

POST SCRIPT

Re: SENTENCING

To further prove the following of;

- (1) That the element of intent did not exist as specifically required to establish mail/cire fraud, and
- (2) The confusion in both word usage caused by anxiety (side effect of dyslexia).

The reader, when reviewing the sentencing transcript will see that counsel categorically again stated, "Mr. Sasaton had no intent to hurt anybody."

And the Court, when discussing with me the letters I sent to the Court focussed on the fact that I had used the wrong word, "graphically", when, as the Court pointed out, the word "written" should have been my choice of words. I was, in fact, so confused and in a state of extreme anxiety, that I could not differentiate between the meanings of the words, "graphically", "composed", "written", and "subject matter".

Therefore, dyslexia is, however incredible, a defense if considered in its totality. The investigative and judicial system totally failed, unfortunately, to make available all the facts to the Court.

A Judge or Jury, however honorable, can only make judgements on the information provided. If the information produced by the Judicial process is incorrect caused by the ineffectiveness or inadequacies of it's departments, then, in my humble opinion, as proven in this case at bar, a manifest in justice will, and has, occurred. The unfortunate result is that the due process and constitutional rights of the individual are subsequently violated.

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further corroborate of sentencing date  
- maybe required.

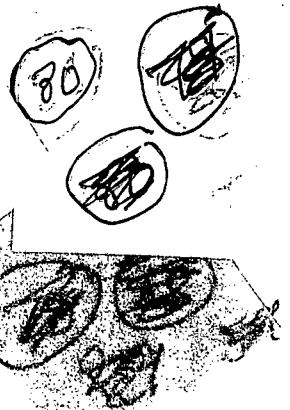
487. Petitioner respectfully submits that he has proved hereinabove that his lawyer's performance was so shoddy that it falls below "prevailing professional norms" and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland v. Washington, \_\_\_\_ U.S. \_\_\_, 104 S.Ct. \_\_\_, 80 L.Ed.2d 674 (1984).

Petitioner prays this Honorable Court to set aside and vacate the Judgment and Conviction.

Respectfully submitted,

  
A.Y.L. IN PRO SE  
Affiant

I.A.L.

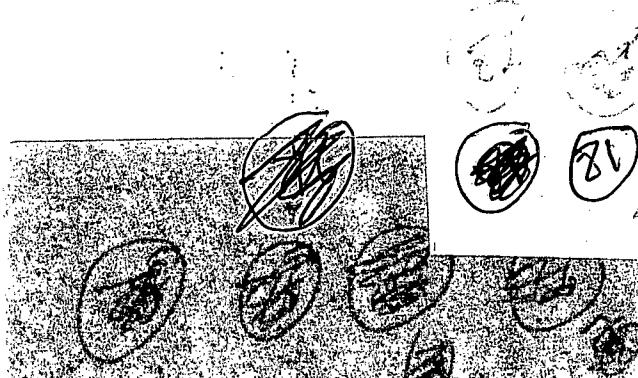


I hereby certify, under penalty of perjury that the foregoing is true  
and correct to the best of my knowledge and belief.

On this 15 day of December, 1985.

IAFL 14 Pro Se  
IAFL Affiant

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Rev Mrs McLough

Dr B. HORNSBY PH.D., M.Sc., M.F.C., M.C.S.T. A.B.Ps.S.  
*Psychologist and Speech Therapist*

Consulting Room  
9a Wilbraham Place  
SW1X 9AE  
Tel. 01-730 7928

*Home*  
39 Ovington Street  
SW3 2JA  
Tel 01-584 4799

## ASSESSMENT REPORT

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35 years

1032551

16 Oaklea Road, Chinnor, Oxfordshire  
Telephone - Chinnor (0844) 52056

**ADRESSES IN  
AMERICA.**

Telephone - Danville (408) 862-1700  
170 Santa Calana Drive, Danville, California 94526.  
U.S.A.

DATE SEEN:

8th November 1983

The above man was first given a test of general intelligence, namely the Wechsler Adult Intelligence Scale on which he obtained the following results:

<u>Verbal Tests</u>	<u>Scaled Score</u>	<u>Performance Tests</u>	<u>Scaled Score</u>
Information	15	Digit Symbol	10
Comprehension	19	Picture Completion	12
Arithmetic	10	Block Design	11
Similarities	19	Picture Arrangement	12
Vocabulary	14	Object Assembly	8
Digit Span	9		

where 10 is average.

Verbal Scale I.Q.	125
Performance Scale I.Q.	109
Full Scale I.Q.	119

— half of Right Normal Int.

This places Mr. Smeaton in the Top Half of Bright Normal Intelligence, border on Superior, but it should be noted that there is a significant difference between the two areas of hemispheric functioning of 16 points. It should also be noted that his Sub Test score is rather spiky in that he obtained the maximum on tests of abstract verbal reasoning and of understanding of social behaviour (see Similarities and Comprehension), did almost equally as well on general information but only obtained an average score on arithmetic and his vocabulary is not as good as one would expect from a man of his intellectual calibre. He has always found maths difficult and maintains he has a 'block on' number. He was able to repeat seven digits in the same order as given, which at the intelligent adult level, but could only repeat three in reverse order. This does suggest a very poor mental imagery for symbols, a common finding in people with specific learning difficulties (dyslexia). Mr. A.Y. did much well on the Performance Tests and, indeed, the relationship between shapes is not immediately apparent to him. It would seem that he is an amule, that is a person who prefers information to be presented auditorily rather than visually. He was also very slow on the Digit Symbol test whereby one has to fill in symbols similar to letters in relation to numbers and is a timed test. This is typically poorly performed by people with specific learning difficulties. It will be seen, therefore, that this is an intelligent man who is very artistic and presents himself well verbally.

2.

On the Wide Range Achievement Test Mr. Alpha had a reading quotient of 95 and a spelling quotient of 79. He printed rather than using a cursive style and spells phonetically because of his good auditory skills. However, he has not been taught the spelling patterns of English and therefore none of the words after the first six were actually correct, but could, nevertheless, be understood. He tends to have trouble ordering the letters in words and even hesitated for some time as to which way round the 'a' and the 'i' should go in the word 'train'. Although his reading is not too bad, it is well below what one would expect from his intellectual level and although he can work words out very slow and, again, tends to put letters in the wrong order, reading 'begin' as 'benigin'. He also makes typically dyslexic errors, such as reading 'ship' as 'fion' and 'aboard' as 'abroad'. However, when I pointed out that a 'g' with an 'i' or 'y' after it tends to make the sound of /j/ he immediately grasped the concept and then went on to use it in other words. He would benefit very much from a structured sequential scientific form of teaching such as 'Alpha to Omega' by Hornsby and Shear, published by Heinemann Educational or the Ellingham Stillman method as used in The States.

Family history. Mr. Smeaton is right handed and right eyed but there is a strong family history of left handedness.

Family History. There is also a positive family history of dyslexia.

Personal history. Naturally, one does not know about the pregnancy and birth apparently at 2½ years old, was thrown out of a car on to his head at considerable speed and afterwards his mother told him that his speech stopped for several months and when he began again he used to stammer. It is impossible, of course, to say whether this had any effect on his learning difficulties as it is either have been innate, a minor brain dysfunction as a result of the fall, or a mixture of both. He was always at the bottom of the class at school and is never tell the difference between 'l' and 'i', 'm' and 'n', 'd' and 'i'. He is a good talker he is a very good salesman and this skill has stood him good stead in his adult life.

Conclusions. There seems very little doubt that this man is dyslexic and that it is interfering with his life, because it must be remembered that current thought tests that dyslexics brain cells are arranged differently and therefore they have or understand things heard and seen in a different way to those not so gifted. This often leads to misconceptions and misunderstandings, which has the case with Mr. Smeaton. As he is not able to read documents sufficiently fully and accurately and avoids accounts and written work as much as possible, he really needs some expert advice and guidance in his business affairs. It is also not too late to improve his literacy skills and I am giving him the address of the Carter Society in America who might be able to suggest someone to help him there, and also of the British Dyslexia Association in this country as he decides to stay in England.

Hornsby

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EDUCATIONAL ASSESSMENT AND GUIDANCE SERVICE

Mr. A. Gray, M.A., Dip.Ed. (Ed. & Psych.)  
Mr. G.W.E. Gray, B.A., A.R.P.S.

A.T.L.

U.K. Address:

461 L.

S.A. Address:

70, Santa Calera Drive,  
Inville,  
rnia. 94526.

Date seen: 5.12.73  
Date of Birth: 3.2.48.  
Age: 35 years.

Reason Given for Referral.

Advice was sought about the occupational and general implications of dyslexia, for which he had received a diagnostic assessment in U.S.A. and more recently in the U.K.

Psycho-educational Assessment. (Please see Appendix for further details)

- Recency of previous psychological testing precludes the necessity or appropriateness of Wechsler Intelligence testing, but a further analysis of this and other test results, by the Bannatyne and other methods suggests features, many of which have occupational and general implications as follows:-
- a. The troughs in the Wechsler profile are similar to those often found with persons with dyslexia, namely as shown hereafter.
- b. Dyslexic difficulties in sequential memory retention and retrieval of carrying figures, number bonds, multiplication tables etc; this has the effect of making him slower and less accurate than average in precise simple mental +, -, x, ÷ calculations. He therefore needs longer time to do such calculations. Whether these be communicated to him orally or in written form; when questions, containing much detail are asked orally he will probably tend, due to short term difficulties, to need such questions to be repeated more than average; in written questions he has shown on test, the need to re-read questions to a much greater extent than average. Some of the occupational implications from the above features might include the following:-

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i. Desirability for him to take longer than average, to check and re-examine any set of calculations undertaken by him, and not to allow himself to be persuaded to make immediate off the cuff calculations; given extra time, and opportunity to estimate a rough answer, and to check this by use of a calculator (or in the reverse order) he could however be able to arrive at a broadly acceptable solution due to his superior intelligence and logical analytical ability.

ii. Desirability for him to have longer than average time to assimilate and check all aspects of any detailed financial statements placed before him.

iii. Whilst his mechanical level of reading of individual words in a graded word list is at a level commensurate with his superior verbal intelligence, his reading comprehension of long paragraphs (containing sequences of sentences) is much slower and less fluent than average. As will be demonstrated later in this report his sequencing ability is relatively weak, and quite out of keeping with his superior verbal intelligence; it seems that his reading comprehension is good, but due to this relative weakness in sequential memory, he needed to read, re-read, and sometimes to re-read again various passages in order to assimilate the overall meaning and the significance of details in the constituent sentences.

iv. He is also relatively slower in visual sequential encoding when writing down or copying symbols.

v. The sequencing difficulties mentioned in (b), (c) and (d) above can also be described in terms of a Bannatyne analysis of the Wechsler test results viz:-

	Mean Sub-test Score (Age Group Average = 10)	Scaled Score Percentile
Conceptualising Ability	17.33	99
Verbal Comprehension (Oral)	10.33	54
Spatial Ability	10	50
Sequencing Ability	10	36

It is clear from the above comparison that whereas his conceptualising ability and his verbal comprehension (given adequate time for assimilation of information) is at a very superior level, his sequencing ability is at a significantly lower level and is likely to be associated with his difficulties mentioned in (a), (b), (c) and (d) respectively numerical fluency and in reading.

f. In spelling he has a very low standard score of 75 - commensurate with expectation for an I.Q. of 75; His percentile level 2 on this test suggests that more than 95% of his age group would show a higher standard of spelling; it is no wonder then that he has a sense of inferiority about his spelling and reading inadequacies in this respect, and prefers to avoid all unnecessary attempts to give written expression or to become too much involved in the responsibility for the preparation, scrutiny of evaluation of documents, preferring to rely upon a colleague or expert adviser in this respect. His technical difficulties in spelling do not appear to be primarily associated with the sequencing difficulties mentioned in paragraphs (a), (b), (c) and (d), for he seems to retain the auditory sequence of the syllables, but has the greatest difficulty in establishing an adequate phoneme-grapheme correspondence (e.g. transforming sound units into their corresponding written counterparts).

Comments on points (a) to (f) above.

It is clear that he is of Superior Verbal Intelligence but has difficulties in harnessing this fully effectively in certain areas of reception and expression of symbols, both alphabetical and numerical, in academic studies and in some industrial commercial applications.

STRESS

111. The above comments are based on quantitative assessment and comparison with statistical norms, which clearly indicate gross discrepancies between expectations for his Superior intelligence and his actual educational attainment levels. There is, however, one important aspect viz. the degree of secondary emotional involvement, apprehension and vulnerability to stress which often persists long into adulthood, as a consequence of unhappy school experiences, due to such factors as the following:-

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- a. Lack of recognition by teachers that he had a specific learning difficulty or dyslexia.
- b. Instead of recognition of his dyslexic problem, he was upbraided for laziness, and made to feel that he was inferior or stupid.
- c. Before his writing difficulties became apparent in Secondary School, he had been regarded as one of the 'i' stream (Bright boys) and most of his friends were similarly 'i' streamers; On reaching Secondary School, he was separated from his friends, and allocated to a very low stream amongst boys of lower ability and even lower aspirations who were referred to by him as "The Bully Boys".
- d. As a result of the ill effects of (a), (b), (c) above, there seems to have occurred - as so often happens in those cases where dyslexic school children fail to have their problems identified by their teachers and suffer disparagement, unfair punishment, hurtful ridicule usually by schoolmates, but in this case also by a teacher - significant lasting harm to his self image and confidence whenever he is confronted by tasks presenting a problem on account of his educational weaknesses. There is - as in his case - often apprehension and stress caused if a dyslexic adult feels that he will have difficulty in concealing "the skeleton in the cupboard" his dyslexic difficulty which he still regards as a "stigma of inferiority" in view of the fact that many adults confuse this with illiteracy and would consider him stupid. Hence, in order to avoid revealing his educational deficiencies, such a person would prefer others, whom he trusts, to check through documents on his behalf; similarly if simple oral agreements have been made, he may feel fairly sure of his ground, and would doubt his competence to query any subsequent documentation or try to analyse its meaning in precise detail as confirming or modifying the original verbal agreement.

It is to be noted that in the report of the National Working Party on "People with Dyslexia" set up at the suggestion of the Dept. of Employment, (see Chapter VI paragraphs 134) - it is stated that Adult dyslexics often "cannot cope with the special demands made on them in later years and may relapse under stress. This relapse may occur if the demands are specifically on their reading and allied skills, but it would appear that stress outside the Scholastic sphere may induce this kind of trouble".

In paragraph 135 of the report (Published by the Royal Association for Disability and Rehabilitation) it is stated "It must be borne in mind in considering all handicapped people that their disability is a point of vulnerability, and that, while direct stress on such a point will certainly be likely to make a special impact, any kind of stress, even if it has no relation to the disability as such, may so to speak cause the individual "to give way at the weak spot"

It is to be noted that in a recent case the expert witness on dyslexia in the Crown Court referred Learned Counsel and the Judge and Court to the above findings of the Report of National Working Party on Dyslexia. I added the following comment:-

Possible Implications for Witness Examination and Interview Situations.

1. In situations of stress of written or oral examinations, earlier stored up "loads" of anxiety and inferiority (previously hidden and/or compensated for by the use of other aptitudes) may be "triggered off" by pressure.
2. According to a well known psychological "Law" (Yerkes-Dodson) there is an optimum level of arousal for any task - if this is not reached, or is exceeded, performance may suffer. "Pressure" which might be acceptable to a non-dyslexic, might in the case of a dyslexic be sufficient to trigger off such a degree of emotional arousal as to cause a person to communicate inaccurately in any of the following ways:-
  - a. He may not say words he means to say.
  - b. He may say words he does not mean to say.
  - c. He may not write exactly what he means to convey.
  - d. He may write down words, which he did not mean to write.
  - e. As he may not read with proper understanding documents placed before him, he may sign documents apparently signifying his agreement to their content (although this might not be the case at all.)
3. Whilst such reactions as in (1) and (2) do not invariably arise in persons with dyslexia - for some persons will feel more secure because their dyslexia was identified and special remedial tuition provided - they seem most likely to arise as secondary emotional consequences of being misunderstood and mistreated at school by teachers, schoolmates (and sometimes by parents), or by the public.

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APPENDIX

4th

Date seen: 5.12.83.

Chinnor,  
Oxon.

1. Intelligence Test Results.

Wechsler Verbal I.Q. of 125 Superior Level.  
Wechsler Performance I.Q. of 109 Average +  
Wechsler Full Scale I.Q. of 119 Bordering on Superior Level.  
(The above results 8.11.83. by Dr. B. Hornsby PhD, M.Sc. M.Ed, M.C.S.T. A.B.Ps.S.)

2. Attainment Tests (5.12.83).

Wide Range Achievement Graded Word Reading Test.  
Standard Score 120. Percentile 91.

Schoenell Silent Reading Test.

Reading Comprehension Age was only at 11½ years due to sequential memory difficulties in reading lengthy passages of words. On a 15 minute test he needed an extra 12 minutes to complete due to his need to read, re-read, and re-read passages (containing sequences of sentences) in order to assimilate accurate the information.

Wide Range Achievement Spelling Test.

He obtained the very low standard score of 75 - commensurate with an I.Q. of 75 and percentile 5 - which is a very low standard most discrepant with expectation for his Superior level Verbal I.Q. of 125 by a difference of about 50 standard score points. The test score suggests that 95% of his age group would obtain a better spelling score.

Wide Range Achievement Arithmetic Test.

He obtained a standard score of 84, percentile 14, suggesting that over 80% of his age group would obtain a higher arithmetic score on this test. As explained more fully in the foregoing report, this relatively low score does not indicate lack of potential for the acquisition of Mathematical knowledge (through application of his Superior Intelligence), but only that he is at present hindered by dyslexic difficulties impeding fluency in sequential memory retention and retrieval of carrying figures, and number bonds, tables, etc., etc. Whilst use of a calculator would undoubtedly be

misrepresented at school by  
the teacher, parents, or the Public.

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... available substances without the risk as plutonium depletion?"  
HOGGARD . . . passes cost-benefit analysis to 1, says CDC, stressing side effects of tobacco . . . producer agrees to stop implying stuff is safer.  
. . . breathing and aerobics combined in sensitization program for asthmatics.  
Licensed . . . by 1981 to manufacture antibody detection kit for donated blood.  
*Haemophilus influenzae* . . . vaccine could prevent 1,000 U.S. cases yearly, says Finnish team.

## 3 at the World's Fair

buggy heads for home base with youth led by New Orleans heat. Duggy can reach a site on the grounds in 90 seconds. Page 12.

Is Come Between MDs—p. 3

Gap in Colorectal Ca—p. 3

5 Options In 'Freakouts'—p. 5

And more . . .

## DYSLEXIA: Stark Struggle By Young Minds and Egos

By CLIFFORD PLATZMAN WEINSTEIN

Most of the specifications that he specifies, surgeon Richard YaDeau has no idea how to spell.

"Luckily, as a surgeon I only have to remember a limited number of drugs. And if there's any confusion about what I've written, the hospital pharmacy knows me and will contact me," said Dr. YaDeau, of Bethesda Lutheran Hospital in St. Paul, Minn.

After 33 years of trying to learn to spell, Dr. YaDeau says he no longer cares. "My competency is in my hands, not in my spelling."

Dr. YaDeau recalls that when he flunked almost every grade in elementary school, his teachers thought he was just "dumb." But he learned to compensate for the distorted way he views words: He memorized his way through high school and then college, gaining a full scholarship at Yale at a time when dyslexia was still an unfamiliar term.

Dyslexia is a catchall term used for any defects in cognitive or perceptual skills that lead to an inability to read, write, and spell adequately despite average or superior intelligence. Three times as many boys as girls are affected. And, in total, as many as 15% of all children in the United States may be dyslexic, according to studies cited by the U.S. Department of Health and Human Services.

### Memoized 10 Latin Books

Dyslexia has been widely researched since the days when Dr. YaDeau memorized 10 Latin books to convince his high school teacher that he could indeed read Latin, though he had constantly flunked Latin vocabulary tests.

In 1978, Drs. Albert Galaburda and Thomas Kemper of Boston's Beth Israel Medical Center discovered abnormalities when they autopsied the brain of a 20-year-old, severely dyslexic male, who also suffered nocturnal seizures. In the brain's

Surgeon YaDeau, a dyslexic, finds his own way of scanning to make words intelligible, also uses memorization.

left hemisphere, they found mild cortical dysplasia and an increased amount of white matter. Bilaterally, thalamus and corpus callosum were also abnormal. Since that time, researchers have found similar abnormalities in four additional brains of dyslexic individuals.

And investigators such as Dr. Norton Geschwind, James Jackson Putnam, and

Continued on page 10

## Early 'No Revival' Order: Views Change

By LAWRENCE M. PARISOTTI

SAN FRANCISCO — Do Not Resuscitate, reads the physician's order on the emergency patient's chart at George Washington University Medical Center (GW) in Washington, D.C. An IV will still drip fluids and nourishment into the patient's veins, but, when heartbeat or respiration stop, the emergency ends

went on the chart.

The striking variations between hospitals (which appear to be explained by physicians' attitudes), could not be explained by differences in patient age, previous

health status, or acute severity of illness. Dr. Jack B. Zimmerman, ICU director at GW, told the Society of Critical Care Medicine meeting here.

Overall, one-third of the 393 DNR orders given during the 1979-81 study period were placed within the first 24 hours of admission to the ICU; 50% were on DNR by the end of the third day and 70% by the end of the seven days.

Three centers were labeled "early" . . . with 43% of patients

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East London **NHS**  
NHS Foundation Trust

26/05/2017

Unity House  
City & Hackney Therapeutic Community  
& Outreach Services  
2 Crozier Terrace  
London E9 6AT  
Telephone: 020 8510 2332  
Fax No: 020 8510 2335  
Email: [UnityHouseTCOS@elft.nhs.uk](mailto:UnityHouseTCOS@elft.nhs.uk)  
Website: <http://www.elft.nhs.uk>

Re: Keith Smeaton - D.O.B. 03/02/1948 - NHS No. 444 535 0249

Dear Rose Arnall

Mr Smeaton was referred to our service for assessment and treatment; I have met with him on 6 occasions.

Mr Smeaton was referred to our service for treatment of symptoms of PTSD as a result of a difficult childhood and his experiences of being convicted of Fraud in the USA. He experiences flashbacks, anxiety attacks and severe depressive symptoms.

These symptoms are exacerbated in stressful situations; I was therefore alarmed to hear that Mr Smeaton is due to be evicted from his accommodation. Mr Smeaton is due to start phased treatment for trauma at the end of July, it is paramount that he is in stable accommodation to effectively make use of the treatment; it is my opinion that being made homeless will have a detrimental effect on Mr Smeaton's mental health.

If you need any more information please do not hesitate to contact me.

Yours sincerely,



Taiseer Shahi  
Clinical Practitioner in Psychotherapy

NOTE: THERE ARE ADDITIONAL DIAGNOSIS DATING FROM 1997.

Re:

Chair: Marie Gabriel

Chief Executive: Dr Navina Evans

  
Page 1 of 1  
03

If you would like to become a member of East London NHS Foundation Trust, you can call our freephone number: 0800 032 7297, visit the Trust website at [www.eastlondon.nhs.uk](http://www.eastlondon.nhs.uk) or email: [foundation@eastlondon.nhs.uk](mailto:foundation@eastlondon.nhs.uk)

14 ~~SUN~~ Wednesday, February 10, 2016

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# DISABILITY CASE RULING DISCRIMINATED

By NICK PISA

STARBUCKS is facing a hefty bill for discrimination after a dyslexic employee was accused of fraud for making mistakes in paperwork.

Meseret Kumulchew, 43, was suicidal after bosses downgraded her job. The supervisor had failed to properly record equipment temperature readings. But coffee chain

## Dyslexic supervisor wins Starbucks compo cash

managers knew of her condition — which sees her struggle to read, write and tell time. She took Starbucks to an employment tribunal and successfully argued she was picked on due to her disability. Meseret, of South-West London, said: "I'm not a fraud. I just made a mistake. I wanted to commit suicide. I nearly ended my life. I had to think of my kids

that made me bounce back." Meseret — whose compensation will be set later — said Starbucks should have had someone at her Clapham branch to help her and check for errors.

Under the 2010 Equality Act,

firms must make "reasonable

adjustments" for dyslexic staff.

That includes giving verbal

as well as written instructions,

allowing time to work out tasks

and training others to be

aware. Meseret said: "I love my job." Referring to her customers, she told the BBC: "Giving them a coffee may not be a big deal, but I'm making their life, for the day at least, happy."

About one in ten people have the condition, according to the British Dyslexia Association.

It said: "Sadly our helpline receives calls from adults facing serious discrimination."

Many have found themselves feeling as if they have nowhere else to turn.

"People with dyslexia can bring unique skills and should be valued as part of a team."

Starbucks said it "works hard" to support all staff.

But it admitted: "We recognise we need to do more."

[nickpisa@thesun.co.uk](mailto:nickpisa@thesun.co.uk)



## CHAPTER 7—THE STANDARD OF CARE

7-19

guard against the man's infirmity". Similar considerations ought to apply if the claimant is the worse for drink.<sup>39</sup>

7-20 Where the personal characteristics of an employee, such as a limited understanding of the English language, exposes him to an enhanced risk in the workplace, or exposes others to an enhanced risk from him, the employer must take such steps as are necessary to reduce or remove that risk.<sup>40</sup> The extent of any inquiry required to identify the enhanced risk before it arises will depend upon the facts, notably the likelihood of the risk arising and the gravity of the consequences, if it does.<sup>41</sup> Once an enhanced risk is perceived, the question will arise how properly it should be addressed.<sup>42</sup> Similarly where an individual has a known inexperience for a task or other activity in relation to to which a duty of care exists.<sup>43</sup>

### (C) Gravity of the consequences

7-21 Overlap. Again there is some overlap with the preceding section. Here, the consideration is the seriousness of the potential outcome for an individual if due care is not taken. Just as in the discussion above the characteristics of the individual can be relevant. There is also the inherent risks of the activity in question. So the cases will be divided into two: those where the claim is by or against a person with a disability of some kind; and those involving the performance of some extra-hazardous act.

7-22 Disability of body or mind. If a defendant knows, or ought to know, that his actions or omissions may cause injury to persons with a disability, either individually or generally, the standard of care to be achieved reflects that knowledge. The care to be taken will be proportionate to the circumstances known.<sup>44</sup> It is not a question of taking more than reasonable care, but that, in the circumstances known, reasonable care requires precautions designed to protect the claimant from consequences aggravated by his disability. So, since a one-eyed man, working with hammer and chisel on metal, stands to suffer grave

165-0 (SLOTIA)

<sup>39</sup> See the cases cited at Ch.4, paras 4-48 to 4-50, above, also *Griffiths v Brown* [1999] P.I.Q.R. P12 below, Ch.10, para.10-153.

<sup>40</sup> *Hawkins v Ian Ross (Castings) Ltd* [1970] 1 All E.R. 180 (an Indian labourer with an impaired knowledge of English was employed to carry a ladle of molten metal with another labourer).

<sup>41</sup> *James v Hepworth & Grandage Ltd* [1968] 1 Q.B. 94 (a Jamaican immigrant who could neither read nor write was unable to read safety notices posted in the factory); also *Darvill v C. & J. Hart* (1972) 13 K.L.R. 275 (contact with oil likely to cause dermatitis only to those with an individual susceptibility to it, where ample precautions were taken by the provision of gloves, barrier creams, washing facilities, etc.).

<sup>42</sup> See para.7-24 onwards.

<sup>43</sup> *Anderson v Lyon* [2008] EWHC 2790 (Q.B.), where a skiing instructor was negligent in failing properly to assess the skiing ability of the claimant and thereafter supervise him sufficiently when taking him and others to ski off-piste; particular hazard was involved given the terrain, quality of the snow and the presence of mature trees.

<sup>44</sup> See, e.g. *Lord Wright in Northwestern Utilities Ltd v London Guarantee & Accident Co Ltd* [1947] A.C. 108 at 126. See also *Lord Macmillan*, both in *Glasgow Corp v Muir* [1943] A.C. 448 at 450 and *Read v J. Lyons & Co Ltd* [1947] A.C. 156 at 173.



Private & Confidential

Please reply to:

City & Hackney  
Specialist Psychotherapy Service  
Vivienne Cohen House  
2 Crozier Terrace  
London E9 6AT  
(accessed from Homerton High Street)

Tel: 020 8510 2900  
Fax: 020 8510 2901

To Whom It May Concern,

Website: <http://www.eastlondon.nhs.uk>

Date: 6 Dec 2018

Re: Mr Keith SMEATON

I am writing to support Mr Smeaton in his request to defer the court hearing, which he is due to attend on 12th December 2018.

Mr Smeaton was referred to City and Hackney Specialist Psychotherapy Service in July 2016 and his referral was accepted on 2nd Aug 2016. He has commenced individual cognitive analytic therapy on 10th October 2016 after waiting for over 2 years. He is expected to remain in therapy approximately for next 9 months.

Mr Smeaton has experienced a severe adverse childhood and adulthood experiences, which have directly contributed to the development of complex post traumatic stress disorder (F 43.1 in ICD 10) with longstanding depression and anxiety.

In effect, he has been suffering from many PTSD symptoms related to his mood, emotions and cognitive processes, including attention, which have a negative impact on his ability to function and manage every day life demands. This applies in particular to his ability to process complex oral or written information, which is further compounded by his severe dyslexia.

Furthermore, some of Mr Smeaton's traumatic experiences are very much related to his experience of legal system, predominantly in the context of his above mentioned problems, which meant that he often felt unable to digest information and to communicate his thoughts to others in the limited time and pressured environment. Therefore, Mr Smeaton will require to access appropriate legal support to help him prepare for any future court hearings well in advance.

I feel that given Mr Smeaton's traumatic history, complexity of his difficulties and long wait for his treatment, it is reasonable to ask for the hearing to be deferred until the end of his therapy.

It is my professional opinion that engaging in the legal proceedings at this point in time would be detrimental to his mental state and damaging to the therapeutic process and Mr Smeaton's chances of recovery.

Please don't hesitate to contact me if you wish to discuss this any further.

Yours sincerely,  
  
Borota Cronin  
Cognitive Analytic Therapist

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## United Nations Article 9 – Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

- a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- c) To provide training for stakeholders on accessibility issues facing persons with disabilities;
- d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

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A-1  
Post Office Box 1000  
Springfield, Mo. 65808

Petitioner Pro Se

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Attn: Petitioner,

vs.

UNITED STATES DISTRICT COURT,  
Northern District of California,  
Hon. Wm. W. Schwarzer Presiding,  
Respondent.

Case No. \_\_\_\_\_

In re: A-1 v. United States  
C-35-1551-WMS

Mr. Phillip B. Winters, Clerk

PETITION FOR WAIVE OF MANDAMUS

COMES now, Attn., hereinafter, Petitioner, to move this Honorable Court for the issuance of a Writ of Mandamus, enjoining the herein named Respondent, District Court Judge Wm. W. Schwarzer, to issue an order "Specifically" stating all reasons and/or grounds for denying this Petitioner's 28 U.S.C., Sec. 2255 Motion and other motions not previously ruled upon.

In support of this Petition and grounds therefore, the Petitioner submits the following:

1. Jurisdiction for the extraordinary writ of mandamus is vested in this

Court by virtue of 28 U.S.C., Sec. 1361, 1651, 1651(a) and 2342(1), AND RULE 21  
OF APPELLATE PROCEDURE.

2. On February 12, 1985 this Petitioner filed a Motion to Vacate Sentence  
and Conviction pursuant to 28 U.S.C., Sec. 2255 in the court of the herein  
named Respondent. Said Motion was docketed and assigned Case No. C-85-1551-WMS.  
(See Attached Motion marked Exhibit "A").

3. On April 7, 1985 the Petitioner wrote a letter of inquiry to Respon-  
dent Judge Wm. W. Schwarzer to learn the status of his pending Motion. (See  
Attached Letter marked Exhibit "B").

4. On April 11, 1985 Respondent Schwarzer responded with a "Blanket Order  
Letter Denial" of all motions submitted by this Petitioner. Said letter stated  
in part:

"Responding to your letter of April 7, 1985, please  
consider all motions filed by you in this court, to the  
extent not previously ruled on, to have been denied."

(See Attached Letter marked Exhibit "C").

5. On April 16, 1985 the Petitioner submitted a Motion for Clarification  
of Denial of Motion. (See Attached Motion marked Exhibit "D"). As of this  
writing, neither the Court Clerk or the Respondent have acknowledged receipt of  
this Motion, nor ruled upon it.

6. When the Petitioner filed his 28 U.S.C., Sec. 2255 Motion, he believed  
then and still does that his Motion was filed in good faith for a good and just  
cause of action and warrants the relief sought. He knows the issues raised were  
neither frivolous or ~~malicious~~ and sincerely believes this Court would grant  
relief if this Petitioner were allowed to appeal, but with no order to appeal

from this Court would be powerless to act, therefore the Writ of Mandamus should be issued.

While this Petitioner may be a layman in law and legal procedures, he understands that speaking within the context of mandamus, the Supreme Court, in United States v. Republic of Peru, 318 U.S. 578, 63 S.Ct. 793, 37 L.Ed. 1014 (1943),

stated that this writ of mandamus is to exert the powers of appellate courts upon trial courts by means of compelling the lower court to exercise its jurisdiction. It is duty bound to do so. In this instant case, Respondent is duty bound to provide this Petitioner with some form of logical and/or grounds for denying his motion so that he may appeal said

which is his constitutionally protected right under the Fifth Amendment and the Supreme Court's right to review all of the records. See Will v. United States, 339 U.S. 270, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967). See also United States v. Borelli, 729 F.2d 1216 (9th Cir. 1984).

#### CONCLUSION

It is recommended with the Petitioner that the Court to issue the writ of mandamus compelling the Respondent to immediately provide the Petitioner with logical and/or grounds for denying this Petition so that he may file the Petitioner to file a timely or out of time appeal to this Honorable Court for equitable relief.

Respectfully submitted on this \_\_\_\_\_ day of \_\_\_\_\_ 1985.

-1A-1  
-1A-1 Petitioner Pro Se

*Plea Proceeding*

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1 THE CLERK: CRIMINAL 83-213, UNITED STATES OF  
2 AMERICA VERSUS KEITH SMEATON.

3 WILL COUNSEL COME FORWARD AND STATE THEIR  
4 APPEARANCES.

5 MR. LUCKEL: EB LUCKEL FOR THE UNITED STATES.

6 MR. HANSON: JEFF HANSON ON BEHALF OF MR. SMEATON,  
7 WHO IS PRESENT THIS AFTERNOON.

8 YOUR HONOR, I BELIEVE, AFTER EXTENSIVE DISCUSSIONS  
9 WITH BOTH THE U.S. ATTORNEY AND MR. SMEATON, WE ARE PREPARED,  
10 I BELIEVE, TO DISPOSE OF THIS CASE BY ENTRY OF A PLEA THIS  
11 AFTERNOON TO A SINGLE COUNT.

12 I WOULD ASK THE COURT TO POSSIBLY HEAR ME OUT ON THE  
13 BASIS OF THIS PLEA BECAUSE I THINK IT IS VERY IMPORTANT TO  
14 MAKE A RECORD ON EXACTLY WHAT WE ARE DOING HERE.

15 COUNT 5 OF THE INDICTMENT ALLEGES, IN PART, THAT  
16 CERTAIN MISREPRESENTATIONS WERE MADE AS PART OF A GENERAL  
17 SCHEME TO DEFRAUD, WERE MADE TO AN INDIVIDUAL, MR. SCHAFER,  
18 AND THAT AS A RESULT OF THESE MISREPRESENTATIONS, MONEY WAS  
19 TRANSFERRED BY WIRE TO SAN FRANCISCO FROM MARYLAND.

20 OBVIOUSLY, THE COURT IS AWARE OF THE BROAD NATURE OF  
21 THE WIRE FRAUD STATUTE. AND IN THAT RESPECT I HAVE INFORMED  
22 MR. SMEATON THAT A MATERIAL MISREPRESENTATION OF FACT TO AN  
23 INDIVIDUAL WHICH INDUCES HIM TO CAUSE MONEY TO BE TRANSFERRED  
24 TO MR. SMEATON REPRESENTS A TECHNICAL VIOLATION OF THE  
25 STATUTE. ?

1 I BELIEVE EVEN THOUGH MR. SMEATON HAD NO INTENT IN THE LONG  
2 RUN TO EVER TAKE THIS MAN'S MONEY AND NOT PROVIDE HIM WITH  
3 THE DIAMOND, WHICH WAS THE REASON WHY HE ELICITED THIS PAY-  
4 MENT, IN THIS PARTICULAR CASE MR. SMEATON HAS ASSURED ME THAT  
5 HE MADE ALL GOOD-FAITH EFFORTS EVENTUALLY TO PROVIDE  
6 MR. SHAFFER WITH THE DIAMOND. HOWEVER, MR. SHAFFER, IN THIS  
7 CASE, INVESTED AND SENT MR. SMEATON MONEY WITH THE UNDER-  
8 STANDING THAT THE MONEY WOULD BE PLACED IN A TRUST ACCOUNT  
9 AND THAT THAT TRUST ACCOUNT MONEY WOULD BE USED TO GO DI-  
10 RECTLY TO A DIAMOND DISTRIBUTOR FOR PURCHASE OF A DIAMOND.

11 AT THE TIME MR. SHAFFER SENT HIS MONEY TO THE  
12 ACCOUNT AT LLOYD'S BANK HERE IN SAN FRANCISCO, MR. SMEATON  
13 DID NOT INTEND THAT THAT MONEY WOULD BE HELD FOR PURPOSES  
14 SOLELY OF PURCHASING THAT DIAMOND. RATHER, IT WAS TO BE USED  
15 TO PAY OFF OTHER BUSINESS DEBTS, AND MR. SMEATON KNEW THAT AT  
16 THE TIME HE ACCEPTED THE MONEY, EVEN THOUGH AT A LATER DATE  
17 HE DID ATTEMPT TO GAIN FURTHER FINANCES TO, IN FACT, PROVIDE  
18 MR. SHAFFER WITH A DIAMOND, BECAUSE AT THE TIME MR. SMEATON  
19 CAUSED THE MONEY TO BE TRANSFERRED, HE DID NOT INTEND TO USE  
20 THE MONEY PER THE AGREEMENT HE HAD REACHED WITH MR. SHAFFER.

21 I BELIEVE THERE IS A FACTUAL BASIS FOR A PLEA TO AN  
22 ALLEGATION OF WIRE FRAUD. THAT IS BASED SOLELY ON THE FACT  
23 THAT THE CASES SEEM TO INDICATE THAT A GOOD-FAITH BELIEF IN  
24 THE EVENTUAL SUCCESS OF A COMPANY OR YOUR EFFORTS TO EVEN-  
25 TUALLY MADE WHOLE A GIVEN CLIENT DO NOT REPRESENT A LEGAL

1 DEFENSE TO A CHARGE OF MISREPRESENTATION OF A MATERIAL FACT  
2 CAUSING SOMEBODY TO INVEST. AND BASED ON THAT READING OF THE  
3 LAW SOLELY, MR. SMEATON IS PREPARED TO ENTER A PLEA TO  
4 COUNT 5. AND I HAVE FULLY INFORMED HIM OF THE CONSEQUENCES  
5 OF THIS, AS WELL AS THE POTENTIAL PENALTIES THAT ARE  
6 INVOLVED--FIVE YEARS AND A \$1,000 FINE. AND I BELIEVE HE  
7 FULLY UNDERSTANDS THAT AND IS PREPARED TO ENTER A PLEA TO  
8 THAT PARTICULAR COUNT.

9 THEREUPON:

10 KEITH SMEATON

11 WAS EXAMINED BY THE COURT AS FOLLOWS:

12 Q WELL, MR. SMEATON, DO YOU AGREE WITH YOUR COUNSEL'S  
13 STATEMENT?

14 A YES, YOUR HONOR, BASICALLY, THAT IS CORRECT.

15 Q YOU UNDERSTAND I HAVE TO ASK YOU CERTAIN QUESTIONS TO  
16 ESTABLISH THAT YOUR PLEA IS MADE VOLUNTARILY AND KNOWINGLY?

17 A YES, SIR.

18 Q YOU HAVE DISCUSSED THIS WITH MR. HANSON?

19 A YES.

20 Q WOULD YOU STATE HOW OLD YOU ARE, PLEASE.

21 A THIRTY-FIVE YEARS OLD.

22 Q WHAT'S BEEN YOUR EDUCATION?

23 A STANDARD BRITISH EDUCATION--VERY LIMITED. WELL, NOT  
24 EXTENSIVE.

25 Q UNIVERSITY EDUCATION?

1 A NO.

2 Q YOU WENT THROUGH THE SCHOOLS THEN, SHORT OF UNIVERSITY;  
3 IS THAT RIGHT?

4 A I BEG YOUR PARDON?

5 Q HOW MANY YEARS OF SCHOOLING DID YOU HAVE?

6 A I LEFT AT 15.

7 Q SINCE THAT TIME, WHAT SORT OF EMPLOYMENT HAVE YOU HELD?

8 A I HAVE BEEN MOST OF MY TIME INVOLVED WITH THE NAVY AND  
9 YOUTH ACTIVITIES RELATED TO THAT PROFESSION.

10 Q HAVE YOU BEEN IN BUSINESS?

11 A NOT UNTIL--ONLY SINCE I HAVE BEEN IN THE STATES. I FIRST  
12 CAME HERE AND ESTABLISHED A POSITION IN MY FATHER'S BUSINESS  
13 OF WHICH I WAS PURELY A SALESMAN. I HAD NO EDUCATION IN  
14 BUSINESS MANAGEMENT.

15 Q MR. HANSON IS YOUR ATTORNEY; IS THAT RIGHT?

16 A YES.

17 Q HAVE YOU FULLY DISCLOSED TO HIM ALL THE FACTS RELATING TO  
18 THE OFFENSES WITH WHICH YOU ARE CHARGED IN THIS COUNT?

19 A YES, SIR, TO THE BEST OF MY KNOWLEDGE.

20 Q AND HAVE YOU DISCUSSED THOSE FACTS WITH HIM FULLY?

21 A YES, I HAVE.

22 Q AND I TAKE IT HE HAD EXPLAINED TO YOU THE ELEMENTS OF THE  
23 OFFENSE, THAT IS, WHAT THE GOVERNMENT MUST PROVE TO GET A  
24 CONVICTION?

25 A YES, THAT TECHNICALLY---

1 Q DON'T TELL ME. I WANT TO KNOW THAT YOU ARE SATISFIED HE  
2 HAS EXPLAINED IT TO YOU.

3 A YES.

4 Q YOU HAVE DISCUSSED WITH HIM WHETHER YOU HAVE ANY POSS-  
5 IBLE DEFENSES TO THE CHARGE?

6 A YES, YOUR HONOR.

7 Q ARE YOU SATISFIED THAT YOU DISCUSSED THE CASE FULLY WITH  
8 MR. HANSON?

9 A YES, SIR.

10 Q ARE YOU SATISFIED THAT HE HAS FULLY CONSIDERED YOUR  
11 CASE?

12 A YES SIR.

13 Q ARE YOU SATISFIED THAT HE IS COMPETENT AND HAS FAIRLY  
14 AND COMPETENTLY ADVISED YOU?

15 A YES.

16 Q YOU UNDERSTAND THAT IN COUNT 5 OF THIS INDICTMENT YOU  
17 ARE CHARGED WITH WIRE FRAUD?

18 A YES, SIR.

19 Q MR. HANSON HAS DESCRIBED THE ACTIVITIES THAT ARE THE  
20 BASIS FOR THIS CHARGE.

21 DO YOU ADOPT THAT STATEMENT? YOU HEARD HIM MAKE THAT  
22 STATEMENT?

23 A YES.

24 Q IS THIS A FULL AND TRUE AND CORRECT DESCRIPTION OF WHAT  
25 OCCURRED?

1 A YES, YOUR HONOR.

2 Q DO YOU WANT TO ADD ANYTHING OR MODIFY OR SAY ANYTHING  
3 ELSE ABOUT IT?

4 A THAT THE REPRESENTATIONS TO THE CLIENT WERE MADE BY A  
5 SALES AGENT OF MY COMPANY FOR WHICH I AM RESPONSIBLE.

6 Q WHAT REPRESENTATIONS DID YOU MAKE YOURSELF? DID YOU  
7 HAVE DEALINGS WITH THIS CLIENT IN MARYLAND?

8 A I HAD SPOKEN TO THE CLIENT ON A COUPLE OF OCCASIONS.

9 Q WHAT DID YOU SPEAK TO HIM ABOUT?

10 A I REMEMBER CLEARLY AFTER THE EVENT THAT I TOLD HIM I WAS  
11 GOING TO DO MY BEST TO GET THE GEM TO HIM.

12 Q YOUR TALKING WITH HIM WAS CONNECTED TO PERSUADING OR  
13 INDUCING HIM TO TRANSFER THIS MONEY TO PURCHASE THE GEM, IS  
14 THAT RIGHT?

15 MR. LUCKEL: YOUR HONOR, PERHAPS I CAN GIVE A LITTLE  
16 BACKGROUND TO HELP YOUR HONOR'S INQUIRY. MOST OF THE SALES  
17 WERE CARRIED OUT BY THE USE OF A SALESMAN, WHO WAS TRAINED BY  
18 MR. SMEATON.

19 IN ADDITION, EACH OF THE INVESTORS, OR PROSPECTIVE  
20 INVESTORS, PREPARED A DOCUMENT THAT I WILL HAND THE COURT  
21 THAT WAS PREPARED UNDER MR. SMEATON'S DIRECTION AND INCLUDES,  
22 PARTICULARLY IN PARAGPAPH 3 OF THE CONDITIONS OF INVESTMENT  
23 ON THE PACK, THAT THE FUNDS WOULD BE DEPOSITED INTO THE  
24 W.I.M.G., THAT IS, THE WELLINGTON TRUST ACCOUNT. THEN IT  
25 GIVES OTHER DESCRIPTIONS AS TO WHAT WILL HAPPEN IN THE EVENT

1 MONEY IS PAID. AND THOSE REPRESENTATIONS WHICH I THINK  
2 MR. SMEATON IS ADMITTING WERE FALSE; AND I THINK IT'S REPRE-  
3 SENTATIONS AS WELL THAT ARE ESSENTIALLY THOSE STATED ORALLY  
4 BY A SALESMAN, PLUS A FEW AMPLIFYING STATEMENTS BY A SALESMAN,  
5 THAT MR. SMEATON ADMITS RESPONSIBILITY FOR BY VIRTUE OF  
6 THE FACT THAT HE TRAINED AND AUTHORIZED THE SALESMEN TO MAKE  
7 THE STATEMENTS THAT THEY DID.

8 Q (BY THE COURT) IS THAT RIGHT, MR. SMEATON?--THAT YOU  
9 INSTRUCTED THE SALESMEN TO MAKE STATEMENTS TO THE EFFECT THAT  
10 THE MONEY THAT WOULD BE RECEIVED FROM THESE INVESTORS WOULD  
11 BE PUT, IN EFFECT, INTO A TRUST ACCOUNT?

12 A YES, SIR, YOUR HONOR.

13 Q YOU KNEW THEY WERE DOING IT?

14 A YES, YOUR HONOR.

15 Q THEY WERE DOING IT UNDER YOUR SUPERVISION AND CONTROL?

16 A YES, SIR, YOUR HONOR.

17 Q NO DOUBT ABOUT THAT?

18 A NO.

19 Q YOU ALSO KNEW WHEN THE MONEY CAME THAT IT WAS BEING USED  
20 FOR OTHER PURPOSES THAN TO PUT IN THE TRUST ACCOUNT?

21 A ON THIS PARTICULAR OCCASION, YES, YOUR HONOR.

22 MR. LUCKEL: I WOULD SAY FURTHER I THINK THE EVIDENCE  
23 WOULD SHOW MR. SMEATON IS 100 PERCENT OWNER OF HIS  
24 COMPANY, AND WITH RESPECT TO THE BANK ACCOUNT THAT THESE  
25 FUNDS WERE DEPOSITED TO, HE WAS THE PERSON WITH ACCESS TO

1 THOSE FUNDS, NOT THE SALESMEN. SO HE DEALT WITH THE MONEY.

2 Q (BY THE COURT) IS THAT CORRECT?

3 A YES, SIR.

4 Q IS THAT THE WELLINGTON INVESTMENT MARKING GROUP?

5 A YES.

6 Q YOU WERE THE 100 PERCENT OWNER OF THAT AT THE TIME?

7 A YES.

8 Q YOU USED THE MONEY THAT WAS RECEIVED FROM THESE CUSTO-  
9 MERS OR INVESTORS TO PAY BILLS, OR WHATEVER?

10 A GENERAL BUSINESS EXPENSES, YES, SIR.

11 Q WELL, AT THE TIME YOU WERE DOING THIS, DID YOU RECOGNIZE  
12 THAT THE MONEY WAS BEING USED FOR PURPOSES OTHER THAN THOSE  
13 THAT WERE BEING REPRESENTED TO THE INVESTORS?

14 A I MUST ADMIT, YOUR HONOR, AT THAT PARTICULAR TIME ON  
15 THIS PARTICULAR OCCASION, YES.

16 Q YOU WERE AWARE THAT YOU WERE CONDUCTING UNAUTHORIZED  
17 TRANSACTIONS?

18 A YES, YOUR HONOR.

19 Q YOU THOUGHT ALL WAS GOING TO COME OUT WELL? YOU THOUGHT  
20 YOU WOULD BE ABLE TO PAY OFF THESE EXPENSES AND ULTIMATELY  
21 RETURN THE MONEY TO THE INVESTORS?

22 A YES, YOUR HONOR.

23 Q YOU DIDN'T TELL THE INVESTORS WHAT WAS GOING ON?

24 A BASICALLY, NO, YOUR HONOR. I HAD HOPED THAT PRIOR  
25 ARRANGEMENTS WITH THE BANK INVOLVED WOULD COME THROUGH-

1 Q WHAT WAS THE USE OF THE WIRE FOR INTERSTATE TELEPHONE OR  
2 WIRE RADIO THAT WAS BEING MADE IN CONNECTION WITH THAT? DID  
3 YOU TALK TO SOMEBODY IN MARYLAND IN CONNECTION WITH THIS  
4 TRANSACTION?

5 A NO. IT WAS MY EMPLOYEE, THE SALESMAN.

6 Q DID HE DO IT UNDER YOUR DIRECTION OR UNDER YOUR  
7 INSTRUCTIONS?

8 A STANDARD INSTRUCTIONS OF HOW THE COMPANY SHOULD OPERATE.

9 Q SO THE STANDARD OPERATION ON WHICH YOU INSTRUCTED HIM  
10 WHICH YOU DIRECTED WAS TO MAKE THESE STATEMENTS TO THE INVE-  
11 TORS USING THE TELEPHONE OR TELEGRAM?

12 MR. LUCKEL: NO, YOUR HONOR. IT'S THE MONEY THAT IS  
13 TRANSMITTED BY BANK WIRE TRANSFER FROM THE INVESTOR TO THE  
14 BANK ACCOUNT.

15 MR. HANSON: THERE WAS A TRANSFER FROM THE---

16 Q (BY THE COURT) WAS THE REQUEST FOR THE WIRE TRANSFER  
17 MADE BY THE SALESMAN TO THE MAN IN MARYLAND?

18 A YES.

19 Q THAT WAS A STANDARD INSTRUCTION?

20 A YES.

21 Q I TAKE IT THE REASON WAS TO MAKE SURE YOU GOT THE MONEY  
22 QUICKLY SO YOU WOULDN'T HAVE TO WAIT BEFORE YOU WOULD GET THE  
23 USE OF THE BALANCE AT THE BANK?

24 A YES, YOUR HONOR, AND TO ASSURE THE PERSON HOLDING THE  
25 GEM, OUR CUTTERS, OUR SUPPLIER, THAT THE FUNDS WERE IN TRAN-

1 SIT.

2 Q WELL, YOU ARE AWARE OF THE MAXIMUM PENALTIES FOR THIS  
3 OFFENSE--\$1,000 FINE AND FIVE YEARS' IMPRISONMENT?

4 MR. HANSON HAS TOLD YOU ABOUT THAT?

5 A YES, SIR.

6 Q YOU UNDERSTAND YOU HAVE CERTAIN CONSTITUTIONAL RIGHTS  
7 YOU ARE GIVING UP BY ENTERING A PLEA?

8 A YES.

9 Q I WANT TO REVIEW THOSE WITH YOU. YOU HAVE THE RIGHT TO  
10 STAND ON YOUR NOT GUILTY PLEA, TO GO TO TRIAL BEFORE A JURY,  
11 AT THE TRIAL TO HAVE THE ASSISTANCE OF COUNSEL TO CONFRONT  
12 AND CROSS-EXAMINE THE WITNESSES AGAINST YOU, TO HAVE THE  
13 COURT COMPEL THE ATTENDANCE OF WITNESSES OR PRODUCTION OF  
14 EVIDENCE IN YOUR BEHALF.

15 AT THE TRIAL THE GOVERNMENT WOULD HAVE THE BURDEN OF  
16 PROVING YOU GUILTY BEYOND A REASONABLE DOUBT. YOU WOULD NOT  
17 HAVE TO TESTIFY OR PUT ON ANY CASE AT ALL. THE JURY COULD  
18 NOT CONVICT UNLESS ALL 12 JURORS AGREED UNANIMOUSLY THAT YOU  
19 HAD BEEN PROVED GUILTY BEYOND A REASONABLE DOUBT.

20 IN THE EVENT OF A GUILTY VERDICT, YOU WOULD HAVE THE  
21 RIGHT TO AN APPEAL.

22 YOU UNDERSTAND THAT YOU GIVING UP ALL THESE RIGHTS BY  
23 PLEADING GUILTY?

24 A I DO.

25 Q DO YOU FEEL YOUR CONSTITUTIONAL RIGHTS HAVE BEEN VIO-

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1 LATED IN ANY RESPECT IN CONNECTION WITH ANY ARREST OR SEIZURE  
2 OF PROPERTY?

3 A NO, YOUR HONOR.

4 Q HAVE YOU MADE ANY STATEMENTS TO ANY LAW ENFORCEMENT  
5 OFFICERS CONCERNING THIS MATTER?

6 A NO, YOUR HONOR.

7 Q I TAKE IT THERE HAVE BEEN DISCUSSIONS BETWEEN YOU AND  
8 YOUR ATTORNEY, ON THE ONE HAND, AND THE GOVERNMENT, ON THE  
9 OTHER, CONCERNING THE DISPOSITION OF THIS MATTER AND THAT  
10 INCLUDES AN AGREEMENT THAT YOU COULD PLEAD GUILTY TO COUNT 5.

11 THE COURT: I TAKE IT THE GOVERNMENT HAS AGREED TO  
12 DISMISS ALL THE REMAINING COUNTS: IS THAT RIGHT?

13 MR. LUCKEL: THAT'S CORRECT.

14 Q (BY THE COURT) ARE THERE ANY OTHER AGREEMENTS OR UNDER-  
15 STANDINGS, AS FAR AS YOU KNOW, MR. SMEATON?

16 A JUST THAT MR. HANSON IS GOING TO PROVIDE YOU WITH A  
17 PRESENTENCE MEMO.

18 MR. HANSON: THAT IS NOT AN ASPECT.

19 Q (BY THE COURT) HAS THE GOVERNMENT MADE ANY PROMISES TO  
20 YOU OR GIVEN YOU ANY ASSURANCE DIRECTLY OR INDIRECTLY WHAT  
21 WOULD BE DONE IF YOU PLEADED GUILTY?

22 A NO, YOUR HONOR.

23 Q HAS ANYBODY MADE ANY PROMISES TO YOU OR GIVEN YOU ANY  
24 ASSURANCES TO GET YOU TO PLEAD GUILTY?

25 A NO, YOUR HONOR.

1 Q HAS ANYBODY GIVEN YOU ANY INDICATION AS TO WHAT THE  
2 SENTENCE IS LIKELY TO BE THAT YOU WOULD GET?

3 A MR. HANSON HAS TOLD ME.

4 Q WHAT IS YOUR UNDERSTANDING? LET ME ASK YOU FIRST, DO  
5 YOU UNDERSTAND THAT THE DECISION OF WHAT THE SENTENCE WILL BE  
6 IS ENTIRELY IN THE HANDS OF THE JUDGE?

7 A YES, I KNOW THAT.

8 Q AND YOU HAVE NO EXPECTATION AS TO WHAT THAT SENTENCE IS  
9 GOING TO BE, I TAKE IT?

10 A AS MINIMAL AS POSSIBLE.

11 Q ARE YOU PLEADING GUILTY HERE BECAUSE SOMEBODY HAS GIVEN  
12 YOU SOME ASSURANCE AS TO WHAT THE SENTENCE WILL BE?

13 A NO, YOUR HONOR.

14 Q HAS ANYBODY MADE ANY THREATS AGAINST YOU OR YOUR FAMILY  
15 TO GET YOU TO PLEAD GUILTY?

16 A NO, YOUR HONOR.

17 Q OR PUT ANY PRESSURE ON YOU TO GET YOU TO PLEAD?

18 A NO.

19 Q HAVE YOU BEEN USING ANY DRUGS OR ALCOHOL LATELY?

20 A NO, YOUR HONOR.

21 Q HAVE YOU BEEN UNDER PSYCHIATRIC CARE?

22 A NO, YOUR HONOR.

23 Q HAVE YOU HAD ANY HEAD INJURIES?

24 A NO.

25 Q DO YOU FEEL YOU UNDERSTAND WHAT IS GOING ON HERE TODAY?

1 A YES.

2 Q AND YOU ARE AWARE OF THE CONSEQUENCES OF THIS DECISION  
3 THAT YOU ARE MAKING TODAY?

4 A I DO, INDEED.

5 Q AND DO YOU FEEL COMPETENT TO MAKE THIS DECISION?

6 A YES, SIR.

7 Q ARE YOU ABLE TO THINK CLEARLY ABOUT IT AND WORK THIS OUT  
8 SO THAT IT IS A DECISION YOU ARE MAKING YOURSELF FREELY AND  
9 VOLUNTARILY AND IN FULL AWARENESS OF THE CONSEQUENCES?

10 A YES, SIR.

11 THE COURT: MR. HANSON, HAS THE DEFENDANT BEEN COM-  
12 PETENT AND ABLE TO COOPERATE WITH YOU?

13 MR. HANSON: HE HAS.

14 THE COURT: YOU HAVE DISCUSSED THE FACTS OF THE CASE  
15 WITH HIM IN DETAIL?

16 MR. HANSON: YES, SIR. FOR THE RECORD, WE HAVE MET  
17 ALMOST DAILY FOR ABOUT THE LAST TWO WEEKS AND THEN EXTENS-  
18 IVELY BEFORE THAT REGARDING THE MERITS OF THIS CASE.

19 THE COURT: YOU ARE SATISFIED THERE ARE NO  
20 MERITORIOUS DEFENSES?

21 MR. HANSON: I AM.

22 THE COURT: YOU ARE SATISFIED HIS CONSTITUTIONAL  
23 RIGHTS HAVE BEEN OBSERVED?

24 MR. HANSON: YES, SIR.

25 THE COURT: ARE YOU SATISFIED WITH THE STATEMENTS HE

1 HAS MADE HERE IN COURT TODAY?

2 MR. HANSON: I AM, YOUR HONOR.

3 MR. LUCKEL: YOUR HONOR, I HAVE ONE CLARIFICATION.

4 MR. SMEATON MADE NO CONFESSION, OR ANYTHING OF THAT NATURE.  
5 HE DID TESTIFY BEFORE THE GRAND JURY IN CONNECTION WITH  
6 RECORDS OF THE COMPANY THAT WERE SUBPOENAED. AND HE DID HAVE  
7 A BRIEF CONVERSATION WITH THE POSTAL INSPECTOR WHEN HE WAS  
8 ARRESTED. BUT IT IS NOT THE KIND OF INculpatory CONFUSION  
9 LIKE A STATEMENT.

10 THE COURT: ALL RIGHT. I TAKE IT YOU HAVE GIVEN HIM  
11 NO INDICATION AS TO WHAT THE SENTENCE WOULD BE LIKELY TO BE?

12 MR. HANSON: NO, SIR. TO THE EXTENT I INFORMED HIM  
13 OF WHAT THE GUIDELINES WOULD BE AND TO WHAT HE COULD EXPECT  
14 TO SERVE SHOULD HE OBTAIN THE MAXIMUM SENTENCE.

15 THE COURT: DO YOU KNOW ANY REASON WHY THE COURT  
16 SHOULD NOT ACCEPT THIS PLEA?

17 MR. HANSON: NO, SIR.

18 THE COURT: AND YOU JOIN IN HIS DECISION TO ENTER  
19 THE PLEA?

20 MR. HANSON: YES.

21 THE COURT: THE COURT, HAVING QUESTIONED DEFENDANT  
22 AND COUNSEL, AND HAVING OBSERVED THE DEFENDANT'S DEMEANOR AND  
23 ATTITUDE AND CONSIDERED HIS EDUCATION AND EMPLOYMENT BACK-  
24 GROUND, FINDS THE DEFENDANT, UNDER THE NATURE OF THE CHARGES  
25 AGAINST HIM AND THE PENALTIES HE FACES AND ADMITS THE MISCON-

1 DUCT CHARGED. THE DEFENDANT IS MENTALLY COMPETENT AND DOES  
2 NOT APPEAR TO BE UNDER THE INFLUENCE OF ANY SUBSTANCE WHICH  
3 MIGHT AFFECT HIS JUDGMENT. THE PLEA IS MADE VOLUNTARILY AND  
4 NOT AS A RESULT OF IGNORANCE, INADVERTENCE, COERCION OR ANY  
5 PROMISES OR ASSURANCES OTHER THAN THOSE DISCLOSED ON THE  
6 RECORD.

7 THE DEFENDANT HAS FULLY CONSULTED WITH COUNSEL, IS  
8 AWARE OF HIS CONSTITUTIONAL RIGHTS AND OF WHATEVER DEFENSES  
9 HE MAY HAVE AND IS WAIVING THEM OF HIS OWN FREE WILL.

10 IT WILL BE ORDERED, THEREFORE, THE DEFENDANT'S PLEA  
11 TO COUNT 5 OF THE INDICTMENT BE ACCEPTED AND ENTERED.

12 THE CLERK: KEITH SMEATON, YOU HAVE BEEN CHARGED IN  
13 A 13-COUNT INDICTMENT WITH VIOLATION OF COUNT 5 OF TITLE 18  
14 UNITED STATES CODE SECTION 1343, WIRE FRAUD.

15 HOW DO YOU PLEAD TO COUNT 5, GUILTY OR NOT GUILTY?

16 THE DEFENDANT: GUILTY.

17 THE CLERK: YOUR HONOR, A PLEA OF GUILTY HAS BEEN  
18 ENTERED AS TO COUNT 5.

19 THE COURT: ALL RIGHT. SHALL WE SET THIS MATTER FOR  
20 SEPTEMBER 3RD AT 2:00 P.M.?

21 MR. HANSON: THAT WOULD BE FINE, YOUR HONOR. I WILL  
22 ENDEAVOR TO PROVIDE THE COURT WITH A MEMO. THIS CASE, AS WE  
23 SAID FROM THE BEGINNING, IS QUITE COMPLEX. I WOULD LIKE TO  
24 BE ABLE TO FULLY EXPLAIN MR. SMEATON'S INVOLVEMENT WITH HIS  
25 BUSINESS, ET CETERA, AND WILL PROVIDE THE COURT WITH A MEMO,

1 AND SEPTEMBER 2ND GIVES ME SUFFICIENT TIME.

2 MR. LUCKEL: WE WILL MOVE TO DISMISS THE REMAINING  
3 COUNTS AT THAT TIME.

4 THE COURT: THAT WILL BE TAKEN UNDER SUBMISSION.

5 MR. HANSON: ONE OTHER MATTER. MR. SMEATON, SINCE  
6 THE LAST TIME WE WERE BEFORE YOUR HONOR, HAS BEEN CALLING  
7 DAILY THE PROBATION OFFICE. I BELIEVE THAT HE HAS DEMON-  
8 STRATED HIS WILLINGNESS TO STAY HERE IN GOOD FAITH. MAY HE  
9 BE RELIEVED FROM THE OBLIGATION OF CALLING EVERY DAY AND  
10 POSSIBLY ONCE A WEEK, OR WHATEVER ELSE THE COURT MIGHT DEEM  
11 APPROPRIATE?

12 THE COURT: WELL, MR. LUCKEL, I WOULD THINK THERE IS  
13 REALLY NO PROBLEM.

14 MR. LUCKEL: I THINK SOME REPORTING REQUIREMENT  
15 WOULD BE APPROPRIATE.

16 THE COURT: HOW ABOUT ONCE EVERY TWO WEEKS?

17 MR. LUCKEL: OKAY.

18 MR. HANSON: THANK YOU, YOUR HONOR.

19 THE WITNESS: MAY I TRAVEL TO LOS ANGELES?

20 THE COURT: YES, YOU MAY TRAVEL. WHAT ARE THE  
21 TRAVEL RESTRICTIONS NOW?

22 MR. HANSON: DISTRICT OF CALIFORNIA.

23 THE COURT: WELL, I THINK YOU ARE ENTITLED TO TRAVEL  
24 WITHIN THE UNITED STATES. BUT BEFORE YOU DO, ADVISE THE  
25 PROBATION OFFICE THAT YOU ARE LEAVING, WHERE YOU ARE GOING

1 AND WHEN YOU WILL BE BACK.

2 (WHEREUPON, THE HEARING WAS CONCLUDED.)

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1 STATE OF CALIFORNIA )  
2 CITY AND COUNTY OF SAN FRANCISCO ) SS.  
3

4 I, LAWRENCE J. WHITE, DO HEREBY CERTIFY THAT:

5 I AM AN OFFICIAL SHORTHAND REPORTER OF THE U.S.  
6 DISTRICT COURT AND THAT AS SUCH I REPORTED IN STENOTYPE THE  
7 PROCEEDINGS HAD IN THE WITHIN-ENTITLED MATTER AT THE TIME AND  
8 PLACE THEREIN SET FORTH; AND THAT THE SAME IS A FULL, TRUE  
9 AND CORRECT TRANSCRIPTION OF SAID STENOTYPE NOTES AS TAKEN BY  
ME IN SAID MATTER.

10 DATED: SAN FRANCISCO, CALIFORNIA, THIS 5/24  
11 DAY OF May 24, 1983.

12  
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15 LAWRENCE J. WHITE  
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Sentencing

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2

1 FRIDAY, SEPTEMBER 9, 1983

2:30 O'CLOCK A.M.

2 PROCEEDINGS

3 --00--

4 COURTROOM DEPUTY: Calling Criminal Action  
5 Number 83-213, United States versus Keith Smeaton.

6 MR. LUCKEL: Abe Luckel for the United States.

7 MR. HANSON: Good afternoon. Jeff Hanson  
8 on behalf of Mr. Smeaton, who is present this after-  
9 noon for sentence.

10 THE COURT: This is the time set for the im-  
11 position of judgment and sentence in this matter. I  
12 will hear from you, Mr. Hanson, and from Mr. Smeaton.

13 MR. HANSON: Thank you, Your Honor.

14 With respect first to the probationary re-  
15 port, there are several comments that I would like  
16 to make with respect to the probationary report because  
17 it has been submitted to Your Honor for consideration  
18 and because Mr. Smeaton's sentence to jail will be used  
19 by the Parole Commission to determine his eligibility  
20 for parole.

21 The first comment I would like to make, Your  
22 Honor, is clearly that the first few pages of this  
23 report set forth the Government's version of the offense,  
24 and it is their version, but on Page 4 we have the  
25 victim impact statement. Your Honor, we were confronted

AV  
KJ

1 with a situation -- this is a new part of the pro-  
2 bationary report prepared by the probation office --  
3 none of the statements contained in the victim impact  
4 statement refer to the individual who was the victim  
5 of the account to which Mr. Smeaton has entered a  
6 plea, Count 5, Richard Shafe (phonetic). Instead,  
7 we have statements prepared by the probation depart-  
8 ment regarding two other individuals, and I am in front  
9 of Your Honor this afternoon in a rough position be-  
10 cause we have victims who we have not admitted were  
11 in fact victims, and to some extent, I believe had this  
12 case gone to trial, there would have been some dispute,  
13 at least as to the second victim, certainly Mr. Mayer  
14 (phonetic), as to whether there is a victim at all here  
15 with respect to the allegations about his involvement  
16 with Mr. Smeaton.

17 For the record I would like to state that  
18 Mr. Mayer, who did enter into certain transactions with  
19 Mr. Smeaton, did make promises to Mr. Smeaton that are  
20 that they would provide him with a line of credit. Those  
21 promises have been alleged in my pre-sentence report  
22 and could have been supported by documentary evidence.  
23 In addition, Mr. Mayer submitted to a bank, in con-  
24 junction with all of the activities relating to his  
25 house, a false letter claiming that he had received

1 by the evidence, and I don't know how it ~~comes~~ ---  
2 way into the probation report, to be candid with you.

3 MR. LUCKEL: It may be appropriate for me  
4 to interject and respond as these.

5 THE COURT: Go ahead.

6 ~~MR. LUCKEL:~~ I think that the satisfied custo-  
7 mers that Mr. Hanson refer to are customers, all of whom  
8 purchased diamonds prior to November 1st, 1980. It  
9 was the Government's theory in this case that the dia-  
10 mond business conducted by Mr. Smeaton became fraudulent  
11 as it related to transactions which took place after  
12 November 1st, 1980. I can represent to the Court that  
13 there were purchases made by relatives and friends of  
14 the diamond salesman prior to November 1st, 1980, and  
15 there is support in the record generally for that. I  
16 cannot state to the court what the precise percentage  
17 was, but I can state to the Court that there is a  
18 factual basis to say that among the satisfied customers  
19 prior to November 1st, 1980, there were included at  
20 least several friends, relatives and the like.

21 MR. HANSON: I have no dispute with that,

22 Your Honor.

23 THE COURT: All right.

24 MR. HANSON: Your Honor, going on, there is  
25 a problem with respect to the defendant's version of

~~THREE AT MOST.~~  
~~"SEVERAL" IS INCORRECT.~~

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1 this offense, and it relates to, again, some diffi-  
2 culties with respect to this entire case.

1 dyslexia and his limited writing and reading ability. X  
2 Save for one statement there which is con-  
3 tained on Page 8 in which it is said that, "During the  
4 participation in the instant offense, the defendant  
5 commonly spelled his name Smeaton and irrationalized  
6 his spelling as a dylexic trait." Mr. Smeaton would  
7 like to make clear for the record that even though  
8 dyslexia has caused a lot of problems, changing two  
9 e's in his name was not the result of dyslexia.

10 THE COURT: I assumed as much. BINS & PRIMUS

11 MR. HANSON: Thank you.

12 I am not saying the purposes were altogether  
13 noble or proper, but it was not due to dyslexia, and  
14 he is not claiming that. <sup>NOT TRUE. HANSON SET HIMSELF UP AS A FRAUD OR BY SUGGESTION</sup>

15 THE COURT: I can certainly infer the pur-

16 poses.

17 MR. HANSON: On Page 9, Your Honor, we have  
18 a statement that he did not submit a financial state-  
19 ment, which is essentially true, again along the same  
20 lines as why he did not submit a written statement.

21 I am concerned about the fact that in the first para-  
22 graph it is said, "The amount of his wife's earnings  
23 have not been revealed to this writer." Apparently  
24 there was a phone conversation in which Mrs. Smeaton  
25 told them, the probation officer, how much she made,

\* NOT SO. I DID SUPPLY THE COURT WITH THIS INFORMATION  
101 VIA MR. LIO MACARTHY - PROBATION OFFICER DURING

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1 and again I'm concerned about I guess the thrust of  
2 the report, as if there were something in terms of Mr.  
3 Smeaton not providing information or intentionally  
4 trying to hide something.

5 THE COURT: He didn't, did he? He didn't  
6 provide financial information. SEE PAGE 8 FOOTNOTE \*

7 MR. HANSON: His wife did when she was re-  
8 quested to.

9 THE COURT: Are you suggesting that Ms.  
10 Stewart is telling a lie? Do you want to take the stand  
11 under oath, Mr. Hanson?

12 MR. HANSON: Your Honor, if I asked Mr. Smea-  
13 ton in the presence of my office to call his wife to  
14 ask if in fact she had told Ms. Stewart how much she  
15 made --

16 THE COURT: What's the basis of your state-  
17 ment that Ms. Stewart is not telling the truth, that  
18 Mr. Smeaton told you what his wife told her?

19 MR. HANSON: No, Your Honor. My statement  
20 is that it's my understanding that the amount of money  
21 that was made by Mrs. Smeaton was offered to the pro-  
22 bation officer.

23 THE COURT: Now you've changed your state-  
24 ment.

25 MR. HANSON: In what respect?

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1                   THE COURT: It's not at all. It says that  
2                   the earnings of the spouse have not been revealed to  
3                   the writer. Are you suggesting that that is an untrue  
4                   statement?

5                   MR. HANSON: To the best of my knowledge,  
6                   Your Honor, from my information, yes.

7                   THE COURT: Ms. Stewart, take the stand.

8                   (Probation Officer is sworn in  
9                   by the Courtroom Deputy.)

10                  THE COURT: Ms. Stewart, you've heard what  
11                  Mr. Hanson has said. Do you want to explain your state-  
12                  ment in the report which says, "Since Smeaton is un-  
13                  employed, it is assumed that his only source of income  
14                  is derived from the earnings of his spouse, the amount  
15                  of which has not been revealed to this writer." Tell  
16                  us what happened.

17                  THE WITNESS: Yes. That afternoon Mrs. Smea-  
18                  ton did telephone me at my office. The majority of  
19                  the report had been dictated earlier that day. Mrs.  
20                  Smeaton and I talked very briefly on the phone, and I  
21                  was interested more or less in what she intended to do  
22                  if the defendant was incarcerated or what the situation  
23                  would be for the family and what the situation was at  
24                  that point. She indicated to me that the family was  
25                  subsisting on the earnings that she made. She did not

PURJWY

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1 tell me her earnings at that time. She didn't elaborate  
2 on that at all. When Mr. Hanson came into my office  
3 on Wednesday I believe, he asked me about that, and  
4 he said that she had told me that she had made \$12,000,  
5 and I indicated to him on that day that I did not recall  
6 her saying that at all.

7 THE COURT: Do you wish to ask any questions,  
8 Mr. Hanson?

9 MR. HANSON: No, Your Honor.

10 THE COURT: Thank you, Ms. Stewart.

11 (The witness leaves the witness stand  
12 and resumes her place in the Court-  
room.)

13 THE COURT: Do you have anything further to  
14 say?

15 MR. HANSON: I do, Your Honor.

16 With respect to Page 11 of the report, I am  
17 aware of the fact that the Ninth Circuit has held time  
18 and time again that virtually anything can be taken into  
19 consideration by a judge in sentencing a defendant,  
20 including all relevant aspects of this background and  
21 matters for which there have been allegations for which  
22 even there has been no proof. And I understand, too,  
23 that the probation office has a right and a responsi-  
24 bility to inform the Court of its evaluation of a  
25 particular individual. Nonetheless, in the first

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1 paragraph of the Page 11, when we are discussing Mr.  
2 Smeaton's dyslexia and the problems that it contains,  
3 there is a statement, (reading): it is unfortunate  
4 that many of the victims of Wilmington Marketing Group  
5 were not apprised of Mr. Smeaton's disability and dys-  
6 lexic condition and therefore could not withdraw their  
7 trust in him (end reading).

8 For the record, Mr. Smeaton was not diagnosed  
9 as a dyslexic until after the entire conclusion of this  
10 criminal activity, as it's been characterized in the  
11 probation report, so that he could not, unfortunately,  
12 remedy that aspect of his -- inform the people who  
13 invested in the company, could not inform them of his  
14 dyslexia prior to their investing into the company.

15 Those are the remarks I'd like to make with  
16 respect to the probation report.

17 Your Honor, I will be candid with you. Ob-  
18 viously this has been a tough case for me.. It's been  
19 a tough case in a lot of respects, because I sincerely  
20 believe that Mr. Smeaton never did intend to hurt any-  
21 body with this program and I believe that he made some  
22 serious mistakes in running this program. He never hid  
23 himself though, he never tried in a sense to run away  
24 with money, he never spent his money on luxuries.

25 Now, because of my concern about the general

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thrust of this case, and because I am concerned about what I believe was the thrust of the probation report, I have made those remarks with respect to it. I hope that any concern the Court might have just expressed regarding my advocacy with respect to that will not be used against Mr. Smeaton or otherwise indicate in any way that he is somehow responsible for his attorney's remarks with respect to the probation report. Those are my remarks and my remarks alone.

9 are my remarks and my ~~recommendations~~  
10 I feel that Mr. Smeaton is a man who came to  
11 this country and really did try his best, and for a  
12 while it worked and, as my pre-sentence report states,  
13 after it worked for a while he overextended himself and  
14 began to do some things -- "began to", emphasize -- he  
15 should have never done. But I think, again, the emphasis  
16 of my pre-sentence report is that he tried like the  
17 Dickens to keep this business afloat. Time and time  
18 again, naively, stupidly, sometimes with half truth,  
19 but nonetheless time and time again, he tried to get  
20 more money for this company, including the merger with  
21 Briggs, Bates & Bacon (Phonetic), everything he was  
22 trying to do was keep Wilmington aloft and not have  
23 investors to give their money to him so he could some-  
24 how defraud them completely of their investment. He  
25 admits now, and understands I believe, that what he

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1 has done is wrong, and he spent five weeks already in  
2 jail as a result of his activities, and I do not believe  
3 that this is the kind of offense for which further  
4 jail time would be appropriate. I think that a serious  
5 program of supervision with some degree of counselling  
6 for his dyslexia would be appropriate, and I would ask  
7 the Court to consider probation as a sentence on Count  
8 5 of the indictment.

9 THE COURT: Mr. Smeaton, do you wish to say  
10 anything?

11 MR. SMEATON: Yes, I do, Your Honor.

12 Firstly, the letters that I initially sent  
13 to you were in fact written by somebody else which was  
14 incarcerated, and I signed them. Secondly, that I  
15 had sincerely believed that the bank relationships  
16 pertaining to the trust account did exist in the bank,  
17 and I can see now that they just didn't, and I'm  
18 tragically sorry about that, and I was relying on the  
19 guidance from people which obviously I should not have  
20 relied on.

21 Towards November the accounts got in such a  
22 terrible situation, so confused, that I was desperately  
23 moving funds to keep the -- kind of sort the whole mess  
24 out and working desperately with the bank, and the banks  
25 I feel might have some responsibility, but it is my

\*\*\* DURING PAGE 10 RE: TRUST ACCOUNT. COURT  
SHOULD HAVE QUESTIONED THIS STATEMENT "I GOOD  
EAT, I REWROTE"

~~127~~

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1 responsibility eventually, and that I can see now that  
2 what I was doing was wrong. I am desperately, des-  
3 perately sorry about it. The responsibility was just  
4 awesome. If it takes me the rest of my life to make  
5 those clients whole I will, regardless of what happens.

6 That's all I can say, Your Honor. I put it  
7 all into your hands.

8 THE COURT: Mr. Smeaton, do you have something  
9 here in your handwriting or does Mr. Hanson have some-  
10 thing in his file that's in your handwriting?

11 MR. LUCKEL: I have quite a few things, Your  
12 Honor.

13 THE COURT: Would you mind showing me some-  
14 thing. I won't read it; I just want to look at the  
15 writing.

16 I don't want to intrude into your attorney/  
17 client relationship, but I am curious about these let-  
18 ters.

19 MR. HANSON: I don't have anything.

20 Wait a minute then.

21 MR. LUCKEL: Your Honor, we might as well  
22 have something in Mr. Smeaton's writing for the agent  
23 to see it.

24 MR. SMEATON: Mr. Mooney --

25 THE COURT: You say that this is your

1 handwriting that you've just handed to me.

2 MR. SMEATON: Yes.

3 THE COURT: Are you telling me that these  
4 letters are not in your handwriting?

5 MR. SMEATON: Yes, sir. Mr. Mooney, Mr.  
6 Harry Mooney, of -- Mr. Harry Mooney, when I was in-  
7 carcerated at the time, he wrote these letters for me.

8 THE COURT: Did he write the piece that was  
9 handed up to me, too?

10 MR. SMEATON: Yes.

11 No, no. I wrote this piece.

12 THE COURT: I am struck by the amazing  
13 similarity of that handwriting. - JUDICAL PLEASE

14 MR. SMEATON: Well, Your Honor it's true.

15 THE COURT: It's just a coincidence.

16 MR. SMEATON: Believe me, it's just a coinci-  
17 dence. The spelling -- if you read it and saw the  
18 correct grammar and the graphics, you would understand  
19 why. - EVIDENCE OF DYSLEXIA - NOT INVESTIGATED BY COURT!

20 THE COURT: What you're telling me, Mr. Mooney  
21 wrote those letters you sent me but you dictated them?

22 MR. SMEATON: I wrote out with rough form,  
23 and he could see that I was having great difficulty  
24 putting in the letters together. DYSLEXIA - ✓

25 THE COURT: How can I see that? Where do I

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\* Why did FBI or Prosecutor or Court of Probation  
OFFICER call Mr. Mooney a PRISONER WITH NO TESTIMONY?

CROSS EXAMINATION B-1 COUNSEL  
LIKE PROSECUTOR. NO OBJECTION B-1 COUNSEL.  
see that? The letter that was handed to me, which is  
1 said to be in your handwriting, shows almost no cor-  
2 rections at all. Two or three words are crossed out.  
3 It is a lot better than my handwriting. <sup>18</sup> PROVES I did NOT WRITE  
4 THEM.

5 MR. SMEATON: Well, Your Honor, as God is my  
6 judge, that is the truth. I'm sure if Mr. Mooney was  
7 here he would testify to that fact. And if you read  
8 that letter you would see the grammar problems in it.

9 THE COURT: But there are no grammar problems  
10 in the letters that you sent me. They were composed  
11 by you.

12 MR. SMEATON: They were composed by me but  
13 graphically put together by him.

14 THE COURT: You mean written by him.

15 MR. SMEATON: Written by him. I put the sub-  
16 ject matter together.

17 I can swear on my --

18 THE COURT: Anything more?

19 MR. SMEATON: Just that I'm desperately sorry  
20 about this whole situation. It was not intentional at  
21 all.

22 THE COURT: Mr. Luckel?

23 MR. LUCKEL: Your Honor, I think I would just  
24 be reiterating what I said in my pre-sentence report  
25 where I recommended a substantial jail term, and I thi

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1 Mr. Smeaton's problem is not facing reality. He shows  
2 continuous disregard for the financial interest of  
3 everybody he comes into contact with and continually  
4 blames others for problems that are his responsibility  
5 and I think that's perfectly clear in everything that  
6 Mr. Smeaton does and says and has been virtually from  
7 the time he got to the United States. EVIDENCE 141 P  
PROVES OTHERWISE Well, I'm persuaded

8  
9 from the record before me that this scheme was not  
10 the result of naivete or even a response to exigencies  
11 beyond the defendant's control. I think it was a  
12 deliberate scheme constructed to defraud the investors.  
13 It may well be true that there was some hope eventually  
14 to give them the diamonds, but there wasn't very much  
15 done to insure that they hope would be realized. I think  
16 it was a self-serving scheme, and there are all kinds  
17 of incidents from early on that indicate the lack of  
18 regard for the truth and for honesty on the part of  
19 Mr. Smeaton. As a result of this scheme, substantial  
20 suffering was caused to a number of victims for which  
21 there is absolutely no justification. The letters that  
22 were sent to me, regardless of who wrote them, certainly  
23 show that Mr. Smeaton was very capable of thinking  
24 straight and clearly and of expressing himself well  
25 regardless of whom he might have used to put it down on

+ FDI's Professional Negligence & Patients Detracted

1 paper, and the suggestion that any of what happened had  
2 anything to do with dyslexia or any other kind of a  
3 reading impairment strikes me as totally incredible. 7  
\*  
\*  
4 Whatever hope Mr. Smeaton may have had to ultimately  
5 supply the investors with diamonds it seems to me is  
6 irrelevant. It doesn't diminish the criminality of this  
7 scheme and, what's more, I really can't find any evi-  
8 dence of remorse at this point. I think the real pro-  
9 blem with Mr. Smeaton -- and this maybe the problem --  
10 that he's not only dishonest with others but he's dis-  
11 honest with himself. I don't think Mr. Smeaton, he  
12 still doesn't understand what he did, he still doesn't  
13 face the fact -- reality, as Mr. Luckel put it -- and  
14 he's just not capable of being honest with himself. I  
15 think he's going to have to take some time to reflect  
16 and try to appreciate the seriousness of what he did  
17 and the consequences of it.

18 So it will be the judgment and sentence of  
19 the Court that the defendant be committed to the custo-  
20 dy of the attorney general for a term of two years with  
21 credit for time served.

22 MR. HANSON: Your Honor, may I request that  
23 he be allowed to voluntarily surrender to an institution  
24 designated by the Bureau of Prisons?

25 THE COURT: What's the Government's position

\* "CAUSER CORRECTION" \* JUDGE SET HIMSELF UP AS  
DYSLEXIA EXPERT. IN SUPPORT, FPD FAILED TO IDENTIFY  
DISILLUSIONING UPBOODS \*

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1 on that?

2 MR. LUCKEL: Your Honor, I have a couple of  
3 suggestions to make and that I strongly urge the Court  
4 to adopt. The first is that Mr. Smeaton arranged for  
5 his passport to be turned over to the custody of the  
6 U.S. District Clerk. Mr. Smeaton, perhaps in the letter  
7 that he wrote the Court at the time of the bail hear-  
8 ing, but if not there, surely based on my recollection,  
9 which I think is accurate, there was a statement in  
10 Court that the passport, at the time of the bail hear-  
11 ing in this Court that the passport had been turned into  
12 the British Consulate here.

13 MR. HANSON: It has since been turned over  
14 to the District Court in accordance with the Court's  
15 order at the time of the bail hearing.

16 THE COURT: Does Mr. Smeaton not have any  
17 passport at this time?

18 MR. HANSON: No, sir, he does not. The  
19 Court Clerk has it upstairs.

20 THE COURT: What is your other suggestion?

21 MR. LUCKEL: The other suggestion is that  
22 Mr. Smeaton resume his daily reporting to the probation  
23 office.

24 THE COURT: Gary, the form please for the self  
25 surrender form.

133  
\* REFER BACK TO COURT QUESTION ~~CHIEFLY IN PERTIN~~  
Page 11 to 12  
133

1 MR. HANSON: Your Honor, while he is pulling  
2 that form, may I also request that the Court recommend  
3 incarceration in California because his wife and  
4 children reside here.

5 THE COURT: Since the probation department  
6 sends him every report with a different set of papers,  
7 this one doesn't -- where is the form for recommendation?  
8 So if somebody will send me the judge's form  
9 for recommendation, I will be glad to recommend in-  
10 carceration in California. \* ANGRY

11 The defendant will be directed to surrender  
12 himself on Monday, September 26 at the designated  
13 institution, passport to remain in custody of the  
14 Clerk of the Court, and defendant to report by tele-  
15 phone daily to the probation department. That will be  
16 the order.

17 MR. LUCKEL: Your Honor, the Government moves  
18 to dismiss the other count of the indictment.

19 THE COURT: That motion is granted.

20 MR. HANSON: Thank you.

21 THE COURT: Thank you.

22 (Whereupon the hearing was concluded.)

23 \* ~~WHY DID THE PROBATION DEPARTMENT SEND~~  
24 ~~RECENT REPORTS WITH DISSEMINATE PAPERS.~~

25

(34)

(RE)

(RE)

(RE)

REPRESENTATIVE  
ASSISTANT CO  
THE ATTORNEY GENERAL

OF AGREEMENT TO REFINANCE WITH DIAMOND TRUSTLESS 4  
PURCHASED HIS HOUSE AND AFTER CLOSING SELLER RELEASED OR AS ECONOMY  
SO I COULD NOT PAY FOR HOUSE OR IT WAS SELLER'S SCHEDULE TO PAY MONEY ON  
SALE OF HOUSE THERE TO  
1 HAD A VARIETY OF JOBS IN RECENT YEARS. BUT IN ANY EVENT, I  
2 BELIEVE SHE'S A JAMAICAN CITIZEN.

3 THE DEFENDANT HAS ESSENTIALLY LIVED WITHOUT PAYING A  
4 DIME FOR HOUSING SINCE JUNE OF 1981. THAT WAS AROUND THE END  
5 OF THE PERIOD OF FRAUD. THE DISPUTE OVER HOUSING HAD TO DO WITH  
6 THE DOWN PAYMENT THAT HE WAS GOING TO PUT DOWN FOR THE HOUSE  
7 BEING \$22,000 WORTH OF DIAMONDS. THE CLOSING WENT THROUGH, BUT  
8 THE DIAMONDS WERE NEVER PRODUCED. DIAMONDS ARE THE PRIMARY  
9 FOCUS OF THIS CASE. *GOVERNMENT DOES NOT REFER TO ANY LOSS VIA DIAMONDS*

10 HE THEN HAS LIVED FROM JUNE 1ST UNTIL ESSENTIALLY THE  
11 PRESENT IN A HOUSE WITHOUT PAYING A MORTGAGE AND NEVER HAVING  
12 PUT A DOWN PAYMENT DOWN ON THE HOUSE. *Facts Prove Defendant is*  
*a victim of robbery.*

13 THE COURT: WHO OWNS THE HOUSE? WHERE'S THE TITLE  
14 TO THE HOUSE, DO YOU KNOW?

15 MR. LUCKEL: WELL, THERE'S A --

16 MR. HANSEN: IT'S BEING LITIGATED, YOUR HONOR.

17 MR. LUCKEL: WHAT HAS HAPPENED IS THE SELLER OF THE  
18 HOUSE IS A MAN NAMED RUDY MAYER AND THERE'S A BANK LOAN THAT'S  
19 BEEN FORECLOSED ON. AND THERE'S AN ACTION PENDING TO EVICT  
20 MR. SMEATON FROM THE RESIDENCE OR HIS FAMILY, I SUPPOSE, BUT  
21 THE FACTOR THAT I THINK IS IMPORTANT IS THAT HE NEVER PUT ANY  
22 MONEY DOWN ON THE HOUSE AND NEVER PAID A DIME ON THE MORTGAGE  
23 THROUGHOUT -- SINCE JUNE, 1981. *LUCKEL MISLEADS COURT AS TO FACT*

24 SO TO SAY THAT HE HAS TIES TO THE COMMUNITY AS A  
25 RESULT OF OWNING A HOME HERE, I THINK IS A GROSS EXAGGERATION.

1 STATE OF CALIFORNIA )  
2 CITY AND COUNTY OF SAN FRANCISCO ) SS.  
3

4 I, LAWRENCE J. WHITE, DO HEREBY CERTIFY THAT:  
5 I AM AN OFFICIAL SHORTHAND REPORTER OF THE U.S.  
6 DISTRICT COURT AND THAT AS SUCH I REPORTED IN STENOTYPE THE  
7 PROCEEDINGS HAD IN THE WITHIN-ENTITLED MATTER AT THE TIME AND  
8 PLACE THEREIN SET FORTH; AND THAT THE SAME IS A FULL, TRUE  
9 AND CORRECT TRANSCRIPTION OF SAID STENOTYPE NOTES AS TAKEN BY  
ME IN SAID MATTER.

10 DATED: SAN FRANCISCO, CALIFORNIA, THIS 5/14  
11 DAY OF May, 1983.

12  
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15 LAWRENCE J. WHITE  
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GENERAL ORDER NO. 13  
TRANSCRIPT FEES OF OFFICIAL REPORTERS  
TRANSCRIPT TIMETABLE

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