

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 1:16-CR-00064-WCG-1
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Green Bay, Wisconsin
)	
RONALD H. VAN DEN HEUVEL,)	Friday, January 5, 2018
)	(9:30 a.m. to 9:38 a.m.)
Defendant.)	(10:01 a.m. to 11:27 a.m.)

SENTENCING

BEFORE THE HONORABLE WILLIAM C. GRIESBACH,
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff:	MATTHEW D. KRUEGER, ESQ. Office of the U.S. Attorney 517 E. Wisconsin Ave., Rm. 530 Milwaukee, WI 53202
For Defendant:	ROBERT G. LE BELL, ESQ. LeBell Dobroski & Morgan 309 N. Water St., Suite 350 Milwaukee, WI 53202
U.S. Probation Office:	Brian Koehler
Court Reporter:	Recorded; FTR
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1 Green Bay, Wisconsin; Friday, January 5, 2018; 9:30 a.m.

2 (Call to order)

3 **THE CLERK:** The Court calls Case Number 16-CR-64,
4 United States of America v. Ronald H. Van Den Heuvel for
5 sentencing. May I have your appearances, please?

6 **MR. KRUEGER:** Good morning, Your Honor. Matthew
7 Krueger on behalf of the United States. Along with me at
8 counsel table is Special Agent Sarah Hager from FDIC. Jen
9 Baker from our office is also here with two representatives
10 from Horicon Bank.

11 **THE COURT:** Good morning.

12 **MR. SPEAKER:** Good morning.

13 **MR. LE BELL:** Good morning, Your Honor. Attorney
14 Robert LeBell for Mr. Van Den Heuvel. Mr. Van Den Heuvel's in
15 court.

16 **THE COURT:** Good morning.

17 **U.S. PROBATION OFFICER KOEHLER:** Good morning, Your
18 Honor. Brian Koehler on behalf of the U.S. Probation Office.

19 **THE COURT:** All right. Well, good morning all.
20 We're here today for the sentencing in the case for Mr. Van Den
21 Heuvel who entered a plea of guilty to the charge of conspiracy
22 to commit bank fraud back in October 10th, I believe. And
23 there are a number of motions that have been filed since then.
24 There was a motion to adjourn sentencing. There was a motion
25 to withdraw the plea. And most recently, a motion by counsel

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1 to withdraw. And Mr. LeBell, perhaps we should address that
2 motion first.

3 You filed a motion to withdraw as attorney for
4 Mr. Van Den Heuvel yesterday afternoon?

5 **MR. LE BELL:** I did.

6 **THE COURT:** And your motion simply states that there
7 is a breakdown in communications that occurred to the extent
8 that further competent representation cannot be provided. What
9 do you mean?

10 **MR. LE BELL:** Judge, I think perhaps this discussion
11 necessitates a number of things. First of all, it should be, I
12 think, in closed session. I think that there's an issue of CJA
13 and also with respect to my client's representation. It also
14 would theoretically require a waiver of attorney-client
15 privilege. And I'm very uncomfortable with talking about
16 details, certainly in public.

17 **THE COURT:** Well, criminal proceedings are public.
18 The public really has a right to know and particularly where
19 there's a motion to withdraw as an attorney at the last minute.
20 And you don't have to disclose confidential information, but
21 I'm asking what you mean by a breakdown in communication. Are
22 you not talking to Mr. Van Den Heuvel? Is he not talking to
23 you? What is this breakdown? What do you mean? You've been
24 on this case for a year and a half, almost two years now. And,
25 yes, you're public-appointed. Despite Mr. Van Den Heuvel's

1 original claims that he's a wealthy man, he could not afford
2 counsel. And now at the last minute, we have a motion to
3 withdraw and those are not lightly granted at this point. And
4 you need to tell me more than a breakdown in communication.

5 **MR. LE BELL:** Well, again, Judge, in order -- it's a
6 little hard to articulate the specifics and I don't think it's
7 appropriate for me to do it in public. And it certainly is not
8 appropriate for me to discuss the specifics because I couldn't
9 articulate in direct response to your question --

10 **THE COURT:** Are you saying you can't -- is the
11 government -- is this supposed to be an ex parte where the
12 government doesn't even hear the reasons?

13 **MR. LE BELL:** I believe that's the appropriate
14 procedure. That's what I was trying to articulate. And it
15 also requires a waiver of attorney-client privilege.

16 **THE COURT:** Mr. Van Den Heuvel, do you waive your
17 attorney-client privilege so that Mr. LeBell can explain to me
18 why there's a breakdown in communications? Do you wish to
19 waive your attorney-client privilege so that he can explain to
20 me why he has to move -- why he's moving to withdraw?

21 **THE DEFENDANT:** I can explain it to you, but if you
22 want Mr. LeBell to --

23 **THE COURT:** Well, if you want to explain it to me,
24 that's fine.

25 **THE DEFENDANT:** Okay. I know the prosecution

1 believes I'm trying to make a mockery of your court, and I'm
2 not. Not at all. This case is very complicated. Mr. LeBell
3 has never been to my office. There is 44 years, millions of
4 pages of documents illegally taken in a search warrant on July
5 2nd, 2015. I know you want justice, but I found the method
6 since July 10th and when you said to me -- which wasn't clear
7 to me before -- that everything has to be proven beyond a
8 reasonable doubt, I went -- I found a method to go through
9 those million pages of documents that were all piled together,
10 mixed up, matched, couldn't find any exculpatory evidence.
11 But I found a way to retrieve documents and organize the
12 documents very quickly. I brought this to Mr. LeBell's
13 attention.

14 **MR. LE BELL:** Judge, can I just ask, are you waiving
15 attorney-client privilege for the purpose of this discussion?

16 **THE DEFENDANT:** I am -- what I say here, I am waiving
17 for -- I'll waive it for whatever the Judge wants you to waive
18 it for.

19 **THE COURT:** It's not up to me, Mr. Van Den Heuvel.

20 **THE DEFENDANT:** I want to finish if I can though.

21 **MR. LE BELL:** I want to know on the record if you are
22 waiving attorney-client privilege. Please, just answer the
23 question. If you're not, you're not. If you aren't --

24 **THE DEFENDANT:** Not to everything we talked about for
25 two years, no.

1 **THE COURT:** You know -- Mr. Krueger, any comment?

2 **MR. KRUEGER:** Yes, Your Honor. The government is
3 concerned that this could be a delay tactic. The government is
4 concerned that the parties appear ready for sentencing, PSR
5 objections made, sentencing memorandum made. Mr. LeBell has
6 been competently representing Mr. Van Den Heuvel for quite some
7 time. At the same time, in review of case law, in order to
8 avoid future problems on appeal, it does seem prudent for the
9 Court to do a careful examination of what the basis for this
10 motion is so that there's an exploration of what the claim of
11 breakdown in communications is and then to proffer of something
12 specific that would -- could be explored. And then if there is
13 nothing specific, to move on to sentencing. But I do think it
14 would be prudent not to just deny it summarily, but instead to
15 explore the grounds.

16 **THE COURT:** Well, that's what I'm doing.

17 **MR. KRUEGER:** I agree. And under the case law, it is
18 not uncommon to excuse the government from those communications
19 so that it can happen freely, whether it happens in chambers or
20 the courtroom is cleared.

21 **THE COURT:** Should -- but that's what Mr. LeBell has
22 asked, that Mr. Van Den Heuvel waive attorney-client privilege
23 for purposes of his presenting the argument that Mr. Van Den
24 Heuvel needs a different attorney. And that's where we
25 started. And Mr. Van Den Heuvel has not agreed to do that so

1 far.

2 Now, Mr. LeBell, would you suggest that you and
3 Mr. Van Den Heuvel come into chambers and talk with me outside
4 the presence of the U.S. Attorney and off the record?

5 **MR. LE BELL:** Yes, I would.

6 **THE COURT:** Mr. Van Den Heuvel, do you wish to do
7 that?

8 **THE DEFENDANT:** The one major point of contention
9 between me and Bob --

10 **THE COURT:** No, no, this is --

11 **THE DEFENDANT:** I'd love to talk to you in your
12 chambers.

13 **THE COURT:** -- you can come in privately if you're
14 interested in --

15 **THE DEFENDANT:** Go ahead.

16 **THE COURT:** -- going this way.

17 **THE DEFENDANT:** Go ahead.

18 **THE COURT:** All right. And you're in agreement with
19 that, Mr. Krueger?

20 **MR. KRUEGER:** Yes.

21 **THE COURT:** All right. Yeah, all right, Mr. Van Den
22 Heuvel and Mr. LeBell, you can come back into chambers. We'll
23 take a recess.

24 **MR. KRUEGER:** For a record of it to be made whether
25 in chambers or afterwards, for you just to make a record so

1 that --

2 **THE COURT:** Well, of course. Once I have a
3 conversation in chambers, I will come out and I'll -- I have to
4 render a decision on the motion to withdraw.

5 **MR. KRUEGER:** Okay.

6 **THE COURT:** So -- and to the extent that I conclude
7 that -- I mean I may describe in general terms what occurred,
8 but, you know, obviously, I'll make a record.

9 **MR. KRUEGER:** Okay. Thank you.

10 **THE COURT:** All right. We're in recess.

11 **(Recess taken from 9:38 a.m. to 10:01 a.m.)**

12 **THE COURT:** You can be seated.

13 Mr. LeBell, do you want to make any statement on the
14 record at this point? I know that you're going to summarize
15 the basis of the motion to withdraw in more detail and will --
16 that will be filed under seal, so it can be reviewed at the
17 Court of Appeals level if necessary.

18 **MR. LE BELL:** I will and I will also secure in
19 writing the necessary waiver.

20 **THE COURT:** Okay.

21 For the record, I will say that I'm going to deny the
22 motion to withdraw. There was a discussion in chambers.
23 Although there's a claim of a breakdown in communication, I see
24 no reason why -- well, first of all, we're at the sentencing
25 stage. So, there's been an awful lot of communication prior to

1 today. And in fact, at the time of the plea hearing, Mr. Van
2 Den Heuvel was asked if he was satisfied with the
3 representation of his attorney. And at that time, he said he
4 definitely was satisfied and, in fact, if I recall correctly,
5 "It was as good as I could've paid for." He was satisfied with
6 the representation of counsel at that point. As we got closer
7 to sentencing, he's become dissatisfied. Mr. Van Den Heuvel
8 believes he now has found evidence of -- exculpatory evidence
9 in the massive amounts of material that had been seized by the
10 Brown County Sheriff's Department in connection with a
11 different investigation. From what his description is, none of
12 it -- it deals more with motive and whether he had other access
13 to other monies and other funds so that he wouldn't have had to
14 defraud Horicon bank. I don't think it would be relevant, but
15 in any event having entered a plea of guilty under oath,
16 waiving his rights after being advised fully on the elements of
17 the offense, the burden of proof, and all the other material,
18 I'm satisfied that the plea was knowingly and voluntarily
19 entered. The motion to withdraw at this point seems to me more
20 of a delaying tactic. It appears that there is certainly
21 conflict, but I'm convinced that even if I were to grant this
22 motion and appoint new counsel, the conflict would still exist.
23 The fact is Mr. Van Den Heuvel is unwilling to admit what he
24 previously admitted in the plea hearing. And I don't find a
25 breakdown in communication that would prevent Mr. LeBell from

1 fully and adequately representing him here today at the
2 sentencing. He has spent more than a year and a half with this
3 defendant. He has spent a great deal of time reviewing
4 documents in discovery and in conversations with his client.
5 He's certainly capable of bringing up all mitigating factors
6 that may bear on sentencing. And he's certainly capable of
7 communicating that to the Court. In the event that Mr. Van Den
8 Heuvel is correct and Mr. LeBell overlooked matters, made an
9 error, Mr. Van Den Heuvel is free to seek postconviction relief
10 and he's free to appeal. And there'd be no doubt that a
11 different attorney would be appointed to represent him on
12 appeal and that attorney can investigate the so-called
13 exculpatory evidence and if the view is that a postconviction
14 motion should be filed, that would be filed. But I'm satisfied
15 that at least as of today, the motion to withdraw should be
16 denied and I hereby deny it. I also note there was a motion to
17 withdraw the plea and a motion to adjourn the sentencing.

18 I carefully reviewed the plea colloquy that was
19 attached to the government's opposition to the motion to vacate
20 the plea. And this was a thorough plea colloquy. Mr. Van Den
21 Heuvel was placed under oath. It was explained to him that the
22 purpose of the hearing was to make sure that he fully
23 understood what he was doing and that any decision he made was
24 a free and voluntary decision on his part. It was not his
25 attorney's decision, it was not family's decision, it was his

1 decision. The fact that part of the plea agreement called for
2 the dismissal of the charge against his -- the charges against
3 his wife was explained, was made a part of the record. It was
4 a reason, perhaps, that motivated him but it was not
5 compulsion. It was not coercion. And there certainly was
6 probable cause to charge her in the first place. The fact that
7 the government and -- that he insisted upon that as the plea
8 agreement does not render his plea involuntary.

9 He has provided no fair and just reason to withdraw
10 his plea at this point. The plea was fully and carefully
11 taken. It was voluntary. And the amount of time that has gone
12 -- already gone on in this case to now allow a withdrawal of
13 the plea would prejudice all parties and simply delay. In
14 fact, I told Mr. Van Den Heuvel during the plea -- when he
15 balked at the idea that intent was an element of this crime, I
16 told him that we're not playing games here. We're not going to
17 equivocate on what he's pleading guilty to. And I made certain
18 that he understand that intent to defraud was an element of the
19 offense he was pleading guilty to. And he acknowledged that
20 and he continued to enter his plea. And I cannot accept a
21 claim now that under oath he decided to lie in order to move
22 things along. This is just gamesmanship as far as I am
23 concerned and it will not be tolerated.

24 The motion to adjourn the sentencing also, the first
25 one had nothing in it other than an indefinite description of

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1 the need to go through more documents. The second one is
2 devoted to his efforts to prove his innocence. He tells me
3 vaguely and in conclusory language that attorneys have now --
4 that represented him in civil actions have now turned over
5 documents that he's convinced will prove his innocence. I
6 don't see affidavits by these attorneys. They are not named,
7 or maybe they're named, but there's no affidavits. There's no
8 document produced. There's a vague assurance that somehow a
9 delay in sentencing will allow him to prove his innocence.

10 Well, he's pled guilty. He did so freely and
11 voluntarily. And let me say this too. The parties have talked
12 about the complexity of this case. This is not a complex case.
13 Lying to get a loan is a pretty obvious and simple and
14 straightforward thing. And certainly, the person that gets the
15 loan, the person involved knows what he intended, knows what he
16 did, knows what he said. Certainly, the bank to which the loan
17 application is made is aware of what's going on. The fact that
18 Mr. Van Den Heuvel knew these things -- and these are seven
19 loans that are laid out clearly in the indictment, the
20 applications for the loans are there. The individuals who
21 served as straw borrowers are listed. What's there had really
22 nothing to do -- and the evidence that was seized from him by
23 the Brown County Sheriff really doesn't bear on these cases.
24 These cases arose independently, were charged separately, and
25 were charged before that without any of that information really

1 being in the hands of the FBI and the investigators in this
2 case.

3 So, for those reasons, I find no reason to allow the
4 motion to vacate the plea. That motion is denied. The motion
5 to adjourn sentencing is also denied.

6 Turning to the presentence report -- and I have a
7 presentence report as well as a sentencing memorandum from the
8 defense and a sentencing memorandum from the prosecution today.
9 But the presentence report, itself, is prepared by the
10 probation department. That has been filed and on file for some
11 time. There have been revisions made at the request of the
12 parties. I know there's some objections.

13 First of all, Mr. Krueger have you thoroughly
14 reviewed the presentence report?

15 **MR. KRUEGER:** Yes, Your Honor.

16 **THE COURT:** Are there any objections to the factual
17 statements in the report?

18 **MR. KRUEGER:** No, Your Honor.

19 **THE COURT:** What about the guideline calculation?

20 **MR. KRUEGER:** We agree with the base offense level,
21 the 12-level increase, the two-level increase for role in the
22 offense. We are no longer recommending an acceptance of
23 responsibility decrease. And so, we think the offense level
24 should be 20.

25 **THE COURT:** Mr. LeBell, have you gone over the

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1 presentence report with your client?

2 **MR. LE BELL:** I have, Judge. He has copies of both
3 the PSR as well as the addendum which followed the objections,
4 as well as my own objections, as well as those of the
5 government.

6 **THE COURT:** And they are all attached. And the
7 government responded to those objections. And Probation issued
8 a response, and then the documents -- the witness statements
9 and other documents supporting the probation agent's recitation
10 of the facts are attached as well. Do you have any evidence
11 you wish to offer or anything else you want to offer with
12 respect to those factual disputes?

13 **MR. LE BELL:** Judge, I have -- as I indicated in my
14 objections, the factual differences I don't think -- first of
15 all, let me say that the factual recitation by the government I
16 think exceeds the plea agreement, but notwithstanding that, I
17 don't think anything that factually was set forth by the
18 government, or by the defense for that matter, impacts on the
19 guidelines. I don't think it substantially changes the
20 underlying facts. That having been said, Mr. Van Den Heuvel --
21 and I have counseled him regarding this potential statement.
22 Without going into my counseling, suffice it to say, he wishes
23 to make a statement with respect to the facts themselves.

24 **THE COURT:** He may do so under oath. If he's going
25 to offer evidence for sentencing, he must do so under oath.

1 **MR. LE BELL:** And could I have just a second
2 because --

3 **THE COURT:** Subject to cross-examination.

4 **MR. LE BELL:** Right. I just want to reiterate
5 something to Mr. Van Den Heuvel.

6 **THE COURT:** Yes.

7 **(Pause)**

8 **THE COURT:** Well, does he wish to testify?

9 **MR. LE BELL:** Mr. Van Den Heuvel, do you want
10 testify?

11 **THE DEFENDANT:** I'd like to make a statement.

12 **THE COURT:** You'll be allowed to make a statement
13 after -- before I impose the sentence. It will be allocution.
14 But this question at this point is whether or not you wish to
15 offer evidence with respect to the factual allegations in the
16 presentence report? And if you wish to offer evidence, then
17 you have to take the stand and be placed under oath and be
18 subject to cross-examination.

19 **MR. LE BELL:** Including in response to the government
20 submissions of various documents that we went over. That's
21 your wish?

22 **THE DEFENDANT:** Yes.

23 **MR. LE BELL:** You acknowledge that you discussed the
24 matter with me; is that correct?

25 **THE COURT:** The record certainly reflects you've

1 discussed it with him.

2 **MR. LE BELL:** Thanks.

3 **THE COURT:** Do you wish to testify Mr. Van Den
4 Heuvel?

5 **THE DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** Come forward and take the stand.

7 **(Pause)**

8 **THE DEFENDANT:** Excuse me, Your Honor.

9 **THE COURT:** Mr. LeBell, I would expect that you will
10 question him regarding the specific objections that are set
11 forth in the presentence report.

12 **MR. LE BELL:** Yes, I will, Judge.

13 **(Pause)**

14 **THE CLERK:** Please state your name.

15 **THE DEFENDANT:** Ronald Van Den Heuvel.

16 **(Defendant sworn)**

17 **THE CLERK:** Please be seated.

18 **THE COURT:** All right. Mr. LeBell, you may proceed.

19 **MR. LE BELL:** Thank you, your Honor.

20 **DIRECT EXAMINATION**

21 **BY MR. LE BELL:**

22 Q Mr. Van Den Heuvel, you're the defendant in this action,
23 is that correct?

24 A (Inaudible)

25 Q You're the defendant in this action. Is that correct?

1 A Yes, sir.

2 Q And you have taken the stand after you and I have
3 discussed your testimony. Is that correct?

4 A Yes, sir.

5 Q And is it your intention to respond or at least address
6 some of the objections that were interposed during the
7 presentence investigation report as well as in response to the
8 government's submissions? Is that correct?

9 A Yes, sir.

10 Q Specifically, let go through the government's -- let me
11 just get to it -- and is it your position -- correct me if I'm
12 wrong -- do you take issue with whether the Peters' loan was
13 taken out for you or for the benefit of your company? Judge I
14 -- let me withdraw this question. It's very uncomfortable for
15 me to do this. I am -- let me withdraw the question. I --

16 **THE COURT:** Well, you interposed objections on
17 behalf of your client --

18 **MR. LE BELL:** I have.

19 **THE COURT:** -- in the presentence report.

20 **MR. LE BELL:** I have, but in good conscience as a
21 lawyer, I can't ask questions that I think are going to be very
22 damaging. I cannot do that. If Mr. Van Den Heuvel chooses to
23 testify on his own behalf, sort of in an extemporaneous fashion
24 against or with my advice, whatever it is, I think that's
25 appropriate. But I -- just as a lawyer, I'm not going to ask

1 him questions that I think are potentially damaging, the
2 answers to.

3 **THE COURT:** Any comment, Mr. Krueger?

4 **MR. KRUEGER:** To the extent that he's just trying to
5 establish evidence to support his objections to the PSR, I
6 suppose one could just ask, do you think your objections are
7 true and then it's a sworn statement by him in support of his
8 objections rather than marching through each one.

9 **THE COURT:** Could you ask him that, Mr. LeBell?

10 **MR. LE BELL:** Judge, I would prefer not to. I
11 understand what you're -- I understand what the government's
12 position is and I appreciate the consideration. I don't want
13 to be party to what I see is going on here because I think it's
14 going to be extraordinarily problematic, not for me, but for my
15 client. Anything under oath. And the reason I say that -- for
16 a number of different reasons -- but more importantly, as I
17 said to you in my preparatory remarks, these objections
18 categorically deny in part any significance to the guideline
19 calculations.

20 Similarly, I don't think they necessarily reflect on
21 the offense itself. As the Court's indicated, you have not
22 allowed him to withdraw his plea. His plea stands. His
23 admissions are there. You can't eradicate or erase his
24 admissions. The objections that I interposed were fairly
25 innocuous and they basically had to do with some rather

1 nonsubstantial circumstances surrounding the loans, but the
2 loans -- the objections that I interposed, never indicated --
3 to my knowledge -- that he did not at that point in time claim
4 he was a straw borrower. What Mr. Van Den Heuvel may have put
5 forth in other pleadings, that's a different issue.

6 **THE COURT:** I'm --

7 **MR. LE BELL:** Let me give you an example, Judge, just
8 so I -- without being vague. As an example, at one point in
9 time, he's described as -- somebody describes him as an
10 individual who's posing as a businessman. Whether he's posing
11 as a businessman or he's not posing as a businessman
12 categorically has nothing to do or impact on his sentencing, at
13 least in my opinion. I put it in there because I thought it
14 was --

15 **THE COURT:** Are you talking about the objection to
16 paragraph 16?

17 **MR. LE BELL:** Yes.

18 **THE COURT:** Which is that Mr. Van Den Heuvel never
19 represented himself --

20 **MR. LE BELL:** Correct.

21 **THE COURT:** -- to be a wealthy and successful
22 businessman. Nor did he conduct a shell game with companies
23 who in different respects involved in the paper industry?

24 **MR. LE BELL:** Right.

25 **THE COURT:** Why can't you ask him if that's his

1 statement if that's true?

2 **MR. LE BELL:** I think it was more the inference that
3 was drawn that he was sort of represented that he was not a
4 wealthy businessman and that's where we're going to get into
5 the weeds I think.

6 **THE COURT:** I'm not asking you to get into the weeds.
7 I'm asking you to simply ask the questions that led you to
8 elicit these objections in the presentence report. That's what
9 he wants to put under oath. That's what he wants to add.

10 **MR. LE BELL:** I don't believe that is what he wants
11 to add at all. That's my problem. The objection --

12 **THE COURT:** Well, he's limited to answering what you
13 ask him --

14 **MR. LE BELL:** Right.

15 **THE COURT:** -- at this stage. And if he wants to say
16 more on cross-examination or if he wants to add more and argue
17 that you no longer should be his attorney, that he wants to
18 simply represent himself, he's free to do that.

19 Mr. Van Den Heuvel, your attorney doesn't want to ask
20 you these questions. Do you wish to represent yourself and
21 make a statement and offer narrative testimony concerning these
22 matters?

23 **THE DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** Then go right ahead. Tell us what you
25 want to say with respect to the factual statements in the

1 presentence report. Do you need the presentence report in
2 order to look at your objections?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Mr. LeBell, hand him your copy of the
5 presentence report or if he has a copy, he can have it.
6 Mr. LeBell -- Mr. Van Den Heuvel, you can just remain seated.
7 We'll bring it to you. I take it you have your own copy of the
8 presentence report? Did you have your own copy?

9 **THE DEFENDANT:** I believe I was emailed something
10 like this.

11 **THE COURT:** Go ahead, Mr. Van Den Heuvel.

12 **THE DEFENDANT:** My objection to the report is more
13 the straw borrowers. They mentioned that in here several
14 times. Straw borrowers were known to me for 10 to 30 years,
15 were partners, some of them in 11 different firms, all of which
16 signed every one of these operating agreements which allowed
17 them to borrow money on behalf of the company.

18 Horicon Bank used my collateral for every one of the
19 loans and every single one of the loans had a signed copy from
20 the Board of Directors and the shareholders stating that
21 Mr. Van Den Heuvel was there. I knew of this loan. The bank
22 knew I knew of this loan. And the bank knew that the
23 collateral being used for the loan was being used for the
24 specific companies of which I was not a managing member, but
25 the -- it was assigned.

1 Every one of these people, including Julie Gumban,
2 has made a significant amount of money being a partner to these
3 LLCs. Some of them have been in the 11 and 12 -- and still are
4 -- partners and get a K-1 from these companies. I don't
5 understand the conflict of law. I do not want to hurt anybody.
6 I would never hurt anybody. I would never take money from a
7 bank willfully, intentionally ever. I understand the
8 restitution and I intend to pay it in full. I have a mountain
9 of work to do to get out of this destruction of my company.
10 Okay?

11 Without going much further, the main thing that is
12 against all of this is that these people were straw borrowers
13 and only Mr. Piikkila at Horicon Bank knew about it. It's just
14 simply not true, just simply not true. I don't want to make a
15 mistake again. The bank had five officials on some of these
16 loans and they went to Associated and removed the top loan.
17 They went to --with a payment. They went to Johnson Bank and
18 removed the top loan. They went to the Nicolet Bank with the
19 top loan. Made their payment from Peoples' loans and paid it
20 off.

21 Prosecution says it was for my benefit. It was to my
22 benefit, along with the eight or nine or 10 other shareholders
23 of that company. That's a true statement. Did I receive a
24 1099 or W-2 for any of that money coming to me personally? No.
25 There wasn't any money coming to me personally.

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1 It was bank debt at one bank, collateralized to clean
2 the title of a middle sale, transferred to another bank that
3 wanted that loan. They wanted that loan and they wanted that
4 loan bad. They were on the low side of deposit-to-loan ratio
5 and they took that. Now there's a time that this bank was
6 looking to take target money. They need to go through all
7 their loans. They need to figure out what it is and the
8 collateral for these loans is mine and I worked very hard to
9 make sure that the bank got every penny of their money back.
10 In fact, the plea agreement is that I'm -- I have to have
11 restitution to the bank. I understand this. I understand
12 this.

13 I do not understand the fact that somebody is saying
14 now that intentionally we got together and said this is what
15 we're going to do to borrow money from Horicon Bank. I sent
16 introductory letters for every one of these loans and copied
17 other people at the bank. I found that just recently. It's
18 important to me. I don't want to lose points.

19 I think Mr. Krueger is a fair man. I think he
20 understands what it's supposed to be, but I can't stand up here
21 -- or didn't totally understand what I was saying when I said
22 that I intentionally got together and defrauded the bank. If
23 this system worked and that straw borrower system worked for
24 nine years, why wouldn't I keep using it? Why wouldn't I use
25 it at other banks? Why would I do this? Purportedly a

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1 businessman.

2 I had a six -- I had a huge line of credit at a local
3 bank. I worked hard during this time. I was trying to buy the
4 mill in Everett from Kimberly-Clark, gone a lot, doing a lot.
5 I expected my partners to do it. I had tons of money tied up
6 in a huge line of credit at Johnson Bank.

7 I was waiting for Mr. Tock (phonetic) to pay the
8 promise notes. I just needed to say that what it says here,
9 I'm straw borrowers, isn't right by me. I just would not
10 intentionally do that. I know you don't need to be intentional
11 to be convicted. I understand that. I understand that I
12 signed a plea and I understand everything that I did and what I
13 did wrong. I never intended to hurt anybody, but I do want
14 everybody to understand every one of these partners, including
15 Julie Gumban, who was a partner with me in seven different
16 firms, 15 percent ownership in some of them. She left her
17 money roll, as we call it. When her time for payment was,
18 she'd invest more, do more. But she took \$65,000 in addition
19 to her wages up out of these companies. And I'm just saying, I
20 can't stand up here as a guy with the ideas, the guy with the
21 technology, the guy going forward, the guy building everything
22 together, the guy letting these people come to manage their own
23 businesses and pay for their homes faster and do other things,
24 that there was an intent to hurt anybody. There were certain
25 things my collateral was no good in this town because I had

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1 huge lines of credit already withdrawn -- already drawing on
2 banks and they will not let you use collateral when you exceed
3 the bank's legal lending limit. I'm not here to try and tell
4 you this.

5 I -- yes, Ms. Hager is right. I was president and
6 chairman of BB&T Bank. Yes, I founded that bank. Yes, I hired
7 Mike Daniels from Nicolet Bank to come down to Georgia and run
8 it. I understand. I understand exactly what they're doing. I
9 didn't intend ever to defraud anybody or to hurt anybody. And
10 if I did from meaningless -- or meaningful actions, I will
11 attempt to the best of my ability to restore those funds. And
12 these people are my partners. The term straw borrower, until
13 this case I didn't even know what it was.

14 **THE COURT:** All right. Thank you. Mr. Krueger, any
15 questions?

16 **MR. KRUEGER:** Yes, thank you, Your Honor.

17 **CROSS EXAMINATION**

18 **BY MR. KRUEGER:**

19 Q You mentioned Julie Gumban. She was the nanny to your
20 children, right?

21 A Yes, sir.

22 Q And she lived in your house? Right?

23 A Yes. She was what's called a live-in nanny.

24 Q And she was interviewed by an agent in this case. And she
25 said that for a period of time that you were not paying wages

1 that were owed to her. Is that true?

2 A Yes. Can I explain it?

3 Q No. Did she, in fact, need to sue you after she left to
4 recover her back wages?

5 A Yes.

6 Q And did you enter into a settlement in which you paid
7 \$45,000 to her in back wages?

8 A Yes.

9 Q You said that for all of these straw borrower loans, that
10 Horicon Bank officials all knew about it. Is that your
11 testimony under oath?

12 A Yes.

13 Q And that your testimony is that if this was such a great
14 plan, you would've kept doing it past the straw loans in this
15 case, right?

16 A I didn't say that I'd keep doing it. I asked why wouldn't
17 I have.

18 Q Okay. Paul Piikkila was the loan officer that arranged
19 these loans for you, right?

20 A At Associated, at Anchor, and at Horicon. That's correct.

21 Q And so the straw borrower loans in this case were arranged
22 by Paul Piikkila, correct? From Horicon -- when he was at
23 Horicon bank?

24 A On all but the mortgage loan on KYHKJG.

25 Q So for all the others, it was Paul Piikkila?

1 A Correct.

2 Q And when these loans came to light, Paul Piikkila was
3 fired by Horicon Bank, right?

4 A As he was at five previous banks for noncompliance, that's
5 correct.

6 Q And then he went to work for you. Is that right?

7 A He did not. In fact, he sued me. I would not hire him.

8 Q Was he -- so if I have a document that shows Paul Piikkila
9 is representing things for you about Green Box, is that not a -
10 - is not a real document?

11 A The CEO of the company, PC Fiber, and Green Box was -- I
12 was the CEO of Green Box but the gentleman named Howard Bedford
13 who Paul Piikkila was the president of his company for years,
14 hired Paul on a commission basis. He did not get salaries.

15 Q Okay. And so when he was doing that, Paul Piikkila was
16 doing work to promote the Green Box process, right?

17 A PC Fiber.

18 Q Which became -- is it one of your companies associated
19 with Green Box. Is that right?

20 A It's the company that holds the technology. That's
21 correct.

22 Q Okay. So, bringing it back to this case, after Paul
23 Piikkila left, Horicon Bank wasn't giving you more loans, was
24 it?

25 A No, we were paying off loans at Horicon.

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1 Q Okay. And so, if Horicon Bank officials have given
2 interviews as they have and have said that they were not aware
3 that Paul Piikkila had given loans to others like Peters, that
4 were also associated with you, are those bank officials from
5 Horicon lying? Is that your testimony?

6 A It would depend on the individual. But every single bank
7 has two loan officers that fills the file, checks them in, and
8 does a loan report to the loan committee and the board. Okay?
9 And every single bank had an operating agreement signed and
10 asked for a borrowing base resolution of which I signed for
11 every single loan.

12 Q Okay. So, let's talk specifically about Horicon Bank. At
13 Horicon Bank, if -- the Horicon Bank officials, this is what
14 they have said. They have said that Paul Piikkila had a
15 \$250,000 lending limit and that loans below that amount did not
16 have to go to a loan committee. And so, the loans in this case
17 to Peters and to Bain and to Gumban, the Horicon Bank officials
18 say that they did not approve those loans and that Paul
19 Piikkila did not make them aware of them. Do you -- are you
20 saying that they are lying?

21 A I'm not saying they're lying. And the way you put your
22 words, approval of a loan and the funding of the loan are
23 completely different than the development of a loan portfolio
24 file that is required by the FDIC and is reviewed quarterly or
25 yearly by the FDIC when they come in and do an audit at a

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1 bank. And those two officials other than Paul -- it cannot be
2 a loan officer -- other than Paul, reviewed each one of those
3 and those loans are also listed with the collateral and who
4 owns the collateral on a monthly report to the loan committee
5 and the Board of Directors of the bank.

6 **MR. LE BELL:** Judge, at this point, I don't know if
7 the government intends to call any witnesses, but I move to
8 sequester in this part.

9 **MR. KRUEGER:** We don't. I just have two last
10 questions.

11 **THE DEFENDANT:** Go ahead, sir.

12 **BY MR. KRUEGER:**

13 Q So your testimony is that Horicon Bank officials were
14 aware of all these loans. Is that right?

15 A Horicon Bank's Board of Directors and officers have seen
16 the loans, every one of them.

17 Q Okay.

18 A They're on the loan reports every month.

19 Q And so the Horicon Bank officials who have stated they
20 were not aware that you and your companies were behind the
21 loans, you would disagree with that statement. I understand.

22 A They could still make that statement had they not -- you
23 know, but in the file, the operating agreement is there with my
24 name on it and the shares in it. And the borrowing base
25 resolution has my name on it. So, it depends what they're

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1 saying. They weren't aware of it. They look at the monthly
2 report and the collateral's there, they should be aware of it.
3 If they're not, they're not watching it close enough.

4 **MR. KRUEGER:** Okay. No further questions, Your
5 Honor.

6 **THE COURT:** All right. You can step -- so you have
7 anything else you want to say?

8 **THE DEFENDANT:** Nothing else, but I would like to
9 apologize to everybody. I'm sorry if I did something wrong.

10 **THE COURT:** Okay. You can have a seat and certainly
11 you can exercise your right of allocution later -- the
12 opportunity to exercise that right.

13 All right. Well, I've listened to the testimony.
14 I've also reviewed the entire presentence report, the
15 attachments, and the other documents. And I'm going to adopt
16 as my findings of fact the factual statements in the
17 presentence report. I'm satisfied, notwithstanding Mr. Van Den
18 Heuvel's testimony today, which of course is inconsistent with
19 his plea itself, that those factual statements are correct and
20 true. I also conclude that the government is correct that
21 there has been no acceptance of responsibility, so he's not
22 entitled to the additional three-level reduction of the offense
23 level. So we're looking at a total offense level of 20 and a
24 criminal history category of I. Which means the sentence
25 range under the United States Sentencing Guidelines would be 33

1 to 41 months -- 33 to 41 months.

2 **MR. LE BELL:** Judge, just so I'm on the record of
3 having maintained my position that I think he's entitled to
4 acceptance and I won't put any further argument on it.

5 **THE COURT:** Okay. Your objection is noted, but I'm
6 satisfied there's been no acceptance of responsibility and it
7 would be improper to award a decrease for that.

8 So, the guideline is a starting point of the
9 sentencing determination, but I'm -- of course, I need to hear
10 from counsel concerning the factors that the statute directs
11 the Court to consider in arriving at a fair and just sentence.

12 So, Mr. Krueger, I'll first hear from the government,
13 but were there witness statements or victim statements you
14 wanted me to consider?

15 **MR. KRUEGER:** Yes, Your Honor. There are two
16 officials from Horicon Bank who are here today and --

17 **THE COURT:** Wish to make a statement?

18 **MR. KRUEGER:** I believe one of them is willing to
19 make a statement.

20 **THE COURT:** Okay. You may. If you would just say
21 your name, and spell your last name for us, and then go ahead
22 and tell us who you are and what your statement is.

23 **MR. SCHWAB:** All right, thank you, Your Honor. My
24 name is Alan Schwab. My last name is spelled S-C-H-W-A-B. I'm
25 the Executive Vice President and Chief Credit Officer for

1 Horicon Bank.

2 **THE COURT:** Okay, thank you.

3 **MR. SCHWAB:** Thank you, Your Honor. Basically, it's
4 clear in the impact statement that Horicon Bank submitted that
5 Horicon Bank sustained a substantial loss, especially for a
6 community bank. And our loss is significantly more than what
7 has been agreed to as far as the final amount that will
8 potentially be paid back. But I think more importantly that's
9 not in the impact statement is the reputational loss of Horicon
10 Bank, especially in the Fox Valley market area. This case has
11 been going on for 8 to 10 years. It's in the paper. It's on
12 the news. It's on the radio. If you go to Google or search
13 Horicon Bank, you'll see that this fraud case pops up right
14 away. So if you're looking for a bank in the Fox Valley area,
15 that will stand out and as an individual, you want to maybe
16 bank with the bank that has that type of reputation as looming
17 on it. We've also had customers come in -- especially with
18 our investment reps -- saying is our money safe and secure
19 being your bank had fraud? I personally can attest as well,
20 interviewing business bankers in this area. When it's their
21 turn to ask our bank questions about a potential career with
22 Horicon Bank, they have asked, are there any concerns we should
23 have coming to work for Horicon bank being this litigation and
24 this fraud has been out there? So, I just ask that you take
25 that into consideration with your sentencing that that's

1 something that you can't put a dollar amount on. That's a
2 harmful loss to Horicon Bank.

3 **THE COURT:** All right. Thank you.
4 Mr. Krueger?

5 **MR. VANDEN BOOGART:** My name is Jay Vanden Boogart,
6 V-A-N-D-E-N, space, capital B-O-O-G-A-R-T. Al articulated well
7 the financial impact and the reputational damage done to
8 Horicon Bank by this incident. I'd also like to mention that
9 as a small independent bank, we are 25 percent employee-owned
10 through an ESOP. And the financial damage caused by this act
11 has impacted all of our 150 employees financially, down to our
12 bookkeepers, our tellers, and everyone that works for us. I
13 think they should be taken into consideration when sentencing
14 is handed out here also. Thank you.

15 **THE COURT:** Thank you. Mr. Krueger?

16 **MR. KRUEGER:** Thank you, Your Honor. The one other
17 victim impact statement was submitted to the Court on a
18 videotape by Ms. Julie Gumban.

19 **THE COURT:** I did have the opportunity to view the
20 videotape and will make that a part of the record. I'll direct
21 the clerk to mark it as Exhibit 1.

22 **MR. LE BELL:** Judge, before there's any further
23 discussion, I maintain that that particular submission does not
24 constitute the submission of a victim and shouldn't be
25 considered as such. Ms. Gumban and her activities as it

1 relates to this case have been pretty well articulated through
2 the course of the plea and the offense history. I don't see
3 that she's a victim. She's never been nominated as a victim
4 and I'd asked the Court not to consider it. It has no other
5 value. I --

6 **THE COURT:** Well, it would have value even if she
7 wouldn't be technically within the context -- the definition of
8 a victim of the offense, but, Mr. Krueger, is -- does she fit
9 within the definition?

10 **MR. KRUEGER:** I don't have the statutory definition
11 in front of me right now. I think it's rather broad, but even
12 apart from that under the guidelines and federal statute, the
13 Court is free to consider any sort of evidence to take into
14 account the history and the nature of the defendant and the
15 offense. And so, whether a victim or not, I think it's
16 perfectly appropriate to consider for sentencing.

17 **THE COURT:** Yeah. Well -- and I know there's a
18 transcript of that interview and that should also be made a
19 part of the record. That will be Exhibit 2. But my ruling
20 stands, I'm going to make those things part of the record at
21 sentencing in this case if not as a victim statement, a
22 statement of the -- concerning the nature and circumstances of
23 the offense. All right. Go ahead, Mr. Krueger.

24 **MR. KRUEGER:** Your Honor, because there has been such
25 substantial briefing and papers in this case, I'll try to keep

1 my remarks to certain high points, but would ask the Court to
2 consider all of the information that we set forth in the
3 sentencing memorandum.

4 So as the Court considers the 3553(a) factors, I
5 would mention three overarching points. First of all, that
6 this scheme was in its real essence motivated by greed and a
7 desire for Mr. -- by Mr. Van Den Heuvel to keep up an image of
8 success. And that's in contrast to his claim that this was
9 motivated by a desire to promote his businesses. As laid out
10 in the sentencing memorandum, Mr. Van Den Heuvel has maintained
11 a very lavish lifestyle, a five-bedroom residence worth nearly
12 \$2 million, second homes, second home in Florida, luxury
13 automobiles, annual trips to Las Vegas, frequent dining at
14 expensive restaurants. Witnesses are consistent in describing
15 that and at the time that the scheme began, he really didn't
16 have businesses that were generating much money but
17 nonetheless, didn't pare back the lifestyle, and instead, lived
18 off of other people whether it was friends or associates that
19 he was borrowing from or banks. And Mr. Peters and Bain have
20 given the witness statements that we laid out explaining that
21 they had previously taken out loans from Mr. Van Den Heuvel
22 elsewhere. Mr. Van Den Heuvel's credit was essentially dried
23 up at other banks. That's why he had had his friends borrow
24 from elsewhere and then when it came he needed a new source, he
25 went to Horicon Bank to get yet more loans. So really were

1 motivated by need to pay off these other debts, to keep his
2 lifestyle going. And so this was fundamentally a crime of
3 greed and is part of a longer story of keeping up a mirage of
4 success that wasn't real.

5 The second point I think that's evident and what
6 you've heard today already is that Mr. Van Den Heuvel has
7 demonstrated a serious and harmful manipulation of other
8 people, that this is not a crime in which just a single
9 institution that is faceless was affected, but that this did
10 affect real people. And that to perpetuate the crime, he used
11 other people including, again, Ms. Gumban, who in very stark
12 contrast in sworn testimony you heard from Mr. Van Den Heuvel
13 who is claiming that he somehow made her high levels of money
14 as a business partner. The reality is Ms. Gumban was a
15 vulnerable person who was dependent upon Mr. Van Den Heuvel for
16 her livelihood and her shelter and her food. She was caring
17 for his children. And yet he took advantage of her using her
18 credit cards and then putting her forward to make her on paper
19 at least liable for a loan to Horicon Bank, and then used the
20 proceeds for his own benefit. Ultimately, she left his
21 employment, had to sue him just to recover back wages, and was
22 quite significantly scarred by this experience. And that's
23 just one story, one example of how Mr. Van Den Heuvel has used
24 other people to keep up this lavish lifestyle.

25 In fact, we see just a few years other -- a few years

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1 later, as part of the relevant conduct in this case and as --
2 and which was one of the charges in this indictment, that a few
3 years later he put forward his own son-in-law as another
4 potential straw borrower to try to obtain loans for him. It
5 shows a callous use of other people.

6 The third point I'd make is just to note his personal
7 advantages that he had in life, being a sophisticated actor as
8 he testified having been in the position on the chair of the
9 board of a bank, having previously in his life built successful
10 companies, and yet when his fortunes were not so substantial,
11 using these manipulative ways to keep up his lifestyle.

12 We -- I would lastly note that in anticipation of
13 arguments about his family situation, that we respectfully
14 submit that the family situation is not a mitigating
15 circumstance given that the guidelines specifically suggest
16 that family circumstances shouldn't be taken into account
17 unless there are very extraordinary situations. And this case
18 doesn't fit that situation. There are many defendants who
19 have family obligations and undoubtedly, it's harmful and
20 difficult, but Mr. Van Den Heuvel chose to engage in these
21 offenses, even had his wife take out two of the loans and so
22 put his family at risk by engaging in this sort of conduct.

23 So, for these reasons, pursuant to the plea agreement
24 by which the government agreed to recommend the low end of the
25 guidelines as the Court calculates, that's the government's

1 recommendation based on these factors.

2 **THE COURT:** Mr. LeBell?

3 **MR. LE BELL:** Judge, first let me say from the
4 outside that the comment about non-consideration of family
5 factors really isn't the way -- the status of the law. And
6 under 3553, it is a genuine factor that can be considered on -
7 - no matter how grave it is, no matter how modest it is, family
8 factors are a factor the Court can incorporate in its ultimate
9 decision.

10 I was thinking about this last night, this whole
11 composition of what I was going to say to the Court. There's a
12 -- in the Spanish language, there's a concept called orgullo,
13 O-R-G-U-L-L-O. It's real simple. It means -- it translates to
14 pride. But it's different in the Spanish language and the
15 culture. Pride is an overarching characteristic or quality and
16 sometimes good and sometimes not so good. It's used for good
17 purposes and it's used sometimes for things that don't go so
18 well. And I think this is a prime example of when an
19 individual who has had success in life, who has done some
20 really good things, and has contributed to the community, has a
21 downturn in his own circumstances, his personal circumstances.
22 And I think right around '08, which is the beginning time of
23 this particular fraud scheme when the economy went south, so
24 went Mr. Van Den Heuvel's fortunes. But then you get back to
25 the concept of orgullo. It doesn't abate that pride, that need

1 to be able to present oneself, that need to be able to function
2 effectively and to succeed, it doesn't go away. And so, the
3 decision-making process is not justifiable. The decision-
4 making process is not something that I'm asking the Court to
5 excuse, it's to put it into the context of oh, what motivated
6 the conduct here.

7 And so, you look at the past history and it's how do
8 I sustain that? And the choice that was made obviously was the
9 wrong choice. Obviously, it impacted on a number of different
10 individuals adversely, but that I think is how it happened,
11 what the genesis was of the various loans. Mr. Van Den
12 Heuvel, I don't think anybody in this room can ignore a long
13 history of Mr. Van Den Heuvel's contribution to the community.
14 I tried to lay that out in the sentencing memorandum. I think
15 I've effectively demonstrated that this isn't just a whim on
16 his part on one occasion. It's consistent and it's -- it
17 reflects well on his approach to life, his involvement in his
18 church and his family, with his wife, with everybody else that
19 he touches, obviously with the exception of the folks that are
20 involved in this particular case. He left a huge positive
21 imprint in many respects. He also obviously had a negative
22 impact and imprint and that's what the Court is considering.
23 And so, I would hope that whatever judgment day comes for
24 anybody, that they're judged on the continuum of life, that
25 sort of sequential series of events from day one until the time

1 you die as opposed to one particular series of events, one
2 particular course of conduct. And if you look at the overall
3 course of conduct, there's a lot positive to be said about Ron
4 Van Den Heuvel, a lot of things that he has done for other
5 folks. And I'm confident that having gotten his attention,
6 that he can get back onto the straight and narrow.

7 He has an extraordinarily positive attitude. I will
8 give Ron Van Den Heuvel that from a month of Sundays. He has a
9 belief in himself which is probably the most important thing
10 that anybody can have. He has a belief in what he's doing.
11 And he really has good goals and objectives. And I set forth
12 in the sentencing memorandum that these are not unrealistic and
13 he really wants to make the planet a better place. And how he
14 goes about that, I can't tell you. I don't know. I'm not in
15 his shoes. But I think if given the opportunity to take care
16 of that objective, to take care of himself, to care of his
17 family, his community, his church, I think he will use it in a
18 positive fashion.

19 I ask the Court to impose a period of probation. If
20 the Court thinks alternatively -- and I hate to argue in the
21 alternative -- but if the Court thinks there's a period of
22 incarceration that's necessary, it should be a year and a day,
23 otherwise it should be community confinement. That particular
24 structure enables other objectives rather than pure punitive
25 sanction from being imposed. Under the state law, which

1 obviously is not applicable, the Galman (phonetic) decision
2 lays out certain objectives and those objectives are flexible
3 and those objectives are not mandatory and I fully admit that,
4 but when you talk about objectives of sentencing, punitive
5 sanction is not the exclusive remedy for an imposition of
6 sentence. It's not the exclusive objection. It has to take
7 into consideration things that Mr. Van Den Heuvel can derive
8 from that sentence.

9 And this proposal that I'm making allows him to do
10 good things as opposed to simply be put away for a period of
11 time. I, as a defense attorney, loath to concede that the
12 punitive aspect of the sentence is proper. I know what the
13 case law is. I understand that it's been sanctioned all over
14 the country. We're a country which absolutely believes the
15 punitive component is appropriate. I don't agree, but that's
16 neither here nor there. But that having been said, my proposal
17 also contemplates a punitive component.

18 The other thing is that despite z Mr. Krueger's
19 comment about family circumstances, I attached a number of
20 different articles. In those articles, I'm bearing as much
21 research as I think is reasonable under the circumstances in
22 this case and others. And I think we do as a culture -- when
23 we make decisions, sometimes we don't think of how they impact
24 on secondary individuals. I know there's collateral
25 consequences. This man, whatever you think about Mr. Van Den

1 Heuvel, whatever has been presented, has a family who loves him
2 dearly. All these folks in the courtroom absent the people
3 from Horicon are here for Mr. Van Den Heuvel. They've taken a
4 day out of their work to see him, to support him, to show their
5 love and affection. You don't go through life screwing up and
6 have this sort of folks behind you. The saddest thing that I
7 think this Court probably sees and you've probably seen it on a
8 regular basis is guys brought in by the Marshal service in
9 orange, and there's not a soul in back of the room. And that
10 doesn't bode very well because as this Court well knows, it's
11 the society into which a person is released on supervision, the
12 society and social structure that person has to rely upon that
13 really is the prognosticator of how that person is going to do.
14 And here you have a social structure that is really
15 incredible. It's fantastic. And it's not something that
16 should be discounted lightly.

17 So, I'm asking the Court to consider the submissions
18 that I have provided. I think it gives a reasoned and rational
19 approach why my recommendation is appropriate. I understand
20 fully that the Court has to take into account all of which it's
21 heard. I'm done whatever I can to -- I'll keep my comment to
22 myself. Suffice it to say, that I believe that given his --
23 the factors that I've presented, the 3553 factors, that the
24 sentence as presented by the defense is appropriate either in
25 the alternative, and I'd ask the fact that the probationary

1 sentence be imposed. I think Mr. Van Den Heuvel would like to
2 make another statement.

3 **THE COURT:** All right. Thank you, Mr. LeBell.
4 Mr. Van Den Heuvel, is there anything you would like to say
5 before I make a decision and impose a sentence?

6 **THE DEFENDANT:** Your Honor, Mr. LeBell, I thank him
7 for the comments. Okay? I do not own my home. I invested
8 all of it to clean landfills. We don't need any anymore. The
9 patents are there. It will go on and we will save things for
10 the planet. My son died of meningitis and we didn't have a
11 cure for that bacteria. And that will no longer come out of
12 landfills that are using this new patent. I did borrow \$70
13 million from a lot of people and put it into this patent and
14 hopefully, the fruition of it by others will make the world a
15 better place. I want to thank everybody for showing their
16 support for me, all the letters I got, all the things I have
17 from past and present employees. I understand also with or
18 without here, none of this happens if my loans that were signed
19 and personally guaranteed to me were paid to me. Now, I
20 understand and Horicon understands that, that if that loan
21 would've been paid, they would've been paid. It was their
22 collateral. So, I apologize. I certainly wouldn't want to
23 hurt any of the employees of Horicon Bank. And I'll try to
24 make it up to them.

25 **MR. LE BELL:** Judge, the only thing I'd add is that

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1 pursuant to the agreement, other than as an imposition of a
2 period of probation or -- and/or community confinement, if the
3 Court imposes a period of imprisonment, that you delay it for
4 the minimum of six months subject to availability of the
5 parties.

6 **THE COURT:** All right, thank you.

7 In the determination of a fair and just sentence, I'm
8 to begin with the guideline -- the sentence range that the
9 guideline sets forth. And as I determined the guideline range,
10 it's between 33 and 41 months. That's -- of course, 36 months
11 is three years, so it's three months less than that to almost
12 three and a half years. That's what the guideline range says.
13 The guidelines are not presumptively the sentence, but the
14 Court is required to give consideration to the guidelines with
15 the ultimate goal of having some uniformity and consistency in
16 sentencing.

17 Ultimately though, sentencing is an individual
18 determination based upon the facts and circumstances of the
19 case and the history and character of the defendant. And in
20 arriving at a just sentence, I'm instructed to look at the
21 circumstances of the offense -- the nature and circumstances of
22 the offense and then the history and character of the defendant
23 and using those two factors, attempt to arrive at a sentence
24 that accomplishes certain goals. The first of which is
25 contrary to Mr. LeBell's statement, to provide just punishment

1 for the offense. That's the purpose of sentencing. That's
2 what brings Mr. Van Den Heuvel before the Court. This Court
3 has no authority over anyone to impose a sentence that does not
4 commit a crime. And when they commit a crime, punishment is
5 appropriate. But punishment is not near merely vindictive. It
6 is intended to provide some sort of reordering or bring back
7 order to a society. It also has other goals.

8 It promotes respect for the law and it reflects the
9 seriousness of the offense. Punishment also -- the sentence
10 is also a sentence intended to deter, to deter the individual
11 defendant and to deter others. Deter means to send a message.
12 Behavior, if it's serious, society has an obligation in order
13 to protect itself by making a statement about it, a statement
14 that makes clear it's not to be tolerated. And that the
15 benefits that look like they're obtainable from the kind of
16 criminal conduct that brings the defendant before the Court are
17 outweighed by the potential consequences.

18 Another purpose of sentencing is to protect the
19 public from further crimes of the defendant and of course, we
20 normally think of that in terms of violence and other types of
21 crimes, but financial crimes as well they can leave people
22 destitute and have horrible impacts on people.

23 And then lastly, the purpose of sentencing is to try
24 to provide programming or treatment or the types of
25 rehabilitative efforts that will assist the defendant so that

1 when he is at the end of the process, he will avoid any similar
2 conduct that brought him to that point. So those are the
3 purposes of sentencing.

4 Looking first now at the nature and circumstances of
5 the offense that brings Mr. Van Den Heuvel before the Court.
6 It is a serious offense. Defrauding anyone is a serious
7 offense. Defrauding a federally insured bank -- and this is a
8 conspiracy to defraud. He was not charged, or at least he was
9 not -- he did not plead guilty to the actual bank fraud
10 charges. He pled guilty to the conspiracy count which carries
11 a maximum of five years, but the conspiracy we're talking about
12 is the conspiracy to engage in bank fraud and to provide false
13 information. So, it's a serious offense not only when we look
14 at the face amount of the loans where it's about \$775,000.
15 The restitution amount is significantly less because the loans,
16 some of the proceeds were used to pay down other loans. The
17 restitution the parties have agreed on is \$316,445. But that
18 type of conduct and that amount of money has a significant
19 impact. And, of course, as the Horicon representative has
20 asked, I have to consider the impact on the victims and the
21 impact is just not the loss of money. They lose money on
22 loans all the time, but the fraud, the way in which this was
23 conducted and carried out is -- tarnishes their reputation in
24 the community and it leads to a lack of confidence. It also
25 impacts anybody that borrows money. So, it is a serious

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1 offense.

2 I look at the nature and circumstances of Mr. Van Den
3 Heuvel and certainly there are very -- there's much positive to
4 be said about Mr. Van Den Heuvel. But in many ways, that makes
5 this crime all the more disturbing. Mr. Van Den Heuvel had
6 advantages far beyond the vast majority of people that we see.
7 He had wonderful parents and a wonderful family he grew up
8 with. He had tremendous advantages in terms of what his father
9 left he and his brothers and sisters. And he, of course, has a
10 great deal of intelligence. He has a business acumen. He has
11 a strong and vibrant personality. He has a strong faith. His
12 family's devoted to him. These are all wonderful gifts,
13 wonderful blessings that he has. Very few people that come
14 before me for sentencing have those kinds of blessings, those
15 kinds of gifts, which makes this crime all the more
16 incomprehensible. And it makes it less -- frankly, more
17 astounding that someone in his position would engage in this
18 type of behavior that is so serious.

19 I am satisfied that this is a case that calls out for
20 significant punishment. The amounts involved -- and this was a
21 -- wasn't an impulsive or sudden mistake. It wasn't a poor
22 judgment. And I've gone through this presentence report very
23 carefully. I've gone through the documents that are attached.
24 Mr. Van Den Heuvel had hopes of Horicon loaning him 7.1 million
25 I think is the package that Mr. Piikkila presented to the loan

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1 committee and that's when they did their due diligence and
2 looked into Mr. Van Den Heuvel and his businesses and concluded
3 not only are we not going to approve a \$7.1 million loan
4 package, we don't want to loan to him at all. We don't want to
5 loan to his businesses. And Mr. Piikkila was told that. And
6 Mr. Van Den Heuvel and Mr. Piikkila arrived at a way of
7 avoiding that. And that consisted of setting up other people
8 to borrow in Mr. -- in their name for Mr. Van Den Heuvel's
9 benefit and they began that process and engaged in seven
10 different loans, the first one 200 -- the first one \$100,000
11 that Mr. Peters, I believe, obtained. \$240,000 then -- the
12 first on September 12th, 2008; \$240,000 on January 2nd, 2009;
13 30,000 on February 11th, 2009; 129,958 on May 15th; 25,000 on
14 May 15th; 240,000 on September 11th, 2009; and then 10,000 on
15 September 25th of 2009. Most of these counts also have a
16 separate -- had a separate charge of false statement. Now
17 those were -- there were not guilty pleas entered to those, but
18 these are the facts that I look at.

19 And in addition, I look to the evidence of the other
20 crimes, all of this is relevant. Some of it is very telling
21 in relation to Mr. Van Den Heuvel's insistence that, in fact,
22 contrary to his plea, he's really not guilty and this is just
23 bad business or bad luck. I thought the -- Ms. Gumban's
24 evidence -- or the victim impact on her was particularly
25 telling. Here was a loan that -- for \$25,000 on May 15th,

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1 2009, that Mr. Piikkila approved for Ms. Gumban. She was the
2 nanny for Mr. Van Den Heuvel's children. She came from the
3 Philippines. She spoke English well enough, but obviously with
4 an accent. The money was borrowed in her name. It was
5 immediately distributed to make payments on the loans in the
6 names of Mr. Peters and Mr. Bain. That was the -- Mr. Van Den
7 Heuvel had assured them that they would not be responsible for
8 the loans that they took out and they were to be given to him,
9 the proceeds of which went for his -- or at his direction.
10 The remainder was transferred to his property RBDH and Ms. Van
11 Den Heuvel's company, KYHKGJ. And that's the other thing,
12 there's so many companies here. But Ms. Gumban, in order to
13 get the loan, there was -- they presented a financial statement
14 that claimed she had assets of \$280,000, and \$208,000 in real
15 estate, as well as a salary of \$65,000 even though she had --
16 they were way behind in salary and were accruing debts on her
17 credit card. They encouraged her -- Mr. Van Den Heuvel
18 encouraged her to take out credit cards so she could build a
19 good credit history. And then he and his wife used those
20 credit cards for their personal expenses and she ended up with
21 all this credit debt that she -- in her name that they took out
22 for their lifestyle expenses, buying clothing and dinners and
23 things that had nothing to do with her. Now, this is a woman
24 who lived in their home and was dependent on them. And this is
25 how she was treated. Ms. Starry (phonetic), his

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1 administrative aide who worked as really a secretary was
2 allowed to -- he used her to get a loan as well for \$240,000,
3 was it? Or a significant amount of money. And suddenly, a
4 month before she's made an officer of the corporation instead
5 of an administrative secretary, and it appears certainly for
6 the purpose of getting the loan. The son-in-law, Mr. Hoffman,
7 these are the charges that were the -- came in on a superseding
8 indictment and there were charges of attempted bank fraud or a
9 credit union fraud. The plan here was to have him use their
10 Cadillac Escalades, Mr. and Mrs. Van Den Heuvel's Cadillac
11 Escalades as collateral to get loans from credit unions. Mr. -
12 - in addition, they falsified pay stubs to say that Mr. Hoffman
13 was making \$100,000 a year when in fact he was making some \$12
14 an hour. They were told by accountants, Mr. Locascio,
15 Mr. Huntington, that this is illegal. Mr. Van Den Heuvel was
16 told this was illegal and yet he continued to do this. Now
17 the banks turned down the loans, so it's only an attempt. But
18 the fact that he would use his son-in-law in this way and do
19 what he was directly told was illegal, I think shows and sheds
20 light on what we're looking at here.

21 This is not -- this is not evidence of a mistake.
22 This is not evidence of bad business judgment or poor
23 consequences. This is evidence of fraud. The defendant has
24 presented himself and continues to present himself as a
25 selfless and successful entrepreneur and philanthropist. He's

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1 pretended to be that up to and including today. That's a lie.
2 And that lie is made manifest by the crime and the related
3 conduct that brings him before the Court today. Mr. Van Den
4 Heuvel cannot admit that to himself, to his family, or to
5 anyone. And that's unfortunate because the beginning of
6 rehabilitation is honesty. Honesty with respect to oneself.
7 And there's little hope of rehabilitation or reform when one
8 isn't even honest with oneself, even when it's -- it would be
9 to his advantage to do so.

10 Mr. Van Den Heuvel has delayed these proceedings.
11 He's filed these motions that are frankly frivolous that I'm
12 sure his attorney -- part of the reason we're here today and
13 part of the reason his attorney seeks to withdraw is because
14 his attorney gives him advice he does not like. That says
15 more about Mr. Van Den Heuvel than it says about the attorney.
16 And it tells us that he is -- he's still has not gotten the
17 message, that he insists that he is what he pretends to be
18 instead of what he has actually done.

19 And it -- I've looked at this family and he has a
20 wonderful family and children are here as well. And I
21 understand that. No Court enjoys sending a person to prison.
22 I don't care what he's done. And yet that is the obligation
23 when one has committed a serious crime. And I understand it
24 affects the family. But Mr. Van Den Heuvel, he should've
25 understood it affects his family. For a person in his position

1 with people as dependent upon him as his family is, to engage
2 in the type of behavior, the flagrant fraud involved here, that
3 would endanger his ability to continue to provide for them, is
4 frankly an aggravating factor more than a mitigating factor.
5 It does not warrant -- you know, especially when you look at
6 the advantages and the blessings that he's had, it does not
7 warrant leniency and it would fly in the face of justice to
8 allow Mr. Van Den Heuvel to escape responsibility for his
9 conduct given the number of people he's defrauded and the
10 manner in which he's done this over years simply because he has
11 a family that is dependent upon him.

12 Unfortunately, the vast majority of people in this
13 world have people that are dependent upon them and it makes
14 their crimes worse when those who have those types of
15 responsibilities ignore those responsibilities for their
16 personal gain or even if they think they're doing it for the
17 benefit of their family. Mr. Van Den Heuvel certainly knew
18 better. He was raised better than that. And he understands
19 better than that.

20 I have no doubt that there's many positives in his
21 life. That's not what brought him here today though. What
22 brought him here today is the willful criminal misconduct that
23 undermines our banking system, that undermines the trust that's
24 essential for successful business and loans to go through. And
25 for that, he's deserving of the punishment.

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1 Taking these factors into consideration -- and I also
2 consider not only the need for punishment but also the need for
3 deterrence. White-collar crime is difficult to prosecute. And
4 -- but it -- people think that if you use a pen instead of a
5 gun, it's a lot easier to steal. That's a bad message. The
6 fact that he doesn't have a crime -- a criminal history, I've
7 certainly considered that. But the absence of a criminal
8 history is frankly standard in white-collar crimes cases.
9 People aren't in a position to steal the kinds of money Mr. Van
10 Den Heuvel obtained by fraud unless they have -- if they have a
11 criminal record. So, it pretty much goes with the territory,
12 but when one looks at the totality of conduct. This is the
13 type of behavior that should be deterred. A message should be
14 sent that it cannot be tolerated and it will not be tolerated.

15 Finally, I think for protection of the public, the
16 fact that there's even -- not even today an admission that he
17 did anything wrong, and from all appearances he would go do it
18 again, I think suggests that he's a threat to the property of
19 others, certainly not the physical -- he's not a physical
20 threat. There's no violence here. But there has been the type
21 of conduct that threatens other people's property. He has
22 these gifts of persuading people to do things for him that is
23 against their own interests and involves them in criminal
24 conduct. One can see that with Mr. Piikkila, with Ms. Gumban,
25 with Ms. Starry, with Mr. Peters, and even with Mr. Bain. And

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1 yet, there's no stopping this.

2 So, under these circumstances, I'm satisfied that a
3 guideline sentence makes sense. I'm going to impose a sentence
4 of 36 months in the custody of the Bureau of Prisons.

5 I'm also going to impose three years of supervised
6 release; \$100 special assessment is ordered. I'll order
7 restitution in the agreed amount of \$316,445.47. And I
8 certainly -- it would be wonderful if this restitution were
9 paid. If I was the bank, I wouldn't hold my breath and I'm
10 sure they're not. There's a history here and this is certainly
11 not -- as we can see from the financial records -- the only
12 huge debt that Mr. Van Den Heuvel owes.

13 The conditions of supervised release -- and I know
14 there's some objection to those conditions. I'm going to go
15 over them though. I'm overruling the objections. The
16 objection is to -- is to the -- well, I'll get to those as I
17 go over the conditions of supervision.

18 But first of all, the defendant is not to commit
19 another federal, state, or local crime. He's not to possess
20 any firearms. He may not illegally possess or use a controlled
21 substance. I find a low risk of future substance abuse because
22 there's no past in that regard. So, I'll suspend drug testing
23 requirements that would otherwise apply.

24 He's to report to the probation office in the
25 district to which he's released within 72 hours of his release

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1 from the custody of the Bureau of Prisons and he's to report to
2 the probation officer in a manner and frequency as reasonably
3 directed by the Court or his probation officer. He's not to
4 leave the state of Wisconsin without the permission of the
5 Court or his probation officer.

6 He's to answer truthfully all inquiries put to him by
7 the probation officer subject to his Fifth Amendment right
8 against self-incrimination. And he's to follow the reasonable
9 instructions of his probation officer.

10 He's to use his best efforts to support his
11 dependents. He's to use his best efforts to find and hold
12 lawful employment unless he's excused by his agent for
13 schooling, training, or other acceptable reasons.

14 He is to notify his agent at least 10 days prior to
15 any change in his place of residence or his place of
16 employment. If pre-notification is not possible, he's to
17 notify his agent within 72 hours after the change.

18 He's not to associate with any persons known by him
19 to be engaged in or planning to be engaged in criminal
20 activity. Associate as used here means to reside with or
21 regularly socialize with such a person.

22 He's to permit his probation officer to visit him at
23 reasonable times at home and permit confiscation of contraband
24 if it's observed in plain view by his probation officer.

25 He's to notify his agent within 72 hours of being

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1 arrested or questioned about a crime by law enforcement
2 officer.

3 He's to pay restitution at a rate of \$200 per month
4 or 10 percent of his net monthly income whichever is greater.
5 He's also to apply 100 percent of any federal or state income
6 tax refund toward payment of the fine -- of the restitution.
7 He is not to change exemptions claimed for either federal or
8 state income tax purposes prior to notifying his agent or
9 notice to his agent. He is to provide access to financial
10 information requested by his agent, including but not limited
11 to copies of his federal and state income tax returns. He's to
12 file his tax returns in a timely manner. He is to submit
13 monthly financial reports to his agent. And he's -- his --
14 these obligations, financial obligations -- or these -- this
15 condition will no longer be in effect once his financial
16 obligations have been satisfied. He is not to open any new
17 lines of credit which includes the leasing of any vehicle or
18 other property without -- or taking any loan from a bank or
19 using existing credit resources without the prior approval of
20 his agent. Again, after his obligations are met, that -- his
21 financial obligations are met, that condition will be waived.

22 He is not to hold employment with fiduciary
23 responsibilities during the supervision term without first
24 notifying the employer of his conviction. He shall not hold
25 self-employment having fiduciary responsibilities or otherwise

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1 -- or is otherwise involved in initiating or conducting
2 financial transactions without the approval of his probation
3 officer. Those last -- that last condition goes directly to
4 the risk he poses to property of others and it's what brought
5 them here before the Court.

6 I'm satisfied that these conditions are -- fit the
7 circumstances here. Most of them are for -- just to maintain
8 supervision. The reasons set forth for those conditions in the
9 presentence are adopted by the Court. And I want to say one
10 more thing about family. And as difficult as this is for
11 family, again, I've certainly considered family. I also note
12 Mr. Van Den Heuvel has -- is far more fortunate than many
13 people that come before me in that he has a lot of extended
14 family that have shown tremendous kindness and I have no doubt
15 that his family will be taken care of if that -- if things come
16 to that, but I'm -- nevertheless, it's not a reason not to
17 impose the sentence that I think is called for by the nature
18 and circumstances of the crime and the history and character of
19 the defendant.

20 Finally, with respect to voluntary surrender, I'm
21 going to allow voluntary surrender, but I'm not going to delay
22 this sentence. This case is old. The fact that he is charged
23 in another case with money laundering and bank fraud -- or wire
24 fraud, I should say, multiple counts, that's not a "stay out of
25 jail free" card. He can voluntary surrender, but he is to

1 surrender when the Bureau of Prisons gives him a place to
2 report and a reporting date.

3 **MR. LE BELL:** Judge, can I just briefly be heard on
4 that because I'm the one who's handling the other case. It is
5 a complex case, number one. The documents have been loaded on
6 the Relativity platform which would be impossible for Mr. Van
7 Den Heuvel to access from an institution. He needs to be able
8 to review the documents. It would be -- there's no prison that
9 I can imagine that's going to allow him to have 800 or whatever
10 it is -- 50,000 documents --

11 **THE COURT:** I'm not delaying this. Figure it out.
12 Other people have the same problems. Figure it out. I'm not
13 going to delay this. I'm not going to delay the sentence for -
14 - it'll be another year. And all the reason more for delay.
15 No. This case -- these crimes occurred in 2009, and here this
16 case was already -- was started in April 2016. And I'm --
17 we're just going to stay sentencing for a year or two?

18 **MR. LE BELL:** I don't think that was the proposal.
19 The proposal was for six months because as you know, the
20 Relativity access was just granted -- at least for my purposes,
21 last Thursday. So meaningful access to the discovery really
22 can't -- hasn't occurred and for --

23 **THE COURT:** Well, you have access to the discovery.
24 He obviously knows what documents he has. He -- they were his
25 records. And he knows what in fact he did as. This again is a

1 claim of wire fraud. It's a claim of money laundering. You
2 know, I -- you can renew your motion if you want to once he
3 gets a reporting date. You do have some time between now and
4 when he has a reporting date. You can renew it then, but I'm
5 not going to indefinitely stay this -- the sentence in this
6 case.

7 **MR. LE BELL:** One other thing. You made a remark
8 about the motions that were filed on behalf of Mr. Van Den
9 Heuvel and you used the term "frivolous." I assume you're not
10 making a formal adjudication they were frivolous. Is that
11 correct?

12 **THE COURT:** No. I denied them. I've considered
13 them. But I -- frankly, the argument that the plea was not
14 voluntary, I do not -- whether you call it frivolous or just
15 meritless, I rejected that.

16 **MR. LE BELL:** No, there's a difference from my
17 perspective what you call it.

18 **THE COURT:** No, I'm not saying you were filing
19 frivolous motions given your circumstances, Mr. LeBell.

20 **MR. LE BELL:** Thank you.

21 **THE COURT:** I'll order the other counts in the
22 indictment dismissed on the motion of the government. Mr. Van
23 Den Heuvel, you have the right to appeal your conviction or
24 your sentence. Your attorney will talk to you about possible
25 grounds to appeal. If you cannot afford the cost of the

1 appeal, the clerk will assist you so you can file in forma
2 pauperis and not have to pay those costs. If you choose to
3 appeal, you have to file a notice of appeal within 14 days of
4 the entry of the judgment. If you fail to file a timely notice
5 of appeal, you would lose your right to appeal. Do you
6 understand those things?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** It had been my intent to address the
9 motions for -- to vacate -- or to vacate the plea or withdraw
10 the plea and the motion to adjourn in writing. I addressed
11 them at the beginning of the sentence. Are you satisfied,
12 Mr. Krueger and Mr. LeBell, or do you wish me to issue a
13 written opinion on those as well?

14 **MR. LE BELL:** I am satisfied.

15 **MR. KRUEGER:** We are satisfied as well, Your Honor.

16 **THE COURT:** And I carefully looked at both briefs and
17 as the government points out, it's simply not a change of mind
18 at this stage. Certainly, a manifest and just reason has to
19 be something more than just a sudden unsupported claim of
20 innocence under these circumstances. And I find nothing like
21 that here. Again, the motion to adjourn sentencing offered no
22 specifics.

23 **(Audio of proceeding ended at 11:27 a.m.)**

24

25