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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

V. CRIMINAL DOCKET NO. 09-20 "J"
NEW ORLEANS, LOUISIANA
WEDNESDAY, SEPTEMBER 2, 2009, 2:00 P.M.

VINCENT HENDERSON

TRANSCRIPT OF SENTENCING PROCEEDINGS
HEARD BEFORE THE HONORABLE CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: U. S. ATTORNEY'S OFFICE
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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY. TRANSCRIPT
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P-R-O-C-E-E-D-I-N-G-S

WEDNESDAY, SEPTEMBER 2, 2009

A F T E R N O O N S E S S I O N

(COURT CALLED TO ORDER)

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7 THE DEPUTY CLERK: All rise. Criminal Action #09-20,
8 *United States of America v Vincent Henderson.*

9 MS. PRIVITERA: Good afternoon, Your Honor.
10 Liz Privitera on behalf of the United States.

11 THE COURT: Good afternoon.

12 MR. SHAPIRO: Good afternoon, Your Honor.
13 Steven H. Shapiro for Vincent Henderson.

14 THE COURT: All right. Good afternoon.
15 Mr. Vincent Henderson, that's you, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. What is the reason Mr. Henderson is
18 in a wheelchair? I'm just not familiar with his situation.

19 MR. SHAPIRO: Your Honor, it's my understanding that
20 Mr. Henderson has a broken -- a left knee injury, and he's had
21 surgery -- actually, he's had surgery on it recently.

22 THE COURT: Oh, okay.

23 Eileen, give him one of those portable mics.
24 Eileen, can we give him one of those portable mics so we can hear
25 him?

1 All right. Mr. Henderson, did you receive a copy
2 of the written presentence report in your case?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I can't hear you.

5 THE DEFENDANT: Yes, sir, I received it.

6 THE COURT: Before we go any further, I asked the
7 probation officer, Ms. Catherine Harbison, to do an alternative
8 guideline calculation based on a 1:1 crack-to-powder ratio. You
9 haven't given that to them; have you, Ms. Harbison?

10 THE PROBATION OFFICER: No.

11 THE COURT: I just got this today. I just asked her
12 this morning to do this. Eileen, would you hand a copy of this
13 to counsel.

14 Mr. Henderson, let's back up a second. Did you
15 tell me you did receive copy of the presentence report?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did you read it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you have a chance to discuss it with
20 your attorney, Mr. Shapiro?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: There were some objections in the
23 presentence report, one dealing with the guideline calculation
24 and the crack-to-powder ratio issue. We'll deal with that
25 separately. All of the other objections I'm having trouble

1 understanding, Mr. Shapiro. Is your client denying that this was
2 him in all these other instances?

3 MR. SHAPIRO: Yes, Your Honor. My client has made --
4 has asserted that this was not him.

5 THE COURT: In every one of these other instances it was
6 not him?

7 MR. SHAPIRO: Your Honor --

8 THE COURT: I just want to know if you or your client
9 are seriously making that argument here. Is that what you're
10 saying?

11 MR. SHAPIRO: I am making that argument.

12 THE COURT: Well, then we'll have a hearing, and we'll
13 let the government put on its evidence.

14 MS. PRIVITERA: Yes, Your Honor. The government will
15 call Cathy Harbison to the stand.

16 THE DEPUTY CLERK: Would you please raise your right
17 hand. Do you solemnly swear that the testimony which you are
18 about to give will be the truth, the whole truth and nothing but
19 the truth, so help you God?

20 THE WITNESS: I do.

21 **CATHY HARBISON**

22 was called as a witness and, after being first duly sworn by the
23 Clerk, was examined and testified on her oath as follows:

24 DIRECT EXAMINATION

25 MS. PRIVITERA:

1 Q. Mr. Harbison, who are you employed with?

2 A. The U. S. Probation Office.

3 Q. In your capacity as a U.S. probation officer, have you had
4 an opportunity to prepare a Presentence Investigation Report on
5 Mr. Henderson?

6 A. Yes.

7 Q. In conducting that presentence investigation, did you run
8 the criminal history of Mr. Henderson?

9 A. Yes, I did.

10 Q. How do you typically run a criminal history of an individual
11 that you are preparing a Presentence Investigation Report on?

12 A. I run record checks through the local New Orleans Police
13 Department Records System, and I run checks through the National
14 Crime Information Center and the state police crime rap sheet
15 office.

16 Q. In this matter, did you employ all of those resources to
17 conduct a criminal history background on Mr. Henderson?

18 A. Yes.

19 Q. And did you receive the defendant's objections to his
20 criminal history that you had calculated?

21 A. Yes.

22 Q. And in response to Mr. Henderson's objections, did you do
23 any additional work or prepare any other type of paperwork to
24 verify that you in fact had the right criminal history for
25 Mr. Henderson?

1 A. Yes. I attempted to gather as many police reports as I
2 could for the individual convictions that he has. I also went
3 over to the State probation and parole office on St. Charles
4 Avenue which had some additional records.

5 Q. Okay. And from your further investigation, were you able to
6 verify that Mr. Henderson was in fact the individual arrested and
7 had been arrested on these dates that you had included in the
8 original Presentence Investigation Report?

9 A. In my opinion, he was the same person.

10 Q. Okay. Now, if I can take you to the defendant's first
11 objections which, I believe, was paragraph 2772 -- I'm sorry.
12 Please note my mistake on that.

13 If we can refer to his objections to paragraphs 40 and
14 41 referring to his criminal history where he objected to
15 receiving three criminal history points for his conviction under
16 Jefferson Docket #93-4602, I believe he was arrested on April 2,
17 1993, and he claims that he was ordered detained and therefore
18 could not have been arrested on July 29th of 1993 because it's
19 his argument that he was incarcerated.

20 Did you verify whether he was incarcerated on July 29,
21 1993, or whether had been bonded out from his April 2, 1993,
22 arrest?

23 A. The Jefferson Parish jail did not have specific records
24 showing that he bonded out in April of 1993. However, the Bill
25 of Information from the Jefferson Parish Charge Docket #93-2463

1 indicated with a handwritten notation on it that he had made bond
2 on April 4th, I believe.

3 Q. And if I may show you what's marked as Government's
4 *Exhibit A*, are you familiar with what that is?

5 A. Yes.

6 Q. And what is that?

7 A. It's the Court -- copies of court documents for Docket
8 #93-2463 in Jefferson Parish.

9 Q. And what does that copy indicate to you?

10 A. Well, the third page of what you handed me is a bond order
11 saying \$10,000 bond was set on April 5, 1993.

12 Q. And you stated that there was a notation stating that he
13 received bond, I believe you said April 4th?

14 A. It's actually April 6th, I'm sorry.

15 Q. Where is that notation located?

16 A. On the last page of what you handed me. It's a copy which
17 has been darkened a little bit within the -- within the copy
18 machine, which does indeed show the numbers 4/6 after his name.

19 MS. PRIVITERA: And, Your Honor, if I can, just for
20 clarification I have attached all of the exhibits now, but if you
21 look at the fourth page of Government's Exhibit A.

22 THE COURT: I see it. I'm looking at it.

23 EXAMINATION

24 BY MS. PRIVITERA:

25 Q. And is it through your experience that you believe that date

1 of April 6th refers to his bond?

2 A. Yes. That's my experience in conducting record checks in
3 Jefferson Parish.

4 Q. And have you conducted record checks previous where the bond
5 date of, for instance, April 6th, was placed next to the
6 individual's name on the Bill of Information?

7 A. Yes.

8 Q. So this is not the first time that you have seen that?

9 A. That's right.

10 Q. And so from your experience as a probation officer
11 conducting presentence investigations, that April 6th date to you
12 is a reference to when Mr. Henderson actually in fact bonded out?

13 A. Yes.

14 Q. Are Mr. Henderson's fingerprints contained anywhere in
15 Exhibit A?

16 A. Yes, on the second page.

17 Q. And is there any other type of identification indicating
18 that this Vincent Henderson in this Jefferson Parish case is the
19 Vincent Henderson that we're talking about today?

20 A. Under the fingerprints there is a signature of a deputy
21 sheriff saying that those are Vincent Henderson's fingerprints.

22 Q. Then if I can direct your attention to --

23 THE COURT: Excuse me. I have one other question.

24 MS. PRIVITERA: Yes, Your Honor.

25 THE COURT: The defendant in this case, what is his date

1 of birth, Ms. Harbison?

2 THE WITNESS: March 10, 1974. In my presentence report,
3 is that what you mean?

4 THE COURT: Yes. I'm looking at the bond order, and I
5 thought I saw it somewhere else here, it appears to be the same
6 date of birth as the Vincent Henderson that you've referenced in
7 Exhibit A, correct?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Go ahead.

10 MS. PRIVITERA: Thank you, Your Honor, for clarifying
11 that.

12 EXAMINATION

13 BY MS. PRIVITERA:

14 Q. And then I would like to show you Government's Exhibit B.
15 Do you recognize that document, Officer Harbison?

16 A. Yes.

17 Q. And what do you recognize that to be?

18 A. It's a copy of Vincent Henderson's conviction under
19 Jefferson number 4602.

20 Q. And what is the date of that conviction?

21 A. The date of his arrest?

22 Q. Of his arrest.

23 A. The date of the charge is July 22, 1993.

24 Q. And again, going through that document, is there a birth
25 date or something identifying this Vincent Henderson to be the

1 same one that's here today in court?

2 A. There is the same fingerprint information, and there is a
3 similar notation on the Hard-Labor Plea Sentencing Form, which
4 says the defendant reported his date of birth as 3/10/74.

5 Q. Okay. Thank you. If I can have one moment, you know, just
6 to organize.

7 THE WITNESS: (Addressing the Court) do you have this
8 page?

9 THE COURT: Part of -- is this B?

10 THE WITNESS: Exhibit B, yes.

11 THE COURT: I have three pages of B. It should be four
12 pages?

13 THE WITNESS: Yes.

14 THE COURT: The pages I have are, it looks likes the
15 Bill of Information and then there is the fingerprint page and
16 then there is the bond order. Those are the only three pages I
17 have in what I have here.

18 THE WITNESS: I have a fourth page, if you wanted to
19 look at it.

20 THE COURT: This is the document called *Hard-Labor Plea*
21 *Sentencing Form*?

22 THE WITNESS: Yes.

23 THE COURT: Okay. All right. Thank you.

24 EXAMINATION

25 BY MS. PRIVITERA:

1 Q. If I may, the defendant objected to paragraphs 46 and 47,
2 stating that he was not arrested on May 2nd of 2001. For that I
3 would like to show you Government's Exhibit C. And do you
4 recognize that, Officer Harbison?

5 A. Yes.

6 Q. And what do you recognize that to be?

7 A. That's a printed Docket Master from Orleans Parish Criminal
8 District Court in reference to Orleans Parish Docket #422-017,
9 and the copy is certified.

10 Q. And if I can show you Government's Exhibit D, do you
11 recognize that?

12 A. It's a police report from the New Orleans Police Department
13 in reference to an arrest on May 2, 2001.

14 Q. Okay. And what is the name given of that police report of
15 the person who was in fact arrested?

16 A. The name?

17 Q. The name of the person who was arrested?

18 A. It says Vincent Henderson.

19 Q. And what is the date of birth of that Vincent Henderson?

20 A. 3/10/74.

21 Q. And did you use these two documents, government Exhibit C
22 and D, in compiling your Presentence Investigation Report?

23 A. I used Exhibit C when I wrote the report. When I wrote the
24 addendum, I used Exhibit D.

25 Q. Thank you. And if I can show you Government's Exhibit E,

1 which is referring to defendant's arrest of February 8, 2005, for
2 simple battery, which he denies --

3 THE COURT: Just for the record, this refers to the
4 defendant's objection relating to adult criminal conviction at
5 Page 8, paragraph 50?

6 MS. PRIVITERA: Yes, sir.

7 EXAMINATION

8 BY MS. PRIVITERA:

9 Q. Do you recognize that document, Officer Harbison?

10 A. Yes.

11 Q. And what did you recognize that to be?

12 A. The first page is a computer printout from New Orleans
13 Municipal Court in reference to a battery conviction under
14 Docket #955-809. And then the other pages are copies of the
15 actual court record from municipal court, and the last page I had
16 just included to show Vincent Henderson's signature and to
17 compare it to the signature in the municipal court guilty plea
18 page.

19 Q. And the signature that you see on that document, is it
20 similar to the past signatures you've seen of Mr. Henderson?

21 A. Yes.

22 Q. And then if I may show you the last document, which is
23 Government's Exhibit F, which is entitled *Diminution of*
24 *Sentence* --

25 THE COURT: Diminution.

1 MS. PRIVITERA: Thank you, I don't think I'll ever be
2 able to spit that out correctly.

3 EXAMINATION

4 BY MS. PRIVITERA:

5 Q. Do you recognize that, Officer Harbison?

6 A. Yes.

7 Q. And did you use that document in an effort to help you with
8 your Presentence Investigation Report?

9 A. Yes.

10 Q. And what does that document tell us?

11 A. It tells us the docket numbers that Vincent Henderson was
12 serving state prison time for at the time of his release on
13 November 24, 2003.

14 Q. And what case numbers does it say that Vincent Henderson was
15 in fact serving?

16 A. Orleans #422-017, Jefferson #93-2463, and Jefferson
17 #93-4602.

18 Q. And is there a date of birth located on that document?

19 A. Yes. It actually says 4/10/74.

20 Q. And from your investigation of Mr. Henderson, you know his
21 date of birth to be March 10th of 1974?

22 A. Yes.

23 Q. And on the defendant's other objections which are 68, 70,
24 71, 73, 74, 75, 76, 78, 79, 80, 81, and 82, which involve other
25 additional arrests, what types of things did you investigate

1 again for the Court to verify that this was in fact

2 Vincent Henderson who is present here before you today?

3 A. The New Orleans Police Department motions, local motions
4 printout listing his arrests and as many of the police reports as
5 I could obtain.

6 Q. And will those motions printout in the other criminal
7 history databases that you referred to have the date of birth of
8 the defendant in them?

9 A. Yes.

10 Q. And will they also have the Social Security number?

11 A. Yes.

12 Q. Will they have any other type of motion number or FBI
13 number?

14 A. Like a second motion number you mean?

15 Q. Yes.

16 A. I'm not aware of Vincent having duplicate motion entries.

17 Q. And when you were compiling this Presentence Investigation
18 Report, did you make sure that all of those arrests under the
19 name *Vincent Henderson* in fact matched up with the date of birth
20 and Social Security number of the Vincent Henderson that is
21 before us today?

22 A. Yes.

23 MS. PRIVITERA: Your Honor, I believe those are all of
24 the questions I have at this time. I could introduce
25 Government's Exhibit A through F.

1 THE COURT: All right. Eileen, do you have copies of
2 those or do you want these copies?

3 THE DEPUTY CLERK: No, I don't.

4 THE COURT: You can have these copies. Any objection to
5 those, Mr. Shapiro?

6 MR. SHAPIRO: No.

7 THE COURT: Do you have questions of the witness?

8 MR. SHAPIRO: I do have questions of the witness.

9 THE COURT: By the way, Ms. Privitera, one of those has
10 a missing page.

11 MS. PRIVITERA: But I believe the original documents
12 don't have the missing page.

13 THE COURT: These are the originals?

14 MS. PRIVITERA: Yes.

15 THE COURT: Then introduce those. Eileen, give me those
16 back. You might let her keep them now until Mr. Shapiro finishes
17 his questions.

18 CROSS-EXAMINATION

19 BY MR. SHAPIRO:

20 Q. Ms. Harbison, I refer you to Government's Exhibit A, which
21 is the bond order, and you'll note that there is a hand notation
22 *\$10,000 bond* at the bottom left-hand corner. Is there anything
23 in this bond order indicating that Mr. Henderson paid the -- paid
24 the bond?

25 A. No, not on that page.

1 Q. Now, Ms. Privitera directed you to the Bill of Information
2 from the 24th JDC wherein Vincent Henderson and a name of
3 Tonya Porter appeared, and you indicate that the numbers which
4 are faint but appear to be 4/6. How did you arrive at your
5 conclusion that that was the date that Mr. Henderson bonded out?

6 A. From my past experience reviewing records in Jefferson
7 Parish.

8 Q. So what you're saying is that when someone bonds out in
9 Jefferson Parish, somebody along the way writes the date down in
10 the Bill of Information as the date the individual bonded out?

11 A. Yes. For example, with Tonya Porter it says 4/3.

12 Q. Is it possible that these numbers could mean anything else?

13 A. As in anything is possible, I would say yes, but not in my
14 experience.

15 Q. Is there a year next to any of these?

16 A. No, there isn't.

17 Q. What about the numbers on the other side, which are also
18 faint. I can see a 6, I think it is, or a U -- it's hard to
19 tell -- next to Vincent Henderson and a 79 next to Tonya Porter.
20 What do those numbers mean?

21 A. I don't know.

22 Q. There is also another notation 88-4094.

23 A. That's a docket number for -- it looks like it might be in
24 relation to Tonya Porter, another case that she has in Jefferson
25 Parish court.

1 Q. But you're not really sure about that?

2 A. That was always my experience when I was saw that. When I
3 was doing an investigation I knew to look for that docket
4 number as well.

5 Q. And in Government's Exhibit -- I think it's still Exhibit B,
6 1, 2 or am I on -- I think I'm on a new exhibit now, Exhibit B,
7 there is a bond order, apparently three counts. Is there any
8 indication on this document that Mr. Henderson bonded out not for
9 the \$9,100 total bond?

10 A. On that page, no, there is no indication.

11 Q. Is there any indication on any other page in any of the
12 documents submitted by the government in their exhibits showing
13 that Mr. Henderson made bond?

14 A. I don't see any indication of that.

15 Q. Like the first document we referred to, the Bill of
16 Information where there is the name of the individual accused, is
17 there any such document in the exhibits submitted by the
18 government as exhibits?

19 A. What was the question again?

20 Q. I think I confused myself a little bit on that one. I'm
21 sorry.

22 In the Bill of Information that charges Mr. Henderson
23 with possession -- alleged possession of crack cocaine, is that
24 document anywhere in the exhibits submitted by the government?

25 A. You mean 93-4602?

1 Q. Whatever the later case -- yeah, actually, I'm sorry, I
2 think I'm looking at it right now. It's the first page of the --

3 A. Exhibit B?

4 Q. Exhibit B, right. Yes. Do you see any notation -- let me
5 fast forward a little bit to the bond order, which seems to be in
6 connection with this case.

7 Is there any notation on this document that
8 Mr. Henderson bonded out like in the first one?

9 A. No. It shows that bond was set.

10 Q. Okay. And I'm almost done, Your Honor.

11 With respect to the Docket Master, Exhibit C, would it
12 be fair to say that the Docket Master is a reflection of the
13 criminal scheduling history or activity in a particular case?

14 A. Yes, it's court activity usually.

15 Q. And you relied on this in your Presentence Investigation
16 Report to calculate the criminal history of Mr. Henderson?

17 A. Yes.

18 Q. And isn't it true that this document is not an official
19 record, for example, like a charging instrument?

20 A. That's true.

21 Q. And isn't it fair to say that these documents, although they
22 are submitted as true copies, frequently contain errors?

23 THE DEFENDANT: I don't know how frequent. I would say
24 sometimes they are in error. I forgot to mention before I have a
25 copy of the revocation that is a copy of the actual court minutes

1 also.

2 Q. Revocation of the later proceeding?

3 A. Right.

4 Q. So you relied on this instead of some kind of a charging
5 instrument or --

6 A. I had requested the actual court record over at
7 Orleans Parish Criminal District Court, and it was not available.
8 It was probably destroyed in the hurricanes.

9 Q. And are you aware that in calculating criminal history, that
10 one must rely on an official record such as a charging
11 instrument?

12 A. This Docket Master was all that I actually had to rely upon,
13 plus the actual, as I said here, this copy of the court record of
14 the revocation which I obtained from the probation office.

15 Q. Now, with respect to Government's Exhibit B, you apparently
16 relied on this police report in connection with a charge of
17 possession of crack cocaine and resisting arrest by flight?

18 A. It was Exhibit B, you said?

19 Q. D. I'm sorry.

20 A. D.

21 Q. Are you aware that this is not the kind of document that one
22 must rely on in arriving at a criminal history, rather, only a
23 charging instrument or something more of an official court
24 proceeding?

25 A. I believe there is something in the guidelines about

1 referring to the charging document more so than the information
2 in the police report. In this case, since I didn't have the
3 charging documents, this was one more thing that I had to show
4 that the arrest actually occurred.

5 Q. And again, Exhibit E, Municipal Court Case Chronology
6 Report, again, this is not an official record but sort of a
7 chronology summary of the proceedings with the Court?

8 A. The first page is.

9 Q. And then the second page is the ticket or the summons?

10 A. I believe that's what it is. It's part of the official
11 court record.

12 Q. And that's in connection with the summary in the beginning
13 that I just mentioned to you?

14 A. Yes.

15 MR. SHAPRIO: I have no further questions. Thank you,
16 Ms. Harbison.

17 THE COURT: Any redirect?

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

19 THE COURT: All right. Ma'am, thank you.

20 I'm going to overrule all of those objections by
21 the defendant.

22 Does Mr. Henderson still have his microphone?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Henderson, I'll give you a chance to
25 speak on your own behalf and say anything you wish to say before

1 I impose sentence in our case.

2 MR. SHAPIRO: Your Honor, if I may, just for the sake of
3 the record --

4 THE COURT: No, I want to give him a chance. You can
5 talk afterwards. This is his chance to talk.

6 THE DEFENDANT: Yes, sir, Your Honor. I would just like
7 to apologize to the Court for what I did, and it will never
8 happen again. I just want to say I'm sorry.

9 THE COURT: Okay. Mr. Shapiro.

10 MR. SHAPIRO: Yeah, Your Honor, just because I do a lot
11 of appeal work I find that one must object for the record.

12 THE COURT: Your objection is in the record. I
13 overruled your objection. You don't have to object again.

14 MR. SHAPIRO: I just wanted to make sure.

15 THE COURT: Anything else you want to say on behalf of
16 your client?

17 MR. SHAPIRO: Yes, Your Honor. I obviously don't want
18 to rehash my sentencing memorandum. I think I said everything I
19 need to say.

20 THE COURT: I've read your sentencing memorandum and
21 everything attached to it.

22 MR. SHAPIRO: I would point out, Your Honor, though,
23 that I think it's significant, if Your Honor is inclined, to
24 sentence Mr. Henderson, to reject the 100:1 punishment ratio
25 between crack cocaine and cocaine powder. I just wanted to bring

1 to the Court's attention in an effort to convince you to take
2 that approach that indeed you are vested with the power to
3 fashion a sentence and reject the 100:1 ratio for policy reasons
4 in any case.

5 The policy reasons, and I'll just cover them
6 briefly -- that's all I have to say really -- the issue about
7 harmfulness of crack cocaine and powder cocaine and the empirical
8 research that has been done indicating that crack cocaine is
9 somehow more harmful or dangerous apparently has been put to rest
10 by recent data and research. Further -- that's one policy reason
11 for not adopting the 100:1 percent to one ratio and rejecting it
12 and using the 1:1.

13 The second one is the 100:1 ratio is inconsistent
14 with the goals of the Substance Abuse Act of 1986 because it has
15 a tendency to punish low-level crack traffickers more severely
16 than major traffickers of powder cocaine. And this actually had
17 a major disproportionate effect on African-American offenders and
18 has become somewhat of a racial issue policy reason for rejecting
19 the 100:1 ratio.

20 Those are the main policy reasons I wanted to bring
21 to this Court's attention while you consider whether to impose
22 sentence under the 1:1 punishment ratio, and I would urge you to
23 do so in accordance with not the pending legislation, we've seen
24 a movement towards eliminating the disparity; however, the
25 Supreme Court has recognized in *Kimbrough* and *Spears* that this

1 Court, the district court has the discretion to -- for policy
2 reasons to reject the 100:1 ratio and fashion a sentence under
3 the 1:1 punishment ratio subject to, of course, application of
4 the factors set forth in 3553(a), and I think I've made it clear
5 in my sentencing memo and if calculated the numbers under his
6 Criminal History Category of V or VI, and I would ask only that
7 this Court adopt the findings that I've made and punish
8 Mr. Henderson to somewhere in the range of 18 to 24 months.

9 THE COURT: Okay. Thank you.

10 MR. SHAPIRO: I just wanted to add also, in the cases,
11 you know, one of the policy reasons punishing street -- low-level
12 street dealers usually to support their own habit, you know, the
13 same way as other, more serious offenders, in this instance, in
14 this case, Mr. Henderson is what you would characterize or at
15 least under the facts of the case *a low-level street dealer*,
16 small amounts, and that is a compelling reason to sentence him on
17 a 1:1 ratio.

18 THE COURT: Okay. Thank you. Ms. Privitera.

19 MS. PRIVITERA: Thank you, Your Honor. The government
20 will primarily rely upon the brief already submitted to this
21 Court in response to the defendant's objection, but with that
22 said it is obviously the government's position that this Court
23 still fully consider the sentencing guidelines, and in this
24 instance we believe that the sentencing guidelines as calculated
25 by Probation Officer Harbison, putting Mr. Henderson at a Base

1 Offense Level of 21, and that includes his three-point reduction
2 for his acceptance of responsibility, and a Criminal History
3 Category that he's earned, which is on the far side of the scale
4 at the VI, is appropriate in this circumstance. Mr. Henderson is
5 a 35-year-old man who has been arrested over 20 times since he
6 was 19, and so that's been 20 times in the last 16 years.

7 If this Court is unhappy with the differences in
8 the sentencing guidelines calculations for crack and cocaine,
9 cocaine powder, I don't think this is necessarily the case to
10 exercise the leniency of making a 1:1 level calculation for
11 Mr. Henderson, particularly when considering the 3553 sentencing
12 factors, respect for the law, adequate deterrence, protection of
13 the public from further crimes by this defendant.

14 Mr. Henderson obviously does not stay out of
15 trouble. He may have an addiction problem. He's obviously not
16 getting help for that while he's out on the street. Maybe while
17 he's incarcerated he can get assistance on that.

18 This is an individual who did distribute narcotics
19 seven times to undercover agents, so it's one thing to minimize
20 somewhat of what he did, but in fact he dealt drugs to an
21 undercover agent seven different times. He's pleading to four
22 counts of that, of course. He's already received a generous
23 Plea Agreement or we're going to request upon sentencing that the
24 Court dismiss Counts 1, 2 and 3. He's receive a three-point
25 reduction, but he, under the 3553 sentencing factors,

1 particularly but also I do believe it's important to consider the
2 sentencing guidelines as they are because the Congress has not
3 acted yet, and we don't know exactly how they are going to act.
4 Every defense attorney before you is going to come in and say,
5 well, of course they are going to reduce the crack guidelines all
6 the way down to what the cocaine guidelines are now, but in fact
7 we don't know that. We don't have any indication that that is in
8 fact going to occur. They could very well rise the cocaine
9 sentencing guidelines and lower the crack cocaine guidelines, and
10 they can meet somewhere in the middle.

11 So under the sentencing factors of 3553 and
12 considering Mr. Henderson's criminal history and the nature of
13 his offense, the government believes that the sentencing
14 guidelines as calculated are appropriate in this situation, and
15 we request that he be sentenced under them.

16 THE COURT: All right. Thank you.

17 MR. SHAPIRO: Your Honor, could I rely briefly to that?

18 THE COURT: No, I don't need anything else. Thank you.

19 I've given this a lot of thought. I've been
20 thinking about this for a while, and I think this is an
21 appropriate case to do this. I have read with great interest an
22 opinion by a judge who I know and respect very well,
23 Judge Mark Bennett from the Northern District of Iowa. I happen
24 to be well acquainted with Judge Bennett because he and I served
25 together on a judicial conference committee so I've known him for

1 a number of years.

2 I'm talking about his opinion in the case of
3 *United States v Gully*, G-U-L-L-Y, which is reported at 2009 WL
4 1370898 (N.D. Iowa May 18, 2009). In that case, Judge Bennett
5 did a thorough, indepth analysis as to why the 100:1 crack
6 cocaine guidelines frankly make no sense and have no empirical
7 basis whatsoever, and to the extent it was thought that they ever
8 did has been debunked thoroughly at this time and that following
9 the Supreme Court case in the Supreme Court's decision in
10 *United States v Kimbrough*, a 2007 case, and then as clarified
11 further in *Spears v United States*, which, by the way, was one of
12 Judge Bennett's cases, which was a 2009 per curiam in the
13 Supreme Court case, it's clear the district courts are entitled
14 to reject and vary categorically from crack cocaine guidelines
15 based on a policy disagreement with those guidelines.

16 As explained by Judge Bennett in the *Gully* case,
17 after *Kimbrough* and *Spears*, a district court has the authority to
18 reject a particular guideline on categorical policy grounds even
19 on the so-called *mine-run* -- I don't know if that's a
20 Supreme Court or an Iowa term; I call it *run of the mill*, but
21 run-of-the-mill, mine-run, so we all know what we're talking
22 about -- case and not simply on the individualized determination
23 that the crack guidelines yield an excessive sentence in a given
24 or particular case.

25 In other words, the Court may reject the 100:1

1 crack-to-powder ratio set out in the current version of the
2 guidelines in every case on policy grounds, not just in a
3 particular case on the grounds that it may yield an excessive
4 sentence in that particular case.

5 So, first of all, I agree one hundred percent with
6 Judge Bennett on that point. Secondly, the question then is,
7 well, if the 100:1 ratio is not the appropriate ratio, what is
8 the appropriate ratio? I know there have been some courts that
9 have adopted their own ratio, something between 100:1 and 1:1.
10 In fact, Judge Bennett and a few other judges around the country
11 had adopted a ratio of 20:1 at various times between *Booker* and
12 *Kimbrough* and *Spears*.

13 Judge Bennett, who had previously used the 20:1
14 ratio, in *Gully* jettisons that as lacking as any empirical basis
15 or data to support a 20:1 ratio as is the 100:1 crack-to-powder
16 ratio. So Judge Bennett concludes and I agree that once the
17 Court has decided to reject categorically the 100:1
18 crack-to-powder ratio, common sense tells me that the only
19 rational thing to do is to say that cocaine is cocaine, and there
20 should be a 1:1 ratio. If Congress at some point raises the
21 guidelines for powder, so be it, but at this time, I'm sentencing
22 this defendant based on the current guidelines for powder with
23 the caveat that I'm finding that the ratio for crack should be
24 the same; in other words, it should be a 1:1 ratio.

25 I'm not going to repeat everything Judge Bennett

1 said in his extensive, well-reasoned opinion, but he points out
2 several policy-based reasons for rejecting this 100:1
3 crack-to-powder ratio as actually pointed out by the
4 Supreme Court in *Kimbrough* and *Spears*.

5 First of all, the case talked about the fact that
6 the ratio does not exemplify the Sentencing Commission's exercise
7 of its characteristic institutional role. In other words, the
8 Sentencing Commission coming up with this 100:1 ratio did not use
9 its usual empirical approach based on data about past sentencing
10 practices; instead, it employed the 1986 act's weight-driven
11 scheme which is the result of Congressional mandates interfering
12 with the work and undermining the work of the Sentencing
13 Commission. This was all based on an assumption at the time
14 about the relative harmfulness of crack cocaine and powder
15 cocaine and the harms that come with trafficking in those
16 substances, which it had now been shown not to be supported by
17 recent research and data.

18 The 100:1 ratio is inconsistent with the goals of
19 the 1986 act because, if you think about it, it tends to punish
20 low-level crack traffickers more severely than major traffickers
21 in powder cocaine, and it also has a disproportionate impact on
22 black offenders and therefore fosters disrespect and lack of
23 confidence in the criminal justice system, which we've seen ever
24 since this crack-versus-powder debate has been brewing.

25 I've seen it in many cases that the major

1 traffickers in powder cocaine are not sentenced as harshly as
2 low-level dealers who get the powder cocaine and then easily and
3 quickly convert it to crack, and they are punished more harshly
4 than the big guys at the top. It makes no sense.

5 It is true that there are many cases where people
6 who use crack cocaine may be more likely to be involved in using
7 weapons or committing assaults or other acts of violence, but
8 trying to use 100:1 or any other ratio other than 1:1 as a proxy
9 for these other harms that may or may not be present in a
10 particular case, again, makes little sense to me.

11 So what I'm going to do is adopt the methodology,
12 and I also know that, of course, as counsel has pointed out, the
13 Department of Justice, under the current administration, has gone
14 to Congress arguing that there should be a complete elimination
15 of any sentencing disparity between crack and powder cocaine;
16 yet, at the same time the Court should take into account, of
17 course, in any individual case an individual's characteristics
18 and background and criminal history and propensity for violence
19 and recidivism and so forth.⁵ any aggravating factors can and
20 should be taken into account, not in the basic guideline
21 calculation but in considering the 18 U.S.C. Section 3553 factors
22 in whether a variance should be imposed from the guideline
23 calculation.

24 What I'm going to do is from this point on in any
25 crack case that I have, of course, obviously, I said all of this

1 with the caveat that there are statutory minimums that apply in
2 some cases where the Court cannot go below a statutory mandatory
3 minimum except with a 5K motion or a safety-valve qualified
4 defendant, but in a case without a statutory or mandatory
5 minimum, the Court finds that the appropriate methodology, once
6 the current guidelines are calculated, I'm going to ask in every
7 case now the probation officer provide the Court with an
8 alternative guideline calculation based on a 1:1 crack-to-powder
9 ratio, which I have now done in this case.

10 What I'm going to then do is consider whether there
11 are any reasons to adjust the basic guidelines under the
12 guideline system itself, and then finally, I'm going to decide
13 whether there should be any variances, up or down, from the
14 guidelines as calculated under the 1:1 ratio for the particular
15 characteristics of the defendant, et cetera, under 3553.

16 I've asked the probation office, as I said, to
17 submit to me this morning, which I've now provided to counsel
18 before the sentencing began, alternative calculations which I'm
19 going to put in the record as an addendum to the Presentence
20 Investigation Report. It shows that this offense involves
21 7.47 grams of crack, .68 grams of cocaine hydrochloride and 16.05
22 grams of marijuana. The crack and cocaine hydrochloride added
23 together equal 8.15 grams which converts to 1,630 grams of
24 marijuana. The marijuana amount of 16.05 grams is added for a
25 total amount of 1,646.05 grams of marijuana. This amount

1 converts to 1.64605 kilograms of marijuana.

2 According to the Drug Quantity Table, for
3 quantities of at least 1 kilogram but less than 2.5 kilograms of
4 marijuana, we start with a Base Offense Level of 10. The
5 defendant in this case is entitled to a two-level reduction for
6 acceptance of responsibility, which leaves him with a
7 Total Offense Level of 8. The defendant's Criminal History
8 remains at VI. With a Total Offense Level of 8 and a Criminal
9 History Category of VI, the guideline imprisonment range is 18 to
10 24 months, and the fine range is \$1,000 to \$4 million. The
11 supervised release term is 3 years.

12 MS. PRIVITERA: Your Honor, if the government may note
13 that --

14 THE COURT: I'm not finished yet. Wait.

15 MS. PRIVITERA: I apologize.

16 THE COURT: Okay. Ms. Privitera, do you want to say
17 something before I go further?

18 MS. PRIVITERA: Yeah, I believe the amended 1:1
19 calculation figured by Officer Harbison does not include the
20 heroin, and I don't believe, Officer Harbison, that that would
21 affect the calculation; is that correct?

22 THE PROBATION OFFICER: It doesn't affect the
23 calculations. I actually realized that when I got to court.
24 It's less than a gram.

25 THE COURT: Does not affect the calculation.

1 THE PROBATION OFFICER: Does not.

2 THE COURT: Because we would still be within that broad
3 range of 1 kilogram to 2.5.

4 THE PROBATION OFFICER: Right.

5 THE COURT: All right. I'm going to adopt that as the
6 appropriate guidelines in this case: Total Offense Level of 8,
7 Criminal History Category of VI, 18 to 24 months incarceration,
8 3 years of supervised release, a fine of \$1,000 to four million,
9 and a special assessment of \$400.

10 Now I'm going to look at the 3553(a) factors for
11 this particular defendant. Here is what I see: First of all,
12 Mr. Henderson has an extremely serious past criminal history. He
13 is 35 years old. He's never been married. He has three
14 surviving children, ages 16, 15 and 5. He dropped out of school
15 in the 10th grade.

16 He has admitted to a significant history of abusing
17 illegal drugs. He began using marijuana at age 15, which he used
18 on a daily basis until his arrest in 2009. He began using heroin
19 at the age of 31. He used heroin twice a day by inhaling it,
20 stating he was addicted to heroin. He attended a drug treatment
21 program in 1999 through a boot camp program while serving a state
22 custody sentence. Following his release, he returned to using
23 heroin and was using it regularly at the time of his arrest.

24 As I said, the defendant left school in the 10th
25 grade. He's never obtained a GED. He was unemployed at the time

1 of his arrest. His only past employment history is very sporadic
2 and minimal. He has a few months working at a temporary service
3 at \$7 an hour. While living in a halfway house in 1996, he
4 worked as a dish washer for a short time. For a couple of years
5 in the early part of the 1990's, he worked cutting grass. That's
6 pretty much his entire work history. So it tells me that likely
7 he's been supporting himself by his illegal drug dealing over the
8 years rather than working at a legitimate employment.

9 He has, as I said, an extensive adult criminal
10 history as set forth in the presentence report. At age 19, in
11 1993, he pled guilty to distribution of crack cocaine in
12 Jefferson Parish. He was sentenced to 5 years. He got an early
13 release, and then his parole was revoked for absconding from
14 supervision. He was released from custody again and revoked
15 again. Again released and again revoked. Again released and
16 again revoked. Again released and then finally in 2004, his
17 supervision expired.

18 Another charge from 1993 at age 19, possession of
19 crack and apparently a second possession of crack charge which
20 was apparently sentenced at the same time as the first one I just
21 mentioned, so all of the things I just mentioned relate to both
22 of those sentences.

23 Then in 1998 at age 24 he's got an attempted simple
24 escape in Orleans Parish, pled guilty, sentenced to 15 months
25 Louisiana Department of Corrections. It happened after he was

1 charged after he made verbal threats to the State probation and
2 parole officers after being arrested for parole violation, after
3 he was transported to parish prison he ran away from the agents,
4 fled towards an open door to the street, continued to resist
5 arrest by fighting with officers and kicking them.

6 At the same time he was sentenced for that he was
7 sentenced for another offense which occurred in the same year,
8 1998, battery of a police officer -- I guess that was all
9 relating to a second charge arising out of all of that -- which
10 he also pled guilty and was sentenced to 6 months.

11 In 2001, at age 27, another possession of crack
12 charge. Pled guilty, sentenced to 2 years at the Department of
13 Corrections. Placed on probation. Probation was revoked. Then
14 he was sentenced for 2 years.

15 2004, at age 30, a domestic violence conviction in
16 municipal court. He gets no criminal history for that because
17 there is no evidence that he was represented by counsel. I just
18 note that the records show he was arrested after Seraza Harris
19 reported to police that he struck her with his fist, knocked her
20 onto the ground and continued to hit her.

21 In 2005, simple battery, municipal court, pled
22 guilty, was represented by counsel on this occasion. He was
23 arrested after he struck the same person, Seraza Harris, on the
24 chin with a closed fist.

25 In 2005, another domestic violence charge in

1 municipal court, pled guilty, arrested on a warrant issued on
2 December 30, 2004, following an incident when he struck the same
3 person, Seraza Harris, in the face, causing her lip to swell.

4 2007, trespassing, pled guilty. He was trespassing
5 in the Fischer Housing Project without permission.

6 Later in 2007, possession of heroin, less than
7 1 gram in Harris County Texas, pled guilty, sentenced to
8 6 months.

9 2008, at age 34, criminal trespassing in
10 Harris County. He was found at the Hunter Cove apartment complex
11 after being warned on numerous occasions not to come on the
12 property.

13 I also note that the instant offense was committed
14 less than 2 years following his release from custody in February
15 of 2008.

16 As I noted, Mr. Henderson has a Total Criminal
17 History points of 17. He's way off the charts in terms of
18 criminal history in terms of being in the highest category.
19 What's the baseline for Criminal History VI? Like a 13 or
20 something like that? Does anybody know? Ms. Harbison?

21 THE PROBATION OFFICER: Anything over 13 points is a
22 Category VI.

23 THE COURT: He's, like I said, off the charts at 17.

24 He's got a number of pending charges. A pending
25 charge in Jefferson Parish for attempted theft, a pending charge

1 in Iberville Parish for simple criminal damage to property, three
2 pending charges from 2009 in Orleans Parish for domestic
3 violence. Apparently at least his last girlfriend had enough
4 sense to finally leave. Apparently he's now beating up a
5 different girlfriend, a Miss Crystal Jones, in two pages of
6 arrests, none of which count for the criminal history
7 calculation, but what this tells me is we have a person here who
8 has a history of criminal conduct, a history of not only drug
9 abuse but of illegal drug distribution going back many years. He
10 has a history of violence, recidivism, and repeated criminal
11 offenses suggesting that he is a classic recidivist, and it's
12 very likely that he will continue to offend unless he's
13 incarcerated.

14 So for those reasons I'm going to vary upwards from
15 the guideline calculations of 18 to 24 months, and under 3553(a),
16 it's my job to try to impose a sentence which takes into account
17 the nature and circumstances of the offense and the history and
18 characteristics of the defendant, most of which I've just relayed
19 here, the need for the sentence to reflect the seriousness of the
20 offense, to promote respect for the law and to provide just
21 punishment for the offense, to afford adequate deterrence to
22 criminal conduct, to protect the public from further crimes of
23 this defendant, and to provide the defendant with needed
24 education, vocational training, medical care or other
25 correctional treatment in the most effective manner.

1 I've taken all of that into account, and
2 considering all of that, I guess, a balancing out, if I might
3 say, somewhat on the other side, I've looked at this defendant's
4 family history. He certainly didn't have the best family
5 history. His parents were divorced when he was young, and he was
6 reared by his maternal grandmother and apparently was placed,
7 when he was 7 years old, his mother placed him and his sister in
8 the Waldo Burton Home in New Orleans where he lived until he was
9 16 years old. He had several runaway charges when he was between
10 14 and 16 years old.

11 He obviously is a drug addict in addition to being
12 a drug pusher, and he needs substantial time in prison to deal
13 with his drug addiction, to obtain further education and
14 vocational training since he lacks sufficient education. He
15 lacks vocational skills. He's never really held any real job for
16 any length of time. Of course, as I said, very importantly to
17 protect the public from further recidivism and repeated criminal
18 conduct by this defendant, which I have no doubt will continue
19 unless he gets a substantial sentence here.

20 Considering all of that, I'm going to sentence this
21 defendant to 72 months in prison, which I think is sufficient but
22 not more than necessary to accomplish all of the goals that I've
23 just described as required by 3553(a). I'm going to impose
24 3 years of supervised release on each count to run concurrently
25 with each other. I'm going to waive the fine, obviously you

1 can't afford to pay a fine, and impose a mandatory special
2 assessment of \$400.

3 Does anybody want to say anything else before I
4 actually impose the sentence? ^

5 MS. PRIVITERA: No, Your Honor.

6 MR. SHAPIRO: Your Honor, with respect to -- with
7 respect to the impending \$400 special assessment, I would ask the
8 Court if my client could have a little bit of leeway in paying
9 that. He apparently does not have folks here today to pay that
10 today and perhaps to give him some time to garner up the special
11 assessment.

12 THE COURT: Ms. Harbison, how does that work as a
13 practical matter? I know we always say it's mandatory and it's
14 payable immediately. What happens if a defendant can't as a
15 practical manner pay it today?

16 THE PROBATION OFFICER: Someone could pay it at a later
17 time from his family or while he's in custody.

18 THE COURT: You or your office will work with him on
19 that?

20 THE PROBATION OFFICER: The Clerk's Office would accept
21 payments.

22 THE COURT: I will just say it's due immediately, and
23 y'all can work it out.

24 MR. SHAPIRO: Your Honor, also in light of what you have
25 done and your reasons, I would ask that as part of the sentence

1 you would recommend to the Bureau of Prisons that Mr. Henderson
2 be placed in a facility as close to his home as possible, that he
3 be enrolled in the very, very good drug program run by the Bureau
4 of Prisons, and that he's expressed an interest in several areas
5 of vocational training.

6 And also, he does have a special medical need, as
7 you can see. He's sitting in the wheelchair, so I would ask you
8 to recommend to the BOP that he be placed in a facility where he
9 can get the appropriate care.

10 THE COURT: All right. I don't have any problem making,
11 I guess, those recommendations, but first of all, your client
12 needs to understand that whatever I say on that is only a
13 recommendation. The Bureau of Prisons makes the final call on
14 that as to where he's going to serve his sentence. Particularly
15 in his case, they will take a lot of factors into account, not
16 only his offense but in particular which you have mentioned, his
17 medical needs. Sometimes that takes priority over other factors.
18 If he has medical needs that they think he needs to be sent to a
19 certain place, that may make it likely that perhaps he won't get
20 to a facility in this area, for example. That's all I'm saying.

21 MR. SHAPIRO: I understand, Your Honor.

22 THE COURT: All right. Okay. Pursuant to the
23 Sentencing Reform Act of 1984, it is the judgment of this Court
24 that the defendant, Vincent Henderson, is hereby committed to the
25 custody of the Bureau of Prisons to be imprisoned for a term of

1 72 months as to each of Counts 4, 5, 6 and 7, such terms to be
2 served concurrently with each other.

3 Upon release from imprisonment, the defendant shall
4 be placed on supervised release for a term of 3 years. This term
5 consists of terms of 3 years on each of Counts 4, 5, 6 and 7,
6 such terms to run concurrently. Within 72 hours of release from
7 custody, the defendant shall report in person to the probation
8 office in the district to which he is released.

9 I should have also said that since this constitutes
10 a variance from the sentencing guidelines that I've adopted, the
11 Court must state the reasons for the variance, which I think I've
12 thoroughly stated in my earlier remarks, and I just adopt those
13 here.

14 While on supervised release, the defendant shall
15 comply with the mandatory and standard conditions adopted by this
16 Court and shall not possess a firearm. In addition, the
17 following special conditions are imposed: One, the drug-abuse
18 treatment and/or testing condition; two, the orientation and life
19 skills condition; three, that if the defendant has not previously
20 done so he shall work towards obtaining a GED degree and/or
21 enrolling in an appropriate vocational program as directed by his
22 probation officer.

23 The defendant shall also cooperate in the
24 collection of a DNA sample pursuant the DNA Analysis Backlog
25 Elimination Act of 2000 as subsequently amended. The Court finds

1 the defendant does not have the ability to pay a fine in this
2 case. The Court waives the fine.

3 It is further ordered to that the defendant shall
4 pay to the United States a special assessment of \$400 which shall
5 be due immediately.

6 The Court hereby recommends to the Bureau of
7 Prisons that if otherwise appropriate, Mr. Henderson be
8 designated to serve his sentence at a facility as near as
9 possible to the southeast Louisiana area; Number 2, that he be
10 allowed to enroll in the Bureau of Prisons' drug treatment
11 program; Number 3, that he be allowed to enroll in the Bureau of
12 Prisons' GED and/or other educational or vocational programs; and
13 lastly, that he be afforded or designated to a facility that
14 would be able to give him appropriate medical treatment for
15 whatever his particular medical needs are at the present time.

16 Okay. Are there counts to dismiss here?

17 MS. PRIVITERA: Yes, Your Honor. At this time the
18 government moves to dismiss Counts 1, 2 and 3 of the indictment.

19 THE COURT: So ordered. There was a plea agreement in
20 this case?

21 MS. PRIVITERA: Yes, Your Honor.

22 THE COURT: With the usual waiver of appeal?

23 MS. PRIVITERA: Yes, sir.

24 THE COURT: Mr. Henderson, let me just advise you, sir,
25 because of your Plea Agreement with the government, you have

1 essentially waived the right to appeal the sentence I've just
2 imposed; however, out of an abundance of caution let me advise
3 you that if for any reason you believe you had a right to appeal
4 and wanted to appeal the sentence, any such appeal would
5 ordinarily have to be filed within 10 days from today.

6 If you needed an attorney to represent you for the
7 appeal and could not afford one, the Court would appoint an
8 attorney for you. If you needed a transcript of today's
9 sentencing hearing or any other hearing or proceeding in your
10 case and you could not afford those transcripts, we would furnish
11 you with those transcripts without any cost to you. Do you
12 understand those rights, sir?

13 THE DEFENDANT: (Nods head affirmatively).

14 THE COURT: You have an answer out loud.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. All right. The defendant is remanded
17 for service of his sentence. Thank you, Counsel.

18 MS. PRIVITERA: Your Honor, just for the record, may the
19 government please note its objection to the Court's departure of
20 the 100:1 ratio of crack to cocaine. Thank you.

21 THE COURT: In other words, you're objecting to *Spears*
22 and *Kimbrough*.

23 MS. PRIVITERA: I'm just doing this for my own safety,
24 Your Honor.

25 THE COURT: Okay.

1 MR. SHAPIRO: Thank you. Thank you, Your Honor.
2 (WHEREUPON, at 3:20 p.m., the proceedings were
3 concluded.)

4 * * *

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9 REPORTER'S CERTIFICATE

10
11 I, Cathy Pepper, Certified Realtime Reporter, Registered
12 Merit Reporter, Registered Professional Reporter, Certified Court
13 Reporter, Official Court Reporter for the United States District
14 Court, Eastern District of Louisiana, do hereby certify that the
15 foregoing is a true and correct transcript, to the best of my
16 ability and understanding, from the record of the proceedings in
17 the above-entitled and numbered matter.

18
19
20 s/Cathy Pepper

21 Cathy Pepper, CRR, RMR, CCR
22 Official Court Reporter
23 United States District Court
24
25

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