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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	CR-93-299-WFN
)	
vs.)	GOVERNMENT'S RESPONSE TO
)	DEFENDANT'S SENTENCING
MICHAEL WYCHE,)	MEMORANDA
)	
Defendant.)	

Plaintiff, United States of America, by and through James P. Connelly, United States Attorney for the Eastern District of Washington, and Timothy J. Ohms, Assistant United States Attorney for the Eastern District of Washington, hereby responds to Defendant's sentencing memoranda.

The factual claims made by the Defendant, Michael Wyche, in his response to the presentence investigation should be closely examined both because many of them are false and because their falsity bears upon his culpability.

The Defendant claims that when he accepted the Malar cats, he knew that he was taking them on a temporary basis and that ownership of the animals remained with Shirley Malar. He admits that he was presented with a written loan agreement, which he did not return to Malar because Cougar Preservation Resources (CPR) had

1 refused to sign it.¹ He claims, however, that he was to be able
2 to keep the animals for a longer period than set forth in the
3 written agreement (Spring of 1993), and that Shirley Malar was
4 required to make demand for return of the cats through CPR. He
5 claims, finally, that he became frustrated with Malar because she
6 did not follow these procedures and because she and her friends
7 were drunk and disorderly when she attempted to reclaim her animals
8 on February 28, 1993.

9 In making these assertions, the Defendant minimizes his
10 criminal intent and blames others for his actions. Based upon his
11 statements, he had no criminal intent when he originally falsified
12 the APHIS 7020 form, and only used the form to mislead
13 investigators out of frustration over Shirley Malar's actions.

14 Two trends emerge through this response. Both are mirrored in
15 the Defendant's explanation of the conspiracy described in Count I
16 of the Indictment. First, he was forced into the offense by
17 someone else's wrongdoing. Second, to the extent that he is
18 contradicted by other witnesses, everyone else is lying.

19 There is something wrong about the Defendant's
20 mischaracterization of these events that goes beyond sentencing
21 issues. The Defendant has previously asserted publicly both his
22 own innocence and the impropriety of the investigation that led to
23 his prosecution. Discovery in this case spans more than 1,200
24 pages. The government's investigation was extremely thorough,
25 lasting several months after the service of the search warrant, and

26
27 ¹ A copy of the loan agreement is included as Attachment 1.

1 encompassing reports, statements, and testimony from numerous lay
2 and expert witnesses. Ultimately, the Defendant's falsification of
3 records pertaining to the Freddy/Levi transaction could be proved
4 objectively. Whether at a change of plea hearing or a trial, the
5 Defendant would have been forced to admit that the Freddy/Levi
6 exchange never occurred.

7 Although the government did not have similar objective proof
8 of the Defendant's violations concerning the Malar cats, it had
9 overlapping evidence from independent sources that the Defendant
10 knew that the transaction was a temporary loan. There was,
11 therefore, if not objective evidence, at least overwhelming
12 evidence of the Defendant's falsification of records concerning the
13 loan of the Malar cats.

14 What may be less clear, is the Defendant's motivation for
15 falsifying these records and whether he intended to return the
16 cats. The motivation alleged in Count VII of the indictment, which
17 the government remains ready to prove if a trial were ever
18 necessary, was theft. The motivation claimed by the Defendant
19 changes over time. Initially, he did not intend to falsify the
20 records at all, but incorrectly recorded the transfer as donation
21 out of convenience because the form did not have a box for
22 "exhibition loan." It was only out of frustration brought on by
23 Shirley Malar that he later decided to take advantage of the error
24 by misrepresenting the transaction to federal authorities.

25 What makes the court's determination of the Defendant's intent
26 important, beyond the establishment of an appropriate sentence, is

1 that the Defendant was not prosecuted for making a mistake, nor was
2 he prosecuted for an ill chosen comment uttered to federal agents.
3 The government's concern was the Defendant's use of falsified
4 records, either as part of a conspiracy or otherwise, to more
5 broadly interfere with legitimate governmental interests and
6 individual property rights. The Defendant's current minimizing not
7 only misrepresents his culpability for sentencing purposes but
8 creates a public misimpression about the basis for federal
9 prosecution generally.

10 For the most part, people are not prosecuted under the
11 circumstances described by this Defendant--nor was this Defendant
12 prosecuted under those circumstances. Michael Wyche was prosecuted
13 not because of a reckless reliance upon an otherwise innocent
14 mistake, but because of a willful effort to defraud the government
15 as part of an overall scheme to retain animals that either did not
16 belong to him or that he could not otherwise lawfully possess.

17 In analyzing the Defendant's explanation, the assertion that
18 bears closest scrutiny is that he did not intend to deprive Shirley
19 Malar of her animals. In evaluating this claim the court should
20 look to the Defendant's words and actions over the course of this
21 case. For instance, it is incredible for the Defendant to now
22 claim that he intended to return Shirley Malar's animals when he
23 has previously asserted to this court that he owned them. On
24 August 23, 1993, an affidavit of Debbie Wyche was filed on behalf
25 of Michael and Debbie Wyche. Ms. Wyche stated the following
26 concerning the ownership of the Malar cats:

1 I have previously submitted an affidavit in support of
2 our request to have our animals returned to the Cat Tales
3 facility pending further court action, if any. I make
4 this affidavit as evidence of our ownership of the
5 animals taken.

6
7 2. My husband and I are the sole owners and caretakers
8 of all animals seized by the government on August 3,
9 1993. The specific animals are as follows:

10 * * *

11 Chato and Yona are a male and female bobcat respectively,
12 and the parents of the four male bobcat kittens who were
13 also taken. When we received them, they were named Robert
14 and Ashley. Their acquisition papers are attached as
15 Exhibit B.

16 * * *

17 Kahn and Tasha are a male and female lynx respectively.
18 When we received them, they were named Murray and
19 Chelsea. Their acquisition papers are the same as those
20 for Chato and Yona, attached as Exhibit B.

21 (Emphasis added). These are not ambiguous statements about the
22 terms of a loan, but specific assertions, under oath, claiming sole
23 ownership of animals that the Defendant now acknowledges did not
24 belong to him. Moreover, these statements were made to the court
25 in the context of hearing in which the animals' ownership was
26 directly at issue. An affidavit of the Defendant, dated August 18,
27 1993, reflects a similar sentiment:

28 The suggestion by Shirley Malar, now adopted by her
current boyfriend and ex-trucker Neil Hansen, that
suggests that I would take on 'loan' four wild animals
she could no longer care for 'during the winter' is
untrue and ridiculous if one just thinks about it. Was
I to return them to her in the summer? So that she could
re-loan them to me next winter?

Any Defendant is entitled to put the government to its proof.
However, an accused does not have a right to misstate facts or to
mislead the court. The court should recall that these statement

1 were used as evidence to refute the government's claim that Shirley
2 Malar owned the animals, which the Defendant not only now admits,
3 but wishes this court to believe that he only half-heartedly
4 denied.

5 The effect of this misrepresentation was to delay the return
6 of Malar's animals by nearly one year. During this time (following
7 their return to the Defendant pursuant to court order), two of them
8 were sterilized without Shirley Malar's knowledge or consent or
9 that of either the court or the government. It would have been
10 simple enough for the Defendant either to have told the truth or to
11 have said nothing concerning the ownership of these animals.
12 Consistent with what has emerged as a pattern of behavior, the
13 Defendant made false statements about the animals when it appeared
14 to promote his interests.

15 In considering the credibility of the Defendant's claim that
16 his intention to keep the animals was only an afterthought brought
17 about by Shirley Malar's provocation, the court should consider the
18 Defendant's actions prior to the claimed provocation, the purpose
19 for the procedures used in the transfer, and the reasonableness of
20 the claimed provocation.

21 With regard to the Defendant's actions prior to the claimed
22 provocation, the court should first consider the terms of the
23 written loan agreement. These included not only that the animals
24 would be returned to Shirley Malar in the Spring, but that they
25 would not be sterilized and that any kittens born during the period
26 of the loan would be returned to Malar within two weeks:

1 Each pair is to be housed together and allowed the
2 opportunity to breed naturally. None of the animals
3 shall be 'sterilized' or put on any chemical form of
4 birth control. Any kittens produced are the property of
5 Wildlife Images and will be returned to me when they are
6 pulled from the mother at 10-14 days old.

7 Despite these terms, immediately upon the Defendant's receipt of
8 the animals, he changed their names and offered them for year-long
9 adoptions to visitors at his facility. He sterilized two of the
10 four adult cats without Shirley Malar's knowledge or consent,
11 effectively destroying their value as mating pairs. In addition,
12 the Defendant not only did not return the kittens born to the
13 bobcats while in his possession, he did not even notify Malar of
14 their existence. He had them declawed. He hand raised two of them
15 in order to exhibit them more effectively, and sterilized two of
16 them.² None of these actions is consistent with an intent to
17 return the cats.

18 The procedures used in the transfer similarly reflect an
19 intent by the Defendant to defraud Shirley Malar of her cats and to
20 insulate himself from the fraud. Initially, Malar was reluctant to
21 make any loan of animals to the Defendant. She had some temporary
22 financial difficulties that caused her to be concerned about the

23 ² A factual issue exists over which kittens were sterilized.
24 Despite the Defendant's representations as set forth in the plea
25 agreement, it is currently unclear whether any of the kittens were
26 hand raised and, if any were, whether they were sterilized.

1 expense of feeding her animals over the course of the winter.³
2 Susan Clawson suggested a temporary loan as one way to avoid these
3 difficulties. Clawson informed the Defendant of Malar's
4 circumstances during a phone conversation beginning at 12:57 p.m.
5 on Friday, July 24, 1992. The Defendant called Malar immediately
6 after this conversation at 1:15 p.m. of the same day.⁴

7 Between this date and the day of the loan, August 17, 1992,
8 the Defendant made another ten telephone calls to Shirley Malar.
9 Malar called the Defendant only twice during this period, both
10 times in response to messages left by the Defendant. In addition
11 to these contacts, the Defendant had nine telephone contacts with
12 CPR during this period and twenty-five with Susan Clawson. Malar
13 had none with either Clawson or CPR during this period. Thus,
14 Shirley Malar had no relationship with CPR and no understanding
15 with them concerning her cats. These calls reflect the Defendant's
16 active involvement both in pursuing the Malar cats and in involving
17 a third party in the transaction.

18
19 ³ Shirley Malar had several other cats in addition to those
20 that she loaned to the Defendant. The Defendant has claimed that
21 Malar was on welfare and could not take care of her cats. In fact,
22 Malar's employer had gone out of business and Malar found herself
23 temporarily unemployed. She received unemployment benefits during
24 the summer of 1992. She has never received welfare.

25 ⁴ In contrast to these records, the Defendant told federal
26 agents that Malar had contacted him and asked "if he could take her
27 cats."

1 The Defendant explains this by claiming that he had been told
2 by State Wildlife Agent Brooks Carmichael that all transfers of
3 captive wildlife within the state were illegal. This is not the
4 law, and Officer Carmichael denies making such a statement.⁵
5 Moreover, even if this had been the law, it is doubtful that it
6 could have been complied with through what was essentially a
7 fictitious transfer of animals to CPR. CPR never had possession of
8 the cats nor did it intend to take possession of the cats. CPR
9 does not even handle bobcats and lynx, but finds permanent homes
10 for captive cougars. The transaction served only one purpose,
11 which was to insulate the Defendant from his obligations to Shirley
12 Malar. He had placed himself in a position to claim that he had
13 obtained the animals by donation through CPR and that he was under
14 no obligation to return them. He could politely refer Malar back
15 to CPR, with whom she had no agreement, no relevant contact, and
16 who neither had possession of the animals nor a legal basis to
17 demand their return.

18 In emphasis of this point, Ray Sebring, CPR's director, was in
19 New York during the transfer of the Malar cats. In an affidavit
20 dated June 15, 1993, he indicates no awareness of any agreement
21 between the Defendant and Shirley Malar:

22 On or about August 17, 1992, my volunteer worker James
23 [Musumeci] was at my facility when Mike Wyche of the
24 Spokane area of Washington arrived with some bobcats and
lynx. I was in the State of New York at the time, so I
have no first hand knowledge of the visit by Mr. Wyche.

25
26 ⁵ An affidavit of Officer Carmichael is included as
27 Attachment 2.

1 The four animals apparently came from Shirley Malar in
2 Vancouver, Washington. I never spoke with Mr. Wyche or
3 Ms. Malar about these animals, and was not aware that he
4 was bringing them here. [James Musumeci] told me that
5 they were only here a short time, and the animals were
6 never unloaded.

7 (Emphasis added). In an affidavit of June 17, 1993, James Musumeci
8 recalled the transfer as follows:

9 Being the volunteer data base manager for Cougar
10 Preservation Resources I was contacted by Mike Weiss
11 [sic] (director of Cat Tales) to facilitate in the
12 transfer of 2 bobcats and 2 [Canadian] lynx in August of
13 last year.

14 Relating to the transfer we filled out the standard
15 APHIS records. It was unclear to me that the animals
16 were being moved only for exhibition for a limited
17 duration, as CPR only acts as a holding facility for
18 permanent placement of felines. A secondary
19 document from the felines departure point (Wildlife
20 Images of Vancouver) was offered by Mike Weiss [sic] for
21 my signature. I declined as it states the cats would be
22 'allowed the opportunity to breed naturally.' This
23 statement violates the CPR bylaws on captive breeding.

24 (Emphasis added).

25 More significantly, in an affidavit of August 9, 1993, Susan
26 Clawson indicated both that the Defendant was aware that the
27 animals could be transferred directly to him and that the manner in
28 which he spoke about the transfer caused her to be concerned that
29 he did not intend to return the animals. In response, she reminded
30 him that the transaction was only a temporary loan:

31 On behalf of Ms. Malar, I discussed with Mike Wyche
32 how the transfer would take place. As I recall, Mike was
33 aware that the Malar animals could be transferred
34 directly to him from Shirley on a temporary breeding
35 loan. However, I sensed that he wanted to keep the Malar
36 animals, and I recall having to remind him that he would
37 have to give them back to Shirley at some point. I
38 remember him mentioning taking the animals to Cougar
39 Preservation Resources (CPR) in Eugene, Oregon. I
40 suggested he contact Ray Sebring before he did anything
41 like that.

(Emphasis added). In an interview with Federal Wildlife Agent Larry Keeney on November 3, 1993, Clawson said that the Defendant told her after he had obtained the cats that Shirley Malar had a furrier's license and, because of this, he no longer intended to give them back. After the search warrant was served on the Defendant's facility, the Defendant contacted Clawson and asked her to send him a letter of support. Clawson reminded him that he was supposed to have given the cats back to Malar and declined to write the letter.

The weekend before the transfer was to take place, Shirley Malar changed her mind and told the Defendant that she did not want to go through with the loan. The Defendant reported this to Neil Hansen, who had volunteered time to help the Defendant, mainly by providing transportation.⁶ Neil Hansen was also acquainted with Shirley Malar. He called her and talked her into going through with the loan by reassuring her that he would periodically check on her cats. As described by Hansen in a written statement dated March 17, 1993:

⁶ In the Defendant's pleadings, Hansen has been portrayed as a liar who was motivated by a romantic relationship with Malar. These allegations are particularly scurrilous not only because they are false but because Hansen has previously volunteered his services to the Defendant's facility, because the allegations appear intended to personally injure Hansen and his family, and because the Defendant has now admitted to the underlying criminal conduct that Hansen described.

1 I asked Mike what was wrong and he told me that the
2 owner from Vancouver WA was having second thoughts. . .

3 I new [sic] the owner of the cats in Vancouver WA
4 and made a phone call. Shirley Malar the owner said she
5 was concerned with some stories she had heard about 'Cat
6 Tales.'

7 I told Shirley that she should not worry, that I new
8 [sic] the people, and would guarantee that the cats would
9 be well cared for, and that I would check on their well
10 being every now and then. Upon my recommendation Shirley
11 decided that maybe this was OK after all.

12 When the Defendant and Hansen arrived at Shirley Malar's
13 residence on Monday, July 17, 1992, Hansen loaded the animals into
14 crates while the Defendant and Shirley Malar completed the
15 paperwork.⁷ During this meeting, the first between the Defendant
16 and Malar, the Defendant presented a transfer form marked
17 "donation," and at Malar's request changed it to "exchange or
18 transfer."⁸ Because the triplicate form was already separated when
19 it was presented to Shirley Malar, only her copy of the form bears
20 this change, while the Defendant's copy continues to indicate
21 "donation."

22 It was during this meeting that Malar presented the Defendant
23 with the written loan agreement. The Defendant agreed to sign it
24 and return it by mail. Neil Hansen described this exchange to
25 Federal Agent Dean Tresch during an interview on July 13, 1993:

26 Shirley presented Mike with a copy of a contract to sign
27 (Hansen) said Mike told her he could not sign

28 -----
29 ⁷ Ironically, no tranquilizers or sedatives were necessary to
30 load the animals when the Defendant received them. This is in
31 contrast to the condition of the animals upon their return.

32 ⁸ Not surprisingly, the Defendant denies making this change.

1 the agreement until later (Hansen could not recall the
2 reason Wyche gave Malar), but Wyche told Malar he would
3 send her a copy. Hansen could not recall what other
4 records were prepared and by whom, but he said
5 photocopies were made by Ms. Malar before they left for
6 Oregon.

7 As indicated above, the Defendant never signed the agreement and
8 never returned it to Malar.

9 The Defendant's current assertion that he would have returned
10 the animals to Malar if only she would have complied with the
11 proper procedures in disingenuous at best. Telling her to demand
12 her animals from CPR is another way of telling her simply to go
13 away. CPR had no obligation to Malar and no reason to assist her.
14 The transaction functioned only to insulate the Defendant from his
15 obligations, and the most reasonable interpretation is that it
16 functioned as it was designed. The Defendant's initial description
17 of the transfer to Agent Tresch (July 14, 1993) supports this
18 conclusion:

19 He [Wyche] told her [Shirley Malar] she would have to
20 first surrender her cats to CPR in Oregon before he could
21 take them.

22 He said he and Neil Hansen, a truck driver, picked
23 up the cats from Shirley Malar. He said they drove to
24 CPR in Eugene, Oregon, and a worker there named 'Moose'
25 [James Musumeci] authorized him to take permanent
26 ownership of the Malar cats

27 (Emphasis added).

28 The final inquiry in challenging the Defendant's explanation
is the reasonableness of the claimed provocation.

The Defendant justifies his use of an APHIS 7020 form to assert
ownership of Malar's cats by alleging that when Malar appeared at
his facility to reclaim her cats, not only had she not made a

proper demand through CPR, but she was with a group of drunk and
disorderly friends. The Defendant's response was to call the
police and throw her off of his facility. As he explained to Agent
Tresch on July 14, 1993,

[Wyche] said that Shirley Malar and eight drunk friends
came to get her cats back in February, 1993. He said he
had to call the Sheriff because they were trespassing on
his property.

He then blames her for not attempting to recontact him, and instead
reporting the incident to authorities. The essence of the
Defendant's explanation is that she forfeited her rights to the
animals by demanding that they be returned. In an effort to make
this explanation appear more reasonable, the Defendant includes
allegations of drunk and disorderly conduct.

It is true that Malar appeared at the Defendant's facility on
February 28, 1993, and demanded the return of her animals. It is
true that she was upset when they were not returned and even more
upset when the Defendant demanded that she leave (the loan
agreement had permitted Malar "access to visit the cats at any time
. . . ."). It is not true, however, that she or her companions
were intoxicated.

Evidence of Malar's demeanor comes from two sources, the first
of these is the Defendant's daughter, Lisa Wyche, who was at the
Defendant's facility when Malar arrived. By contrast, the
Defendant was not there. In response to questioning, Ms. Wyche
never described Malar as intoxicated and testified plainly that her
friends were not intoxicated:

Q. Did anyone with her appear to be intoxicated?

1 A. No.

2 (Discovery page 1171). In addition to this testimony, the
3 government is in possession of a video tape taken by one of the
4 members of Malar's group on February 28, 1993. The tape clearly
5 shows that no one was intoxicated nor were they disruptive,
6 discourteous, or impolite. The description offered by the
7 Defendant in support of his claimed provocation is not only false,
8 it is baseless. In fact, there was no provocation. Malar had
9 merely asked for the return of her animals. When the Defendant
10 arrived he ordered her off of his property, called the police, and
11 denied that she owned the animals.

12 In addition to the foregoing, the court should consider the
13 Defendant's credibility both as it affects the reasonableness of
14 his assertions and as a separate issue of culpability. The
15 Defendant has conspired to falsify documents and to defraud both
16 the federal and state government; he has falsified other documents,
17 unrelated to the conspiracy, in order to claim ownership over
18 animals that did not belong to him; he has provided false
19 information to federal agents in order to impede the investigation;
20 he has made false representations to this court concerning his
21 ownership of animals; and he has solicited letters that he knew
22 contained false information and forwarded them to the government in
23 an effort to prevent the investigation from continuing.

24 These letters are significant because they reveal that the
25 Defendant was not only willing to make false assertions, but that
26 he was willing to involve others in this process, including his
27

1 daughter. Although most of the people who were used in this way
2 were probably unaware that the information they were asserting was
3 false, both the Defendant and his daughter participated directly in
4 the fictitious transfer and knew that the information contained in
5 the letters was false.

6 Apart from his daughter, the Defendant obtained letters from
7 Jeffrey Dailing, Richard Jamison, Joe Sullivan, Robert Hutchinson,
8 Martin and Nancy Hill, and Ryan Wyche, the Defendant's son.⁹ Many
9 of the letters contain detailed accounts of claimed differences
10 between Freddy and Levi. To the extent that the government was
11 able to determine how these letters were written, they were
12 solicited by the Defendant. For instance, in an interview with
13 Agent Keeney, Richard Jamison explained that he wrote his letter
14 during a visit to Defendant's facility after commenting that Levi
15 looked differed to him:

16 JAMISON said the cougar looked different to him on the
17 last visit and WYCHE asked him if he would write a letter
18 to that effect. JAMISON stated he said give me some
paper, and WYCHE provided pen and paper. He left the
letter with WYCHE.

19 Ironically, both Jamison and Joe Sullivan are among those currently
20 providing affidavits on behalf of the Defendant for the present
21 sentencing.

22 In addition, the court should consider the risk to which the
23 Defendant placed other licensees by convincing them to participate
24 in a conspiracy to violate federal law. Both Ray Sebring and Susan
25 Clawson were talked into assisting the Defendant by various

26 ⁹ Copies of these letters are included as Attachment 3.

1 accounts of mistreatment claimed by the Defendant. Both
2 individuals were reluctant to become involved in the false
3 transaction. James Musumeci was present during discussions leading
4 up to the false transfer and at the time of the false transfer. In
5 an affidavit dated July 21, 1993, he described the atmosphere as
6 follows:

7 Mr. Wyche was finally able to get Ray to agree to the
8 transfer on the basis that it would be best for the cat
9 to leave it where it had been raised. This was a
10 difficult matter for Ray, and I recall him having some
11 shouting matches with Mr. Wyche over the telephone prior
12 to Wyche's visit.

13 In a letter to State Wildlife Agent Brooks Carmichael, Sebring
14 expressed both remorse and a feeling that he had been taken
15 advantage of by the Defendant:

16 Concerning the 'transfer' of Levi and Freddy Cougar.
17 As you know this transaction, on our part, were [sic]
18 based in large part on information that was either not
19 true or based on emotional hyperbole. We were originally
20 contacted about this transfer when the kittens were moved
21 and were told at that time that Levi was a 'victim of the
22 system' and targeted by local authorities whose feathers
23 Cat Tales had ruffled in exposing certain bad practices
24 at the Spokane Zoo. Mike had made a verbal agreement to
25 transfer Levi for Freddy, however when it became clear
26 that some slight of hand was to take place, we became
27 skittish and several abusive comments were exchanged
28 between [James Musumeci], Mike Weiss [sic] and Ray.

29 In reflection we here at CPR feel somewhat
30 gullible, especially after learning about the kittens we
31 entrusted to Mikes care. (Incidentally Cat
32 Tales claimed to have a unnamed APHIS employee who gave
33 tactic [sic] if not public approval to the whole mess.)
34 You have to understand that all of us here are volunteers
35 who have only the interest of our animals at heart.

36 Sebring later reiterated these comments in an affidavit dated June
37 15, 1993:

38 I had agreed to cooperate with Mr. Wyche initially as I
39 felt it was in the best interest of the cat to allow it

1 to stay where it had been raised. However, after he had
2 left I realized he was attempting some slight of hand, and
I informed him that I wanted no part of it.

3 (Testimony during the suppression hearing in this case established
4 that no state or federal authority had provided advice or given
5 approval of the false transfer used by the Defendant).

6 Susan Clawson's recollection was similar to that of Sebring's.
7 In an affidavit dated August 9, 1993, she stated the following:

8 Mike asked me if he could work an exchange of cougars
9 through CPR which would show transfers on paper, but
where no exchange would actually take place. I am the
10 placement coordinator for CPR, and I told him I would
speak with Ray Sebring about it. Ray's initial reaction
11 was negative to doing that, as he was afraid of the
complications that could arise. He and I were
12 sympathetic to Mike's situation with Levi, and Ray
finally agreed that he would help Mike in the best
interest of the cat.

13 Mr. Sebring and I both have regrets about
14 agreeing to assist Mr. Wyche with his Levi problem.

15 Through his actions, the Defendant attempted to keep property
16 that did not belong to him and placed the federal license of others
17 in jeopardy. The Defendant has shown tremendous hostility toward
18 the victim and witnesses in this case as reflected in numerous
19 false statements directed toward them, including allegations that
20 Malar intended to kill her cats for their fur, that she was
21 intoxicated when she attempted to reclaim them, that she was on
welfare, and that she had had an affair with Neil Hansen.


22 Ultimately, in assessing the Defendant's culpability in this
23 case, the court must consider whether he has ever accepted
24 responsibility for his actions and shown any appreciation for the
25 harm and risk of harm that he caused. The government is bound by
26 its plea agreement to recommend that the Defendant receive a two
27

1 level credit for acceptance of responsibility. This is based
2 solely upon the Defendant's entry of a valid guilty plea as set
3 forth in the plea agreement. The court should look beyond this,
4 however, in determining where, within the applicable guideline
5 range, the Defendant should be sentenced. The Defendant shows no
6 remorse and no appreciation of the risk that he created for others,
7 of the expense caused by the investigation of this case as a direct
8 result of false statements that he made to the court and directed
9 to this office, and of the injury that he caused to Shirley
10 Malar.¹⁰ Certainly the Defendant's current explanations have
11 little connection with reality and appear to be designed more to
12 promote public sympathy than to honestly account for his behavior.

13 As a result of the foregoing, this court should sentence the
14 Defendant to the high end of the applicable guideline range.

15 DATED this 1 day of August, 1994.

16 JAMES P. CONNELLY
17 United States Attorney

18 
19 TIMOTHY J. OHMS
Assistant United States Attorney

20 I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, on August 1, 1994, I placed a copy of the foregoing in a prepaid
21 envelope placed in the outgoing mail of the United States Attorney's Office for the Eastern District of Washington, which is deposited in the
22 United States mail at Spokane, Washington, to the persons indicated below, which I believe are their last known addresses.

23 Mary E. Schultz
24 Attorney at Law
25 North 1212 Washington, Suite 116
26 Spokane, Washington 99201

27 ¹⁰ A statement from Shirley Malar is included as Attachment
28 4.