

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
) CASE NO. 3:06cr83/MCR
vs.)
)
) KENT E. HOVIND) Pensacola, Florida
and JO D. HOVIND,) January 19, 2007
) 9:00 A.M.
)
) Defendants.)
_____)

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE M. CASEY RODGERS,
UNITED STATES DISTRICT JUDGE
(Pages 1 thru 125.)

APPEARANCES:

FOR THE PLAINTIFF: MICHELLE M. HELDMYER, ESQUIRE
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FOR THE DEFENDANT JEROLD W. BARRINGER, ESQUIRE
JO D. HOVIND: Jerold W. Barringer, P.A.
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1 (Court in session.)

2 (Defendants present.)

3 THE COURT: Good morning. Okay. We have a sentencing
4 scheduled this morning in the case of United States of America
5 versus Kent Hovind and Jo Hovind. I would like to first to
6 address Mrs. Hovind's sentencing with counsel. In my review of
7 the presentence investigation report -- Mr. Barringer, good
8 morning.

9 MR. BARRINGER: Good morning, Your Honor.

10 THE COURT: In my review of the presentence
11 investigation report on Mrs. Hovind, it appears to me that
12 there may be an issue as to base offense level in her case.
13 This is not something that was raised by either party, either
14 side, but something that in consultation with the probation
15 office that I think it's important to raise now and may result
16 in the continuation of Mrs. Hovind's sentencing for today.

17 Let me direct you to, in your guideline manual, 2001
18 edition, to 2S1.3. It's on page 259.

19 MR. BARRINGER: Your Honor, I accidentally left that
20 at home. So I don't have that with me. And I apologize. I do
21 have some notes that deal with that particular provision, Your
22 Honor.

23 THE PROBATION OFFICER: Your Honor, I have an extra
24 copy of that, if he would like to review them.

25 THE COURT: Thank you, Ms. Lassiter, yes.

9 : 1 0 A M

1 MR. BARRINGER: Yes, Your Honor.

2 THE COURT: All right. Also referencing page 15 in
3 the PSR.

4 MR. BARRINGER: I'm there.

5 THE COURT: Okay. The base offense level reflected in
6 the PSR is a 22. That is based on an initial base offense
7 level of six called for under the guidelines, with a 16 level
8 increase based on the value of the funds involved. And that's
9 where we arrive at 22 in the PSR. But if you look at the
10 guideline section, 2S1.3, the Court is concerned about two
11 subsections there, 2S1.3(b)(2) and 2S1.3(c)(1). My thought was
12 initially that 2S1.3(b)(2) might apply, which would decrease
13 the offense level to a six. However, I then considered the
14 cross-reference which is mentioned in 2S1.3(c)(1). And then to
15 complicate matters even more, if you consider the
16 cross-reference and that the offense was committed for the
17 purpose of violating the Internal Revenue laws, then it appears
18 that 2S1.3(b)(1) may apply, because the intent may have been to
19 promote unlawful activity.

20 So it appears there are arguments to be made on both
21 sides that have not been made, or perhaps maybe should be made.
22 What I would -- well, let me hear from you all first.

23 Mr. Barringer.

24 MR. BARRINGER: Thank you, Your Honor. And I
25 certainly did argue that the base offense level should be, in

9 : 1 3 A M 1 fact, six, was in my objections to the presentence report.

2 THE COURT: However, not specifically based on --

3 MR. BARRINGER: As to these issues. And I agree that
4 the Court is raising different concepts in terms of whether or
5 not this was dealing with -- directed towards taxes, directed
6 towards something else, some other unlawful activity that, as
7 the Court is pointing out, may alter and, in fact, increase the
8 sentence report from the government's position, or whether or
9 not under (b) (2), whether it drops back down to six. And as
10 the Court said, we've not discussed that.

11 THE COURT: Well, the oddity here is that on the front
12 end of the transaction, an argument can be made that the
13 purpose was to violate the IRS laws. I think the argument can
14 at least be made. On the tail end of the transaction, I think
15 the argument can also be made that the funds were to be used
16 for a lawful purpose, that is, to pay the employees of CSE and
17 the expenses of CSE.

18 MR. BARRINGER: Nor do I believe that there was a lot
19 of evidence that was deduced at trial that would point
20 ultimately in either direction.

21 THE COURT: Well, that would be an argument you might
22 want to make. I'm asking if you would like the opportunity to
23 address this to the Court. And if so, then I would continue
24 the sentencing to a separate date. And I'm going to ask
25 Ms. Heldmyer the same question.

9:15 AM

1 MR. BARRINGER: I'd like to have a moment, Your Honor.

2 Thank you, Your Honor.

3 And it seems pretty clear in talking to Mrs. Hovind
4 that we would prefer to brief it out or to address it in
5 writing as opposed to off-the-cuff oral comments about the
6 issue.

7 THE COURT: And that would be my preference as well.
8 Ms. Heldmyer.

9 MS. HELDMYER: We agree, Your Honor.

10 THE COURT: All right. Very well. Then the parties
11 will brief the issue the Court has raised in Mrs. Hovind's
12 case, and your memorandum should be filed by February the 19th,
13 and that's for both the government and Mrs. Hovind, both due
14 February the 19th, and sentencing will be rescheduled to March
15 the 1st at 9:00 a.m. If you have conflicts with that date, you
16 can notify my chambers, and we will endeavor to accommodate
17 your schedule, considering the Court's schedule.

18 MR. BARRINGER: Anything further for Mrs. Hovind
19 today, Your Honor?

20 THE COURT: No. No, sir. Then you would be excused,
21 Mr. Barringer, as well.

22 MR. BARRINGER: Thank you. I know that Mrs. Hovind
23 would like to stay. I'm not sure that there is really room.

24 THE COURT: She can stay.

25 MR. BARRINGER: Would that be okay if I just sit as

9 : 1 6 A M 1 well.

2 THE COURT: Yes.

3 All right. Then as to Kent Hovind, Mr. Hovind, the
4 way we will proceed this morning with your sentencing is that I
5 will address both attorneys as to the objections that have been
6 filed pertaining to the presentence report. I will -- I don't
7 know if we have evidence to be presented. I believe there may
8 be evidence to be presented. I'll resolve all objections. I
9 will give you an opportunity to address the Court before
10 sentence is imposed. You're not required to speak, but you do
11 have that right. And I'll notify you of the appropriate time
12 before that. And then I will impose sentence.

13 Mr. Richey, let me ask if you have had an opportunity
14 to review the presentence report with Mr. Hovind?

15 MR. RICHEY: Yes, Your Honor.

16 THE COURT: And you have filed objections to certain
17 portions of the presentence report?

18 MR. RICHEY: Yes, Your Honor.

19 THE COURT: I think the best way for us to proceed is
20 to look at each of the offense groups and go through them
21 separately. There are adjustments that have been raised as to
22 each group and objections made based on those adjustments. Any
23 objection to proceeding in that fashion?

24 MS. HELDMYER: No, Your Honor.

25 MR. RICHEY: No, Your Honor.

9:18 AM

1 THE COURT: All right, then. Well, we'll start then,
2 I believe, on page 15 of the PSR with the offense or counts of
3 conviction 1 through 12. All right. Mr. Richey, is there any
4 objection as to the offense level arrived at here of 20?

5 MR. RICHEY: Yes, Your Honor, my objection there is
6 that, first of all, the government was required to prove the
7 tax loss. They still did not prove any tax loss. And, in
8 fact, I would raise at this time the Supreme Court cases of
9 Apprendi v. New Jersey and Blakely v. Washington. Any
10 enhancement that would be imposed at sentencing should be
11 raised and addressed by the jury. It should be found by the
12 jury. And so there was no tax loss that was found by the jury.
13 Based on that then, the base offense level would be a six.

14 THE COURT: All right, then. Ms. Heldmyer.

15 MS. HELDMYER: Your Honor, for this argument and for
16 the arguments to follow and, of course, the United States is
17 going to be relying upon the evidence that was produced at
18 trial. We've also filed the sentencing memorandum, neither of
19 which I'm going to repeat too extensively during the arguments.
20 We do believe that the guidelines allow for the tax loss or
21 intended loss. There was certain problems resultant from
22 Mr. Hovind's inability or lack of records that we were able
23 obtain. That was something that was a problem with regard to
24 the tax loss in terms of the employment taxes that we
25 encountered in calculating tax loss that is solely the

9 : 2 0 A M 1 responsibility of Mr. Hovind. The intended tax loss, however,
2 is clear even though a number -- a specific number other than
3 what was proven at trial, could not be calculated. We believe
4 that the way the probation office calculated that tax loss is
5 correct.

6 MR. RICHEY: Your Honor, I failed to address one more
7 thing, if I could, regarding that. There was also evidence at
8 trial, many of the witnesses testified that they prepared their
9 own tax returns and paid their taxes. That being the case,
10 then that would be an amount that the government would not be
11 entitled to, because the tax was already paid on that. And,
12 again, the burden would rest on the government to prove what
13 the actual tax loss was. And that was not considered or taken
14 into account in their figures.

15 THE COURT: Ms. Heldmyer.

16 MS. HELDMYER: Your Honor, the intended loss is a
17 calculation that is used if it is above and beyond the tax law.
18 There is no way that we could possibly calculate how much taxes
19 were paid by these employees separately. But the intended loss
20 is what is important here, Mr. Hovind intended the loss as
21 noted in the presentence investigation report by his actions
22 and activities. If these employees then went out on their own
23 and paid the Internal Revenue Service, that is -- he may be
24 right in terms of a restitution figure, but that's certainly
25 not correct in terms of calculating the loss in this particular

9 : 2 1 A M 1 guidelines.

2 THE COURT: As to his Blakely objection.

3 MR. DAVIES: Your Honor, may I address that issue?

4 THE COURT: Yes, Mr. Davies.

5 MR. DAVIES: In our sentencing memorandum at page 6,
6 those cases, Pope, Valnor and Talley, all say that the way it's
7 handled post-Booker is the Court calculates the guideline
8 range. Once the Court does that correctly, then it imposes a
9 reasonable sentence pursuant to that 3553(a) factor. So his
10 Blakely argument is -- Booker argument has repeatedly been
11 rejected by the Eleventh Circuit including in those cases.

12 THE COURT: All right. Under the laws in this
13 circuit, it is clear and has been repeatedly addressed by the
14 Eleventh Circuit that this type of enhancement need not be
15 presented to the jury and a jury finding beyond a reasonable
16 doubt in order to support the enhancement at sentencing. As
17 long as I make the finding based on the evidence -- by a
18 preponderance of the evidence standard, that is sufficient.
19 And I do make that finding now as to the amount at issue.

20 For the years 2001 through 2003, I believe the
21 number -- and I believe this is reflected in the presentence
22 report. It was \$604,874.87. That, again, was for the years
23 2001 through 2003. This is referencing the employment taxes.
24 I can consider all relevant conduct in this case. And at this
25 time, I do consider also the conduct in the years '99 and 2004

9 : 2 4 A M 1 in finding the intended loss at \$890,577.01

2 As far as the base offense level, if the tax loss is
3 greater than 400,000, we would be at a base offense level of
4 20. And I believe -- Ms. Lassiter, am I correct, but less than
5 a million? Is it 400 to a million in the table?

6 THE PROBATION OFFICER: More than a million, Your
7 Honor. It should be less than a million --

8 THE COURT: So whether I used the 600,000 or the
9 \$890,000 figure, we're at the same base offense level of 20.
10 All right.

11 And that objection, Mr. Richey, will be overruled.
12 Paragraph 38 then applies an adjustment for role in the
13 offense. Do you wish to address that?

14 MR. RICHEY: Your Honor, I believe that was already in
15 the objections, but just briefly then, the role there would
16 indicate that he was leading or had some supervisory role, and
17 if -- the evidence that was presented at trial indicated that
18 the witnesses were told that they could prepare their tax
19 returns if they wanted, he was not going to tell them what to
20 do regarding that. And as the evidence also indicated, many of
21 them did pay their taxes. So I would object that there be any
22 enhancement in that, because there was no role as a leader in
23 regards to that.

24 THE COURT: Ms. Heldmyer.

25 MS. HELDMYER: Your Honor, the evidence that was

9 : 2 6 A M 1 adduced at trial is supported by paragraph 38 that was written
2 by the probation office. The evidence was very clear that
3 Mr. Hovind was a leader -- a very strong leader among his
4 family and his followers and all of the employees, which at the
5 high point I believe there were approximately 45, that he
6 engaged regularly in anti-tax rhetoric, that he very
7 regularly -- there was nobody who didn't understand what
8 Mr. Hovind's position was, that he was advocating the
9 non-payment of taxes and the illegality of the Internal Revenue
10 Service. The entire scheme was certainly extensive. It lasted
11 a number of years and involved the whole of the business. And
12 Mr. Hovind even sold and promoted anti-tax issues and arguments
13 by way of the videotapes and the other literature that he sold,
14 and that he gave -- and that he allowed to be videotaped on his
15 property. So we believe that the evidence is very supportive
16 according to the testimony with regard to Mr. Hovind.

17 THE COURT: All right. I've considered this issue,
18 and I agree that the role adjustment should apply, and that
19 being the four-level adjustment. The offense did involve a
20 number of years, '99 to 2004, and it also involved significant
21 tax loss. I've stated that amount at just shy of a million
22 dollars. There were -- the entire operation was involved, not
23 just CSE, but also the Dinosaur Adventure Land as well and the
24 employees of that operation. It is clear also from the
25 evidence that Mr. Hovind was in complete control of those

9 : 2 8 A M 1 operations.

2 As far as the other participants, the Court does not
3 have to find that in applying this adjustment, that the other
4 participants, excuse me, were somehow responsible for the
5 offense. It's not a matter of me resolving or determining
6 relative criminal responsibility. Many of these employees were
7 what I would consider unknowing participants in Mr. Hovind's
8 scheme. While it is true that there was testimony during the
9 trial from employees that Mr. Hovind told them they could file
10 taxes if they wanted to, it is also true that the evidence was
11 very clear that Mr. Hovind never shied away from advising
12 individuals, including his own employees, that there was no law
13 that required anyone to pay taxes in this country. There was a
14 video that was disseminated and shared with employees and
15 others about that. There was testimony, I know, from at least
16 one employee, Mr. Nelson, Dan Nelson in which he testified that
17 he was told specifically that he did not have to pay -- pay
18 taxes.

19 So I believe and would find that the adjustment --
20 four-level upward adjustment is appropriate in this case as
21 Mr. Hovind was an organizer or leader of an extensive criminal
22 operation.

23 All right. There is another adjustment that has been
24 applied here, Mr. Richey, in paragraph 39 for abuse of position
25 of public or private trust. Do you wish to address that? I

9 : 3 0 A M 1 understand you filed a sentencing memorandum, but there is a
2 lot in your sentencing memorandum. So if you wish the Court to
3 consider an objection, I would like you to make it orally as
4 well here on the record.

5 MR. RICHEY: In regards to the public trust, Your
6 Honor, I don't think that that applies in this situation
7 because he's not considered a public figure. Certainly he's a
8 minister and went around preaching, but that's a different
9 matter than what these charges address. The charges dealt with
10 taxes. And the evidence that came into trial also was that the
11 organization, CSE, was actually operated by other individuals,
12 Dr. Mooneyhan and Glen Stoll, and that they actually supervised
13 and ran everything.

14 THE COURT: All right. Thank you. Ms. Heldmyer.

15 MS. HELDMYER: Your Honor, again, the evidence adduced
16 at trial is completely contrary to that. The evidence adduced
17 is very clear that Mr. Hovind ran that business, ran every
18 aspect of that business and ran it with a tight fist. And
19 whether or not he claimed to have given ownership or control to
20 someone else, which he did on a number of occasions, the
21 evidence was very clear that he never, in fact, did that. He
22 exerted control over all of those employees. He did not give
23 any of his employees whom he had control over the option of
24 having wages or taxes withheld from their pay, which was
25 something that was forced upon them if they wanted to work at

9 : 3 2 A M 1 Dinosaur Adventure Land or CSE. So he certainly had a position
2 of private trust with regard to his relationship with his
3 employees. And with regard to his relationship to the public,
4 he was -- he had some level of esteem in the community, and he
5 had some level of power. He did a number of lectures and even
6 held himself out as an expert. And simultaneous with holding
7 himself out as an expert, he also advocated the non-payment of
8 taxes. So he clearly abused a position of trust that he had
9 gotten from the general public and from his own staff and his
10 own employees.

11 THE COURT: The evidence adduced during the trial was
12 very clear, at least from the employees' perspective, that
13 Mr. Hovind again was in complete control of the operation. He
14 had great influence over the employees at the operation of CSE
15 and Dinosaur Adventure Land. To say they looked up to him would
16 not be a strong enough characterization of their testimony and
17 the way they perceived Mr. Hovind. He had great influence over
18 the employees. No question they trusted him. They believed
19 him and what he had to say. And by his actions in this case
20 with respect to those employees, Mr. Hovind breached that trust
21 that they placed in him.

22 I also need to mention for the record, which it's
23 clear, but let me do so for the record, that he was a minister,
24 and this operation was run as a ministry in the views of many
25 who worked there, and it was a family of individuals, and they

9 : 3 4 A M 1 looked to Mr. Hovind as almost like a father figure in many
2 respects. Mr. Hovind's reputation in the community, I agree
3 with what Ms. Heldmyer just said, did also play a role in his
4 influence over the employees in this situation. There was also
5 no one to supervise Mr. Hovind's activities in this regard.
6 Again, he was the leader, the organizer, the controller of the
7 operation. It was not Glen Stoll or anyone else. It was
8 Mr. Hovind. Because the employees placed such trust in
9 Mr. Hovind, I find that it made the detection of the offense
10 that he committed significantly less likely in this case.
11 Those employees were not -- were not going to cross Mr. Hovind.
12 They were not going to report Mr. Hovind to the IRS, because,
13 in fact, they believed Mr. Hovind and what he told them.

14 I do find, Mr. Hovind, that you abused a position of
15 trust in this case and, therefore, the two points -- or
16 two-level adjustment will also be applied.

17 All right. Mr. Richey, we then get to paragraph 40,
18 which is the adjustment for obstruction of justice.

19 MR. RICHEY: Yes, Your Honor. The charge that -- and
20 I guess this would in some way parallel Count 58, the last
21 count, is that the charge was the obstruction of the -- and
22 what the jury found was obstruction of the administration of
23 the Internal Revenue laws. And I would just note that that is
24 different -- that's a different charge than obstruction of
25 justice. Obstruction of justice would come under Title 18.

9 : 3 6 A M 1 And since that was not what was found by the jury, I object to
2 any enhancement found under obstruction of justice.

3 THE COURT: Ms. Heldmyer.

4 MS. HELDMYER: Your Honor, I believe that this issue
5 is sufficiently briefed in the sentencing memorandum,
6 specifically on page 2, the government's sentencing memorandum,
7 the counts are to be grouped, and the underlying conviction for
8 the obstruction charge would then be -- mandate a two-level
9 enhancement -- a two-level adjustment.

10 THE COURT: Just one moment, please. The obstruction
11 adjustment under 2J1.2 should be applied here, Mr. Richey, and
12 I'm not sure I understand your argument as to why it shouldn't
13 be applied. Is this a -- is your argument a grouping argument?
14 Is that what you're objecting to? Certainly you're not
15 suggesting Mr. Hovind should not be punished for the offense of
16 conviction in Count 58?

17 MR. RICHEY: No, Your Honor, that's not what I'm
18 saying. I'm just saying that that's a different thing, and
19 obstruction of justice was never previously alleged. He was
20 charged with a different count. And the obstruction of justice
21 here doesn't meet or require what -- the evidence that was
22 provided at trial did not meet the level for obstruction of
23 justice under this point system. So --

24 THE COURT: Do you have an objection then as to the
25 grouping of the counts for purposes of sentencing?

9 : 4 0 A M 1 MR. RICHEY: You mean grouping Count 58 with 1 through
2 12 and all the other counts?

3 THE COURT: I didn't see an objection to that in your
4 memorandum. So I'm asking you now.

5 MR. RICHEY: As far as -- if I understand your
6 question right, as far as grouping them all together for
7 purposes of determining the base loss -- or the base in
8 calculating and the overall sentencing, correct.

9 THE COURT: Right.

10 MR. RICHEY: No, I don't have that objection.

11 THE COURT: Well, absent -- absent grouping, the way
12 that the PSR has done, there would be no punishment to
13 Mr. Hovind for that offense of conviction absent this
14 adjustment. And that's, in fact, what the grouping rules
15 require me to do, so that the sentence accurately and
16 appropriately would reflect the conduct, and that's why 2J1.2
17 is to be applied in the grouping.

18 For the record, let me note how I come to that
19 conclusion, and that would be starting in Section 3C1.1 of the
20 guidelines manual and the commentary to that section, which
21 notes that this adjustment would apply to obstructive conduct
22 with respect to the official investigation, prosecution or
23 sentencing of the instant offense where there is a separate
24 count of conviction for such conduct. And then in paragraph 8
25 refers specifically to the grouping, which states that the

9 : 4 3 A M 1 offense level for that group of closely related counts will be
2 the offense level for the underlying offense increased by the
3 two-level adjustment specified by this section, or the offense
4 level for the obstruction offense, whichever is greater. In
5 this case, it would be what we have here in the presentence
6 report. But there is no question in the Court's mind that the
7 obstructive conduct in this case related to both the counts in
8 1 through 12, as well as 13 through 57.

9 MR. RICHEY: Your Honor, just for clarification
10 purposes, I'm not sure I heard, and maybe I just didn't hear,
11 was that a two-point increase?

12 THE COURT: Two points -- a two-level adjustment. And
13 the obstructive conduct is outlined in the presentence report
14 in paragraphs 24 -- well, it's contained -- it's one paragraph
15 with several subparagraphs following that, pages 11 through 13
16 of the presentence report. And those of us present for the
17 trial are well aware of what the conduct was.

18 All right, then. Let's look back at the computations
19 for the grouping in Counts 1 -- or for the group of counts of
20 conviction 1 through 12, then the adjusted offense level would
21 be 28. We also need to consider the computation under 13
22 through 57 in order to determine according to the guidelines
23 which results in the higher offense level, which is what the
24 guidelines instruct the Court to apply.

25 Are you with me, Mr. Richey?

9 : 4 6 A M 1

MR. RICHEY: Yes, your Honor.

2 THE COURT: I'm on page 16, paragraph 42. Do you wish
3 to address this base offense level? We're now dealing with the
4 structuring counts.

5 MR. RICHEY: Yes, Your Honor. This -- my objection is
6 under 2S1.3, then that the base offense level is a six, because
7 there was no demonstrated loss to the government on this.
8 Also, then, the PSR requests a 16-point enhancement based on
9 what they say is a loss of more than \$1 million. Again, there
10 was -- that was certainly not any loss. If you look at only
11 what the jury found, the loss that the jury alleged was
12 400,000. So it would not exceed the \$1 million mark for the 16
13 points that they've requested.

14 THE COURT: But I want to note, as I've already ruled,
15 the law in this circuit is that I'm not bound by the jury's
16 verdict with respect to loss.

17 MR. RICHEY: Further in regard to that, Your Honor,
18 there was no demonstration by the government of what other
19 illegal activity this was in conjunction with. And as the
20 Court already noted for Mrs. Hovind, there is some question
21 there as to what the underlying conduct would be. So based on
22 that, Your Honor, I would just state that the defense's
23 position is that it should be a six-point.

24 THE COURT: All right. Ms. Heldmyer.

25 MS. HELDMYER: Your Honor, the guidelines provisions

9 : 4 8 A M 1 for structuring do not require that the government prove or
2 this Court find for sentencing purposes that there was a loss
3 for the government. The structuring guidelines specifically
4 say that it's a six-base offense level, plus a number of
5 offense levels corresponding to the value of the funds. So
6 they use the table that refers to a loss, but the actual
7 finding by the Court needs to be just the value of the funds.

8 And the Court is accurate that the Court is not bound
9 by the proof at trial. The counts, as the Court may recall,
10 were restricted to those counts within the statute of
11 limitations, but there was, I believe, entered under 404(b), if
12 I'm not mistaken, a number of other structuring transactions
13 that occurred, and all of those can be considered for
14 sentencing purposes, and those are the figures that were used,
15 along with the charge and counts of conviction, to come up with
16 that figure. We agree with the probation office's calculations
17 in that regard.

18 MR. RICHEY: Your Honor, if I may, one more thing, and
19 I want to be brief on this, but just to raise to the Court's
20 attention, I know on Tuesday the Court issued its order denying
21 the judgment of acquittal and cited a couple of cases there.
22 And I also wanted to apprise the Court of one other case, and
23 that case would be U.S. v. Davenport at 929 F.2d 1169. That's
24 a Seventh Circuit case, 1991. In that case, that Court -- the
25 Davenports had been charged with a conspiracy to violate

9 : 4 9 A M 1 5324(3), and a single count alleging 81,500. And then there
2 were ten separate charges dividing up the 81,500 in each
3 individual transaction that occurred.

4 The Court looked at that and said that -- and kicked
5 out the ten that were the separate transactions under 10,000
6 and said that it should have only been the one count of 81,500,
7 and that was what they were convicted on, and the other counts
8 were dismissed. Then, specifically with regard to the cases
9 that the Court cited, Morales v. Rodriguez, in that one --

10 THE COURT: Mr. Richey, I'm sorry to cut you off, and
11 I don't mean to be rude, but if you wish me to reconsider my
12 order on the motions of judgment of acquittal, I need you to
13 file a proper motion for reconsideration. Now is not the time.

14 MR. RICHEY: Okay. That's not really what I'm doing.
15 I'm just trying to point out the actual loss in this that would
16 go to the loss.

17 THE COURT: Based on the ruling that I have already
18 made, the analysis will include all counts of conviction.
19 Again, if you wish -- I don't remember the case that you have
20 just cited to me, the Davenport case. I don't remember that
21 being specifically referenced.

22 MR. RICHEY: Correct. The Court did not reference
23 that case.

24 THE COURT: I don't remember you referencing it and
25 arguing it.

9:51 AM

1 MR. RICHEY: No, I don't believe so.

2 THE COURT: So if you wish -- again, if it's something
3 that you wish me to reconsider or a point you wish to make on
4 reconsideration, you should do that in a motion to the Court,
5 and I'll review it. As to our purpose for being here today,
6 which is the sentencing of Mr. Hovind, we need to proceed on
7 the rulings that have been made.

8 MR. RICHEY: Right. So -- but based on what the
9 government just said of the structuring, that in order to prove
10 the structuring transactions in all those cases looked at,
11 there had to have been, and in each of those cases there was a
12 single charge alleging the total amount of loss. And that
13 wasn't in this case.

14 THE COURT: Again, that goes for your motion for
15 judgment of acquittal, which has already been ruled upon, and
16 the government -- as we stand here now today, the government
17 has proved what it charged in the indictment, and Mr. Hovind
18 has been found guilty of those charges. So my sentencing today
19 will proceed on that basis.

20 MR. RICHEY: Also -- well, okay. Then, also, Your
21 Honor, in regards to that, then, he was not charged with
22 5324(d)(2), which would be the penalty. And so that -- he was
23 not apprised of that, so that any enhancement based on that
24 should not be considered at this time.

25 THE COURT: All right. I do want to address the

9 : 5 2 A M 1 5324(d)(2) issue, and probably I should have done that at the
2 outset, because I agree with Mr. Richey that Mr. Hovind was not
3 charged specifically under that section, and because it would
4 or does increase the penalty beyond the statutory maximum
5 otherwise, I do believe it's an Apprendi issue, and that would
6 have been something that the jury would have had to found
7 beyond a reasonable doubt, which is not the case here.
8 However, that only affects the statutory maximum in this case,
9 not the guidelines.

10 So the presentence report, Mr. Richey, will be
11 reflected -- excuse me, modified and amended to reflect -- to
12 reflect that fact. And I agree with you in that regard.
13 However, that argument does not pertain to the guidelines. It
14 pertains only to the statutory maximum, which is five years as
15 opposed to ten.

16 Also, I think it important to point out, specifically
17 in connection with these counts, the guideline -- the edition
18 of the guideline manual that's being used in Mr. Hovind's case,
19 and that is the 2006 edition of the manual, and that is
20 consistent with the application note 2 to 1B1.11, which states
21 that the edition -- or that the last date of the offense of
22 conviction is what is to be considered in determining which
23 edition to use.

24 Here, actually, Count 58 charged conduct up until the
25 date of the return of the indictment, which was July the 11th,

9 : 5 5 A M 1 2006. There are no ex post facto issues in Mr. Hovind's case.
2 There were, in fact, such issues in Mrs. Hovind's case, and
3 that's why the 2001 manual -- the edition of the manual was
4 used for Mrs. Hovind's purposes, but not for Mr. Hovind's
5 purposes. And that is an issue in Mr. Hovind's case because of
6 one of the adjustments, and that is reflected in the PSR, which
7 we'll get to in just a moment, and that would be in paragraph
8 43.

9 Back to paragraph 42 and the base offense level, the
10 guidelines do not refer -- as Ms. Heldmyer pointed out, do not
11 refer to loss. They refer to the value of the funds, which is
12 a clear indicator to the Court what the Commission's intent
13 was, and that is for the Court not to consider loss, but
14 instead value of the funds, which is what you have in a
15 structuring situation as opposed to a loss. It would make no
16 sense to have the Court consider loss in a structuring case.
17 The value of the funds, based on the evidence at trial, is as
18 reflected in the PSR on page 10. I am not limited by any jury
19 determination in this regard, and also consider all relevant
20 conduct, and that additional relevant conduct is identified in
21 paragraph 21 of the PSR, which does bring the amount -- total
22 amount value of the funds involved in Counts 13 through 57 to
23 \$1,570,538.

24 And that does -- if you refer to the corresponding
25 table, 2B1.1, which is what the guidelines tell us to do, there

9 : 5 8 A M 1 is a 16-level upward adjustment for the value of the funds.
2 It's 16 levels for a value between -- greater than 1 million,
3 but less than 2.5 million, which is less than where we are. So
4 that then brings the base offense level to a 22.

5 There is, in the PSR in paragraph 43, a two-level
6 upward adjustment under 2S1.3(b)(2). Mr. Richey, do you wish
7 to address this fact -- this issue?

8 MR. RICHEY: Your Honor, just based on that,
9 1.3(b)(2), that's not authorized under the facts of this case,
10 and I would just rely on the objections that we've already
11 made, that each individual check was written for 95- or 9600.

12 THE COURT: Ms. Heldmyer.

13 MS. HELDMYER: Your Honor, we agree with the
14 calculations and the statements from the probation office that
15 it was -- that it did involve more than \$100,000 over a
16 12-month period as the evidence showed. I think that was very
17 clear.

18 THE COURT: All right. I agree. The evidence was
19 that the structuring conduct occurred from 1999 to 2003 and did
20 involve well in excess of 100,000 in at least three of the
21 years. And so the two-level increase is appropriate. And the
22 objection will be overruled.

23 All right. Paragraph 45. Mr. Richey, we have
24 reflected here an adjustment for role in the offense again.
25 Different offense, so you may have a different objection.

10:00AM 1 MR. RICHEY: Right, Your Honor. Under this one for
2 the role, there was no evidence of any role that my client had
3 on this. He was merely alleged in the indictment as a
4 co-conspirator on this. Certainly there is no indication that
5 his name was ever on any of the checks, that he ever told
6 anyone to go down and withdraw cash, or that he gave specific
7 instructions to anyone. I mean, he was just named as a
8 co-conspirator, and that was it.

9 THE COURT: I think he was aiding and abetting as
10 opposed to a co-conspirator.

11 MR. RICHEY: I stand corrected. Aiding and abetting.

12 THE COURT: Thank you. Ms. Heldmyer.

13 MS. HELDMYER: Your Honor, the evidence was also very
14 clear that Mrs. Hovind didn't do anything that she wasn't
15 directed to do by her husband. Clearly, though, she had her
16 own freewill and could have said no, which is I'm sure why she
17 was convicted. Clearly the evidence is and has been very clear
18 that Mr. Hovind directed all of the activities, particularly
19 the monetary activities. We introduced a number of documents
20 in the Court which indicated that Mr. Hovind -- the memos and
21 things that were seized from CSE which showed that Mr. Hovind
22 was, in fact, directing all the financial transactions and the
23 financial responsibilities, and that he was, in fact, directing
24 how the employees were being paid, why the cash was being
25 obtained, the cashier's checks for property, all of those kinds

10:02 AM 1 of things were directed by Mr. Hovind. And though the
2 structuring -- the actual -- the person who went down to the
3 bank and actually did the structuring was Mrs. Hovind, that
4 does not preclude the Court from finding that these activities
5 were directed by Mr. Hovind, and that he is -- was the
6 organizer and leader of this otherwise extensive activity.

7 I think that the Court can find that it was otherwise
8 extensive. I think the Court can find that there were five or
9 more people involved with regard to the -- how the cash was
10 being paid, because we're talking about structuring occurrences
11 that started with the direction from Mr. Hovind, and
12 Mrs. Hovind who actually performed the act of the structuring,
13 brought the cash back, and the cash was then distributed to the
14 employees. There were some other employees who also cashed
15 some checks as well. So it certainly was --

16 THE COURT: Where do you come up with the five? I
17 certainly recognize Mrs. Hovind. Martha Harris, I believe, was
18 also involved in the transactions, and I believe Tonya Hovind.
19 I may have that wrong.

20 MS. HELDMYER: Your Honor, there was other evidence
21 that other members of the Hovind family also conducted the
22 structuring transactions. I would urge the Court, however, to
23 rely upon the otherwise extensive subsection of that, rather
24 than the five. I think we could come up with five. I think
25 it's much more sound to argue that it was otherwise extensive.

10:03 AM 1 It was over a long period of time. It permeated the business.
2 It was the reason why the structuring allowed and enabled the
3 illegal Internal Revenue Service activities by getting all the
4 cash that came back. And the cash was primarily for the
5 payment of the employees so the employment taxes would not have
6 to be paid, et cetera. So I think the Court can very easily
7 find that it was otherwise extensive, and I would ask the Court
8 to rely on that particular subsection.

9 With regard to the aiding and abetting, I do not
10 believe, as I said, that that precludes the Court from finding
11 Mr. Hovind was an organizer and leader. Simply because he
12 didn't go down and do these transactions does not mean that he
13 was not the organizer and leader. Again, the relationship
14 between Mr. and Mrs. Hovind is very, very clear that
15 Mrs. Hovind was subservient to her husband, she did what her
16 husband told her to do, and that these activities were all
17 directed by Mr. Hovind, and that's why we believe that you can
18 find he was the organizer and the leader of this particular
19 activity.

20 THE COURT: Thank you. I don't know and haven't been
21 provided with any authority to preclude me from finding that
22 someone who aids and abets cannot be given this adjustment
23 under the guidelines. And absent some legal authority
24 indicating that that cannot be done, it makes sense to me that
25 it can be done. And in this case, I do think it's appropriate.

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10:05AM 1 Mr. Hovind, as I've already indicated, was the decision-making
2 authority for the operation, and based on the degree of control
3 and influence that he exercised over others, including those
4 involved in the financial transactions at issue here, I believe
5 I can find and do find that the adjustment for being an
6 organizer and a leader of an otherwise extensive operation is
7 appropriate, that he did direct the activities of those
8 involved in the financial transactions, namely, those
9 activities of his wife, Mrs. Hovind.

10 I also would note the length of time, the span of time
11 involved in this offense, and that it is significant, and also
12 the significant -- the value of funds involved at 1.5 million
13 lends me or causes me to believe and find that it was an
14 extensive operation.

15 All right, then. Mr. Richey, we are at paragraph 46,
16 which is back to the obstruction. Unless you have some
17 additional argument to make here, the same analysis would be
18 applied by the Court with respect to this group of counts.

19 MR. RICHEY: Your Honor, I think with respect to this
20 group of counts, that there is no evidence of hiding of bank
21 records or hiding the amounts in order to -- unless you look
22 specifically just at the structuring charge itself.
23 Otherwise -- in fact, I would point to the Court to the fact
24 that the IRS had issued summons and did obtain all bank records
25 from the banks, and so there was no affirmative act of the

10:07AM 1 defendant to hide the monetary transactions and the monetary
2 amount. And so based on that, we would object to any
3 enhancement.

4 THE COURT: Okay. I understand the argument.

5 Ms. Heldmyer, do you wish to address it?

6 MS. HELDMYER: No, Your Honor. I believe the same --
7 the same logic would apply. It doesn't have to be related to
8 the counts, the obstructive behavior does not have to be
9 related to the counts. So we would urge that same analysis
10 applies.

11 THE COURT: Well, I would find that the conduct does
12 relate to this group of counts as well. The -- if I recall the
13 evidence, there was -- there was communication from, and I
14 believe it was Glen Stoll to Mr. Hovind regarding the need to
15 notify Mr. Stoll in the event of any transactions being
16 conducted in excess of \$10,000. And I believe that Mr. Stoll
17 and Mr. Hovind had the same intent, and that was the intent to
18 not only avoid the payment of taxes, but also to obstruct and
19 impede any efforts of the Internal Revenue Service to
20 administer its laws.

21 All right. The adjusted offense level, then, on these
22 counts is 30, which is a greater offense level than those for 1
23 through 12 in which the guidelines would indicate that is the
24 offense level to be applied.

25 Mr. Richey, I believe in your objections you -- I

10:09 AM 1 believe you raised an objection to no adjustment for acceptance
2 of responsibility. Do you wish to address that?

3 MR. RICHEY: Not anything further, Your Honor, but I
4 do believe that my -- well, actually I retract that.

5 THE COURT: Okay.

6 MR. RICHEY: Just a couple of things. The Court just
7 noted the evidence that was presented regarding Glen Stoll, and
8 actually after that came in, there were no more cash
9 transactions over 10,000. So I believe as far as that goes,
10 that portion has been corrected, and that is no longer
11 continuing. I would also point out to the Court that after the
12 conviction in this case -- and it's -- I mean, there was quite
13 a bit of dialogue during the course of this trial regarding
14 Mr. Hovind's awareness of what he was actually charged with,
15 and I think the testimony was that initially the investigation
16 did deal with his personal income taxes, and then converted
17 over to an investigation of employment taxes.

18 And regarding that, after the conviction in this case,
19 then steps have been taken to put in place a program where an
20 employment agency is now being used for everyone there at CSE
21 and Dinosaur Adventure Land. And so with regards to that, I
22 believe that he has taken appropriate steps, now having
23 understood what the charges were and what the issues were, to
24 correct those. And I believe that he will later make a
25 statement regarding that. So I would ask the Court to keep

10:11AM 1 that in mind and to -- to find acceptance of responsibility.

2 THE COURT: Thank you. Ms. Heldmyer.

3 MS. HELDMYER: Your Honor, we have reason to believe
4 that that is not the case, that those activities as outlined by
5 Mr. Richey are not exactly as represented by Mr. Richey. We do
6 have evidence to present at some point in time that's relevant
7 to that and other issues, and I will leave it, of course, to
8 the Court to decide when the Court may want to hear that
9 evidence, but it's actually -- this evidence is evidence of
10 conversations after conviction and recent conversations that
11 Mr. Hovind has had at the jail that would relate directly to
12 acceptance of responsibility to -- and to sentencing issues
13 whether -- where within the guidelines range the Court may wish
14 to sentence the defendant or whether the Court may choose to
15 sentence the defendant to a sentence above the guideline
16 ranges. We believe these conversations would be relevant to
17 all of those -- all of those issues.

18 If the Court wants to hear those relative to the
19 acceptance of responsibility, we're willing to do that now.
20 But regardless of those representations, we do not believe,
21 even if those were true, that those representations by
22 Mr. Richey are sufficient to allow this Court to give
23 Mr. Hovind the two levels for acceptance of responsibility.
24 Mr. Hovind has done everything but accept responsibility. He
25 continues to believe that he didn't owe any taxes, that there

10:12 AM 1 are no laws that require him to pay taxes. He certainly did
2 not plead guilty. And he is continuing to conduct criminal
3 activities that we can illustrate by this evidence. So if the
4 Court wishes to hear that now, we can proceed now or wait until
5 perhaps the guidelines range is calculated and the sentence is
6 to be determined.

7 THE COURT: All right. Well, it would relate to the
8 argument as far as this adjustment. So I will hold my decision
9 or ruling in abeyance as far as the level here and whether any
10 adjustment should be made.

11 Mr. Richey, you're standing up, so I presume you have
12 something you would like to say.

13 MR. RICHEY: Yes, Your Honor. In regards to this disk
14 that was made of the telephone calls, my objection would be,
15 first of all, that they are only blippets taken out of sequence
16 and out of the conversation. Further, so that it doesn't shed
17 the true light of the nature of the conversation, in fact, in
18 many of them, you don't know what -- it was obvious that there
19 was a question that preceded that. We don't know what the
20 question was, because that was cut out. It's unclear who the
21 conversation is taking place with in many of the conversations.
22 And so this disk, we would object to it as coming in in that it
23 doesn't meet -- it's been distorted and deformed and not even
24 in its true and correct and accurate original intent. So --

25 THE COURT: I would find that the arguments that you

10:14 AM 1 raise would go to the weight of the evidence as opposed to the
2 admissibility.

3 But, Ms. Heldmyer, if you wish to address the accuracy
4 of what he says, you're free to do that for the record.

5 MS. HELDMYER: Your Honor, the speakers can be
6 identified by Special Agent Schneider as the tape is rolling.
7 I think he's probably listened to more tapes than he cares to
8 say, and he can identify the speakers as the tapes are playing.
9 They are not entire conversations, but they are entire
10 questions and answers of the conversations. The copy may not
11 be simply easy to hear what's being said by the other person,
12 but the tape recording is very easy to hear what Mr. Hovind
13 says. It's not very difficult.

14 THE COURT: That's why I want to make sure that my
15 ruling was premised on the belief that these were conversations
16 with Mr. Hovind.

17 MS. HELDMYER: They're all with Mr. Hovind and another
18 individual. I think that we have set up the equipment such
19 that we will be able to hear the questions and what's being
20 said on the other side. Mr. Richey's copy, probably it was
21 difficult to hear, but I think we've set it up so that you will
22 be able to hear what the actual question is or what the
23 exchange is, but all of them have Mr. Hovind on them. And the
24 tape is portions of conversations that we felt obviously were
25 relevant to the Court's decision on these matters, and they are

10:16 AM 1 all identified by date, and Special Agent Schneider can
2 identify the speakers as well.

3 THE COURT: How long is the tape?

4 SPECIAL AGENT SCHNEIDER: 30 minutes.

5 MS. HELDMYER: 30 minutes.

6 THE COURT: Is there anything either of you would like
7 to address before we proceed with the tape? I think we've
8 resolved the computations.

9 MR. RICHEY: Yes, Your Honor. One other thing in
10 regard to is that then my other objection would be that these
11 are specifically hand-picked conversations that were taken, and
12 the Court should also take into account when the conversations
13 were made, because obviously he's been incarcerated for about
14 three months. And whether these were at the beginning of that
15 as opposed to now, that certainly I would make a representation
16 in discussing this with my client, that there have been more
17 recent conversations where his attitude has, in fact, changed
18 and altered. And so this is not a true, fair and accurate
19 depiction of all the conversations that he's had in his true
20 mental state.

21 THE COURT: All right. You will be permitted to
22 cross-examine Agent Schneider as far as the timing of the
23 conversations and when they took place.

24 You did indicate Agent Schneider, did you not?

25 MS. HELDMYER: Yes, Your Honor. And the actual dates

10:17AM 1 of the conversations are going to appear on your screen as the
2 disk is being played.

3 THE COURT: All right. And you can make points
4 through cross-examination that you just raised if you feel it
5 necessary. And then, of course, Mr. Hovind can address the
6 Court about his present state of mind.

7 MR. RICHEY: Thank you.

8 THE COURT: We're going to take a ten-minute recess
9 before we begin with the tape. We'll be in recess until 10:30.

10 (Recess.)

11 THE COURT: Ms. Heldmyer.

12 MS. HELDMYER: Yes, Your Honor. Special Agent Scott
13 Schneider.

14 THE CLERK: Do you solemnly swear that the testimony
15 that you shall give will be the truth, the whole truth and
16 nothing but the truth so help you God?

17 THE WITNESS: I do.

18 SCOTT SCHNEIDER, GOVERNMENT'S WITNESS.

19 THE CLERK: Be seated. Please state your full name
20 and spell your last name for the record.

21 THE WITNESS: I'm Scott Schneider, S-c-h-n-e-i-d-e-r.

22 THE COURT: Ms. Heldmyer.

23 MS. HELDMYER: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. HELDMYER:

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10:30 AM

1 Q. Special Agent Schneider, how are you employed?

2 A. I'm a special agent with IRS Criminal Investigation,
3 Pensacola, Florida.

4 Q. Are you the same Scott Schneider that testified at the
5 trial of Kent and Jo Hovind?

6 A. Yes, ma'am.

7 Q. And one of the case agents that investigated the case?

8 A. Yes, ma'am.

9 Q. At some point in time after the conviction, Special Agent
10 Schneider, did you have the occasion to attempt to get copies
11 of tape recordings made by the jail where Mr. Hovind was
12 staying and listen to those tape recordings?

13 A. Yes, ma'am.

14 Q. Would you explain the procedure, please.

15 A. Well, as part of their regular procedure, the jail makes
16 recordings of --

17 MR. RICHEY: Objection, Your Honor. Hearsay,
18 speculation.

19 THE COURT: Overruled.

20 THE WITNESS: The jail makes recordings of phone
21 calls. The phone calls start off warning the caller or the
22 recipient of the phone call that the call is subject to
23 monitoring and recording. I specifically requested from the
24 Escambia County Sheriff's Office that phone calls relating to
25 certain PIN numbers be looked for, meaning the home and

10:31 AM 1 business of Kent Hovind. We were able to ascertain that he was
2 using someone else's PIN number for making those phone calls
3 from the jail. The PIN number is assigned to inmates so that
4 they can make phone calls out and they can identify who the
5 caller is. So he was using a James Bergeron's PIN number for
6 the majority of the time.

7 And we obtained these phone calls on disk pretty much
8 once a week, sometimes once every other week, but for most of
9 the time once a week. We would get a CD by called number. So
10 if the phone number for the house we would get a CD for all the
11 phone calls going to that house the prior week and they would
12 be in a form that it had its own media player but it was also
13 in a form that you could listen to it on any Window's-based
14 computer through their Window's-based media player.

15 BY MS. HELDMYER:

16 Q. For what period of time were you doing this?

17 A. We started doing it probably about a couple weeks after
18 initial incarceration at Escambia County jail, and we went back
19 and started the day he was actually convicted. So it was
20 November 2nd, I believe, 2006, is when the tape recording
21 started.

22 Q. What calls did you listen to total, the calls that had --
23 the calls to the home telephone number and what else?

24 A. Calls to the home telephone number, calls to the business
25 number.

10:32 AM 1 Q. The business being?

2 A. The business being Creation Science Evangelism. And, also,
3 later on he did obtain the ability to call some cell numbers,
4 and we started listening to those as well, retrieving those in
5 addition.

6 Q. Do you know why he was using someone else's identification
7 number?

8 A. Well, it appeared at the early onset it was because he was
9 having problems. The recordings indicated that he was having
10 problems with his own PIN, so he started using someone else's.
11 He used his own for the majority of the time, and I believe as
12 late as December 30th or around the first of the year, that
13 individual left, their PIN number was cut off, and he finally
14 got his working again. And so he started using his own.

15 Q. Can you give us an estimate of about how many hours of tape
16 recordings you listened to?

17 A. There was probably an average of eight hours a week, six to
18 ten, ten on the high side, six on the low side. And it covered
19 about 11 weeks or so. So I'd say somewhere in the neighborhood
20 of about 80 to 90 hours.

21 Q. What types of things or topics of conversations were you
22 looking for?

23 A. Well, we -- we initially started looking for issues
24 regarding the possibility of him secreting and hiding or
25 removal of assets. Since we had the judgment -- or we had the

10:33 AM 1 forfeiture order pending, we were concerned that despite our
2 warnings, immediately after conviction that he might start to
3 dissipate or move assets out of the reach of the government.
4 So that's what initiated the reason for monitoring the phone
5 calls.

6 Q. Did you find phone calls that you would categorize as
7 telephone calls regarding that topic, that subject matter, the
8 hiding of assets?

9 MR. RICHEY: Objection, Your Honor, calls for
10 speculation.

11 THE COURT: Overruled.

12 THE WITNESS: Yes, ma'am.

13 BY MS. HELDMYER:

14 Q. What else did you eventually listen for and record?

15 A. Well, it became apparent while we were listening for that
16 information, that he was continuing to make threats of -- there
17 were a couple of veiled threats, but the majority of them were
18 threats about additional legal action that he was going to
19 take.

20 MR. RICHEY: Objection, Your Honor, testifying as to
21 evidence not or -- not in evidence.

22 THE COURT: Overruled. It's a statement he's
23 overheard of the defendant. I'll allow it.

24 THE WITNESS: So, again, that was a category that we
25 started hearing, and so we made note of significant -- again,

10:35 AM 1 similar to the type of charge he was convicted of in court,
2 threats of additional legal action, additional TIGTA
3 complaints. So that was a category. And in addition to that,
4 we started hearing a lot of the same rhetoric that we heard
5 during our investigation, as well as in his correspondence,
6 which is his continuing refusal to recognize the IRS or to
7 believe that they have any authority whatsoever. So we started
8 noting those phone calls as well.

9 BY MS. HELDMYER:

10 Q. At some point in time did you create a separate disk with
11 portions of telephone calls that you believe were relevant to
12 those topics?

13 A. Well, yes and no. Yes, I created a separate disk. I
14 created a separate file. This one file that -- that I'm seeing
15 right now that I compiled, I put on a disk with the full phone
16 calls that comprised this tape recording. This right here is
17 basically my compilation for the Court's ease of use. Instead
18 of having to listen to eight hours of phone calls that comprise
19 this, the full phone calls, I broke down the comments that were
20 made primarily by Kent Hovind.

21 Q. Did you bring a copy of these calls to court in the form of
22 a disk?

23 A. Yes, ma'am. As a matter of fact, every call separated in a
24 different directory list. There is one directory on this disk
25 that has every single phone call we got from the prison, and in

10:36 AM 1 addition to it is every single phone call that made up this
2 actual compilation.

3 Q. All right. So all of the phone calls are on the disk that
4 you brought to court?

5 A. Yes, ma'am.

6 Q. Is that disk marked Government's Exhibit 1?

7 A. Yes, ma'am.

8 Q. And is it keyed up and ready to play?

9 A. The file is keyed up and ready to play, yes, ma'am.

10 MS. HELDMYER: The United States would move
11 Government's Exhibit 1 into evidence at this time.

12 THE COURT: It will be admitted.

13 MS. HELDMYER: Your Honor, if I make the inquiry, the
14 screen will not tell the Court who the speakers are. Do you
15 want the agent to interject at the beginning of every phone
16 call and identify the speakers?

17 THE COURT: Yes.

18 MS. HELDMYER: All right. If you would do that when
19 the tape is played.

20 And I believe you'll see, Your Honor, the date and
21 time of each of the phone calls that are played. May I be
22 seated during the playing of the tape?

23 THE COURT: Yes.

24 (Tape played.)

25 THE WITNESS: There is about a 20-second blank intro.

10:37AM 1

That's Mr. Hovind.

2 (Tape played.)

3 THE WITNESS: And the other speaker is Glen Stoll.

4 (Tape played.)

5 THE WITNESS: That's one of the employees at Creation
6 Science Evangelism, Diane -- I don't remember the last name off
7 the top of my head.

8 (Tape played.)

9 THE WITNESS: That was Jo Hovind.

10 (Tape played.)

11 THE WITNESS: That's Eric Hovind.

12 (Tape played.)

13 THE WITNESS: This is an employee, I believe the first
14 name of Jeff that works over there. Just another employee at
15 CSE.

16 (Tape played.)

17 THE WITNESS: That's Eric Hovind again.

18 (Tape played.)

19 THE WITNESS: That's Marlissa Hovind, and Eric Hovind
20 is also on this phone call.

21 (Tape played.)

22 THE WITNESS: That's Eric Hovind again.

23 (Tape played.)

24 THE WITNESS: That is Glen Stoll.

25 (Tape played.)

10:55 AM

1 THE WITNESS: I believe he's talking to Paul Hanson
2 about the article he's writing portraying what happened.

3 (Tape played.)

4 MS. HELDMYER: That completes the tape, Your Honor.

5 THE COURT: Do you have any further questions?

6 MS. HELDMYER: I do have one or two follow-up
7 questions.

8 BY MS. HELDMYER:

9 Q. Agent Schneider, you heard Mr. Richey make representation
10 regarding employment -- outside employment consultants. Did
11 you hear anything on the tape with regard to that subject?

12 A. Yes, ma'am, I did.

13 Q. What did you hear?

14 A. Well, we heard some discussions and specifically --

15 MR. RICHEY: Your Honor, I'm going to object to this.
16 The evidence has not been admitted with regards to his
17 conversation. It's hearsay.

18 MS. HELDMYER: It is admitted, Your Honor. It's part
19 of the tape -- the CD, Government's Exhibit 1, I believe all
20 the conversations are on there.

21 THE WITNESS: Every single conversation from the
22 prison. And my recap will prevent us from having to go over
23 pulling specific conversations.

24 MR. RICHEY: My objection is mischaracterization, and
25 the evidence speaks for itself.

11:10 AM 1 THE COURT: When it's your turn, if you want to play
2 the tape, you can play it. Go ahead.

3 THE WITNESS: In general, there is discussions about
4 using an employee leasing company, and there are discussions
5 about how to do it. But, specifically, there was a comment
6 made about it's okay to use an employee leasing company for
7 their -- what they call their -- I believe he refers to them
8 sort of as grunt workers, people who do the lawn, dig the
9 ditches, do the maintenance work. But everybody else that's
10 actively working for the ministry of CSE was not going to be
11 going through that employee leasing company.

12 MS. HELDMYER: All right. That's all I have, Your
13 Honor. May I approach the clerk with the disk?

14 THE COURT: Yes.

15 MS. HELDMYER: If the tape needs to be played, we can
16 do that. I just need to retrieve the disk.

17 THE COURT: Mr. Richey.

18 MR. RICHEY: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. RICHEY:

21 Q. Good morning, Agent Schneider.

22 A. Good morning.

23 Q. So I just have a few questions about this recording. So
24 this is a recording -- you received all of the conversations
25 that Mr. Hovind made or just numbers that you picked out?

11:11AM 1 A. Well, we attempted to locate all of the conversations that
2 were made. So we searched by numbers we knew him to call. We
3 cross-referenced those with the PIN numbers used. So unless he
4 was hiding them with the use of other PIN numbers, we've gotten
5 every phone call that he made out of there.

6 Q. Okay. And then all of the phone calls are on this disk; is
7 that correct?

8 A. Yes, sir.

9 Q. Okay. And you said that there were about 80 or 90 hours'
10 worth; is that correct?

11 A. I'd say average, yes, sir, generally.

12 Q. All right. And then what we listened to was about 31
13 minutes?

14 A. Thirty-one minutes of selected clips of approximately 30
15 phone calls, which would have been approximately five hours of
16 phone calls.

17 Q. Okay. And you're the one that picked out those 30 minutes,
18 right?

19 A. Myself and Agent Evans, yes, sir.

20 Q. So you said that those 30 minutes came out of about five
21 hours?

22 A. Yes, sir, in order to compress it for use here. I don't
23 think the Court wanted to hear 80 hours' worth or even five
24 hours' worth.

25 THE COURT: No, we don't want to do that.

11:12 AM 1

THE WITNESS: I apologize, ma'am.

2

THE COURT: All right. Go ahead.

3

BY MR. RICHEY:

4

Q. So then it's your testimony that all 80 or 90 hours,

5

whatever the total amount was, it's all the same as what we

6

listened to, this 30 minutes?

7

A. I didn't say that.

8

Q. I'm asking if that's your testimony?

9

A. My testimony is that what you see is generally

10

representative of Kent Hovind's comments and stances throughout

11

that last three months, as well as I would say that

12

Mrs. Hovind's statements here are generally representative of

13

her stance and viewpoint over that same three months.

14

Q. Okay. And during the phone conversations, we heard people

15

like Glen Stoll where Mr. Hovind was asking him questions, and

16

he gave answers; is that right?

17

A. You heard some conversations like that, yes, sir.

18

Q. Right. And do you know if what Glen Stoll told him to do,

19

that that's what was carried out?

20

A. In reference to what exactly, sir? I guess I'm not

21

understanding the question.

22

Q. There were a number of things, for example -- well, I

23

believe that there is at least one question about whether

24

complaints or lawsuits should be filed, he asked that of Glen

25

Stoll?

11:14 AM 1 A. Okay. Regarding any of those that have been carried out,
2 including the transfer of the bank account, I don't know for
3 sure. I don't have records back from the bank yet. So I
4 couldn't tell you.

5 Q. Okay. Were there any phone calls where Mr. Hovind actually
6 said that they were trying to comply?

7 A. Well, he might have used those words, but in the context --
8 in the proper context, he -- just like you heard in these
9 recordings, he's trying to comply, but we're not following the
10 law. And that's the general context that he would be saying
11 them in. So he might use the words "we are attempting to
12 comply," but he doesn't agree with what the law is, so we're
13 the ones in the wrong. So I would put it in that context, yes.

14 MR. RICHEY: Just one minute, Your Honor.

15 BY MR. RICHEY:

16 Q. In one of the conversations that we heard, and I may
17 misstate it, so feel free to correct me if I do, Mr. Hovind
18 made reference to that he had to talk to Glen Stoll in regard
19 to those things. Do you know if -- and we heard the
20 conversation about employee leasing companies, and I believe
21 your comment was -- or actually we didn't hear that. I'm
22 sorry. You said that there were some conversations about the
23 employee leasing company and only the grunt labor should be
24 part of that. Was that a conversation that was held with or
25 had with Glen Stoll?

11:15AM 1 A. As I recall, Glen Stoll was involved in some of the
2 conversations regarding employee leasing, but primarily I
3 believe that phone call was between Mr. Kent Hovind and Eric
4 Hovind where he was giving his opinion on who should be part of
5 it, and that this is the way it should be done and he'd like it
6 done that way. But, yes, he did refer to Glen in that
7 conversation, but that actual comment, I believe, was made to
8 Eric Hovind.

9 Q. And was that prefaced or do you know if there is another
10 conversation preceding that where Glen Stoll told him that
11 that's what needed to be done?

12 A. I do not hear Glen giving any instructions. I know that
13 Glen was involved in conversations discussing using an employee
14 leasing company, and most of the conversations between
15 Mr. Hovind and Glen surrounded the fact of the contractual
16 obligations and whether the contracts were proper and whether
17 they agreed in their theory that a ministry can enter into a
18 contract for employee leasing. And there was also further
19 discussion of whether or not they should lease them, but pay
20 the employee directly. Thus, basically they are leased on
21 paper, but they continue to pay them themselves. So there were
22 a variety of conversations. But specifically regarding your
23 question, no, not that I recall.

24 Q. Do you know how the jail records the phone conversations?

25 A. They are put onto a main database. There is a PIN number

11:17AM 1 that inmates are given, and I believe they are electronically
2 recorded by computer.

3 Q. Okay. And then -- just so I can understand, then you
4 requested and they provided you a CD every week?

5 A. I have individual CDs, yes, sir, and then I transferred
6 them to one hard drive and put them all on one disk for ease of
7 use.

8 Q. So each of those -- I'm just trying to make sure. So then
9 each of those phone calls is on this disk; is that correct?

10 A. Yes, sir.

11 Q. And you compiled this disk when?

12 A. That copy was actually burned yesterday, and I compiled
13 everything -- Monday or Tuesday morning, I had pretty much
14 everything compiled. We got some additional calls Wednesday
15 midday, and they were added. So that final disk was done
16 Thursday, I guess.

17 Q. Thursday meaning yesterday?

18 A. Meaning yesterday, yes, sir.

19 MR. RICHEY: Thank you. Your Honor, I have no further
20 questions?

21 THE COURT: Thank you. Ms. Heldmyer.

22 MS. HELDMYER: Nothing, Your Honor.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Ms. Heldmyer, anything else from the

11:18 AM 1 government?

2 MS. HELDMYER: Your Honor, I think before the tape
3 began to play, we were talking about acceptance of
4 responsibility, and I believe the tape speaks for itself with
5 regard to that issue.

6 THE COURT: Anything you wish to present on this
7 issue?

8 MR. RICHEY: On this particular issue?

9 THE COURT: On the acceptance of responsibility.

10 MR. RICHEY: No, Your Honor.

11 THE COURT: All right. I indicated that I would -- to
12 the extent that Mr. Hovind wishes to address the Court in
13 allocution, I will listen to that prior to ruling on the
14 acceptance of responsibility.

15 I don't believe there is anything else left to be
16 discussed with respect to the presentence report.

17 Ms. Heldmyer.

18 MS. HELDMYER: I don't think so, Your Honor.

19 THE COURT: Mr. Richey.

20 MR. RICHEY: No, Your Honor, with respect to the
21 presentence report, no.

22 THE COURT: Mr. Richey, do you have anything to
23 present on Mr. Hovind's behalf in relation to sentence?

24 MR. RICHEY: Your Honor, I believe that there are --
25 may be a couple of people who would like to say a couple of

11:19 AM 1 words. Would now be the time for that?

2 THE COURT: Now would be the time.

3 MR. RICHEY: Let me just confer and see if they still
4 want to do that.

5 THE COURT: Ms. Heldmyer, are you going to want to
6 cross-examine?

7 MS. HELDMYER: Probably not, Your Honor. We're
8 talking about character witnesses, obviously.

9 THE COURT: I'm assuming that's what you're referring
10 to, is character reference testimony?

11 MR. RICHEY: Yes. They were just going to speak. I
12 wasn't going to question them. Is that okay with the Court?

13 THE COURT: It is if that's the type of statement that
14 they are going to make. If they are going to get into any
15 factual matters that might pertain to the sentencing, then they
16 would perhaps be subject to cross-examination, and that's why I
17 ask.

18 MR. RICHEY: I don't -- I don't believe so. I haven't
19 talked to them about their testimony. I just asked if anyone
20 wanted to speak on behalf.

21 THE COURT: And they will be permitted to do that,
22 absolutely, if they want to make those type of statements, no
23 problem. If they want to testify, that is not a problem, they
24 would just be subject to cross-examination. Otherwise, do let
25 me note, though, that I have received numerous letters on

11:20 AM 1 behalf of both Mr. and Mrs. Hovind, and I have reviewed each
2 and every letter.

3 MR. RICHEY: Thank you, Your Honor.

4 THE COURT: To the extent someone wishes to speak,
5 you're welcome to do so.

6 MR. RICHEY: I believe Eric Hovind. And then there
7 may be one other.

8 THE COURT: All right. Mr. Hovind, if you would
9 approach the podium here. You can speak from there.

10 MR. ERIC HOVIND: Good morning, Your Honor. I
11 appreciate it. My name is Eric Hovind. I'm Dr. Hovind's son.
12 And I was instructed that I would be able to give testimony as
13 to my dad's character. And I would be absolutely honored,
14 honored to do that.

15 Dr. Hovind is somebody that I've known from a very
16 early age, obviously. Dr. Hovind all my life has -- my dad has
17 searched for truth. And when he finds truth, he sticks with
18 it. His entire ministry is devoted to seeking out what is
19 truth and staying with what is truth, regardless of the
20 consequences. I know that growing up whenever -- I remember a
21 particular instance where my dad told me something, he said,
22 "Listen, son, we're in store, so don't play with that. If you
23 break it, you're going to have to buy it." And -- well, I
24 grabbed it, and it fell. It was a little snow globe, and it
25 broke, and all the water leaked out. And he said, "Well, son,

11:22 AM 1 I told you what was going to happen." So we went to the front
2 counter, and I had a couple of dollars of my allowance, and
3 that went to buy a broken snow globe, as an example.

4 He's very consistent in what he does, which I believe
5 is incredible, absolutely incredible in today's society, in a
6 world of politics where people will say whatever is needed to
7 be said in order to gain whatever they want to get. They'll
8 say whatever needs to be said to manipulate the situation. My
9 dad doesn't do that, Your Honor. My dad speaks the truth.

10 He's very consistent in what he does. And I find that
11 admirable in today's world.

12 Some examples to show that he's consistent, I think
13 have been brought up in court. He did not believe that he was
14 not supposed to withhold on contractors. We signed a
15 contracting agreement, and he believed, he really believed and
16 was consistent in, look, we have a contractual arrangement with
17 you, we're not going to withhold taxes. That's been evident.
18 He was consistent in the fact that he believes that the law has
19 not been shown to him, which was again demonstrated just a
20 minute ago. He sincerely believed and is very consistent in
21 the fact that, look, I haven't been shown the law. I believe
22 he's very consistent, despite the fact that others may desire
23 to change their opinion just in order to make it easier on
24 themselves.

25 He also believed that his rights had been violated,

11:23 AM 1 and he believed that there were certain things that he could do
2 to reinstate the rights of his that had been violated by the
3 IRS. He believed that he had written in good faith to the IRS
4 and was consistent in that belief, and it still is, that he
5 wrote to the IRS and said would you please just show me where
6 I'm wrong or show me where you have the jurisdiction, and then
7 we can get along. I don't know if it was his communication
8 skills that were lacking or the IRS's communication skills that
9 were lacking in doing that, but obviously that didn't happen.

10 He's consistent in his message. It's always been the
11 same. His message has always been if you owe a tax, you better
12 pay it. I know the government has taken information and bits
13 of information and twisted it into making it -- and even
14 stating that Kent Hovind is a tax protester. I'm here to tell
15 you as a character witness that Kent Hovind is not a tax
16 protester.

17 MS. HELDMYER: Your Honor, if I may object. We've
18 gotten into several factual issues at this point. If we
19 continue to go along those lines, we may want to swear him, and
20 I may want to cross-examine him.

21 THE COURT: Mr. Hovind, if you want to continue and
22 make references to factual matters in connection with your
23 father's activities in this case and his state of mind in this
24 case, the government may wish to cross-examine you, and you may
25 be subject to that. Do you wish to proceed in that fashion?

11:25 AM 1 MR. ERIC HOVIND: My understanding is if that I'm
2 talking about his character, which is what I'm trying to
3 basically show to you is what his character is like, I will
4 certainly try not to -- well, all of his character has to do
5 with facts. So how do I --

6 THE COURT: Well, if you relate it to this case and
7 actions that he's taken in this case which may pertain to the
8 sentencing, then the government would be entitled to cross or
9 you need to be placed under oath and testify, and the
10 government would be entitled to question you about that.

11 MR. ERIC HOVIND: I understand, Your Honor.

12 THE COURT: I assume that you are making these
13 comments in hopes that I would take them into consideration
14 when I impose sentencing?

15 MR. ERIC HOVIND: I'm making these comments because
16 these are relevant things that even you would know to help
17 ensure what his character is like.

18 THE COURT: Ms. Heldmyer, are you willing to forego
19 the cross-examination at this point?

20 MS. HELDMYER: I would, Your Honor.

21 THE COURT: You may proceed as you are.

22 MR. ERIC HOVIND: Thank you, Your Honor. Not only is
23 he a man that is consistent, he is also a man of conviction.
24 He is a man that is convicted that he's going to do what is
25 right because God has told him to do what is right no matter

11:26 AM 1 what. And he is a man that has not swayed or swerved from that
2 at all, as if I can say, I think would be evident to you. Win
3 or lose, he's going to stay on what's truth -- he's going to
4 stay with what the truth is. He's a man of conviction when it
5 comes to right and wrong, good and bad. He is a man of
6 conviction when it comes to evil in this world. He is a man of
7 conviction of -- to say that God hates evil and God desires
8 good. He is a man of conviction. He has stood on his
9 conviction of what God believes and what he believes God has
10 shown him through God's word.

11 He is a also a man of love, unbelievable love. And he
12 is not a man who is in love with money. He's a man who is in
13 love with God. Plain and simple. Not only is he a man in love
14 with God, which is extremely evidence, which I believe -- you
15 read the letters, the character letters, which I would dare say
16 easily show he's a man that loves God. Not only does he love
17 God, he's a man that loves his country. I don't know if I can
18 say that it's been brought up -- or it's been tried to be shown
19 that he doesn't. I'm here to say he does. He loves this
20 country. He would not want to live in another country. He
21 would want to live here in America. He's had options going to
22 other countries. He could have taken us as a family to raise
23 us in a different country. He loves his country. There is no
24 question about that. I can testify to that.

25 He's also a man that loves others. The reason he

11:27AM 1 loves others isn't because they deserve to be loved. The
2 reason he loves others is because he has experienced God's
3 incredible love, which makes it possible now for him to love
4 the unloveable, for him to love the unlikable. He loves God.
5 He loves his country. He loves others. Man, does he love his
6 children.

7 Boy, I tell you, I look up to my dad. He is a great,
8 great example of what a dad should be in a world that -- I
9 don't know the exact statistics, besides 85 percent are made up
10 on the spot anyway. He's a man that has done an incredible job
11 of raising his kids. My sister and my brother are here. And
12 I'm sure if they had the nerve to stand up here, they would
13 testify my dad has been an awesome dad. He has loved me
14 unbelievably and unconditionally. Despite the many trials and
15 tribulations that we as children have put on his life, he said
16 you know what, I'm going to keep loving you. That's an
17 unconditional thing.

18 He's a man that loves his grandchildren. Wow. He's
19 got five now, one just born a week and a half ago that he's
20 never seen. And, boy, I know he would like to see them. He
21 sure does love them. And I don't know if I'm allowed to say,
22 because of that -- because of his love for that and the
23 closeness of our family, despite the fact that there are
24 disagreements, the closeness of our family is just incredible.
25 And if I might be able to say, I don't know if I can say this,

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11:29 AM 1 but I am able to say this, I would love to request that after
2 sentencing is imposed, that if there is time to be served, that
3 it be locally at the Saufley Field location, so that we could
4 visit with him, which would be invaluable. Just invaluable.

5 Kent Hovind is also an incredibly generous man, a man
6 that is willing to give everything for God and country, a man
7 that has tried desperately over the years to -- from 1989, when
8 he took a vow of poverty and said, look, I don't want to own
9 anything. I'm not trying to build up a kingdom. I'm not
10 trying get a lot of wealth and prosperity. I want to serve
11 God. And since 1989, he's tried to give it all away. He
12 doesn't want anything. From the fact that his seminar tapes
13 that he produces are not even copyrighted. He said copy them.
14 Get this word out. This is an important message for God. He's
15 not a man that's tried to hide money from the IRS in order to
16 gain wealth or benefit himself. He's not trying to do that.
17 You heard about a motor home that a gentleman still has, a guy
18 that gave it to us. That was gifted to us. The gentleman has
19 it because he's fixing electrical problems on the motor home.
20 And my dad said, you know what, I appreciate that. People have
21 been incredibly generous because he is a man of incredible
22 generosity. He's not trying to hide stuff.

23 He's a man that, like I said, will stand on truth.
24 He's a man that doesn't desire to skirt the issues. He wants
25 to hit it head on. He's also -- well, he's just -- he's an

11:31AM 1 incredible hero of mine. I know that the circumstances he's in
2 right now are incredibly tough. And through it all, he said,
3 Eric, my number one goal is to love God. That's what I want to
4 do. I want to love God. He's been an incredible example to
5 me. He's been an incredible example to others. And as a
6 character witness for my dad, it's an honor to say, Dad, I love
7 you. And you are a man of conviction. You're man of integrity
8 and honesty. You're a man that loves truth. You're a man that
9 just simply loves. And you're a man that's incredibly
10 generous. That's amazing. And that's my testimony of my dad,
11 Your Honor, and I hope you'll take that into consideration.

12 THE COURT: Thank you, Mr. Hovind. Is there someone
13 else?

14 MR. GUSTI: Your Honor, I'll keep it brief for you.
15 My name is John Gusti. And out of all the people that have
16 served at CSE, I'm probably the one who that has lasted the
17 longest, call it whatever you want, loyalty, discipline. I
18 think it's loyalty to whom I serve ultimately, whom you may or
19 may not know Him. That's for your decision.

20 But as a character reference or witness to Dr. Hovind,
21 I'll put it this way: I believe Agent Schneider is a military
22 man, I believe, or former. I myself am a military man, six
23 years in the Marine Corps, honorably. I understand what honor
24 is. I know how to stand in it. I know how to walk in it. I
25 know how to walk in truth. I know how to stand on your beliefs

11:33 AM 1 and to fight for what you believe in. And I believe that's his
2 conviction. I have stood and walked beside of him for ten
3 years now, going on the 11th year. And if the Lord permits, I
4 will continue. But regardless, I hold him in the highest
5 regard and highest esteem. I honor him for what he stands for.

6 He is a man of conviction. And I think sometimes
7 because of the personality of this man, he has such a strong
8 personality, that people can misunderstand when words come out,
9 but if you spend time with him, I think that everyone or anyone
10 would understand that although there may be a little bit of an
11 edge on the verbs or the words that come out or maybe a little
12 bit of edge on the heart sometimes, deep down I agree with Eric
13 Hovind. He is a man of conviction, a man of honor, and a man
14 who will stand on the principles of what he believes. And I
15 would ask for mercy from a man who has walked with him for ten
16 years. And he is an honorable man. That's it.

17 THE COURT: Thank you.

18 PASTOR DIXON: I'm Pastor Greg Dixon, pastor emeritus,
19 Baptist Temple. My remarks will be very short. I've come here
20 today to say that a good name is to be honored more than choice
21 silver, according to the Scriptures. And I can say from the
22 very depths of my soul that Mr. Hovind, Pastor Hovind,
23 Evangelist Hovind has not done one thing, he has not said one
24 thing, he has not conducted himself in any manner that great
25 multitudes, even thousands of pastors across America that he

11:35 AM 1 has ministered to would not say thank you for standing up in
2 the times in which we live for doing what you believe is right.
3 He refused to take a license for his ministry. John Bunyan
4 went to jail for 13-and-a-half years because he refused to take
5 a license for his ministry. In the eyes of many of us, that's
6 the real crux of this issue today.

7 In closing, I would like to say I sat here for 30
8 minutes, 31 minutes, and listened to things that were said in
9 that jail. I've lived for 74 years on this earth. I did not
10 hear one word out of that man's mouth, not one expletive, not
11 one word of filth or vileness. And I can imagine if other
12 people had been in his same situation, the invectives that
13 would have come out of their mouth toward you and toward this
14 court and everyone involved, but there was not one word like
15 that. And I think that alone shows the character of this man.

16 I've driven a long way to be here today, and I stand
17 proudly to say I love Dr. Kent Hovind and his wife Jo, their
18 children, their family. And I'm honored to be able to stand
19 here in the presence of this awesome Court and be able to give
20 this testimony. Thank you, Your Honor.

21 THE COURT: Thank you, sir.

22 Anyone else? Is there anyone else? You have your
23 hand raised.

24 MR. ABRAMSON: If I may speak. Your Honor, members of
25 the court, my name is Paul Abramson, A-b-r-a-m-s-o-n. I'm

11:38 AM 1 currently contracting at Creation Science Evangelism to answer
2 the technical creation questions that come in, and I also help
3 with a subtitling project that we're doing and various other
4 responsibilities. I fell into the creation-evolution debate
5 about nine years ago. I was working for Intel Corporation in
6 Oregon at the time and thought of the Web page name of
7 creationism.org, which kind of put me into the battle because I
8 had a good name for the Website.

9 And it was about a year later when I met Dr. Hovind
10 for the first time. He had come to Oregon and spoke, and I met
11 him and watched his seminar series. I was very impressed at
12 how good he was at presenting the evidence. And then over the
13 years after that, I got to know him as a person. I had moved
14 down to Berkeley following the .com push down in the Bay area
15 and was working down there and living in the city of Berkeley,
16 California, which has a reputation for being not particularly
17 conservative, but I was there teaching creation, sometimes on
18 campus and sometimes in churches, and then trying to help to
19 invite others in. I had invited persons from other major
20 creation ministries to come and speak, but I couldn't promise
21 to even pay for their airfare. I couldn't promise to even have
22 a good crowd -- I could get a crowd, but not a crowd that would
23 buy books, and they would be partially hostile. But Dr. Hovind
24 came anyway. He came on his own cost, and he came to Berkeley
25 twice. We had huge crowds.

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11:40 AM 1 And in testifying to Dr. Hovind's character, I see him
2 as a very generous man. 700 times a year in recent years he's
3 spoken on creation. And I ask for the mercy of this Court,
4 because I believe his voice is one that is essential in the
5 creation-evolution debate. And that debate aside, that is my
6 purpose or part of my purpose in asking for mercy, is that his
7 voice needs to be heard. When he goes, he affects a crowd.
8 He's debated about 100 times, and he often or usually wins
9 those debates. And the creation message needs to be heard. He
10 is such an important person in that debate that if he is
11 incarcerated, if he's locked away, it will -- it would -- well,
12 I believe it would be detrimental to our society as a whole.

13 So -- so I just -- as one of those 700 persons per
14 year who helped him and now is working with this ministry in an
15 active basis, I -- I believe this is such an important ministry
16 in the United States and in the world. As this Court knows, in
17 August there was a huge meeting scheduled -- meetings scheduled
18 in South Africa. I believe there was like 15,000 or 18,000
19 people who were scheduled to attend those meetings. And, of
20 course, those had to be cancelled, but this is a -- to us a
21 very important issue, and I request the mercy of the Court.
22 Thank you for your time.

23 THE COURT: Thank you, sir. Mr. Richey.

24 MR. RICHEY: Yes, Your Honor, I believe at this time
25 Mr. Hovind would like to address the Court.

11:42 AM 1 THE DEFENDANT: Yes, ma'am. I very much would like --
2 if I could publish on the screen the affidavit that's been
3 referred to so many times, I don't know if that's allowable or
4 not, so everybody can see. To summarize, to save the Court
5 time, is by picking out sentences, I have copies for you of
6 things I would like to enter into the record. I don't know
7 anything about the legal system. I don't know how to do that.
8 So -- the affidavit and the letters referred to in the
9 affidavit is what I would like to enter.

10 THE COURT: Mr. Richey, assist him in doing that,
11 please, because you really need to be the one -- I don't know.
12 Ms. Heldmyer now has seen this.

13 MS. HELDMYER: I have no idea what he's talking about,
14 Your Honor.

15 THE COURT: All right. We do have rules, Mr. Hovind.
16 And the government is entitled to see whatever it is you
17 present to the Court, just as you're entitled to see whatever
18 it is presented to the Court. So, Mr. Richey, if you would.

19 THE DEFENDANT: She has seen this before. This has
20 been sent to her three times. If I could use that microphone,
21 I could point out things.

22 THE COURT: in just a moment.

23 MS. HELDMYER: Your Honor, may counsel approach?

24 (At the bench:

25 MS. HELDMYER: Perhaps the Court would want to see

11:44 AM 1 this. It appears to me Mr. Hovind is going to retry this case,
2 and we object. This is evidence he wants to make in the record
3 and more than likely become an appellate issue, et cetera. He
4 just wants to retry the case.

5 THE COURT: What is his purpose here?

6 MR. RICHEY: I'm not really certain, Your Honor. I
7 believe it's mostly speculation on my part. So I hate to do
8 that too much, but I think he just wants to point out -- again,
9 these are just things that he's said, and he's consistent with
10 that. He hasn't changed, and probably even in the things that
11 he heard, I think he's just going to reference it. I don't
12 think he's going to read from any of it.

13 THE COURT: Has he given you any indication of how
14 long he expects for his allocution?

15 MR. RICHEY: Forty-five minutes.

16 THE COURT: He may not get 45 minutes.

17 MR. RICHEY: I told him.

18 THE COURT: I'm going to allow it. The appellate
19 court will recognize it for what it is.

20 MS. HELDMYER: I was just concerned that we were going
21 down that path, because, you know, he obviously hasn't talked
22 to Mr. Richey about what he wants to do, and it appears to me
23 that we might be back in trial here in a minute.

24 THE COURT: Mr. Richey, I'm going to take a very brief
25 recess. I want you to communicate with your client and find

11:46 AM 1 out what it is he hopes to accomplish as part of his time
2 before the Court, and I want you to represent to me -- when we
3 come back into court, I'll call you back up here and ask you
4 what you understand his intent to be. I want you to relay that
5 to me honestly and seriously and tell me what he wants to do.
6 And I'll decide if he's permitted to do it. This is not a time
7 for him to get on the pulpit and preach to the Court. It is a
8 time for allocution. That is it. And there is a time limit
9 for that.

10 MR. RICHEY: Do you have a time limit that I can tell
11 him?

12 THE COURT: No, I really don't. I've never had -- I
13 think I may have cut one person off, and I don't remember at
14 what point I did that. I think it was at the point at which
15 the person began personally attacking the assistant U.S.
16 attorney and the Court, and that's about the point I cut that
17 person off. But I don't suggest that's what he's going to do.
18 I don't know. But I do need to know ahead of time. I'm going
19 to take a brief recess. Well, you'll be invited up to the
20 bench when we recess.

21 MS. HELDMYER: May I ask you another question
22 unrelated to this? Roy Atchison, A.U.S.A. Atchison, he was
23 here to make sure there were no problems with the forfeiture.
24 He's been preparing the forfeiture documents. We have a final
25 order of forfeiture prepared and ready to submit to the Court.

11:47AM 1 If there aren't going to be any issues in that regard, he can
2 go on. May I inquire if there are going to be any issues with
3 the final order of forfeiture?

4 THE COURT: I don't have any notice of issues of the
5 final order.

6 MR. RICHEY: The only issues that I raised before
7 regarding in my objections that I filed in response and only a
8 couple of those were addressed in the new order, but, also, I
9 believe, I mean --

10 THE COURT: There is an issue of substitution.

11 MR. RICHEY: That's not before the Court at this time.

12 MS. HELDMYER: All I need for today is to give the
13 Court a final order for signature and the incorporation of the
14 J and C, if we get that far today, and I want to make sure
15 there aren't any issues.

16 THE COURT: Why don't you talk about that when I take
17 the recess and decide whether there are issues for me to
18 consider.

19 MS. HELDMYER: Okay.

20 THE COURT: The preliminary order has been entered.

21 MR. RICHEY: And I guess -- how long do you anticipate
22 in doing that? I mean, just the presentation of the order.

23 MS. HELDMYER: That's all it would be, is providing
24 the Court with a final order for signature. And by law it has
25 to be incorporated in the J and C, and we have to do that

11:49 AM 1 today.

2 MR. RICHEY: Just to be honest, I wasn't anticipating
3 this to go very long, and my return flight is for 3 o'clock
4 this afternoon. I don't think we'll go that long.

5 THE COURT: You'll have to talk to him. All right.

6 MS. HELDMYER: Thank you.

7 (Bench conference concluded.)

8 THE COURT: Mr. Hovind, I'm going to take a brief
9 recess and allow you and Mr. Richey to have a short discussion
10 about the purpose for allocution. And I'll return right about
11 12:00.

12 (Recess.)

13 THE COURT: Would you like to approach?

14 MR. RICHEY: Yes, Your Honor.

15 (At the bench:

16 MR. RICHEY: Your Honor, I've discussed the matter
17 with him. He said it's only to show his state of mind. I told
18 him he can't rehash the case. He can't go over things. He
19 can't say anyone was wrong or anything was wrong. And it's
20 merely to show that his state of mind has been consistent and
21 that -- and so he's only going to reference them. He's not
22 going to read from them, and he said he could cut it down to 30
23 or 35 minutes.

24 THE COURT: That will be fine, particularly since he
25 did not testify, I think this is entirely appropriate.

12:02 PM 1 MR. RICHEY: Do you want me to offer the exhibits?

2 THE COURT: Sure. But the thing I want to explain to
3 you, the minute he begins to try to suggest to me that the law
4 is wrong, that someone needs to show him where the law is, the
5 law that he violated, I will cut him off.

6 MR. RICHEY: Okay.

7 THE COURT: Okay. Let me give -- you have his -- was
8 this a copy for me?

9 MR. RICHEY: I think that's the original.

10 THE COURT: It needs to be marked.

11 (Bench conference concluded.)

12 MR. RICHEY: Your Honor, may I?

13 THE COURT: Yes.

14 MR. RICHEY: Your Honor, this group of affidavits and
15 letters and other information that the government did have in
16 its possession and was turned over in discovery, and there are
17 things that Mr. Hovind will at this time make reference to. We
18 will just offer them into evidence at this time.

19 THE COURT: Those will be admitted.

20 Mr. Hovind, you do have the right under our rules, as
21 I mentioned to you at the outset, to address the Court and to
22 make any statement or to present information that you wish to
23 present to the Court in mitigation of your sentence. And
24 because you did not testify during the trial in this case, it
25 would be entirely appropriate for you to address the Court as

12:03PM 1 to your state of mind and intent. What I will not permit,
2 however, is a rehashing of the case and the evidence, and also
3 will not permit a suggestion to the Court that the law is wrong
4 or should not be, or a demand that the Court show you the law
5 that you have violated. The jury -- the 12-member jury in this
6 case has found you guilty, and we have to proceed on that
7 basis. All right. Sir, take the podium.

8 MR. RICHEY: Your Honor, I'm sorry, just one matter.
9 It appears that he has his own copy. So do you want me to hand
10 these?

11 THE COURT: Certainly, if you would, Mr. Richey.

12 MR. RICHEY: Thank you.

13 THE COURT: And, Mr. Hovind, do you want to use the
14 overhead; is that right?

15 THE DEFENDANT: Yes, ma'am, if I could.

16 THE COURT: All right. Proceed.

17 THE DEFENDANT: I won't need that for about six
18 minutes.

19 THE COURT: You let me know when.

20 THE DEFENDANT: Thank you, Your Honor, for letting me
21 share my side of the story that none of you have seen. I would
22 just like to cover three things, if you'd give me the time. I
23 would like to give you a brief history of our church ministry,
24 a brief history of my state of mind on the three charges that I
25 was charged with, and just a few simple questions I just cannot

12:05 PM 1 resolve. I can say everything in 20 minutes, but your court
2 reporter would have a stroke. So I need to slow down. Please
3 allow me the time to finish.

4 In Aesop's Fables, there was once a lion who trapped a
5 mouse, and the mouse said would you please let me go? And the
6 lion said what can you ever do for me? And the mouse said I
7 don't know, maybe someday I can do something for you. And one
8 day the lion was caught in a net, and the mouse chewed him out
9 of there.

10 I feel like the mouse. I stand here in great fear of
11 the power of this Court. I know full well you have the power
12 to free me, send me home today, and you have the power to send
13 me to prison for many years. Your decision can destroy my
14 life, destroy my ministry, destroy my grandchildren. I've
15 prayed for God to guide your decision. I know that huge
16 amounts of money and time have been spent, on both sides have
17 been spent on this issue. I have even a greater fear of
18 standing before God some day.

19 We have never had the opportunity to speak, Your
20 Honor, other than hearing what's said in court. I've never had
21 the opportunity one time to speak to Michelle Heldmyer in a
22 friendly manner. I have never one time had the opportunity to
23 speak to Scott Schneider other than adversarial. I wish so
24 badly we could have just talked to them. I have been over
25 everything that I can find on this case 30 times in my freezing

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12:07 PM 1 jail cell the last three months. I'm convinced more than ever,
2 every single thing could have been settled with a discussion.
3 I know I tend to be haughty and proud, and I apologize. I
4 don't think that's against the law. I think that's just my
5 personality.

6 I think Agent Schneider and Ms. Heldmyer, possibly
7 you, Your Honor, face a false opinion about who I am. I know I
8 cannot change the jury instructions, and that is not my desire
9 today, but I want you to see my heart. Proverbs 18 says it's
10 folly and shame to answer a matter before you hear it. You
11 need to hear both sides. You've heard what the IRS says about
12 me and my wife. You've heard that we are evil tax protesters
13 and law breakers, and we have to pay for our crimes by spending
14 years in prison and paying the government back millions of
15 dollars they say we stole from them. Matthew 5 says I'm
16 supposed to agree with my adversaries, while I'm in the way,
17 before I go to court, before I go to prison. I never had the
18 chance.

19 The first notice I had that they were concerned at all
20 about how we were conducting our ministry was the day I was
21 arrested and handed a sealed indictment. I never had a clue.
22 For ten years they've been investigating personal taxes on me,
23 could not get a grand jury to indict, and all of a sudden I get
24 arrested for something I knew nothing was coming or I would
25 have talked to them. I would have obeyed the Matthew 5 passage

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12:08 PM 1 and gone and tried to resolve it with them. And I know some
2 far-out radicals have written this Court, you know, claiming
3 all kinds of crazy things, and because of that you probably
4 think I'm a flight risk. Your Honor, I'm not a flight risk. I
5 do know people all over the country that love me and love my
6 ministry, but they are the same people that love the law and
7 love the word of God, and they would be the first ones to turn
8 me in. I have no intention to flee. If sentencing is
9 postponed, if I could just go home, I promise you, I fear God
10 more than anybody else on this planet, before God, I will do
11 whatever this Court says. I will show up when you tell me to
12 show up where you tell me to show up. I wish everybody would
13 just, please, put away their swords for just a minute.

14 The three months I have been in jail have been very
15 good for me in many ways. I have been able to lead 15 men to
16 Christ and seen some incredible lives changed. I've grown much
17 closer to the Lord. I've been away from my hectic travel
18 schedule. My daughter has done my scheduling for years, and
19 she knows it's pretty bad. It's been a good rest time for me.
20 I've experienced the whole range of emotions that being locked
21 in a cage gives a person. I see now why God's law, which is
22 perfect, the Bible authorizes restitution, beatings and capital
23 punishment, but never jails. I can tell you from being on the
24 inside, it doesn't work. Every man in there, when I talk to
25 them, would you rather just have a beating than be away from

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12:10PM 1 your family? Oh, yes, please give me the worst beating I can
2 take. The jail and prison, in my opinion, is cruel and unusual
3 punishment. It doesn't work.

4 I'm not a lawyer, and the whole legal system baffles
5 me, but everything I know and hear about this tells me that
6 this whole thing could have been resolved just if we could
7 talk. I have never been offered that opportunity. I'm
8 supposed to be a peacemaker, according to the Bible, and I've
9 failed miserably to make peace with Scott Schneider. I'm
10 sorry. I would love to. I see at least one major mistake I
11 made in going over all the papers I've filed over the years, my
12 attitude and frustration with what I felt sincerely was the
13 lack of due process showed through in my letters. And I
14 apologize for that. My letters show my frustration and my
15 pride. And I sincerely apologize for that.

16 I am not a tax protester and never have been. I have
17 said hundreds of times, the tax laws are perfectly fine. I
18 don't object to any of the laws. Yet some people are enforcing
19 things that aren't even in the laws I object to. I know there
20 are tax rebels out there, and the government has ordered people
21 to send a message to stop the tax rebellion. I'm not part of a
22 tax rebellion. Never have been. I'm an evangelist. I want
23 everybody to obey the law. So it is not my intent to break any
24 laws at all, never has been.

25 I need to apologize to Scott Schneider, if I can. My

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12:11PM 1 last words ever said to him around the street in front of my
2 house, he was taking pictures for this trial, and I rolled down
3 the window of my van and I said, Scott, we'd like you not to
4 come on the property, please. We've had 80,000 visitors over
5 the years come to our ministry, and Scott Schneider is the only
6 one that I have ever turned away. And I'm sorry. You're
7 welcome anytime, Scott. I would love for this to be over. And
8 bring your family.

9 And to you, Judge Rodgers, I want to thank you for
10 your patience and your professional manner in the courtroom. I
11 know you have a very heavy burden and a heavy caseload, and I
12 pray for you daily that God will bless you. My only complaint
13 is you won't allow water in here. As a public speaker, that
14 probably bothers me, but that's your decision.

15 I regret that this case was ever brought here. These
16 issues could have been resolved. Instead of jail time, if you
17 could please order mediation, I know we could work everything
18 out. I struggled as our ministry developed in 1989 until the
19 present for the proper way to structure a church ministry that
20 would be true to Scripture and obey the law. We have gone
21 through three different stages of an unincorporated business
22 trust, and then Faith Baptist Fellowship, and it dissolved
23 without Remedies at Law. I'm relying on people to tell me how
24 is the proper way to do this. My goal is to do it right to
25 make everybody happy, but I've never, to my knowledge,

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12:13 PM 1 willfully disobeyed any known obligation, law or statute that
2 applies to me or the Lord's church.

3 And I want to thank you, also, Your Honor, for withholding
4 formal adjudication until allocution is finished. If I could
5 publish now very quickly a brief history of our ministry.

6 Three times in 2005, I sent letters to the foreman of the grand
7 jury and copied them to Michelle Heldmyer. I realize now this
8 was a major mistake. I should have actually sent the letter to
9 Michelle Heldmyer. So because of this, she doesn't have to
10 answer. It wasn't actually sent to her. That was a technical
11 mistake, of which I've made many over the years. But I asked
12 her, this is to the grand jury regarding the investigation of
13 Creation Science, Faith Baptist Fellowship, which was at that
14 time dissolved, Dinosaur Adventure Land and Kent Hovind. My
15 third letter, I got no response. At the bottom, my attorney
16 tells me that the U.S. attorney told him the grand jury
17 investigation of me has been indefinitely postponed, but Scott
18 Schneider is still investigating the possibility of tax evasion
19 or other tax crimes to the above names, which would be above.

20 Every lawyer I have consulted informs me, ministers and
21 churches are not liable for income taxes, as shown later in
22 this affidavit. We did not ever consult David Gibbs. He and
23 his family came over to our ministries and to our Dinosaur
24 Adventure Land after he preached at our church. We discussed
25 many topics, and I never one time advocated to him or anybody

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12:15 PM 1 else in my life that anybody should break the law regarding
2 taxes. Never have I done that.

3 Paragraph 2, during my numerous written inquiries, IRS
4 refuses to identify at the time the law or taxes. This caused
5 me great frustration. I did not know what I was doing wrong.
6 7202 is not an identifiable law. It frustrates me dearly that
7 I want badly to be right with God, and I don't know how to do
8 it. I don't know how to get right. I don't know what I've
9 done. So has my state of mind changed? I still want to serve
10 God. I still want to obey the law, but I haven't seen it.

11 Paragraph 3, Agent Schneider has refused to answer my
12 simple questions for four years now, because he knows he's
13 acting outside the law. The law says his clear delegated
14 authorities is under Title 27, Alcohol, Tobacco and Firearms,
15 which includes Count 58. I'm not involved in any of those.
16 Enclosed letter to Scott Schneider from December 27, it's only
17 ten pages long, but it's a lot of supporting documentation. As
18 usual, he never responded. "It is my prayer that both you and
19 the U.S. attorney will read it and help me understand if I'm
20 wrong." Over and over and over the years, I've asked for help
21 from Agent Schneider, please tell me what I'm doing wrong.
22 Three times I sent a copy of this letter to the U.S. Attorney.

23 THE COURT: Mr. Hovind, she's going to have a stroke.
24 You've got to slow down, please. Thank you.

25 THE DEFENDANT: Bottom paragraph, after sending

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12:16 PM 1 hundreds of pages of documents to the IRS, numerous letters
2 asking honest questions which received no response except a
3 surprise gestapo-type raid, the only conclusion I can come to
4 is someone is trying to stop the creation ministry. And,
5 again, I'm summarizing.

6 On May 3rd, my attorney sent a letter to the assistant
7 U.S. attorney, Michelle Heldmyer, requesting that I come
8 testify before the grand jury. She refused. Being a preacher
9 of the gospel and not wishing to break any laws or embarrass my
10 Lord, I thought it best that you see and hear the truth from
11 all sides before deciding if our church ministry should be
12 drawn into an expensive lawsuit, and here we are today having
13 spent a fortune. And then the whole bottom of this page, there
14 is a little bit of a history of our ministry, where I was born
15 and raised. I was ordained at Emmanuel Baptist Church in 1974
16 to the gospel ministry. Page 4, at the bottom, mostly just
17 summary again.

18 1989, I took a vow of poverty to commit my resources
19 to spreading the word of God. I don't want to own anything. I
20 am not the owner of CSE. I don't own anything nor do I want
21 to. And this is not a way to get out of taxes. This is a
22 sincere desire in my heart to dedicate everything that I have
23 to God, who began our ministry in 1989, Creation Science
24 Evangelism. Bottom line, we've always encouraged others to
25 copy our materials and give them away. We have never charged

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12:18 PM 1 anything for our ministry, never. We don't charge for my
2 seminars. In the affidavit it said I do debates for a fee.
3 That is not true. We only take love offerings.

4 Page 5, between '89 and '96, the ministry grew very
5 rapidly. I was invited to preach all over. So we were able to
6 purchase the parsonage that my wife and I still live in. There
7 used to be ten offices in the house. There are now only seven.
8 What woman in this room would want to have seven offices in the
9 house where she lives? My wife is amazing. She has put up
10 with this all these years. The property used by CSE consists
11 of a parsonage, office buildings and office equipment, et
12 cetera. Nothing belonging to CSE can now or ever become my
13 property. It is an irrevocable and sacred trust of an ongoing
14 ministry, which is why when Agent Schneider sees the \$42,000 in
15 church funds, I'm responsible for that. God entrusted this to
16 me. The legal recourse I had to was to file suit. So I filed
17 suit. That's what I'm supposed to do. And now they are mad
18 for doing what the law says I can do. I do not understand what
19 I did wrong.

20 Next page, beginning '99, we merged with Faith Baptist
21 Fellowship. These are the years in the indictment. Why am I
22 here? It should be Pastor Mooneyhan. 2002, Pastor Mooneyhan
23 resigned and dissolved the fellowship. So Remedies at Law took
24 over the management of the ministry. It's still that way
25 today. If the IRS or the government wants to seize the

12:19 PM 1 property, they need to deal with Remedies at Law, not me. I
2 don't know how they can seize ministry property for a debt Kent
3 Hovind owes. I don't understand that. Remedies at Law, as a
4 great courtesy response, Michelle Heldmyer referred to them as
5 being under injunction or something like that. There is simply
6 a great misunderstanding on that. But I have it with me, but I
7 won't take time today to read all that.

8 1996, our cars were seized, as we heard in the trial.
9 A friend of mine paid the money to get the cars back. To be
10 sure I was not doing anything wrong, that year I wrote to three
11 tax professionals, just like it says in the booklet, 517, I
12 believe. It says if you're concerned about your tax, you
13 should write to an attorney, enrolled agent, and a tax
14 consultant. So I wrote to John Schlobach, an enrolled agent.
15 I stayed at his house. I sat down. I'm a minister. Is this
16 taxable? He wrote back a letter saying no, you're not breaking
17 any laws. You're fine. I wrote to Guy Curtis, an attorney.
18 Glen -- John told me many attorneys believe this, but are
19 afraid to write a letter because then they'll be hassled by the
20 IRS. They will be bullied. But Guy Curtis, who I have said
21 now is in trouble, of course they are going to target anybody
22 who ever stands up against them, but in '96 he wrote me a long
23 letter saying, no, Kent, I agree with what you're doing and
24 you're not breaking any laws. I wrote to Fred Ortiz, a tax
25 consultant in Hawaii, because he was the only one brave enough

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12:21 PM 1 to do it. He wrote a long letter back saying, no, Kent, you're
2 doing fine. I'm relying on the advice of these professionals.

3 I contacted the IRS to get a copy of my IMF file, had
4 it decoded. On my code they had me coded as an underground
5 coal miner in Virgin Islands. That is a taxable activity. And
6 I've never been to the Virgin Islands. And I sure don't mine
7 coal there. And we finally got that fixed in the IMF. And
8 when we paid to get the IMF file sent to us, it was 700 pages,
9 the government was complaining about all the time it took for
10 them to do that. That's their job. And we did pay to have
11 that done. Every letter said please send me the cost. We paid
12 hundreds of dollars to have those pages copied. When those
13 pages were handed to Agent Schneider on the stand, my attorney
14 pointed out there were ten pages missing. Without even looking
15 at the stack, he said, yes, I know, those pages are not in
16 here. Those ten pages, Your Honor, say very clearly I am not a
17 tax protester and I owe no tax. That's what was in those ten
18 pages. That's why they were excluded.

19 I kept receiving letters from the IRS. I always
20 answered their letters every time. I have never avoided their
21 questions. I kept asking them questions. Which letter should
22 I fill out or which form should I fill out? Which tax am I
23 allowable for? I sent them the professional letters from the
24 professional saying, what am I doing wrong? I'm not involved
25 in a taxable activity. The ministry, as I'm going to show you

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12:22 PM 1 in a minute, is not. And it seems to me that Agent Schneider
2 is acting outside of his authority. So I asked him direct
3 questions about his authority. I sent letters to Agent
4 Schneider, certified mail. In the movie "Catch Me if You Can,"
5 Tom Hanks tries to catch Leonardo DiCaprio. He's so good at
6 posing as anything, a pilot, a doctor. I believe Scott
7 Schneider has very legitimate authority. I believe the IRS CID
8 has a wonderful place in America. We need them. But he's
9 acting outside of this authority when he comes after a church
10 ministry. That's what my letters are about.

11 I've examined -- he wanted to examine the financial
12 records. I said I think this exceeds the venue and dangerous
13 subject matter of your jurisdiction. You may be operating
14 under color of law. And I sent him this long letter. And we
15 could spend days on that, but this is 11 pages long saying,
16 would you please tell me which code section gives you the
17 authority to investigate me. I'm a minister. He never
18 answered. This greatly increased my frustration with the whole
19 system. How do I deal with these people? I sent him another
20 letter, December 27 of '02 and said you're not following due
21 process. It's my belief based on the code that I've seen that
22 law enforcement -- the term "law enforcement officer" does not
23 include Internal Revenue special agents. Under the law, I'm
24 charged with knowledge of the authority of government agents,
25 United States v. Jones. Please show me where your authority

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12:24 PM 1 comes from. Your authority appears to be limited by law to
2 Alcohol, Tobacco and Firearms. I sent him all the statute
3 regulations. This is only the first part. The letter was
4 one-and-a-half inches thick and 200 pages of documentation at
5 the end.

6 In June 1980, during hearings before the Subcommittee
7 of Oversight of the Internal Revenue Service Finance Committee,
8 Senator Lowell Weicker said, "I want to make a statement here
9 just so we all understand, the ground on which we stand, the
10 IRS is not," underlined, "not a law enforcement agency." Next
11 paragraph, I sincerely tried to avoid doing anything that might
12 remotely be considered an act to try to impede any IRS agents.
13 I do not wish to impede even you. I cannot locate the
14 authorizing documents authorizing the IRS unit as a CID to
15 enforce Chapter 575. Could you please review the attached
16 materials and point out to me which delegation order gives you
17 authority. He never answered. What am I supposed to do? All
18 I get is silence and the raidings and terrorizing my wife and
19 my ministry.

20 January 14, I sent him a letter, Dear Mr. Schneider, I
21 just today received your letter dated January 6 asking if I
22 intend to comply with your summons. I hereby assure you that I
23 am very willing to comply, and I intend to do whatever the law
24 requires me to do. I did not wish to make your job difficult.
25 This is my state of mind. It is still my state of mind to this

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12:25 PM 1 moment. We agree that if you have authority, I should not
2 hinder you from doing so. The major area of disagreement is
3 whether you're acting within the law and have the lawful
4 authority to conduct an investigation. It is my duty as a
5 child of God to obey his letters as well as the letters of the
6 land that I live in. Because of past abuses of power by
7 people, I have a duty to ensure that you are not one of those
8 people seeking to defraud me under color of law.

9 Skip all the way to page 11 here. I ended the letter
10 by saying, "If you find I'm in error about the law regarding my
11 production of documents, please notify me within 20 days or
12 else I can only presume you cannot demonstrate an error." No
13 response. 20 days goes by. I assume I'm fine. I go back out
14 preaching. I'm spending a fortune and spending hundreds of
15 hours researching and trying to find out what's wrong, at the
16 same time trying to maintain our ministry.

17 Back to the affidavit. So these are all the letters
18 that I sent to Agent Schneider asking for help, please tell me
19 what I'm doing wrong. I sent him tax forms. Getting no
20 response from Agent Schneider or anyone else, I considered the
21 matter closed and went off preaching, until April 14, 2004, I
22 was preparing for these. When he drove in the driveway with 16
23 other IRS agents and 20 or so Escambia County officers, it was
24 just a raid on our ministry. A gestapo-type raid is the best
25 way I can describe it. He could have just called, hey, Kent, I

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12:27PM 1 need you to come in. He never does that. It's always got to
2 be a high profile raid in the media, so that we look bad. Our
3 staff filled out many affidavits about how terrorized they
4 were. They are in the stack, Your Honor. I'm not going to
5 read any of those, but, please, get the heart of our staff as
6 you read some of these affidavits of what they did to us that
7 day. This is America. Nobody should have to go through that.
8 They took all kinds of boxes of materials and all the cash.
9 They wouldn't even let me see what they had taken. As Agent
10 Schneider was about to leave, he said would you sign this paper
11 for all the stuff I've taken. No, I said, I want to see it all
12 first. I don't know what you're taking. I still to this day
13 do not know what all they took.

14 The IRS should know from the tax code that every
15 attorney and professional I consulted informs me that Internal
16 Revenue Code 1401 imposes a tax on self-employment, but the
17 services of a minister are specifically excepted. 1402 says
18 employment income, trade or business. The term "trade or
19 business" shall not include performance of service of a duly
20 ordained, commissioned or licensed minister of a church.
21 That's what I am. That's what most of our staff are. 3101
22 imposes a tax on income, but it specifically excepts in 3121 --
23 I'll turn the page here -- for the purposes of this chapter,
24 the term "employment" means whatever service, but such term
25 shall not include service performed by a duly ordained,

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12:29PM 1 commissioned or licensed minister of a church. 3402, one of
2 the charges I'm charged with here, talks about employers taking
3 taxes out of their employees' wages, but 3401 defines wages.
4 And 3402(a)(9) specifically excepts -- the term "wages" shall
5 not include services performed by a duly ordained, commissioned
6 or licensed minister. 7202, one of the charges in my
7 indictment, any person required under this title shall deduct
8 and withhold taxes. I don't see where I'm required under this
9 title. I've searched -- I've asked him. I sent the letter
10 three times. My state of mind is great frustration, Your
11 Honor.

12 I would love to obey the law. I'm trying. CSE has
13 never existed to the benefit of a membership. CSE functions as
14 a bona fide Christian ministry spreading the gospel. I'm a
15 minister. I have taken a vow of poverty. I'm independent. I
16 don't own a car. I don't own a house. I don't own anything.
17 Even if I did receive income, it would be an exception
18 according to the law. Why is there an investigation of me at
19 all unless they are trying to disrupt the creation message? If
20 there is any doubt, come visit. If the IRS is accusing me or
21 my fellow ministers of the church ministry at CSE of some other
22 crime I do not know, I'll be glad to answer questions before
23 the grand jury. Every lawyer I consulted says we are obeying
24 the applicable letters. I just want to be dedicated to
25 preaching the gospel. I realize now I made a fatal mistake by

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12:30 PM 1 not sending it to Michelle Heldmyer, only copying it her. As a
2 loophole in the law, she doesn't have to answer. I understand.
3 That was my heart. I wanted answers. Still today would like
4 some answers. One of the major problems that I see here, in
5 closing, the IRS does not want to recognize our ministry as a
6 legitimate church ministry. I'm done, Your Honor, with that.

7 I'd like to briefly discuss the three basic charges
8 and my understanding and my state of mind of what's happening.
9 Counts 1 through 12 are for willful failure to withhold taxes
10 from employees. By the definition of employees that I could
11 see and the definition of wages, I wasn't allowed to. IRS Code
12 3402(p) says very clearly any withholding has to be a voluntary
13 agreement. If they agree to such withholding, when people came
14 to work at our ministry, I said we cannot withhold taxes for
15 several reasons. We're not authorized to be an agent for the
16 federal government. It's not my job to take money out of your
17 paycheck. I said you should take care of your own taxes. If
18 you have an obligation, pay it. But what the government wants
19 to do is make the church one of their agents. The pastor,
20 Mooneyhan, says we cannot do that. You cannot deduct wages. I
21 said what do I do? He said tell them they are on their own,
22 they're independent contractors, call them missionaries. It
23 was his decision to call them missionaries.

24 I was never given any notice that I was required to do
25 the things they've charged me with not doing. I was never made

12:32 PM 1 aware that these statutes applied to our ministry. I was
2 relying on the professional opinions and the research that I
3 had done and I had sent to them and gotten no response. I was
4 relying on -- because they hadn't responded and I told them
5 clearly, if you don't respond, I will assume it's true, and I
6 relied on that. Many ministries, even the large ones, Lakewood
7 Bible translators and South African Community Church have
8 hundreds of people working in their ministry. They all do
9 their staff through independent contracting. They do not take
10 out any tax taxes.

11 No evidence was presented that -- we never made a
12 contract to become withholding agents for the government. No
13 evidence that I can see was presented on what specific statute
14 or law we broke or what obligation we have. 3402 prohibits me
15 from withholding without a mutual agreement. But to be a
16 peacemaker, we have since the indictment started using employee
17 leasing service. This is Glen's decision. I don't know why
18 they tried to make me look bad. Glen Stoll is the director.
19 They need to talk with him. But then they put me in prison. I
20 thought what I was doing was perfectly lawful. I assure you,
21 Your Honor, I will do everything I can within my power to
22 comply with their legitimate concerns. All or nearly all of
23 the staff members file taxes as independent contractors anyway,
24 as far as I know. It's not my business what they do, but many
25 testified that they did.

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1 12:33 PM It was never my intent to violate any letters. It was
2 my understanding that ministers and ministries had a special
3 exemption or exception. I asked Michelle Heldmyer three times
4 to show me, and she never answered. What else should I have
5 done? Evidence was presented that the staff were asked, do you
6 prefer cash or checks? Since many are Bible college students
7 from out of town or out of state, they don't have local banking
8 arrangements, they requested cash. So we did that to be a
9 minister to them. There was no evidence that they were ever
10 violating any law or willfully trying to injure anybody.
11 Nobody was injured by this. And we certainly weren't trying to
12 hide anything.

13 Counts 13 through 57, in '96, we started drawing cash
14 out to pay the people. It was about \$3,000 a week. The
15 records would show that slowly grew from 3,000 a week, 4,000 a
16 week. As the ministry grew and the needs grew, we only
17 withdrew enough up to meet the needs. It finally got up over
18 10,000. Pastor Mooneyham said and later Glen Stole said don't
19 go over 10,000 without specific permission from me. I said why
20 not? He said, oh, it just causes trouble. I said what kind of
21 trouble? He said don't worry about it, just if you need to go
22 over 10,000, call me, we'll do it. Okay. I did not know what
23 a CTR, whatever the thing is. I didn't see one until the day
24 of trial when this showed up on the screen. The ministry shows
25 a great lack of structure in withdrawal. Sometimes it's three

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12:35 PM 1 or four days apart, sometimes it's 34 days apart, it would
2 become 49 or 50. This is not structuring. There is no
3 evidence that the cash was ever less than the ministry needed
4 or that it ever went to some unlawful use. It never went to
5 drugs or controlled substances.

6 I was shocked and upset when the government alleged
7 that our ministry property should be forfeited based on drug
8 letters. And more shocked when you, Your Honor, signed the
9 okay for that. And I'm sure they've got a taped conversation
10 where I said I think that's wrong. I did think that's wrong.
11 There is no drugs. I've never taken drugs in my life. I'm in
12 a room full of men every day, 24 hours a day, 90 percent of
13 them are in there for drugs. I've never touched them once in
14 my life. And that upset me that they would try to seize the
15 church ministry that we worked so hard to build through all
16 these years. They just want to come seize it and use drugs
17 laws as their excuse. I'm embarrassed that our government
18 would do such a thing.

19 Our ministry leaders were instructed clearly to notify
20 them if it were to get more than 10,000. These were sacred
21 funds. I felt and still feel to this day that Agent Schneider
22 stole church money and applied it to a tax bill for Kent
23 Hovind. I think that's wrong. My state of mind was that he
24 didn't follow due process. I had a right to file suit, Count
25 58. That's my understanding that's what I'm supposed to do.

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1 12:36 PM How on earth can that be unlawful? We tried to follow due
2 process. I felt they were not following due process. So my
3 state of mind was frustration. What do I do? There is no
4 evidence that anything in the suits I filed was false or
5 frivolous. They were dismissed on procedural grounds because
6 I'm not a lawyer, and I forgot to cross some T's and dot some
7 I's.

8 There is no evidence that I ever threatened anyone.
9 And I never have. I've been married 34-and-a-half years to the
10 same woman. I've never hit her one time. I have thought about
11 it a couple of times, but I never have. I'm not a violent man.
12 I'm outspoken, I'm stubborn, I'm proud, I admit, but I'm not
13 violent. I would never harm anyone. You heard on the tape, I
14 said I'm going to take every lawful means. That's all I would
15 ever do, Your Honor. And it bothers me that you kept me locked
16 up for three months away from my grandchildren when I'm not a
17 threat to anybody. I'm not a flight risk. I don't understand
18 that. What the IRS has done has terrorized our ministry staff,
19 it has terrorized our life, but vengeance belongs to God. I'm
20 commanded to pray for those that spitefully use you. I feel
21 the IRS has just spitefully used me over the years, and it
22 continues. I pray for those that persecute me. I pray for
23 each of you by name every day. I weep and cry in my jail cell
24 for you.

25 It was mentioned that I destroyed records. All we do

12:38 PM 1 is shred documents that pertain to credit card numbers for
2 people in our ministry. Sometimes we burn them. I hope every
3 ministry and business in America does that. I don't want
4 credit card information to fall into somebody else's hand.
5 This is not unlawful to shred those documents if they contain
6 that information.

7 We call the people missionaries, because that's what
8 they are. All we do -- many are here today. They will
9 testify, that's all we do, is try to win souls. That's all
10 we've ever done. Putting me in jail will not stop that. I've
11 been evangelizing in jail. My staff keeps evangelizing outside
12 of jail. Prison won't solve this problem. There is no
13 evidence that either my wife or I have ever willfully violated
14 any laws that I can see. I would like to go home and hold my
15 new grandson. I would like to rock my other four
16 grandchildren. I don't want to fight the IRS anymore. I
17 mentioned on the tape that if I'm locked up, I intend to sue
18 them the rest of their life. I changed my mind. It doesn't do
19 any good. Nobody is listening. Nobody on this planet that I
20 have seen is brave enough to stand up to them. Senators,
21 congressman are afraid of them. Everyone fears the IRS. I
22 don't want to fight them. Somebody else can slay that dragon.
23 Whether I go to jail or not, it is my intention to not sue
24 them, to not file complaints. I feel like when you wrestle
25 with a skunk, you can win, but it's not worth it.

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12:39 PM 1 I stand at the mercy of this Court. The jail chaplain
2 seated in the corner asked me a few days ago, Dr. Hovind, have
3 you repented? I said, Brother, I wish I knew what to repent
4 of. I still don't know what law I've broken. He said you're
5 in jail, aren't you? I said you're right, the Bible is full of
6 stories of people who went to jail and even were killed, yet
7 had done nothing. Cain killed Abel. What had Abel done wrong?
8 Joseph was in Egypt for 13 years in prison. He did nothing
9 wrong. The Book of Acts records 50 instances of people were
10 beaten, jailed, threatened for preaching the gospel. There's
11 nothing wrong. What was Job's sin?

12 I am guilty of being proud and guilty of being
13 frustrated and guilty of letting that show through my letters
14 and correspondence and my attitude. And I'm sorry. Christ
15 examined Jesus and said twice I find no fault in him. Yet the
16 Bible said he delivered him to be crucified because he feared
17 the people. When Paul appeared before Felix and King Agrippa
18 three times, they said Paul has done nothing wrong or worthy of
19 death or bonds, but these politicians left Paul in jail for two
20 more years because they feared the people. When Paul appealed
21 with Caesar, Felix said it's unreasonable to not specify what
22 laws he's broken. Acts 25.

23 Your Honor, if my wife and I have deliberately and
24 intentionally violated a law worthy of prison, please, have the
25 U.S. attorney show me which one. I've shown you the statutes I

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12:41 PM 1 was relying on. The indictment said in general -- in general
2 employers are required to withhold. I had shown her a year
3 before the three statutes I was relying on said I am not an
4 employer, I'm not required to withhold. She never responded
5 other than getting an in general, what law is that?

6 I want to be a peacemaker, so we went to employee
7 leasing. That resolves Counts 1 through 12. We began using
8 checks in 2003. Counts 13 through 57 are resolved. I still
9 feel the IRS does not follow due process. And I have not filed
10 a complaint or a suit against them in over two years. So I
11 think I'm reformed on that count, also. There is no need for
12 prison.

13 Your Honor, we are godly people. We just want to
14 bring people to the Lord. That's all. Again, I am not a tax
15 protester and never was one. I don't know who put that label
16 on me. I wish they would take it off. If it's just money the
17 IRS wants, there are thousands of people out there willing to
18 pay huge amounts of money to have me out of jail back out
19 preaching. We could raise a huge amount of money if it's some
20 kind of ransom they want. I don't know. They will pay for my
21 release. I'm willing to make any necessary changes they want
22 me to make just so I can back go out and preach the gospel.
23 That's God's calling on my plate. I can see several ways you
24 can rule, Your Honor, that would be in favor of me. One, you
25 can reverse your decision on the acquittal. I know judges

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12:42 PM 1 rarely do that, but you could. And I know the sentencing
2 guidelines are not mandatory. You don't have to do anything on
3 that page. You could declare a mistrial for any number of
4 reasons. You could simply not uphold the jury verdict. If you
5 do send me to prison, would you please grant release pending
6 appeal? We certainly will appeal this case. I don't want to
7 be sitting there waiting for appeal. I promise, I won't go
8 anywhere. And, please, Your Honor, if my wife is sentenced to
9 prison, would you please put that on mine?

10 Our ministry needs me out there preaching so we can
11 continue. I beg you, just let me go home. I would not flee.
12 I would be a fugitive for 30 years. I would rather spend five
13 years in jail or whatever and get it over with and be back out
14 preaching. I don't want to be a fugitive for the rest of my
15 life. There are senators, representatives and lawyers that
16 support our ministry and love me. They would not tolerate me
17 being a fugitive. They would hunt me down. I have no criminal
18 record. This is the first time my wife and I have ever been
19 defendants on anything. I have two traffic tickets.

20 There was no prior warning. There were no attempts at
21 resolution. They simply came and arrested me. The morning
22 they came, my wife was sleeping. She had just gotten to sleep
23 at 3 o'clock. Four agents surrounded her bed, told her to get
24 up, handcuffed her in her nightgown, refused to let her get
25 dressed, put a robe on or go to the bathroom, took her to the

12:44 PM 1 squad car to haul her down here. That's her first experience
2 ever with the law. Who in their right mind would want that to
3 happen to their wife? I'm embarrassed to be an American
4 sometimes when I see how some of them act. All prison will do
5 will destroy a family, destroy a ministry. I'll do whatever
6 you want me to, Your Honor. Imagine you're Kent Hovind -- I'm
7 sorry. I'm nearly done. Imagine you're me, '94 to '95, I sent
8 letters to Agent Powe. She never answered. She shows up and
9 steals the cars without due process. I wrote letters saying
10 what is going on? My friend paid the money to get them back.
11 He said it's not worth fighting them. 2004 -- '96, I paid to
12 have professionals tell me, am I doing something wrong? They
13 all said, no, you're doing everything fine. I paid for that.
14 We're a church ministry. 2002 to 2004, I sent more letters to
15 Agent Schneider, which he never answered. I begged him to
16 please let me see what law I'm breaking. I never got one
17 response. I asked him to verify his authority, which he's
18 required to do and I'm required to ask, according to Ryder v.
19 United States. I even sent him all the research to make his
20 job easier. Here's all the statutes. Which one applies?

21 April 2004, they raided our ministry, seized thousands
22 of dollars in sacred church funds and gave it to a civil tax
23 case, to the civil side on a bill they just created that day.
24 That's not due process. The next day I prayed for Agent
25 Schneider on the radio, and he says he feels threatened because

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1 12:45 PM I prayed for him. Please read the staff affidavits and see who
2 was threatened that day. 2004, I filed complaints about the
3 IRS not following due process. I filed a lawsuit, and it's
4 dismissed on procedural grounds. When I wrote to TIGTA and
5 said would you please send me see a copy of your report, they
6 said no. I filed for the report. They finally sent me the
7 TIGTA report on Agent Schneider, and all of it was blacked out.
8 I got 300 black pages. I still don't know what was in there.
9 2005, they convened a grand jury, but they refuse to indict me
10 on personal taxes. And all of a sudden, bang, that was
11 ministry taxes, with no warning whatsoever.

12 Our ministry has been demonized through the media. We
13 spent a fortune trying to fight the most powerful government on
14 earth. I feel like the mouse. November 2, 2006, my attorney
15 assures me that no defense is necessary because the government
16 never proved their case. So we put on no defense. We were
17 shocked when a few hours later, the jury found us guilty of
18 breaking a law that they never saw and I have never seen.
19 November 2nd to January 19th, I spent two-and-a-half months in
20 jail while my sweet little wife is relieved from playing the
21 piano at the church where David McGinnis sits. Our ministry
22 struggles to keep going. And my staff is asking me, Brother
23 Hovind, what did we do wrong? My speaking schedule has all
24 been cancelled. Thousands of people will not hear the gospel.
25 My four grandchildren wonder when Grandpa will be coming home.

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12:47 PM 1 Grandpa is in jail for the first time in his life alternating
2 between winning souls and doing Bible studies and crying
3 himself to sleep at night in a freezing cell.

4 January 19th, today, I stand in court still wondering,
5 what have I done? If I had known the IRS had a problem, we
6 would have fixed it. I would have talked to them. We never
7 knew.

8 Any more Kleenex, Jo?

9 THE COURT: We're approaching an hour.

10 THE DEFENDANT: Just one second, Your Honor.

11 Pavlov did an experiment many years ago. He would
12 ring the bell and feed the dog, ring the bell, feed the dog.
13 Most people don't know what that experiment was really about.
14 After the bell would ring, the dog would begin to get excited,
15 salivate, supper is coming. Then Pavlov would ring the bell
16 and beat the dog and then ring the bell and feed the dog. Very
17 erratically, he would go between beatings and feedings until
18 actually when the bell would ring, the dog had no idea what was
19 coming, he would run to the corner and quiver in fear.

20 I feel like that dog today. I do not know what the
21 IRS wants. What do you want, Scott? Do you just need another
22 piece of meat to grind? Am I the poster boy for this year?
23 Just because I dared to ask you questions and challenge your
24 authority, am I now doomed for persecution forever? Do you
25 want me to give the IRS all the money and property that

12:49 PM 1 belonged to the church for a tax bill for me and be happy about
2 it? Do you want authority over the church that Congress says
3 you can't have? Do you want me thank you for raiding our
4 ministry and terrorizing my wife?

5 THE COURT: Mr. Hovind, this is not an opportunity for
6 you to launch personal attacks.

7 THE DEFENDANT: I'm sorry. I don't know, Your Honor,
8 what the government wants. I don't know what IRS wants. My
9 grandchildren ask me, why is Grandpa in jail? What should I
10 tell them? Do you want me to keep silent and cheerfully accept
11 the prison sentence and not ask why? Should I just not grieve
12 of the destruction of my family and my ministry that's taking
13 place. Why do you want us in prison? Are we a threat? Who
14 have we harmed? Do you want truth, or like in the prison, they
15 have an expression, is it justice or just ice? I fear it's
16 just ice sometimes. Does the Court want to see remorse? I
17 would love to be remorseful. I told the chaplain about repent,
18 please, tell me what I'm supposed to repent of.

19 I've shown you my heart today. God, what do you want?
20 Why did you give me such a close, loving family only to rip
21 them away from me? Am I not supposed to have feelings? Didn't
22 the government see as they investigated thousands of hours of
23 our ministry, can't they see that we're Christians? Can't they
24 see we're dedicated to the Lord? All they are doing is looking
25 through all this stuff looking for something I said wrong.

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12:50 PM 1 Don't they see anything we said right? I love you, Lord, and I
2 trust you, and I always will, but I don't understand. And I
3 need your protection right now. I just want to go home. I'm
4 tired. Thank you, Your Honor.

5 THE COURT: Thank you.

6 Ms. Heldmyer, do you wish to address the Court as far
7 as sentence?

8 MS. HELDMYER: Your Honor, we spent two weeks at trial
9 rebutting the comments and the ideas that Mr. Hovind still
10 clings to. The basic information is in the record, and I don't
11 intend to reiterate all of the proof that we so diligently
12 presented to the jury that found Mr. Hovind guilty. The only
13 fact that I recall Mr. Hovind saying that may not have come out
14 at trial, so I'll put it on the record, Mr. Hovind repeatedly
15 said that there was a grand jury that refused to indict him.
16 That is not true. There's never been a grand jury that refused
17 to indict Mr. Hovind. He was indicted the first time the
18 indictment was presented to the grand jury.

19 Other than that, Your Honor, I think that everything
20 he says has been rebutted. The tape recordings show the lack
21 of sincerity of any statement that Mr. Hovind could make to the
22 Court today saying that he is sorry for anything that he has
23 done. If he truly were sorry, if he truly wanted an
24 opportunity to make things right, he had more than enough
25 opportunity, and he could most definitely have at least made

12:52 PM 1 some effort to pay the bill that he owes, and he has absolutely
2 done none of that. I think the Court knows what is truly going
3 on here and knows what truly is in Mr. Hovind's heart. And the
4 fact is that Mr. Hovind has still not learned and he still does
5 not accept responsibility for what he did. He does not accept
6 responsibility for the harm that he has done, not the
7 government, to his friends and his family. And we ask that an
8 appropriate sentence be fashioned in accordance with the
9 guidelines.

10 THE COURT: All right. You had mentioned earlier an
11 upward departure. Is that something that you are requesting?
12 And if so, would you address that.

13 MS. HELDMYER: Your Honor, the information that was
14 presented with regard to the tape recordings that we presented
15 to the Court, there was information there that the Court could
16 use and find it that has not been taken into account in the
17 calculation of the guidelines. The fact that Mr. Hovind is
18 continuing to try to hide assets so that the IRS can't come and
19 take them, the fact that he continues to threaten lawsuits,
20 that he continues to threaten illegal means as retribution for
21 what he apparently deems to be the wrongs against him, all of
22 those things, particularly the hiding of the assets, Your
23 Honor, you know, the timing of all this, those telephone calls
24 have been over the past couple of months after he found out
25 what his sentence is, that the presentence investigation report

12:53 PM 1 says, after he found out about the preliminary order of
2 forfeiture, and he even refers to them on some of the tape
3 recordings, he even actually says on the tape recordings, he
4 wants to do this, he wants to allocute and put all this on the
5 record so that it can be part of his appeal and part of the
6 appellate record, and my suspicion based upon that is the
7 reason why he's addressing the Court in that manner is not for
8 the reasons that he's suggesting to the Court, but is
9 subterfuge because he wants to use that as proof of facts that
10 he wants to appeal down the road. So I don't even think that
11 that was genuine on his part.

12 I think all these things that we've presented, Your
13 Honor, give the Court the ability to fashion a sentence above
14 the recommended guidelines range pursuant to the presentence
15 investigation report. And we trust the Court's discretion to
16 fashion a reasonable sentence.

17 THE COURT: All right. Is there anything else,
18 Mr. Richey?

19 MR. RICHEY: No, Your Honor.

20 THE COURT: All right. I'm going to take a recess and
21 meet with the probation office. Mr. Richey, I know you have a
22 plane to catch. It shouldn't take long, once the court
23 resumes, to pronounce sentence. I'm going to take 20 minutes,
24 and I think you'll still be able to make it to the airport on
25 time for your flight.

12:55 PM 1 MR. RICHEY: Thank you, Your Honor.

2 THE COURT: We'll be in recess until 1:20.

3 (Recess.)

4 THE COURT: Ms. Heldmyer, what is the amount of
5 restitution?

6 MS. HELDMYER: The restitution, Your Honor?

7 THE COURT: Yes, the restitution. I thought there was
8 some change.

9 MS. HELDMYER: The bill of cost are we talking about
10 now?

11 THE COURT: No, the restitution.

12 MS. HELDMYER: We made no change to the restitution
13 amount, just to the government's bill of cost that was filed
14 yesterday.

15 THE COURT: All right. What was the change to that?

16 MS. HELDMYER: The change, Your Honor, first of all,
17 we have -- we were going to be withdrawing the bill of cost
18 regarding Mrs. Hovind, because Mrs. Hovind was not convicted of
19 any tax charge, and that was what prompted us to make a couple
20 of small changes in the bill of cost. Specifically, there are
21 two sections on page 3 of our bill of cost where we are
22 charging the copies of Jencks material to both defendants. So
23 we've cut those two amounts in half in paragraph 4 to -- from
24 \$50 to \$25, and from \$2600 to \$1300. So the final amount that
25 we're asking for for the cost is \$7,078.24. 7,078.24.

1 : 4 4 P M 1 THE COURT: As to the restitution and amount reflected
2 in the presentence report is accurate?

3 MS. HELDMYER: It is, Your Honor.

4 THE COURT: Let me address the issue -- the matter of
5 acceptance of responsibility. In order for someone to be
6 entitled to an adjustment in their offense level for acceptance
7 of responsibility, the person has to truthfully admit the
8 conduct which comprises the offense of conviction. This has
9 not been done in this case, and it is quite rare for it to be
10 done in any case in which a defendant goes to trial, but I have
11 taken it into consideration. But after hearing the tapes from
12 the jail, I am -- and also the allocution that was made, I find
13 that Mr. Hovind is not entitled to acceptance of
14 responsibility, that he has not accepted responsibility for the
15 conduct which comprises the offense of conviction, which is
16 what the jury found him guilty of.

17 All right. Let's then make sure that we are all on
18 the same page as far as the -- excuse me -- the guidelines.
19 The total offense level is a 30, a criminal history category of
20 one. Guideline range is 97 to 121 months. Again, the
21 statutory maximum under Counts 13 through 57 has changed, and
22 that is five as opposed to ten years.

23 All right. Let me make a few things clear before I
24 impose sentence in the case. First, I want you all to
25 understand and be clear on the fact that this case is not and

1 : 4 6 P M 1 has never been about religion. It was Mr. Hovind, not the
2 government, who injected religion into this case during this
3 trial. And I know the courtroom is full today, it's packed.
4 And most, if not all of you were not here for the trial, I do
5 not believe. Some of you may have come in and out, but we
6 certainly didn't have this number of individuals in the
7 courtroom every day listening to the evidence as those of us
8 involved in the trial did here. Churches are not exempt from
9 the withholding and payment of taxes on the wages of employees.
10 Pure and simple. That is the law. That is the law in this
11 country, and it is the law that has been upheld by the United
12 States Supreme Court, who in this country has the final word on
13 matters of law and the Constitution.

14 Second, Mr. Hovind is responsible for his actions in
15 this case. And he, not the government nor the Court, is to
16 blame for what happens to the CSE ministries while Mr. Hovind
17 serves his sentence. Mr. Hovind is the one who has caused the
18 hurt and confusion that has surrounded these charges by
19 refusing to accept what the law is in this case. Again, I note
20 that most of you were not here for this trial, and most of you
21 will not like what I am about to say, but I am telling you that
22 this picture that Mr. Hovind painted during his allocution is
23 not the evidence that was heard by the jury in this case. And
24 we proceed at this sentencing based solely on the verdict of
25 the jury and then what was presented here at the sentencing.

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1 : 4 9 P M 1 Instead, the picture that was presented to the jury at the
2 trial in this case of Mr. Hovind is completely consistent with
3 what you heard today on the tapes made in the jail cell or from
4 the jail, the most recent of which occurred just four days ago,
5 or Monday.

6 Mr. Hovind, you've stood here before the Court, and I
7 listened to you. You spoke eloquently before the Court and
8 before your family and your friends, and you professed your
9 confusion and frustration over and with the Internal Revenue
10 letters, and you steadfastly insisted today that you are not a
11 tax protester. The evidence is to the contrary, sir. I know
12 it. The government knows it. Your employees know it. Your
13 associates know it. I believe that your wife knows it, and
14 your family knows it.

15 I am not going to reiterate for all of you here what
16 the evidence in this case was, and I don't need to do that for
17 Mr. Hovind. But the best evidence of that fact of your tax
18 protester status is the fact that you continue to affiliate
19 your ministry and yourself with Glen Stoll and Remedies at Law,
20 in fact, to the point of saying that he is still in charge to
21 this day of your ministry. You are heard speaking with him on
22 the phone calls that were played here in the courtroom. And
23 Mr. Stoll, and, again, you indicated just today that he is the
24 one that is in control of your ministry, and someone had to
25 turn that ministry over to Mr. Stoll. Mr. Stoll didn't start

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1 : 5 1 P M 1 CSE Ministries. Kent Hovind started CSE Ministries and has run
2 and operated CSE ministries. And as captain of that ship, you
3 are responsible. And you turned that ministry over to
4 Mr. Stoll.

5 And Mr. Stoll has been determined by another federal
6 court to have engaged in conduct that interferes with the
7 enforcement of the Internal Revenue letters. He organizes,
8 promotes and markets a fraudulent tax scheme using corporations
9 sole and ministerial trusts in an attempt to fraudulently evade
10 income and employment tax and to thwart the IRS's ability to
11 assess and collect its customers unpaid federal -- I'm sorry,
12 the customers of remedy sole -- Remedies at Law, excuse me,
13 unpaid federal tax liabilities. Glen Stoll and Remedies at Law
14 assists customers, of which CSE is a customer, in creating
15 ministerial trusts in which they falsely claim they are exempt
16 from all requirements under the Internal Revenue letters.
17 Remedies at Law advises its customers in using their
18 ministerial trust scheme to stop paying income and employment
19 taxes and to stop filing federal tax returns.

20 The scheme by Glen Stoll and Remedies at Law results
21 in its customers illegally concealing a substantial portion, if
22 not all of their income and business profits which would
23 otherwise have been paid to the customers as wages subject to
24 income as well as employment tax. They falsely advise their
25 customers with respect to businesses to reclassify and treat

1 : 5 3 P M 1 themselves and their employees as independent contractors,
2 instead of employees of the business. They falsely advise
3 their customers that they are not required to issue IRS forms,
4 W-2 or 1099s, both of which report compensation paid to
5 individuals and entities. They also advise falsely their
6 customers that they are not required to withhold any income or
7 employment taxes on the compensation they pay themselves and
8 their employees, and if they are employed by a third party, no
9 income or employment tax need be withheld on their wages.

10 This is the person that you have turned the ministry
11 over to. And so, like I said to everyone here in the
12 courtroom, that which happens to CSE Ministries after
13 Mr. Hovind is sentenced today is not the fault of anyone in
14 this courtroom other than Mr. Hovind.

15 Another point I want to make clear as to you,
16 Mr. Hovind, and that is that this nation is not perfect by any
17 means, but in my mind, there is none greater on this earth, and
18 we who live in this country are truly blessed to be here. Most
19 of us are blessed in that manner simply by virtue of the fact
20 of who our parents are, the fact that we were born here. We
21 did nothing to earn the privilege of being able to call
22 ourselves American. And as Americans, we enjoy certain rights
23 and privileges that are embodied within our Constitution, and
24 these are rights and privileges that make each of us sitting in
25 this room uniquely American, and they also make us the envy of

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1 : 5 5 P M 1 the world. Mr. Hovind, you have enjoyed those rights and
2 privileges throughout your life. I presume you've lived here
3 and you've enjoyed them, just as most of us have. And I
4 actually can sit and consider your legal situation now, and I
5 can identify several of those rights that you have enjoyed.
6 You have enjoyed the freedom of speech. You have certainly
7 enjoyed the freedom of religion. You have enjoyed repeatedly
8 the right of access to the courts. You have enjoyed the right
9 to a trial by a jury of your peers. And you have also enjoyed
10 the right to due process of law. And as I am confident, there
11 will be an appeal of any sentence that I impose today, you will
12 continue to enjoy the right to due process of law, regardless
13 of your convicted status.

14 You've also enjoyed the benefit of living in a
15 prosperous society where there is food from our farmers, there
16 is protection from our military, there is education from our
17 academic institutions, there is health care from our medical
18 institutions, there is infrastructure from our public works,
19 and the list goes on and on. And those things are paid for by
20 our taxes, but you have enjoyed all this simply because, again,
21 you are fortunate enough to have been born here. And as I tell
22 immigrants who stand before the Court to be naturalized, I tell
23 them that with these rights and privileges comes great
24 responsibility, and this is the responsibility that you have to
25 your country, and one of those responsibilities is the payment

1 : 5 8 P M 1 of taxes. I can't say it any better or more plainly that has
2 been stated by another judge in another case, the Honorable
3 Frank C. Damrell, and if you'll permit me I'm going to quote
4 from him in a sentencing in which he sentenced someone for tax
5 fraud in his own court. And what Judge Damrell said was a
6 person who has enjoyed life, a comfortable life in this
7 country, that refuses to take up the obligation of citizenship
8 is completely reprehensible. We have a social compact in this
9 country, and it is embodied in our Constitution. It allows us
10 as citizens to live together under one government. And when
11 someone fails to recognize their obligations to their country,
12 they break that compact that they have with all other citizens,
13 particularly those who have given their life to allow those
14 persons, including you, Mr. Hovind, to pursue the life that you
15 have pursued in this country, and I find that to be a most
16 difficult thing. Young people willing to sacrifice their lives
17 so that we can live in a secure and free society, and the only
18 obligation for the most part that we're asked of as citizens in
19 order to have the honor of being citizens in this country is to
20 pay some tax so as to allow our government to continue
21 providing security and freedom to us all. And to me the story
22 is as simple as that, the failure -- your failure to honor your
23 obligation to this country.

24 Judge Damrell in his sentencing referenced the men and
25 women of our Armed Forces and the sacrifices that they have

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1 : 5 9 P M 1 made for us, and I think it's important for you and all those
2 here in the courtroom and elsewhere to realize and appreciate
3 the fact that these men and women, past, present and future,
4 not only fight for your security, Mr. Hovind, and all of our
5 security, but they also fight for your right to practice and
6 preach your Creation Science Evangelism in any way that you
7 choose and even for your right, which is unique in many
8 countries, but even for your right to criticize our government
9 and its tax letters. But make no mistake, these men and these
10 women are not fighting and are not sacrificing their lives to
11 give you the right to do the sorts of things that you did in
12 this case. They are not fighting and sacrificing their lives
13 so that you can skirt obligations to this country, obligations
14 to them. It is our tax dollars that puts food in the mess
15 halls of our military, puts mattresses on their bunks and
16 weapons in their hands so that they can fight to protect this
17 country. And you may think that my statements are a bit over
18 the top, but I don't. I think they are right on point. And
19 that the conduct in this case is extremely serious.

20 I received letters from many of you expressing the
21 view that sometimes those convicted of heinous crimes are
22 subject to less time than Mr. Hovind is facing in this case.
23 This is a serious case, serious charges, serious conduct. Make
24 no mistake about it. By your conduct in this case, Mr. Hovind,
25 in my opinion, you dishonored the men and women in our

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2 : 0 1 P M 1 military. You dishonor your fellow Americans, and you've
2 dishonored the Constitution of the United States.

3 All right. I'm prepared now to go forward with the
4 sentence. I have a final order of forfeiture that's been
5 presented by the government, and I have signed that pursuant to
6 the preliminary order of forfeiture that has already been
7 entered, and that is based on the forfeiture finding of the
8 jury in this case.

9 Mr. Hovind, please rise. All right. At this time,
10 Mr. Hovind, I do formally adjudicate you guilty of Counts 1
11 through 58 of the indictment, and that is consistent with the
12 jury's finding of guilt as to each of those counts.

13 Pursuant to the Sentencing Reform Act of 1984 and all
14 amendments, it is the judgment of the Court that the defendant,
15 Kent E. Hovind, is hereby committed to the custody of the
16 Bureau of Prisons to be imprisoned for a term of 120 months.
17 That is comprised of 60 months as to Counts 1 through 56, all
18 of which to run concurrent, 57 -- 60 months, excuse me,
19 consecutive as to Count 57, and 36 months concurrent as to
20 Count 58, which results in a sentence of 120 months, which is
21 within the guideline range.

22 I do -- also, I want to note that this sentence is at
23 the high end of the guideline range, and that is due to
24 aggravating factors that I find present in this case, which
25 include, but are not limited to the number of obstructive acts

2 : 0 3 P M 1 that are involved in this case, which include personal attacks
2 against Mr. Scott Schneider and Ms. Powe, or Powe, I'm sorry if
3 I mispronounced that, the revenue officer. Your personal
4 attacks against those employees of the Internal Revenue Service
5 were intended as personal attacks, and they are intended to
6 smear their reputation and to ruin their careers. This type of
7 behavior has continued. It is reflected in the tapes that we
8 heard played here today. There is also the continued efforts
9 to obstruct by hiding and concealing your assets in the face of
10 this sentence, which would presumably include fines and most
11 assuredly would include restitution.

12 I do recommend that the sentence be served and that
13 Mr. Hovind be designated by the Bureau of Prisons to a facility
14 for confinement as near his home here in Pensacola, Florida as
15 the Bureau of Prisons can accommodate. I don't make that
16 decision. It is out of my hands. I do recommend, however,
17 that -- and the Bureau of Prisons does take my recommendation
18 into account, but I do recommend that Mr. Hovind be housed, and
19 I will specify Saufley Field here in Pensacola, so that he may
20 receive regular visitation from his family and his friends.
21 But, again, that decision will rest with the Bureau of Prisons.

22 I find that Mr. Hovind does have the financial ability
23 to pay a fine in a modest amount. Mr. Hovind, you refuse to
24 provide any financial information or financial statement to the
25 Court as required, but based on what I know absent that

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2 : 0 5 P M 1 financial affidavit, I find that you can pay a fine in the
2 amount of \$2,000 on a monthly installment payment schedule
3 during your term of supervised release, which I will address in
4 just a moment. While incarcerated, you will be required to
5 participate in the Inmate Financial Responsibility Program, and
6 this amount will be due and payable immediately. To the extent
7 that you are unable to pay the amount in full, again, the
8 remaining balance will be collected during the term of your
9 supervised release.

10 Pursuant to law, there is also a \$100 special monetary
11 assessment that must be ordered, and that is as to each of the
12 58 counts, for a total of \$5800. That is due, also, and
13 payable immediately.

14 Pursuant to law, specifically 26 U.S.C. 7202, you will
15 be required to pay the cost of prosecution in this case, and
16 that is in the amount of \$7,078.24. And that is under the
17 counts of conviction in Count 1 through 12.

18 Mr. Richey, all of this will be spelled out in a
19 written judgment of conviction.

20 Upon your release from incarceration, Mr. Hovind, you
21 will be placed on a period of supervised release for a term of
22 three years as to Counts 1 through 57, and one year as to Count
23 58, with the terms to run concurrently, one with the other.
24 Supervision will be under the standard conditions adopted for
25 use in this district, together with the following special

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2 : 0 7 P M 1 conditions. Please listen carefully. You shall not own or
2 possess, either directly or constructively, any firearm, any
3 dangerous weapon or any type of destructive device, and that
4 also includes any ammunition and would also pertain to hunting
5 weapons as well. You will be required to cooperate in the
6 collection of DNA, which is required by statute. Also,
7 pursuant to law, you will be required to make restitution, and
8 that law is 18 U.S.C. 3583(d), in the amount of \$604,874.87 to
9 the Internal Revenue Service, Atlanta Service Center, Criminal
10 Investigations Branch, P.O. Box 47-422, Stop 75-B, Doraville,
11 Georgia, 30362.

12 Mr. Hovind is to receive credit for any amount seized
13 by the government. Restitution shall be paid in monthly
14 installments of not less than \$500 per month, and these
15 payments shall commence within three months from your release
16 from imprisonment. Any unpaid balance of the fine shall become
17 a condition of your supervised release, and you will be
18 required to pay not less than \$61 per month towards that
19 balance to commence within, again, within three months. Any
20 unpaid balance of the cost of prosecution shall become a
21 condition of your supervised release, and you will be required
22 to pay not less than \$100 per month to commence within three
23 months of release as to that cost.

24 You will also be required to provide the probation
25 office with access to any requested financial information, both

2 : 0 8 P M 1 business as well as personal. You will be required to report
2 the source and amount of personal and/or business income and
3 financial assets to the supervising probation officer as
4 directed. You shall not incur any new credit charges or open
5 any additional lines of credit without the approval of the
6 probation office unless you have satisfied -- unless and until
7 you've satisfied your financial obligations under the sentence.
8 You shall not transfer or dispose of any asset or interest you
9 may have in any asset without the prior approval of the
10 probation officer unless and until you have satisfied the
11 financial obligations under the sentence.

12 Although mandatory drug testing is required under the
13 law during supervised release, I am going to suspend the
14 requirement for drug testing in your case, Mr. Hovind, because
15 I find that you pose a very low risk, if any, of any substance
16 abuse.

17 In making this sentencing decision, I do want the
18 record to reflect that I did consult the guidelines, I
19 calculated the applicable advisory range of 97 to 121 months
20 based on an base offense level of 22, two points for the
21 pattern of unlawful activity, four points for the role
22 adjustment, two points for the obstruction of justice
23 enhancement, no points for acceptance of responsibility. The
24 total offense level is 30, criminal history category one.

25 Although the government has requested an upward

2 : 1 0 P M 1 departure from the guideline range, in other words, a higher
2 sentence than has been imposed, and although I recognize that I
3 have the authority to do that in this case, I find that an
4 upward departure is not clearly appropriate and, therefore, no
5 departure, either upward or downward, will be imposed in this
6 case.

7 Finally, I did consider every one of the factors in 18
8 U.S.C. 3553(a) in arriving at the sentence. And at this time I
9 do find that a sentence of 120 months in this case is
10 sufficient, but not greater than necessary to comply with the
11 purposes of sentencing set forth under the law.

12 The total sentence is 120 months' imprisonment,
13 followed by three years of supervised release, a \$2,000 fine, a
14 \$5800 special monetary assessment, restitution in the amount of
15 \$604,874.87, and the cost of prosecution in the amount of
16 \$7,078.24.

17 Mr. Hovind, do you understand the sentence that's been
18 imposed? Do you understand it?

19 THE DEFENDANT: I guess I would need to see it in
20 writing first.

21 THE COURT: Do you have any questions about what I've
22 said as far as the length of the term of imprisonment, the fine
23 amount? Do you understand what I said?

24 THE DEFENDANT: I have a question. Since I have a vow
25 of poverty, I don't own anything. The ministry owns

2 : 1 1 P M 1 everything. How am I supposed to pay?

2 THE COURT: That will be -- that will be something
3 that will be determined later whether or not you have the
4 ability to pay or whether or not the government can seize or
5 attach those assets. That's not a matter for me to determine
6 today. That may come back before me, but it's not before me
7 today.

8 THE DEFENDANT: I don't understand how I can do that,
9 so I guess I need to get clarification on that.

10 THE COURT: Well, there may be -- in some instances,
11 third parties have rights in forfeiture cases, and sometimes
12 third parties file things with the Court, and there is a
13 hearing, and that may be where we get in this case. I don't
14 know. None of that is before me right now. Mr. Richey can
15 advise you further about that.

16 THE DEFENDANT: Your Honor.

17 THE COURT: Yes.

18 THE DEFENDANT: As far as sentencing, if there --
19 obviously this will go to appeal. If there is any way that can
20 be postponed as far as being implicated until appeal, so I
21 would have that sentence hanging over my head, but could go
22 free on bond or on own recognizance. I just hope --

23 THE COURT: Mr. Richey can file something if he deems
24 it appropriate. I have ruled on your motion for release and
25 addressed in that ruling the issue of release on appeal. In

2 : 13 PM 1 this case there is one overriding legal issue that I think that
2 Mr. Richey and Mr. Barringer will pursue on appeal. The law,
3 however, is that even if successful on that portion of the
4 appeal, that would not affect the other remaining counts of
5 conviction for which a sentence of imprisonment is called for.
6 And so, therefore, that issue does not affect the issue of
7 release.

8 THE DEFENDANT: All three counts, though, will be
9 appealed, and it hasn't been determined yet, so I sure would
10 like to go home until --

11 THE COURT: I understand. I understand, Mr. Hovind,
12 that you would like to go home. I have to follow the law, and
13 the law in this case is that you remain in custody.

14 All right. Counsel, other than the objections that
15 have been made and are placed and preserved in the record, are
16 there any objections to the Court's ultimate findings of fact
17 or conclusions of law as related to the sentence? Mr. Richey.

18 MR. RICHEY: As to the mathematics, no, Your Honor,
19 but there were two just brief issues, and I'll try to be very
20 brief. In regards to restitution that CR 32(a)(2) says that a
21 victim as an individual as courts have repeatedly found the IRS
22 has no capacity to be sued or to sue, and they are not a real
23 party in interest, which means they cannot be a victim in this
24 case, and under 18 U.S.C. 3583(d), that does not include Title
25 26.

2 : 1 4 P M

1 THE COURT: Ms. Heldmyer, do you wish to respond
2 before I proceed?

3 MS. HELDMYER: If Mr. Davies could respond, Your
4 Honor.

5 THE COURT: Mr. Davies.

6 MR. DAVIES: Your Honor, the case law is, in a case
7 such as this, you can make restitution for the Title 26 offense
8 is a condition of supervised release. As for the -- and
9 that's -- so it is appropriate under Title 18, which you cited
10 in your sentence.

11 MR. RICHEY: Your Honor, then -- I'm sorry. In
12 reference to that, you had stated that he must pay \$500 a month
13 beginning now, that as he just stated, that would only take
14 place in restitution which begins in supervised release, which
15 would be inappropriate to order him to begin payment on that
16 now.

17 THE COURT: I would agree with that. Mr. Davies, I
18 think Mr. Richey raises a valid point. So the judgment will be
19 amended to reflect that the restitution payments will begin
20 three months following release from incarceration.

21 MR. RICHEY: One other thing, Your Honor, was on the
22 bill of cost. There is no receipts included in this to
23 substantiate it. And, for example, just on number two, they
24 want three -- or five dollars per page on grand jury
25 transcripts, and I believe the figure on that is much less per

2 : 1 6 P M 1 page. So I would ask that the government produce receipts in
2 order to substantiate.

3 THE COURT: Mr. Davies.

4 MR. DAVIES: Your Honor, we site in the bill of cost
5 the Patti case and also the Dean case. The Patti case, both of
6 which were in district court, but Patti went up to the Eleventh
7 Circuit and got affirmed, and it specifically affirmed that
8 five dollars per page for the transcript, which is what we are
9 charged for grand jury transcripts without a court reporter,
10 and the 50 cents per page for copies has been affirmed by the
11 Eleventh Circuit. So you have the discretion according to the
12 Patti -- Eleventh Circuit Patti case, and I think your
13 imposition was correct.

14 THE COURT: That's the law, Mr. Richey, and that
15 amount won't change.

16 Ms. Heldmyer, any objections from the government?

17 MS. HELDMYER: No objections, Your Honor.

18 THE COURT: Mr. Hovind, you do have the right to
19 appeal from this sentence. If you choose to pursue an appeal,
20 you must file your notice of appeal within ten days of the date
21 of judgment, and this will be in writing, and it will be
22 entered early next week. So you will have ten days from that
23 date of judgment in which to file your notice of appeal. If
24 you cannot afford the cost of an appeal, you may file for leave
25 to appeal in forma pauperis or no cost to you. And upon

2 : 1 7 P M 1 request, our Clerk of Court would file a notice of appeal
2 immediately on your behalf. I know Mr. Richey can advise you
3 further about your appeal rights, but please do remember, it's
4 ten days from the date of judgment.

5 MR. RICHEY: Your Honor, if I may address one thing
6 just quickly on that. A notice of appeal was filed, and it was
7 paid, but the clerk's office for some reason interpreted it as
8 an interlocutory appeal, even though in the notice of appeal it
9 said judgment and sentence. And my understanding is even if
10 the notice of appeal is filed prior to the judgment and
11 sentence, it still applies once judgment and sentence is
12 issued. Do I need to file an amended notice of appeal?

13 THE COURT: Well, you threw us a curve on that one,
14 Mr. Richey, and we weren't sure. And I believe we consulted
15 with the Eleventh Circuit and were told it would be treated as
16 an interlocutory appeal, the appeal that you have filed. So I
17 think -- I'm not here to give advice, but it might be --

18 MR. RICHEY: May I request that the Court order that
19 it be allowed then to be the final notice of appeal rather than
20 interlocutory?

21 THE COURT: I don't think I can do that. It's however
22 the Eleventh Circuit treats it. Again, I can't give you
23 advice.

24 MR. RICHEY: I'm moving the Court to do that.

25 THE COURT: To just file an amended notice of appeal?

2 : 1 8 P M 1 MR. RICHEY: To allow me to file an amended notice of
2 appeal, and for that to apply, that the filing fee be already
3 paid.

4 THE COURT: Mr. Richey, I don't know that I can do
5 that. I mean, that's not something I can give you an answer on
6 right now. The judgment of conviction hasn't been entered. So
7 your time period is not running. So you don't need to worry
8 about that. So that's something you'll need to research and
9 see what you can do or the Court has authority to do, and you
10 need to let me know that. And if I can, I'll be more than
11 happy to treat it as such. I just don't know that I have the
12 authority to do that, because the judgment has not actually
13 been entered.

14 MR. RICHEY: And then one last final matter. I'd
15 request that the Court grant that Mr. Hovind be given credit
16 for the time served from the time of his incarceration after
17 the verdict.

18 THE COURT: He will be automatically given credit for
19 that time.

20 MR. RICHEY: Thank you, Your Honor.

21 THE COURT: All right. We've rescheduled
22 Mrs. Hovind's sentencing. I believe the date I gave you was
23 March the 1st.

24 MR. BARRINGER: That's correct, Your Honor.

25 THE COURT: All right. And we will see you and

2 : 2 0 P M 1

Mrs. Hovind back here at that time, Mr. Barringer.

2 Mrs. Hovind, you are still in pretrial -- well, you're still
3 under supervision on presentence release. There are terms and
4 conditions, you know, I'm sure, that you must abide by --
5 continue to abide by during this period of your release. I
6 make one modification to the bond, and that is that you appear
7 for your sentencing here in this Court on March the 1st at
8 9:00 a.m.

9 DEFENDANT J. HOVIND: Yes, ma'am.

10 THE COURT: All right. Court will be in recess.

11 (Proceedings concluded.)

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15 I certify that the foregoing is a correct transcript from the
16 record of proceedings in the above-entitled matter. Any
17 redaction of personal data identifiers pursuant to the Judicial
Conference Policy on Privacy are noted within the transcript.

18 s/Gwen B. Kesinger

10-2-07

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20 Gwen B. Kesinger, RPR, FCRR
21 Official Court Reporter

Date

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