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IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	Case No. CR03-88C
Plaintiff,)	
)	Seattle, Washington
v.)	
)	October 10, 2003
LAURA JEAN MARIE STRUCKMAN,)	
)	SENTENCING
Defendant.)	
)	
_____)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by computer-aided stenography.

1 THE CLERK: Case No. CR03-88C, Unites States versus
2 Laura Jean Struckman. Counsel, please make your appearances.

3 MR. MAIETTA: Your Honor, Chris Maietta on behalf of the
4 United States.

5 MR. ODULIO: Your Honor, Mark Odulio for the government.

6 MR. HANSEN: Richard Hansen as local counsel for Alan
7 Baum, Your Honor, from California. I'd like to introduce him to
8 the Court.

9 THE COURT: Mr. Hansen.

10 MR. BAUM: Good morning, Your Honor.

11 THE COURT: Good morning. Ms. Struckman, have you had
12 an opportunity to review and comment upon the presentence report?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right.

15 MR. BAUM: Thank you for the opportunity of appearing in
16 your Court, Your Honor. The issues that are before the Court for
17 resolution were presented by way of objections to the presentence
18 report. And the probation officer responded in a supplemental
19 addendum to the presentence report. And then reiterated in the
20 defendant's sentencing memorandum, which was filed with this
21 Court.

22 Frankly, Your Honor, the defendant's objections to paragraph
23 two and paragraphs five and six and paragraph seven probably are
24 not directly relevant to the guideline calculations in this case.
25 Although some of those matters could very well influence the

1 Court one way or the other in -- as to where within the
2 designated range of the determined adjusted offense level.

3 THE COURT: Let me save you some time and tell you that
4 I'm disregarding those portions in formulating the sentence.

5 MR. BAUM: Thank you, Your Honor. I would ask that in
6 that regard, since that information in the probation report, when
7 it is transferred to the Bureau of Prisons, might influence their
8 decision as far as classification, I would ask the Court to
9 strike the objected to materials in paragraphs two, five and six
10 and seven.

11 THE COURT: I'm not going to do that.

12 MR. BAUM: The record will be clear, however, that the
13 Court is disregarding those matters for the purposes of the
14 sentencing.

15 THE COURT: Yes.

16 MR. BAUM: As to the most relevant objection insofar as
17 the guideline calculation, Your Honor, and that is my objections
18 to paragraphs 13 and 15, I would submit that --

19 THE COURT: You mean 15 and 17.

20 MR. BAUM: Is it 15 and 17?

21 THE COURT: Yes.

22 MR. BAUM: Yes, Your Honor. You're right, Your Honor,
23 and my sentencing memorandum was incorrect. It's 15 and 17. 15
24 being the victim impact, which is the first time that the
25 probation report seems to refer to the amount of loss, and then

1 calculates the amount of loss times .20, or 20 percent, to come
2 up with the 350,000 and change that then is reflected in the tax
3 table as a level 17.

4 We would submit, Your Honor, that it would be -- it would be
5 wrong to include the extra 213 uncharged currency withdrawals,
6 that it would really be a violation of due process, because the
7 defendant, to the best of my knowledge and belief, was not
8 provided discovery concerning those 213 uncharged currency
9 withdrawals.

10 And I do have a copy of the trial transcript, Your Honor.
11 And since the case was tried before Your Honor, I probably don't
12 need to remind Your Honor that the government in the trial of
13 this matter, in the opening statement, indicated that the charged
14 behavior in the case involved withdrawals of something over
15 \$900,000, 122 cash withdrawals.

16 And then Mr. Hardaway, a representative from the Internal
17 Revenue Service, testified to documents which listed the 122
18 transactions totaling \$966,000. And in the closing argument the
19 government argued that the case involved 122 transactions
20 totaling approximately \$966,000.

21 The government in its sentencing memorandum indicates that
22 notwithstanding the testimony that was presented at the trial the
23 Court can and should include these uncharged 213 counts that
24 admittedly occurred before the charged conspiracy, occurred
25 within 14 months of the charged conspiracy. I respectfully

1 disagree with the government's argument that this conduct meets
2 the necessary standards to be included under relevant conduct.

3 I think perhaps the most significant issue is has the
4 government shown by its pleadings here, by the opposition, that
5 the conduct that is reflected in those 213 counts for that
6 additional amount of money is necessarily criminal conduct, have
7 they shown that it is part of the common scheme and design.

8 The government on page 5 of its memorandum indicates that the
9 213 uncharged currency withdrawals typically ranged between 2,000
10 and 8,000 dollars per day. Now, we know from the testimony as to
11 the 122 counts or transactions that were part of the indictment
12 that the defendant's conduct -- clearly the jury found to be with
13 the intent to avoid the CTR requirements.

14 THE COURT: If you're correct, what does it do to the
15 guideline range?

16 MR. BAUM: It's a two point difference, and instead of
17 24 to 30 months, it results in a guideline range of 18 to 24
18 months. I believe that the fact that those other transactions
19 arranged between 2,000 and 8,000 dollars breaks the pattern.

20 It's much less persuasive to find that a 2,000 dollar cash
21 withdrawal was done for the purpose of avoiding the CTR. And the
22 government admits that without breaking down as to how many
23 \$2,000 withdrawals there were, or 3,000 or 4,000, but merely does
24 indicate that the 213 uncharged withdrawals ranged between 2,000
25 and 8,000 dollars. I think that is really the most significant

1 factor of distinction, Your Honor.

2 I would ask the Court to find that the amount of loss in this
3 case is based -- should be based upon the \$966,000, which would
4 result in the guideline range being 18 to 24 months. And for all
5 of the reasons before the Court, as to mitigation and the lack of
6 prior record, the Court is disregarding all the political
7 ramifications of Ms. Struckman's position, the fact that she was,
8 I think, significantly influenced by her husband at the time, to
9 sentence her at the bottom of the guidelines to 18 months.

10 THE COURT: Does your client wish to say anything?

11 MR. BAUM: No, Your Honor.

12 THE COURT: Okay. I'll hear from the government.

13 MR. MAIETTA: Thank you, Your Honor. Chris Maietta on
14 behalf of the United States. Your Honor, the government agrees
15 with the recommendation in the presentence report which I think
16 indicated a base level -- an offense level of 17 should be used
17 in calculating the sentence in this case. And that's based upon
18 335 currency transactions.

19 And for the Court -- just to clarify, when we submitted --
20 when the government submitted its memorandum in this case, it
21 indicated 213 currency transactions relating to uncharged
22 conduct. That is actually -- it should be 217 currency
23 transactions relating to uncharged conduct, in addition to
24 another 118 currency transactions that the defendant made during
25 the conspiracy, and that would give us the 335 currency

1 transactions.

2 And it's the government's position that all 217 currency
3 transactions relating to the uncharged conduct should be
4 considered in determining the defendant's ultimate sentence in
5 this case.

6 The government's position is that the presentence report sets
7 forth sufficient evidence to establish that guideline, but if the
8 Court wishes, the government is prepared to place Agent Michael
9 Hardaway on the witness stand to testify to the 217 currency
10 transactions.

11 THE COURT: No. I'm going to sustain the objection and
12 fix the total offense level at 15, which gives a guideline range
13 of 18 to 24 months, and I'm imposing a sentence of 21 months,
14 with a period of supervised release of three years. I'm waiving
15 a fine due to the defendant's financial condition. She'll be
16 required to pay the special assessment for the count of
17 conviction. The supervised release will be subject to standard
18 conditions, together with those additional conditions set forth
19 in the presentence report.

20 Ms. Struckman, you may have the right to appeal your
21 sentence. If you wish to file, a notice of appeal must be filed
22 within 10 days of today. If you wish the assistance of an
23 attorney in filing the notice of appeal and can't afford one, one
24 will be appointed to assist, if you so request. If you wish the
25 assistance of the clerk in filing your notice of appeal, she will

1 assist you, if you so request.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Where is Mr. Struckman, and why hasn't he
5 been charged in this?

6 MR. MAIETTA: Your Honor, the government is conducting
7 an investigation at this point, and there is no resolution of it.

8 THE COURT: All right. Okay.

9 MR. BAUM: Thank you, Your Honor.

10 THE COURT: Counsel, it's the practice in this district
11 that the government prepares the judgment and commitment. So do
12 it, okay?

13 MR. MAIETTA: Thank you, Your Honor.

14 CERTIFICATE

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I, Joseph F. Roth, Official Court Reporter, do hereby
certify that the foregoing transcript is correct.

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S/Joseph F. Roth

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Joseph F. Roth

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