in this posture before Your Honor.
9 It's not something that I ever thought was possible, and I do
10 take responsibility for my actions, and I regret that I'm here
11 before you in this way. I wish I had an opportunity to know
12 you in a different way.

13 I do look forward to going on with my life. I do
14 intend to continue to vindicate the things that I have always
15 stood for. That has never waivered throughout all of this.
16 Those letters make me sound like something that is much better
17 than I really am, but the one thing they say that I will ask
18 you to note is that I stand for principles. I have always
19 stood for those. I have taught those. I have taught those to
20 my children, and I will continue to live by them whatever the
21 outcome may be here. I intend to go on and work in the not-
22 for-profit sector as I have done while I worked in for-profit
23 sector during the last of couple of years. That has been the
24 source of actual solace to me through all of this, to have the
25 opportunity to continue to do that, and I hope to be able to

1 continue to do that as my life goes forward, and I want to
2 thank Your Honor for your attention to all of this.

3 THE COURT: Let me ask you something that may seem
4 like an unrelated question. You have very vast experience in
5 the non-profit sector, and I have noted carefully all the
6 involvement you've had with community work in one form or the
7 other: Is there -- if there were to be a book or a
8 publication that addresses the task of non-profit
9 organizations to reach out to the community and to conduct
10 itself in a way that would permit it to acquire more support
11 and funds, what would that book be like; do you know? Is
12 there such an area?

13 THE DEFENDANT: You mean is there such a book?

14 THE COURT: Yeah. All right. Is there such a book?

15 THE DEFENDANT: Not that I'm aware of, Your Honor.

16 THE COURT: Would you be competent to write such a
17 book?

18 THE DEFENDANT: One of the things I haven't done in
19 addition to wanting to become a rabbi is writing a book, and I
20 majored in English literature when I was in college and always
21 thought about being a doctor and being a lawyer, and I became
22 both of those, and one of the things that I have always wanted
23 to do was write a book.

24 THE COURT: What about?

25 THE DEFENDANT: Well, its's changed with time. When

1 I was younger, it was going to be about Jewish guards in Nazi
2 concentration camps who were collaborators and who in later
3 life had to deal with that. I thought that probably has been
4 written since then so I've kind of given up on that.

5 And as I have gotten older, even though I have not
6 yet read *The Mystery of Edwin Drood*, which is the Dickens'
7 novel that I haven't read because I'm kind of saving it for
8 the last thing I do, I have gotten more and more away from
9 fiction as reading and fiction in my fantasies about what I'm
10 going to write to more and more about life, and, although, I
11 will never say that I think that this experience is something
12 that I would have liked to have had I had a choice going in, I
13 actually have given a lot of thought to writing about it.

14 THE COURT: All right. Thank you. Have a seat.

15 THE DEFENDANT: Thank you, Your Honor.

16 THE COURT: Mr. Bodnar, in every case involving a
17 conviction, be it by way of a trial or a plea, when it comes
18 time for sentencing, the judge, he or she, will review a
19 number of things, a number of factors, that are substantial to
20 the formation of a fair sentence. Judges are frequently
21 guided by considerations of deterrence, incapacitation,
22 rehabilitation, retribution, and so forth.

23 In this instance, I will say that I am very
24 impressed and pleased to conclude that there is no need for
25 rehabilitation in this situation, at least not in the standard

1 sense. There is no need for incapacitation. That's usually
2 reserved, in my view, for persons who haven't learned after
3 repeated convictions; they just haven't learned that they
4 offend society by acting in such a way. I don't think there's
5 a need for that here. Retribution is punishment, as we know,
6 and deterrence.

7 All right. I think I mentioned deterrence.
8 Deterrence -- there are two types; one is the deterrent to the
9 person who committed the crime, something to discourage that
10 individual in engaging in that kind of conduct again, and then
11 there's the general deterrence which is aimed at the general
12 population, something that people will experience vicariously,
13 and then if persons are similarly situated, they would avoid,
14 presumably, committing the offense because they know that it's
15 been dealt with in a way that takes the conduct into
16 consideration. That's general deterrence; in other words,
17 discouraging people from doing the same thing.

18 Frequently, in these cases, the judge will also take
19 into consideration, by way of background, the education of the
20 individual. Some -- most of the people, perhaps, the --
21 clearly, the majority of the people I see for sentencing
22 purposes have not had -- perhaps, even from their youth --
23 opportunities to see the world in a broad way with hope and
24 vision, rather their vision is very narrow. They seize upon
25 opportunities which are inappropriate and illegal. They get

1 caught, and they go to prison.

2 In recent years, there's been an outcry -- maybe
3 that's too dramatic a word -- about persons who commit crimes
4 who happen to wear white collars at the same time, and I think
5 some of the reaction, the public reaction to that, is
6 justified in that it would appear that individuals with very
7 little chance in life or who have never really experienced the
8 positive side to productive outcomes, options in life, surely
9 go away because they don't have the resource. They don't have
10 the support. They don't have a support system. And,
11 frequently, they're repeat offenders and so forth.

12 So out these doors, many times, I have to send
13 relatively young people to prison for long periods of time.
14 Some of them very bright people, amazingly smart people, who
15 have not been shielded by their intelligence in this society,
16 but have misused it in some way.

17 None of this really applies to you in that regard,
18 obviously, because you are an extraordinary person, and I will
19 say I agree with your attorney in noting that, but there has
20 to be something that the general public learns that leaves the
21 general public with a sense, especially those who might be
22 similarly situated, that because a person is notable and
23 intelligent and well-educated and well-rounded and all those
24 things that you are doesn't mean that they get a free ride.

25 Now, not to build the suspense, I am going to give

1 you a probationary sentence in this case, but the probationary
2 sentence, not just to pay a fine, is going to be imposed for
3 the reason I've just stated, and that is there has to be some
4 outcome in this case that tells the human public that courts
5 do examine these matters closely and just because you come
6 from a privileged situation does not mean that you're going to
7 skirt the consequences of inappropriate or illegal behavior.

8 Having said all of that, Mr. Bodnar, I would again
9 agree with your attorney that certainly all the evidence
10 that's been presented, the memoranda, the letters, the
11 comments, just the plain history of it all, coming from where
12 you come and achieving what you have achieved, can leave no
13 other impression but that you are an extraordinary person who
14 has done extraordinary good, and that is one of the factors
15 that under the guiding statute, 3553 -- 18 U.S.C. 3553 -- the
16 Court is permitted to consider, and, indeed, I have given it
17 consideration.

18 And under normal circumstances, probably, the
19 lawyers who know me in this room will tell you that that I
20 have very little sympathy for white-collar crime, very little
21 sympathy for persons who use their intelligence and position
22 to manipulate and cheat and lie and steal. That's not you in
23 this situation, of course, but I want to make that clear
24 because the nature of this offense, which can be characterized
25 as a white-collar crime, has juxtaposed against the nature of

1 you as a person, your achievements, and your promise --
2 "promise" meaning your future -- that move me away from what I
3 might under other circumstances gravitate towards in terms of
4 making sure that the white-collar community understands that
5 their conduct or its conduct is going to be punished when it
6 does wrong.

7 So I've taken into account -- of course, the
8 calculations in the sentencing guidelines are correct. The
9 presentence report was very well-written. The probation
10 officer says that she was very impressed by you; can't find
11 anybody to say anything negative about you. The government is
12 unhappy with the circumstances surrounding the offense and so
13 forth, but even the government in working this deal obviously
14 recognized that these are special circumstances.

15 And the guideline range is zero to six months, and I
16 could, if I wished to, after reviewing all the factors simply
17 give you a fine, but I'm not going to do that. I'm going to
18 put you on probation for a period of two years, and it's going
19 to be unsupervised probation, and I will not transfer
20 jurisdiction of this case to -- where is it, New Jersey?

21 MR. ABRAMOWITZ: New Jersey.

22 THE COURT: Yeah. I will not do that, I will retain
23 this case. And one of the things, Mr. Bodnar, that I would
24 like to see you do is to write a book. That's going to be one
25 of the conditions of your probation. Hopefully, you'll finish

1 it before the probationary term expires, but I was thinking
2 more along the lines of, well, what you've just stated, which
3 is what occurred under these circumstances, that would be
4 fine; something that would be instructive so that other
5 individuals don't find themselves in a situation that you have
6 just indicated is unpleasant and unforeseen; do you follow me?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Therefore, it is the sentence of the
9 Court that you be sentenced to a period of probation of two
10 years. You will pay a \$5,000 fine. You are further ordered
11 to pay a \$25-special assessment, which is associated with the
12 imposition of sentence on this misdemeanor. The special
13 assessment and fine are due immediately to the Clerk of the
14 Court of the U.S. District Court, and if it's not paid today
15 and you change addresses, then you must let the Clerk of the
16 Court of the U.S. District Court know that so it that it is
17 aware of your whereabouts until the financial obligation is
18 paid in full.

19 Within 72 hours, Mr. Bodnar, you will report to the
20 probation office here. It can be done today. The probation
21 is going to be unsupervised, but, of course, if something goes
22 awry -- I don't expect it to -- then the probation officer
23 will inform me, and then I will take whatever action is
24 appropriate under the circumstances.

25 The Court is requiring you to write a book. We just

1 discussed that, and that's part of the probationary sentence,
2 something that will be useful and instructive. Who knows,
3 maybe, possibly, inspirational to people who read it, but, in
4 any event, to persons who would benefit from understanding
5 what you've been through and deciding -- using that
6 information to avoid their involvement in such activity.

7 You have the right to appeal this sentence. Should
8 you choose to appeal, you must file a notice of appeal within
9 10 days, and if you are, for example, unable to afford the
10 cost of prosecuting an appeal, then you could ask the Court
11 the appoint an attorney so that you could proceed in forma
12 pauperis.

13 There was one other matter I think probation wanted
14 me to do.

15 MS. CAVE: We had just asked that the Court waive
16 the condition of mandatory drug testing.

17 THE COURT: Very well. It is so ordered.

18 MS. CAVE: Thank you.

19 THE COURT: The government -- anything that you want
20 to address by way of recommendations?

21 MR. TERZAKEN: No, Your Honor. I just wanted to
22 note for the Court there is -- of course, the defendant does
23 have certain appeal rights, but there is a paragraph in the
24 plea agreement that deals with the appeal, and I'm sure his
25 counsel has well-informed him on that, so I just wanted to

1 make that known.

2 THE COURT: All right.

3 MR. TERZAKEN: And second is, also, I wanted to make
4 sure the Court didn't forget the United States' motion to
5 dismiss with prejudice the underlying false statement count.

6 THE COURT: That motion is granted. And although
7 these plea agreements often do -- recently at least, in recent
8 years -- include certain waivers of appeal, if I imposed an
9 illegal sentence of any kind as far as I am concerned as a
10 judge, I would expect that it would be appealed, whatever
11 other waivers that are contained in the plea agreement.

12 MR. ABRAMOWITZ: Your Honor, I have one question
13 that deals with conditions of travel. In unsupervised
14 probation, will the defendant be able to continue his travel
15 as he has been since the indictment?

16 THE COURT: Yes.

17 MR. ABRAMOWITZ: Thank you.

18 THE COURT: Anything else from probation?

19 MS. CAVE: No, Your Honor.

20 THE COURT: Government; defense?

21 MR. TERZAKEN: No, Your Honor.

22 THE COURT: Good luck, Mr. Bodnar.

23 THE DEFENDANT: Thank you, Your Honor.

24 MR. TERZAKEN: Thank you, Your Honor.

25 MR. ABRAMOWITZ: Thank you, Your Honor.

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[End of proceedings]

C E R T I F I C A T E

I, Wendy C. Ricard, Official United States Court Reporter in and for the District of Columbia, do hereby certify that the foregoing proceedings were taken down by me in shorthand at the time and place aforesaid, transcribed under my personal direction and supervision, and that the preceding pages represent a true and correct transcription, to the best of my ability and understanding.

Wendy C. Ricard, RPR, CCR
Official U.S. Court Reporter