

COPY

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF ALASKA

3 UNITED STATES OF AMERICA,

Case No. A04-0025-CR (JKS)

4 Plaintiff,

Anchorage, Alaska

5

Friday, November 5, 2004

6 vs.

10:57 a.m.

7

JOHN THOMAS HARPOLE,

IMPOSITION OF SENTENCE

8

Defendant.

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PARTIAL TRANSCRIPT OF PROCEEDINGS

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BEFORE THE HONORABLE JAMES K. SINGLETON

12

UNITED STATES DISTRICT JUDGE

13

14 APPEARANCES:

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

1 ANCHORAGE, ALASKA - FRIDAY, NOVEMBER 5, 2004

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3 (Call to Order of The Court at 10:57 a.m.)

4 THE CLERK: Please rise. His Honor the Court, the
5 United States District Court for the District of Alaska is now
6 in session, the Honorable James K. Singleton presiding.

7 THE COURT: You may be seated. The Court has before
8 it this morning the matter of United States vs. Harpole. Mr.
9 Becraft, have you had a chance to thoroughly discuss -- you may
10 remain seated.

11 MR. BECRAFT: Oh, okay. Thank you, Your Honor.

12 THE COURT: The -- have you had a chance to thoroughly
13 discuss the presentence report with Mr. Harpole?

14 MR. BECRAFT: Yes, I have, Your Honor.

15 THE COURT: And does your sentencing memorandum and --
16 and the letter you wrote to the Probation Officer accurately
17 reflect his views and your views with regard to the presentence
18 report?

19 MR. BECRAFT: Let me kind of explain it, if I can.

20 THE COURT: Sure.

21 MR. BECRAFT: You know, just -- here we have -- as the
22 Court remembers, on June the 22nd, after lunch, you came back
23 into the courtroom and told us about Blakely.

24 THE COURT: Sure. Sure.

25 MR. BECRAFT: And, you know, Blakely kind of sits in

1 the back of everybody's mind now and I kind of think -- I look
2 across the country and see, you know, things are kind of in a
3 state of flux. You know, without that -- that issue, you know,
4 we don't have any real --

5 THE COURT: Well --

6 MR. BECRAFT: -- any real sentencing issues.

7 THE COURT: What I thought I would say to -- to the
8 parties, because as you accurately point out, the
9 Blakely/Ameline group of issues affects virtually every case I
10 have in some respect. As I understand the record in this
11 case -- and the parties may correct me if I'm in error -- if
12 the approach the Ninth Circuit took in U.S. v. Ameline
13 prevails, then it is unlikely that there would be any serious
14 fallout in this case from the Booker/Fanfan cases.

15 On the other hand, there's the possibility that the
16 U.S. Supreme Court would take a stronger stand and simply throw
17 out the guidelines entirely, effectively leave the situation as
18 open sentencing. So what I'm suggesting to the parties -- and
19 I haven't thoroughly thought through the double-jeopardy
20 implications. But it seems to me that a sentence that is
21 legal, even if wrong-headed, that is favorable to a defendant
22 is preserved to that defendant by the double-jeopardy clause of
23 the United States Constitution.

24 So if the Supreme Court, in Booker and Fanfan, say the
25 guidelines are out the window, open sentencing, then I would be

1 prepared to bring -- bring all of you back and have a
2 resentencing, with the understanding that Mr. Harpole couldn't
3 get any more but he might get less. And that is basically the
4 position I'm going to take with everyone who is sentenced.

5 Now some men and women, in addition to the possibility
6 that the guidelines may be thrown out entirely -- and I -- it's
7 my understanding that the United States has taken the position
8 that they should be. In other words, the United States, in
9 arguing before the Supreme Court in Booker and Fanfan, are not
10 arguing for the position taken in U.S. v. Ameline. Now there
11 may be some variations on that theme, but I think that's -- so
12 I don't think it is impossible that the Supreme Court might
13 come down in that way and say, 'All right, they're out the
14 window.' So I will bring everybody back.

15 Now there are some cases where the -- even the Ameline
16 case would require further proceedings. But I don't see that
17 as a big problem in this case. So that's basically where I am.
18 I -- it appears to me, too, that the parties are not disputing
19 the -- are not disputing the presentence report. I recognize
20 that the presentence officer sees that all the counts, of which
21 there are many, 12, that Mr. Harpole is at a total offense
22 level of 16, a criminal history category of I. He's vulnerable
23 to 21 to 27 months. The Probation Officer's recommending 24
24 months.

25 There's a fine of \$5,000 to \$50,000, and the Probation

1 Officer is recommending a fine at the low end, of \$5,000. The
2 special assessments would be \$100 for Counts I to VI, and \$25
3 for Counts VII to XII, for a total of \$750.

4 I'm kind of leaning towards simply sentencing at the
5 low end of the range, 21 months. I think Mr. Harpole does have
6 the potential of paying a fine. I would be prepared to impose
7 the fine at the low end, \$5,000. The \$750 special assessments
8 are mandatory.

9 I would be prepared to allow Mr. Harpole to
10 self-surrender. And there are -- there are two aspects of
11 that, and I would be interested in hearing from the parties.
12 When to self-surrender? In each case, the defendant remains at
13 large under the same conditions that he was previously under,
14 until such time as the Bureau of Prisons classifies him, at
15 which point he can either turn himself in to the Marshals here
16 and have the government pay for his transportation to the
17 institution, or he can buy a plane ticket and fly and turn
18 himself in at the institution. Now it's my understanding --
19 and I don't understand why this would be so, but it's my
20 understanding that you get some kind of a -- a benefit if you
21 actually walk up to the prison yourself rather than have the
22 Marshals bring you. So I -- I -- I'd be open to that.

23 (Side conversing)

24 THE COURT: But that's -- that's basically the way
25 I -- I see this. And then if Booker and Fanfan come down and

1 the government prevails and they throw the guidelines totally
2 out the window, then I would be prepared to reassemble
3 everybody and -- and let you have a go at it. I would not
4 sentence Mr. Harpole any higher, but I would let people argue
5 to sentence him lower.

6 Does the government wish to put on any evidence?

7 MS. CARLISLE: No, Your Honor.

8 THE COURT: Does the defense?

9 MR. BECRAFT: No evidence, Your Honor.

10 THE COURT: Okay. Then I would propose -- I've
11 already kind of tentatively indicated where I'm going. I would
12 propose to hear allocution from Mr. Harpole first and then
13 allow counsel to sum up. And then we'd proceed from there.
14 Mr. Har- -- yes.

15 MR. BECRAFT: Oh, no, go ahead, Your Honor.

16 THE COURT: Mr. Harpole, you have a very important
17 right, sir. That's the right of allocution. That's a right to
18 make a statement on your own behalf without being under oath
19 and without being subject to any penalty for anything you might
20 say. You do not need to make a statement if you don't want to,
21 but I think you understand that you know yourself better than
22 anybody else here in the room.

23 You have the right to consult with Mr. Becraft before
24 making your statement. And if at any time during your
25 statement you want his advice, you need only ask for it. He's,

1 after all, here for your benefit. Would you like to chat with
2 counsel before you make your statement, sir?

THE DEFENDANT: Please.

THE COURT: Yeah.

(Pause - side conversing)

THE COURT: You may remain seated, sir, but speak into
7 the microphone.

8 ALLOCUTION

9 THE DEFENDANT: Your Honor, I want to -- I want to
10 basically admit that I -- that I made a mistake based on my
11 understanding of the -- of the cases and -- and some government
12 materials that I consulted. And, you know, I basically got a
13 basic degree, I'm not all souped-up Ph.D. or anything like
14 that, but I thought that I understand -- understood the meaning
15 of what the law said, including some Senate documents. But,
16 you know, obviously I was wrong.

17 Now probably the Court understands that -- that I
18 circulate in -- in people that have like mind like myself.
19 Well, I've informed all these people and all my friends that I
20 was basically full of B.S. The positions that -- that I took
21 and that they took is in error. It's obvious it's in error. I
22 didn't know that -- that filing an exempt W-4 was a -- a
23 problem as far as being an element of tax evasion because if I
24 had known that, that would have been stupid on my part to do
25 it. And I didn't know that until -- until this -- this

1 incident started.

2 So I recommended that -- that everybody that I
3 associate with gets squared around and -- and -- and do
4 whatever they need to do. Now I think putting me in jail
5 wouldn't help society a bit because I'm not a threat to
6 society. I'm probably a better help to society being out of
7 jail and continuing on and being a productive citizen in
8 society. And maybe I can keep other people from making these
9 same mistakes.

10 As far as \$112,000, it is my understanding of wages,
11 and the definition of wages and the exemptions from wages
12 and -- and the regulations that support wages and things like
13 that, that I didn't make any. And that was -- that was my
14 understanding of the law. And I, you know, the government
15 never brought anything out that said that I did make a defined
16 wage. So wages is a -- is a legally defined term, defined a
17 couple of places in the -- in the tax code. But that's neither
18 here nor there. I didn't -- I didn't understand that.

19 So I felt like when this thing started that I never
20 received the administrative procedure to make that
21 determination, even though the government started it. They --
22 they said we want to, you know, we want to determine your --
23 your -- your tax, and I asked for the office interview. It's
24 my right to be heard. And the government never -- never
25 provided that interview and waited six years and indicted me.

3 So I want to apologize to the government and apologize
4 to the Court for my misunderstanding of the law. And I really
5 think that I would be better for society out than in. Now
6 I've got some -- some issues with the ex-wife over the -- over
7 the 401(k) and pension stuff that's got to be dealt with here,
8 and I don't know how long that's going to take. It'll probably
9 take a hearing at the state level. And you know how that
10 time -- that goes. So I really don't know how long that would
11 take. It'd be kind of hard to handle that asset from jail.

12 But anyhow, once again, I just want to apologize to
13 the Court.

14 THE COURT: Very well. Well, I don't want to steal
15 any thunder from Ms. Carlisle because I'm sure she is in a far
16 better position to speak for herself than I ever could be, but
17 my guess is, she's going to say this. She's going to say, Mr.
18 Harpole, you testified before the jury. The jury had a chance
19 to observe your demeanor and evaluate ,your credibility, and the
20 jury was clearly told in the jury instructions, if they
21 believed that Mr. Harpole was negligent or mistaken or
22 misunderstood, they had to acquit you. Now the very fact that
23 the jury, 12 men and women, your peers -- all that means is men
24 and women drawn from the community who are our equals -- they
25 evaluated your testimony and they said, 'Mr. Harpole was not in
error, I mean, he was not negligent. He knew what he was
doing. He was too intelligent a man.'

1 Now Ms. Carlisle is going to say, if you're not
2 prepared to accept that, then you should get a higher sentence.
3 How do you respond to that?

4 (Pause - side conversing)

5 THE COURT: Incidentally, Mr. Harpole, I'm not trying
6 to put you on the spot and ask a rhetorical question. The
7 reality is, that the cases that Mr. Becraft so eloquently
8 argued are all premised on the very idea that men and women --
9 many men and women aren't able to evaluate the tax code, that
10 men and women will make mistakes, that there is a great risk of
11 negligence. And for that reason, the Supreme Court has taken
12 the view that if people are negligent, no matter what it is
13 they believe, if -- if it's believed in good faith and the
14 belief, however wrong, would justify the person in not paying
15 taxes, the government is left with civil remedies. It cannot
16 proceed against a person criminally.

17 It's only the man or woman or who knows what they're
18 doing that can be criminally prosecuted. So I wasn't trying to
19 put you on the spot or -- or embarrass you in any way. I just
20 want to make it clear because I know Ms. Carlisle's going to
21 argue this, that it's out in the open and that if you have
22 something you wanted to say about that --

23 THE DEFENDANT: Well, Your Honor, I accept
24 responsibility for -- for -- for this -- this error.

25 THE COURT: Mm hmm (affirmative). Very well. Thank

1 you, sir. Ms. Carlisle.

2 MS. CARLISLE: Yes, Your Honor. Would you prefer if I
3 was at the podium?

4 THE COURT: You may remain seated as long as you speak
5 into the microphone. Some lawyers are not comfortable sitting
6 down. They want to stand up. I'll -- I'll -- I'll defer to
7 whatever -- whatever makes people comfortable when they're
8 speaking. It's just more comfortable for me if everybody's
9 sitting down. But that, you know, you are the master or
10 mistress of your fate. Argue from, you know, the position that
11 you're most comfortable in.

12 MS. CARLISLE: Very well, Your Honor. I'll remain
13 seated. Your Honor has correctly surmised the government's
14 position. Today is -- Mr. Harpole's statement is the first
15 indication of any sort of remorse he has shown. In the four
16 months since the trial, he has made no effort to deal with the
17 IRS or any of his tax problems, nor to -- to set up a payment
18 plan or start working out his -- his tax issues.

19 The -- the position he -- that we heard testimony that
20 he had expounded greatly across the North Slope and -- and
21 perhaps converted other people is a serious problem. And with
22 the significant amount of money he had made and the period of
23 time that this did go on, we feel that a two-year sentence
24 would be an appropriate sentence for this type of -- of crime.
25 In addition, testimony showed -- and I believe that during

1 cross-examination, Mr. Bradley asked Mr. Harpole the amounts of
2 money he earned each year, and Mr. Harpole did admit to those
3 amounts of money. And it is in light of the amount of money he
4 has earned at his job, the government feels that a much higher
5 fine would be -- would send a message. And the government
6 would ask for a \$50,000 fine in this case.

7 In addition, we just ask that he get the -- the 24
8 months sentence. We feel mid-range would send a message -- we
9 need to send a message to these people so that they understand
10 that this sort of thing is -- is going to get them into
11 trouble.

12 THE COURT: Well, again, I'm not asking rhetorical
13 questions. I -- I recognize that the situation is a serious
14 one. But the thought crossed my mind. Do you really think
15 that a man or woman who knew there was a significant risk, 50
16 to 60 percent chance they were going to do 21 months, wouldn't
17 be just as deterred as somebody who thought they were going to
18 do 24?

19 MS. CARLISLE: That's a good question, Your Honor.
20 Perhaps. I don't know. Three months could make a difference
21 to someone, perhaps it wouldn't.

22 THE COURT: Well, three months definitely would make a
23 person -- an issue to somebody at the end of 21. But I'm
24 talking about prospectively.

25 MS. CARLISLE: Your Honor, I think in this case the

1 idea is more whether you get the bare minimum, which would
2 be - -

3 THE COURT: Mm hmm (affirmative).

4 MS. CARLISLE: -- 21 months, or whether you were going
5 to get more than the minimum, which, you know, there's only a
6 six-month range there between the minimum and maximum. But
7 giving the bare minimum, I think sends a different message than
8 giving more than the bare minimum, which is why the government
9 asks for 24 months.

10 THE COURT: Very well. Thank you, Ms. Carlisle. Mr.
11 Becraft, you may remain seated as well if you're comfortable
12 doing it

13 MR. BECRAFT: I am, Your Honor. I don't think that
14 there's a whole lot more that I could add to what the Court's
15 asked in the way of questions and the replies that the Court's
16 gotten from both Ms. Carlisle and Mr. Harpole. I would make
17 this -- perhaps this is an opportunity for me to go ahead and
18 kind of inject an issue in reference to sentencing. You know,
19 the Court's observed the consequence of Ameline and -- and
20 Blakely.

21 THE COURT: Mm hmm (affirmative).

22 MR. BECRAFT: And it's kind of -- as far as I'm
23 concerned, it's kind of a toss-up in the air. I talked to Mr.
24 Bradley a couple of months ago when he sent me the -- their
25 brief on appeal in the -- in the Booker case. You know, I'd

like to maybe have had this sentencing after we had some decision, but, you know, who knows when that's going to come down. I think the Court's probably taking things under consideration and is going to give a real good -- good opinion that we're all going to be able to live with. But in the interim, you know, I've got this one simple little question. If we're going to go along with the Ameline type of rationale, I ask this one simple question and I would kind of like to preserve it as a sentencing issue.

10 THE COURT: Sure.

11 MR. BECRAFT: It seems like to me that if, you know,
12 we got a base offense level and everything else, you know, like
13 the additional taxes, constitutes upward departure, so to
14 speak, it seems like to me that a valid legal issue that
15 remains open to question -- I don't know whether the Supreme
16 Court will answer it or not.

17 THE COURT: Mm hmm (affirmative).

18 MR. BECRAFT: But, you know, if that's the case that,
19 you know, just even the calculation of the tax loss would be a
20 consideration of an upward departure, wouldn't that be required
21 that, in criminal cases, we have to start asking
22 interrogatories to the jury.

23 THE COURT: Mm hmm (affirmative).

24 MR. BECRAFT: And, you know, if the Court comes down
25 and says, 'Well, gee, we're into that,' -- not that I'm in

1 favor of asking interrogatories in a criminal case, but, you
2 know, if we ultimately end up there, I certainly would like to
3 preserve the issue of, you know, since the jury in this case
4 did not come back with any interrogatory or finding as to the
5 amount of tax, then, you know, we're in that Ameline type of
6 uncertainty there. The jury didn't make a determination and,
7 therefore, the real -- the real sentencing range in this case
8 would be the base offense level. If I may, that's the issue I
9 would like to preserve.

10 THE COURT: Sure. And -- and I think the argument --
11 and again, I don't want to take words out of Ms. Carlisle's
12 mouth, but I think what she's going to argue is that the
13 interrogatories -- and I think you're right. I think if -- if
14 we go down that trail, there are going to be more special
15 verdicts in criminal cases. And you're correct, that
16 historically special verdicts in criminal cases were considered
17 to infringe on the defendant's right to a judgment by a jury of
18 his peers. But we may be going down that route.

19 But I think what Ms. Carlisle would probably say to
20 you is this. It depends on how the general verdict is
21 structured. If the general verdict makes a dollar amount an
22 element of the offense so that unless the jury finds that
23 dollar amount, they must acquit, then you have the conceptual
24 equivalent of -- of the -- of the interrogatory. If, on the
25 other hand, the jury is just given a "did somebody" -- well,

1 fraud cases are easier to discuss. Did he -- did he steal.

2 MR. BECRAFT: Mm hmm (affirmative).

3 THE COURT: And in order to -- to turn that into an
4 Ameline, then you would have to have special interrogatories.
5 And in the old days, that was the rare case in which they were
6 actually allowing it. The difference between petty theft and
7 felony theft sometimes had to be handled by an interrogatory.

8 But the way I'm going to handle the Booker/Fanfan --
9 and you're correct, too, that -- that I have postponed a number
10 of sentencings, particularly where I was faced with the threat
11 of re-instituted jury trials on sentencing issues. I have
12 postponed it until Booker/Fanfan comes down, which I was hoping
13 would be November 1st, but it appears unlikely. The
14 conventional wisdom now says, well, maybe before the
15 Thanksgiving break. I do think, too, that it's possible that
16 the chief justice's health situations may -- may delay an
17 outcome even longer than that. So who knows.

18 So what I'm going to do is what I said I would do. I
19 will impose sentence today based on the guidelines and those
20 matters that are set out in the presentence report, with the
21 understanding that Mr. Harpole cannot get anymore time. But if
22 Booker and Fanfan comes down and err on the side of caution,
23 I'll -- I'll have a resentencing. I'll let you argue for
24 whatever the Supreme Court says, because I think that -- I
25 think that that is the fairest way to go.

1 There is a possibility that if you had totally open
2 sentencing, the Court would arrive at a sentence of less than
3 21 months. That's clearly possible. Who knows. We don't have
4 truly open sentencing at the moment. Some of the senators have
5 indicated that if we do get it, it's going to be only a brief
6 window because then they're going to come back with minimum
7 sentences for everything. I don't want to predict that future.
8 My recent predictions have all been wrong.

9 So what I'm going to do then is allow Ms. Carlisle any
10 rebuttal if she wants it. Otherwise, I'll proceed to
11 sentencing.

12 MS. CARLISLE: Just briefly, Your Honor. I'd like to
13 point out that the tax losses were alleged in the indictment,
14 and that the defense did have the opportunity to cross-examine
15 the government's expert on those losses and they did not do so.

16 (Audio Server, Log No. 11:24:25)

17 (This Portion Not Requested)

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CERTIFICATION

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

Tammie Heinrich
Tammie Heinrich, Transcriber

024105
Date

1 UNITED STATES DISTRICT COU

DEC

2 DISTRICT OF ALASKA

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% STRICT COURT
OF ALASKA
Deputy

3 UNITED STATES OF AMERICA,

Case No. A04-0025-CR~K~S

4 Plaintiff,

Anchorage, Alaska

Friday, November 5, 2004

5 vs.

10:57 o'clock a.m.

6 JOHN THOMAS HARPOLE,

7 IMPOSITION OF SENTENCE

8 Defendant.

9 PARTIAL TRANSCRIPT OF PROCEEDINGS

10 BEFORE THE HONORABLE JAMES K. SINGLETON
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

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Proceedings recorded by electronic sound recording.
Transcript produced by transcription service.

1 ANCHORAGE, ALASKA - FRIDAY, NOVEMBER 5, 2004

2 (Call to Order of the Court at 10:57 a.m.)

3 All parties present; defendant present)

4 (This Portion Not Requested)

5 (11:24:17)

6 **IMPOSITION OF SENTENCE**

7 THE COURT: Okay. Pursuant to the Sentencing Reform
8 Act of 1984, it is the judgment of the Court that defendant,
9 John Thomas Harpole, is hereby committed to the custody of the
10 Bureau of Prisons to be imprisoned for a term of twenty-one
11 months on each of counts one to six and twelve months on each
12 of counts seven to twelve, all such terms to run concurrently.

13 Now Ms. Carlisle has a point that you could
14 characterize a twenty-one-month sentence as opposed to a
15 twenty-four-month sentence symbolically as -- as not taking the
16 crime seriously. On the other hand, the range itself, twenty-
17 one to twenty-seven months, I think takes into account the --
18 both the criminal history and the offense level. So my
19 tendency is to sentence at the low end of the sentencing range
20 unless there's some strong reason to do something differently.

21 I'm particularly concerned -- since I do have that
22 policy, I'm particularly concerned about deviating from that
23 policy where someone elects to go to trial as opposed to pleads
24 guilty because I think that sends the wrong message. Men and
25 women have a right to a jury trial: if they wish to exercise

a aAaa

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1 that right, and they should do it without burden. The -- the
2 fact that I don't think -- I -- you know, I think Mr. Harpole's
3 acceptance of responsibility is -- is pretty vague. He was not
4 allowed acceptance of responsibility by the probation officer I
5 think correctly, and so that's all factored into the sentence.

6 The -- upon your release from imprisonment, Mr.
7 Harpole, you shall be placed on supervised release for a term
8 of three years on each of counts one to six and one year on
9 each of counts seven to twelve, all such terms to be served
10 concurrently. Within seventy-two hours of your release from
11 custody of the Bureau of Prisons, you shall report in person to
12 the probation office in the district to which you are released.

13 There are no federal correctional facilities in
14 Alaska. Any person convicted of a federal offense and
15 sentenced will be classified to an institution outside of
16 Alaska. My assumption is, however, that you will return to
17 Alaska and I hope take up your employment with BP upon your
18 release, and you're given seventy-two hours to accomplish that.

19 While on supervised release, you shall not commit
20 another federal, state or local crime, shall not possess a
21 firearm or illegal controlled substance, and shall comply with
22 the standard conditions that will be included in the judgment
23 to be issued by the Court.

24 The mandatory condition of supervised release set

a. a.k.a."

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forth in 18 U.S. Code, Section 3583(d) requiring the defendant to submit to drug testing is suspended because there appears to be no risk of future substance abuse by this defendant. Now should that prediction prove unsound, of course there are ways to deal with it in the future, but I have no reason to expect that will be the case.

In addition, the Court will impose the spec -- following special conditions, which are pretty uniform in cases of this kind:

First. Mr. Harpole shall cooperate with a request of internal revenue officers in a good faith, best efforts attempt to pay in full any outstanding tax liability, including penalty and interest, or enter into an installment payment plan with the Collection Division of the Internal Revenue Service, the IRS, within sixty days from the final assessment first notice and demand.

Second. The defendant shall provide to the U.S. Probation Office a copy of any written and approved agreement with the IRS for the payment of any outstanding tax liability within ten days of the execution of any such agreement. If defendant enters into any such agreement, he shall make timely payments and shall abide by the terms of such agreement during the terms of supervision.

Third. The defendant shall file with the IRS true and correct income tax returns for the years 1997 through 2002

a.k.a.

1 within three months of release on supervised release.

2 Next, the defendant shall timely file accurate future
3 income tax returns as required by law during the supervision
4 period unless an extension of time is granted by the IRS, in
5 which event the return shall be filed within the period of the
6 extension.

7 Fifth. The defendant shall provide the probation
8 officer with access to any requested financial information,
9 including authorization to conduct credit checks and to obtain
10 copies of the defendant's tax information. The defendant shall
11 not incur any new debts or open lines of credit without prior
12 approval of the probation officer.

13 The Court finds the defendant does have the ability
14 to pay a fine. It is further ordered the defendant shall pay
15 to the United States a fine of five thousand dollars.

16 Now again, I think there is an argument for a
17 substantially increased fine, but being an old economics minor,
18 I don't like to impose economic burdens that I don't think will
19 ever be paid, and I think that Mr. Harpole is going to have a
20 difficult time, even with the excellent job performances and
21 jobs he's had in the past, in paying back all the money he owes
22 to the Internal Revenue Service when we take into account the
23 significant penalties and interest. And so I think the five-
24 thousand-dollar fine is a more realistic imposition and that a
25 higher fine -- also, while I am confident in part based on past

1 experience that Mr. Harpole will get his job back, that is not
2 an absolute certainty, and the reality is Mr. Harpole is going
3 to face future employers with a federal felony conviction.

4 So taking all of those things into account, I think
5 that the -- the five thousand dollars is the more reasonable
6 fine.

7 The seven hundred and fifty dollars -- and I've
8 already indicated those are incremental based on the counts of
9 conviction, some hundred-dollar increments and some twenty-
10 five-dollar increments -- is mandatory and will be imposed.

11 The Government has asked that defendant pay the costs
12 of prosecution in the amount of nine thousand six hundred and
13 forty-five dollars and five cents. I think that's reasonable
14 in this case. The Court has in part considered that in
15 imposing a fine at the low end.

16 Any fine, restitution, cost of prosecution, or
17 special assessment imposed shall be due and owing immediately.
18 Any amount remaining unpaid following sentencing shall be due
19 and owing during any period of incarceration and thereafter as
20 a condition of supervised release. Payments made during
21 supervised release shall be made pursuant to a payment
22 schedule.

23 Now the Court recognizes that it is its burden and
24 not the probation officer's burden to determine an appropriate
25 schedule. Experience teaches, however, that it's best to allow

1 the defendant, defense counsel, the probation officer, and the
2 Government attorney to meet together and attempt to come up
with a meaningful schedule for the payment of these amounts.
If the parties can reach an agreement on a payment schedule,
then the Court will follow that payment schedule.

3 If, on the other hand, there's a disagreement, then
4 any party may petition the Court for a hearing and we'll
5 determine Mr. Harpole's ability to pay. My preference would be
6 that we defer that until he's out on supervised release and has
7 been re-employed, but again, I am open to requests from the
8 parties. So I would ask that you -- you sit down after we
9 complete the proceeding today and address an appropriate
10 payment schedule. If you want to defer that until he is on
11 supervised release, that would be acceptable to the Court.

12 Mr. Harpole, you have another important right, and
13 that's the right to an appeal. You may appeal your conviction,
14 your sentence, or both. If you appeal your sentence and invoke
15 Blakely, the Ninth Circuit is probably going to defer ruling on
16 that until after Booker and Fanfen (ph) come down, but that
17 doesn't relieve you of the obligation if you want to appeal to
18 file it within ten days, and that's the important thing.

19 An appeal -- as Mr. Becraft will explain to you in
20 much more detail than I will -- an appeal is a request of a
21 higher court -- in this case a panel of the Ninth Circuit Court
22 of Appeals -- to review the record with care to see if any

1 errors were made that you bring up, and if they find errors
2 were made, to direct that those be corrected. And the really
3 significant thing about an appeal is that it must be filed with
4 ten days of today.

5 Ms. Carlisle, is there anything further from the
6 Government at this time?

7 MS. CARLISLE: No, Your Honor.

8 THE COURT: Mr. Becraft?

9 MR. BECRAFT: Can I ask two things, Your Honor? The
10 Court made an observation that you think Mr. Harpole may be
11 coming back to Alaska. I would like to inform the Court that
12 Mr. Harpole has a girlfriend from North Carolina --

13 THE COURT: And he's (indiscernible) --

14 MR. BECRAFT: -- and has plans to go back, oh, maybe
15 this spring to Charlotte. I would like to request if the Court
16 could put in a -- a designation of a facility for Mr. Harpole
17 -- I -- I think it's Beutner (ph) -- it's either Beutner or
18 Buckner in North Carolina.

19 THE COURT: Yeah.

20 MR. BECRAFT: I think it's Buckner -- B-U-C-K --

21 THE COURT: Yeah, I -- I think of that always as
22 being the hospital, but I guess they have -- they have a
23 correctional facility as well, is that correct, Ms. Carlisle?

24 MS. CARLISLE: I believe so, Your Honor.

25 THE COURT: Sure. Be happy to recommend it.

1 MR. BECRAFT: Okay. And -- and then the Court also
2 made the suggestion we might get some brownie points by
3 reporting. You know, I'd like to go ahead and report if the
4 Court will allow us to --

5 THE COURT: Yeah, I -- I was. Is he willing to pay
6 his own way?

7 MR. BECRAFT: Yes, I believe --

8 THE COURT: Okay.

9 THE DEFENDANT: If you give me a couple weeks notice,
10 Your Honor, so --

11 THE COURT: Sure. I think that's the plan, isn't it?
12 Don't don't you normally give them a few days notice on
13 on do we have a probation officer here?

14 MS. CARLISLE: I -- I be --

15 THE COURT: Ah, Ms. Shaw, there you are hiding in the
16 background. What -- you'll -- after today, the classification
17 committee will -- will meet and they'll choose a facility for
18 Mr. Harpole. The Court will recommend a facility in North
19 Carolina or the eastern part of the United States. When will
20 we know normally?

21 THE PROBATION OFFICER: I believe it takes about four
22 to six weeks, Your Honor, and we'd notify Mr. B -- or Mr.
23 Becraft or Mr. Harpole as soon as we became aware.

24 THE COURT: All right. And then arrangements can be
25 made and -- yeah, that -- that might benefit you in some --

1 some respect if you show up at the jailhouse door, so I'll
2 allow that. I -- Ms. Shaw, you had some reservations, but you
3 thought on balance that Mr. Harpole had been a good candidate
4 on su -- on out -- release conditions and it's certainly not to
5 his advantage at this stage to run.

6 THE PROBATION OFFICER: I wouldn't think so, Your
7 Honor.

8 THE COURT: Very well. Yeah. You -- you have to
9 understand, sir, you are under the same restrictions that have
10 previously been imposed. If you violate any of those
11 restrictions, you are in jeopardy of being separately
12 prosecuted for escape or violation of the conditions or
13 unlawful flight to avoid prosecution or sentencing, their whole
14 panoply. Mr. Becraft will discuss those with you. The reality
15 is that you probably will be putting this behind you rather
16 soon. It's not to your advantage to postpone that and -- and
17 simply prolong the -- the situation. Anything further from
18 defense?

19 MR. BECRAFT: Nothing, Your Honor.

20 THE COURT: Very well. We'll stand at ease. And you
21 will -- you will go over -- regardless of anything else, if Mr.
22 Harpole wishes to appeal, you will --

23 MR. BECRAFT: Yes.

24 THE COURT: -- file a timely notice. Okay.

25 MR. BECRAFT: Will do, Your Honor.

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THE CLERK: This matter IS adjourned. This Court now
stands adjourned subject to call.

(Proceedings concluded at 11:40 a.m.)

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CERTIFICATE

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

"LA(A 04-tiebL19 /t/, d) ?L
Signature of Approved Transcriber Date

DONNA K. CHERTKOW
Typed or Printed Name