UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Case No. CR 11-135 Milwaukee, Wisconsin
ARVIND AHUJA, Defendant.	)	February 1, 2013 1:30: P.M.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE CHARLES N. CLEVERT, JR.
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by computerized stenography, transcript produced by computer aided transcription.

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P R O C E E D I N G S (1:47 p.m.)

THE CLERK: Case No. 2011-CR-135, United States of America vs. Arvind Ahuja. This matter is before the Court for sentencing. May we have the appearances, please?

01:47 MS. SISKIND: Good afternoon, Your Honor. Melissa Siskind and Tracy Johnson on behalf of the United States, and we're joined by Special Agent Geoffrey Cook of the IRS.

THE COURT: Good afternoon.

MR. WEBB: Your Honor, on behalf of Dr. Ahuja, Dan
01:47 Webb, Tom Kirsch and Shannon Allen are all present in the courtroom, and Dr. Ahuja is present in the courtroom.

THE COURT: Good afternoon to all of you as well.

PROBATION OFFICER: Good afternoon, Your Honor. Mike Karolewicz from U.S. Probation.

01:48 THE COURT: Good to see you, Mr. Karolewicz.

At the outset the Court would like to address the defendant's motion for judgment of acquittal.

The parties have submitted very well-written briefs on the subject and the Court has read all of those filings. Is
01:48 there anything you would like to add to this matter, in brief?

MS. SISKIND: Not from the government, Your Honor.

MR. KIRSCH: Your Honor, yes. I would just like to say a few things and I'll just say them very briefly.

Your Honor, with respect to the government's argument,
01:48 the government's first argument, I just want the record to be

clear on this. With their argument regarding Count 4 and their first theory of prosecution that Arvind Ahuja knew of his duty --

Well, it's somewhat confusing. They present the 01:48 argument that Dr. Ahuja knew of his duty to report interest income on his tax return. That is not what's at issue here. That's not what the government is required to prove. And that's not in dispute.

The government spends their brief arguing that 01:49 Dr. Ahuja was aware of a legal duty to report interest income on his tax returns. That is not in dispute. What is in dispute and what the government largely ignores, is whether or not Dr. Ahuja knew that his foreign interest income from HSBC was not reported on his 2009 tax return. There the government cites 01:49 two things:

One, that he signed his tax return. Which is not enough.

Two, that he played an active role in the management of his offshore accounts. My response to that is, so what? 01:49 That doesn't have anything to do and does not establish at all that he knew that his interest was not being reported on his tax returns or that he was not receiving 1099s from HSBC.

In response to our argument -- Your Honor, that's the government's whole case on that issue. The jury rejected it. 01:50 It was the same argument the government made for '06, '07 and

'08. The jury rejected it in '06, '07 and '08, so it's easy to conclude that they rejected it for '09 because there's no additional evidence with respect to that in '09.

The government responds that the interest income could 01:50 have been calculated another way even though he hadn't received 1099s. That's a red herring. In order to calculate the interest income another way, from bank statements or from screen shots, he first would have had to know that he wasn't receiving 1099s or that the income wasn't being reported on his tax 01:50 returns. He didn't know those things and that's what the government failed to prove.

So, first of all, that goes to our Rule 29 motion. That also goes to our argument that the base offense level in this case is 6.

01:51 With respect to the second part of Count 4, I'll be very brief. This is with respect to the Schedule B issue. The government again cites essentially two things:

First, with respect to the Schedule B issue they rely on the two meetings that Dr. Ahuja had with Mark Miller in 2009, 01:51 one in August and one in December. But, Your Honor, Schedule B was never discussed at these meetings. And as indicated in our briefs it was Mark Miller, he testified here before the Court that he was the one that checked "no" on a Schedule B without discussing it with Arvind Ahuja.

01:51 Then there's the evidence of the Citibank 1099. Mark

Miller was in possession of the Citibank 1099 which showed and demonstrated that Arvind Ahuja had a foreign account. Mark Miller missed it. And, Your Honor, I'm not blaming this on Mark Miller. Mark Miller testified about the difference between
01:52 foreign investments and foreign accounts, and it's a thorny subject. But the government can't have it both ways.

THE COURT: It's not that thorny. It's not that thorny. I have to reject your view that this is some mystical thing that only people who are engaged in the preparation of tax
01:52 returns can understand. The record here does not support the argument you are making in that respect.

Go on.

MR. KIRSCH: Your Honor, I'm not -- I'm just citing to Mark Miller's testimony with respect to his testimony.

01:52 THE COURT: I know what he said. He said this is a matter that is discussed among professionals, if I recall correctly.

MR. KIRSCH: That's right.

THE COURT: He didn't say it was so complex that a
01:53 layperson, an individual taxpayer, U.S. taxpayer, would have difficulty understanding. Particularly if that person has experience with respect to generation of interest income, the receipt of 1099s, and the payment of federal income taxes.

And there is certainly no suggestion here -- in fact,
01:53 the record would certainly demonstrate that there is no evidence

that Dr. Ahuja was, during any of the relevant years, unaware of interest that was being generated when he made investments, particularly investments in CDs.

So regardless of whether those CDs or accounts -- bank 01:54 accounts were in the United States or outside of the United States, the record demonstrates that Dr. Ahuja was aware that such accounts generate income that is taxable.

MR. KIRSCH: I agree with that, Your Honor. I agree with that. I agree with that. I think the issue is whether or 01:54 not he knew they weren't reported on his tax returns, not whether or not he knew that he was receiving interest income from HSBC.

The only other point that I would --

THE COURT: Are you suggesting that the record does 01:54 not show Dr. Ahuja was aware that he had more accounts than were reported on with respect to any one of the -- any one of his tax years 2005 through 2009?

MR. KIRSCH: I'm not sure I understand, Your Honor.

THE COURT: Well, essentially what you're suggesting 01:55 is your client did not know that he had income that was being generated in multiple accounts in various banks in the United States and, of course, outside of the United States. And -- go ahead.

MR. KIRSCH: I'm not trying to suggest that. I 01:55 recognize that he knew that he was receiving interest income.

That's not the issue. The issue is whether or not he knew that the interest income from HSBC was not being reported on his 1099s.

THE COURT: That's true. And if he was aware that he had accounts that were generating income, particularly accounts with seven figures, there is nothing in this record to suggest that he could not and he was not, in fact, aware that there was something about those accounts that needed to be looked into and reported. Especially after he had multiple -- he had meetings with his tax preparer and on a number of occasions was alerted to what he needed to do to accurately report his income, especially in 2009.

MR. KIRSCH: Your Honor, may I have one second?

THE COURT: Go ahead.

(Brief pause.)

MR. KIRSCH: Your Honor, I want to address the two meetings in 2009 very briefly. But I first want to call the Court's attention, we cite this case from the Seventh Circuit, U.S. vs. Peters, which is 153 F.3d 445, and it talks about what the government has to prove in order to prove a willful tax violation. And the Seventh Circuit writes, and I quote:

"A failure to report income correctly may be due to mistake, inadvertence, reliance on professional advice, honest difference of opinion, negligence" --

THE COURT: I believe you cited that in your brief.

MR. KIRSCH: Yes. But I just was going to go on to say "negligence or carelessness."

THE COURT: Yes. I'm certainly keenly aware of that.

MR. KIRSCH: Your Honor, I just very briefly want to discuss those two meetings in 2009. In 2009 they never discussed Schedule B. And Mark Miller, in fact, testified--

THE COURT: I think that you can't discuss 2009 in a vacuum. You have to look at the years prior to that as well in determining whether or not your client is essentially claimed to be the ostrich who is putting its head into a hole and ignoring what's going on around it.

Or, that your client was just totally uninformed when it came to what he had to report to Mr. Miller.

MR. KIRSCH: Your Honor, I certainly agree with that, that you've got to look at '05, '06, '07 and '08. But in those years there was no discussion whatsoever about Schedule B.

And you mentioned the ostrich, and clearly there's an ostrich instruction but --

THE COURT: But if I recall correctly, on the 1040 form there is a reference on that form to Schedule B. Am I wrong?

MR. KIRSCH: Schedule B is part -- I think Schedule B -- I don't know if it is. I think it just -- I don't know if it does or not. But Schedule B is a tax return and it's filed and I don't have any dispute with what Schedule B says.

But, Your Honor --

THE COURT: Let me interrupt and ask Ms. Siskind whether that is so.

MS. SISKIND: Your Honor, the Schedule B is part of the 1040. The FBAR is the separate form that --

01:59

THE COURT: But I'm talking about a line on these additional -- there's a front page to the schedule to a 1040 form.

MS. SISKIND: The first page of the 1040 accumulates information from other schedules. So the Schedule B, the final line item on the Schedule B carries over to the front page of the 1040.

02:00

THE COURT: So there is a reference on the front page of the 1040 form to Schedule B.

02:00

MS. SISKIND: Yes. Correct, Your Honor.

THE COURT: All right. That's all I wanted to know.

Go ahead.

MR. KIRSCH: Your Honor, it mentions -- Schedule B was filed. It mentions nothing on the front page of the 1040 as to whether or not there were foreign accounts. That nowhere appears on the Form 1040.

02:00

THE COURT: The reason I interrupted Ms. Siskind is because you suggested that there was no discussion of Schedule B. The mere fact that there was not any specific discussion that Mr. Miller said he recalls, that doesn't mean

02:00

Schedule B was not discussed.

More important, it doesn't say that Schedule B was not something that your client was aware of or should have been aware of particularly in view of the execution of the form on multiple years including 2005, 2006, 2007 and 2008.

MR. KIRSCH: Your Honor, I don't dispute that at all with respect to Schedule B. But it's one specific question on the bottom of Schedule B in very small print that we're talking about. Not just Schedule B. He filed Schedule B.

We're not just -- and this is -- I wanted to address the Court's comments about the ostrich because I think this is very, very important. Your Honor, the standard here is not knowingly. The ostrich -- it refers to -- the standard here is willfulness.

THE COURT: That is correct.

MR. KIRSCH: The government has to prove that he knew of a specific legal duty. That's totally different -- there's a majority of the cases that are prosecuted in the United States where knowingly is -- even state courts, federal courts, the standard is typically knowingly. If you hit somebody you don't have to know the elements of battery; you just know what you did and you're guilty of battery.

Here the government has to prove that he knew of a specific legal duty. And, Your Honor, I respectfully submit that in 2006 through 2009, there's no evidence that the

government can point to that he knew of the specific legal duty to answer that question on Schedule B. And I say that because the only evidence that the government cites the Court to, the only evidence, are the two meetings between Arvind Ahuja and Dr. Miller in 2009, and the fact that he signed his return.

But the meetings in 2009, it's very important that these meetings in August and December of 2009, Schedule B, or the specific legal duty contained on Schedule B to report a foreign account, was never discussed.

02:02 So 2009 doesn't get him there. Excuse me, those meetings. The signature on the tax return doesn't get him there. The Court's well aware that that's prima facie evidence, but it's not enough. You've gotta consider the surrounding circumstances and facts.

02:03 And here I respectfully ask the Court to take into account -- I think Mr. Miller testified that on August 15th Dr. Ahuja signed 25 tax returns or so. Hundreds of pages. Your Honor, he didn't read these returns. Mark Miller essentially testified to that. He said they were prepared on 02:03 April 15th, they were given to him, they were signed, and they were filed.

So, Your Honor, the record lacks any evidence that Dr. Ahuja was specifically aware of the legal duty to answer the question on Schedule B, I think it's Section 3, I think it's 02:03 Question 7, as to whether or not he has an interest in a foreign

bank account. The government did not prove that. And for those reasons we believe Count 4 must be dismissed as a matter of law under Rule 29.

With respect --

02:04 THE COURT: Let's have the government reply to that before we go to the next item.

MR. KIRSCH: Yes, Your Honor. Yes, Your Honor.

MS. SISKIND: Your Honor, I don't want to go too much over everything we've gone through in our papers, but I would 02:04 submit that there's a simple proposition in -- for return preparation: that a tax return can only be as accurate as information a taxpayer gives to the return preparer.

Dr. Ahuja knew that his accounts were not being reported because he didn't tell his accountant that he had these 02:04 foreign bank accounts. How would Mr. Miller know otherwise that there were foreign accounts if not for his client telling him?

And it wasn't as if Mr. Miller didn't try to get this information. We heard about the August 2009 meeting where Mr. Miller asked Dr. Ahuja if he had any foreign bank accounts. 02:04 Dr. Ahuja said at that point that he would follow up to see if he had any but there was nothing that the accounting firm had to do at that point. And Mr. Miller testified that Dr. Ahuja never followed up, never told his accountant that he had these foreign bank accounts, even when he was specifically asked about them.

02:05 Then there's the December 2009 meeting where there was

the agenda item talking about FBAR reporting requirements and foreign bank accounts.

There's the December 2009 cover letter to the tax organizer speaking about some changes in tax law that mentioned foreign bank account reporting.

These were opportunity after opportunity for Dr. Ahuja to come clean and tell Mr. Miller he had foreign bank accounts, but he continued to conceal them throughout that time period. That's how he knew the accounts weren't being reported, because he never disclosed them.

And we would submit that is sufficient for a finding of willfulness because he knew of his legal duty to report them. Mr. Miller told him of his legal duty, informed him time and time again, and he intentionally failed to report those to his accountant.

THE COURT: The Court is denying the motion with respect to this count. I do so fully aware that the defendant claims he lacked the requisite willfulness to make or subscribe to a false return.

I also am mindful that the Court has to look at the facts in a light most favorable to the government under the circumstances. And here, given all the circumstances — not just the fact that the defendant executed his tax return — there was evidence that:

Dr. Ahuja was quite aware of the generation of

interest income;

He knew that he had income that was coming from outside of the United States;

He knew that he was, in fact, receiving 1099s for some of his accounts;

He had substantial funds, more than seven figures invested outside of the United States, and;

He engaged in multiple transactions including a trip to Citibank that demonstrate his awareness of what was happening with respect to his foreign bank accounts and particularly the HSBC -- I should say especially HSBC account.

That the language on the 1040 respecting Schedule B was small certainly is not supportive of the defense suggestion that Dr. Ahuja, in the midst of signing multiple tax returns, was not aware of the need to report interest income on his Schedule B.

I have to say somewhat tongue in cheek that Dr. Ahuja is a neurosurgeon. He's used to dealing with stuff that's very, very small. Perhaps he has much greater awareness of things that are small than most folks. And I find it difficult to conclude that the jury would have missed that fact in its deliberations.

Dr. Ahuja, according to the evidence, was and remains a sophisticated person with regard to finances. Indeed the evidence, if I recall it correctly, indicates that he signed

some forms acknowledging his intimate knowledge of finances and his day trading and his comfort level with investments.

And when I take that into account I can't conclude that the jury was uninformed with respect to the need to consider whether or not Dr. Ahuja acted willfully when he failed to report his interest income.

Does the defense wish to be heard further?

MR. KIRSCH: Your Honor, do you want me to address Count 7 briefly?

02:10 THE COURT: Yes. If you wish to. It's certainly not necessary. You have a very, very well-crafted brief. And unless there's something different that you'd like to point out, then it will not be absolutely essential that you be heard further.

02:11 MR. KIRSCH: Your Honor, I just want to point the Court to Jury Instruction Number 24 which requires that Dr. Ahuja knew it was his legal duty to file an FBAR. The government did not and cannot prove that Dr. Ahuja knew of a specific legal duty to file an FBAR. That's our argument. His 02:11 signature on the tax return is not enough. FBAR was never discussed with him.

That's our argument, Your Honor. I think it's in the brief. I'm happy to answer any questions you may have on that.

THE COURT: Ms. Siskind?

02:11 MS. SISKIND: Your Honor, just to point out that FBAR

was discussed with him. It was on an agenda. It was on a tax organizer. That word "FBAR" was raised with the defendant. It's not some obscure form that he can claim he's never heard of because Mr. Miller and the accounting firm took it upon itself to make sure its clients were aware of this legal requirement.

02:11

THE COURT: I agree. More need not be said. The defense motion is defined. Therefore, the Court declines to grant the defendant's motion for a judgment of acquittal.

With that, I turn to the presentence report. I note at the outset that following the jury's verdict in this matter the Court directed that a presentence report be prepared. That report has been submitted and the parties have responded to the same with the filing of objections as well as sentencing memoranda.

02:12

02:12

The Court is also in receipt of case law particularly with regard to matters concerning acquitted conduct.

Further, the Court has a number of references to comments of parties respecting sentencing.

Dr. Ahuja, have you had a chance to go over the sentencing materials with your counsel?

02:13

THE DEFENDANT: Yes, I have.

THE COURT: Do you believe that you've had a sufficient opportunity to discuss with your counsel all matters that are of concern to you today?

02:13

THE DEFENDANT: I may not have discussed all the

details with the accountant before, but I have discussed this in detail with my lawyer.

THE COURT: And what's key here is whether or not you've discussed things with your lawyer. And if there's anything affecting sentencing that you'd like to review with your counsel before we go any further, I'll give you a chance to do so right now.

THE DEFENDANT: No, I do not need to. Thank you.

THE COURT: All right. That being so I'd like to hear from the defense with regard to its objections, in particular the objection concerning the sophisticated means of executing the scheme in this case.

MR. KIRSCH: Yes, Your Honor. Can I just start right there with sophisticated means? If that's okay with the Court?

THE COURT: Yes.

MR. KIRSCH: Okay. Your Honor, we cite in our papers that "sophisticated means" means "especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense."

United States vs. Stokes, which we cite in our paper, says that there's nothing sophisticated about not disclosing income to your accountant. And essentially that's the government's case.

Your Honor, if these bank accounts were in the United States there would be absolutely no sophisticated means

enhancement applicable. None. There's just no way that the government could argue that Dr. Ahuja attempted to conceal from the IRS.

I mean, if you look at the record here, sophisticated means, Your Honor, as the Court is well aware in tax cases, is applied: when shell corporations are used; when things are done not in the defendant's own name; when things are done to deliberately conceal from others.

And that's not what happened here. Arvind Ahuja opened a bank account at HSBC in New York. He transferred money from his US Bank account in Milwaukee to his account in New York. He openly communicated with these HSBC bankers about all sorts of matters by e-mail.

I mean, I suggest to argue sophisticated means here is such a stretch by the government. The best the government can do is point to the change of address. That's the best they could do. But their own witness, Ramit Bhasin, testified --

THE COURT: You're referring to the change of address to the address in India?

MR. KIRSCH: Yeah. But, Your Honor, do you remember Mr. Bhasin, at page 333 and 331 -- I'll cite to the transcript. He addressed this. He straightened this all out and he said that it had nothing to do -- it had nothing to do with any sort of effort at concealment. It had to do with the fact that Dr. Ahuja had made a million-dollar investment with Mr. Bhasin

when he worked in a company called Oxus Investments.

He was moving to Mann Financial, and in order to move the money Dr. Ahuja had to have some sort of document with an Indian address on it. Ramit Bhasin, and I remember specifically this testimony because I remember when Mr. Webb asked Mr. Bhasin about this and started talking about tax implications, Mr. Bhasin had this puzzled look on his face.

THE COURT: Let me interrupt and just let you know that at this point the scale is in your direction.

MR. KIRSCH: I have nothing else to say on that issue, Your Honor.

THE COURT: I'm having some trouble with the government's argument in this connection. Because as the defense has pointed out, essentially what you've asserted and presented as evidence in this case is that Dr. Ahuja didn't tell his accountant about these accounts. And if that is it, everything else related to his failure to tell his accountant about the accounts is very, very minor.

MS. SISKIND: Your Honor, it's more than just the simple failure to tell his accountant about the accounts. The use of offshore bank accounts, one of the reasons that it's listed in the sophisticated means enhancement as an example of what might be sophisticated is that offshore bank accounts are inherently nontransparent.

By putting one's money offshore it significantly

decreases the chance that the U.S. Government will ever learn about it. Because as we learned at trial, foreign banks don't issue Forms 1099 and the jurisdiction of the grand jury and the court to obtain compulsory processes and records from these banks is significantly limited.

So that is why the use of an offshore bank account is something that is sophisticated; is more than just a mere failure to tell an accountant about some information. It's an affirmative step designed to prevent the government from learning about the income generated in that account.

Now, we also pointed out that there were transactions, affirmative steps the defendant took to further ensure that the account would not become known to his accountant and to the government. There was the change of address which I think is more significant than the defense points out.

Ramit Bhasin can say whatever he wants about why he thinks the defendant changed the address. But the fact is that the -- by changing the address the defendant prevented any account-related correspondence from coming to his house in the United States where it could have been accidentally turned over to his accountant among these other 1099s and financial documents that he was given. It didn't even raise that possibility because if the record never comes into this country, there's no chance of it being given to his accountant and for that income making its way on his tax return.

So, by using the forward address; by, for example, the account closure of the Jersey account; the -- we talked about this and it didn't come in at trial because there were a lot of documents that were not admissible at trial but I think it is relevant for this purpose. He closed the account. A check was mailed to him. If he had no intent to conceal the existence of that account from the government, then why didn't he deposit that in his US Bank account here in Milwaukee and then wire the funds to India? Instead, he handed the check off to -- likely handed the check off to an HSBC banker at a meeting in New York, who then sent it to the UK for processing to be credited to his India account.

That type of transaction is the very type of sophistication that the drafters of the guidelines had in mind with this enhancement. It is not the usual banking transaction that would be considered non-sophisticated. It is something much more than that and something calculated at concealing foreign accounts from the government.

We would recognize that there's always a continuum of what constitutes sophisticated means. And the government's not saying that this is most sophisticated scheme in the history of fraud in this country. But it does meet the test for what is sophisticated means under the guidelines. The defendant used foreign accounts. He concealed transactions. And it wasn't just a mere failure to disclose. There were affirmative steps

calculated from preventing the government from learning about his bank accounts.

THE COURT: Mr. Kirsch?

MR. KIRSCH: Yes. Would you like me to respond to that, Your Honor?

THE COURT: Please do.

MR. KIRSCH: Your Honor, the government talks about -- first they talk about offshore bank accounts being inherently nontransparent. Well, we know that's not the case. Dr. Ahuja had an account at Citibank that was a foreign account. He got a 1099. There's nothing wrong with that.

There's no evidence that he opened an account at HSBC — in New York, by the way — to somehow conceal assets from the government. If that was the case I submit he would not have opened the account in the United States, but he did.

The change of address is a complete red hearing. I mean, he had this account since 2001. He changes the address sometime in 2008, indicating that his address had been Greendale, Wisconsin from 2001 to 2008. That certainly can't -- for seven years they have his account being in Wisconsin. He changes it. Mr. Bhasin tells you -- anyway.

THE COURT: I don't recall any testimony regarding 1099s that may have been issued for such accounts back in 2001. Do you have any references to the record or anything that you can point out in the record that would address that?

MR. KIRSCH: I don't think there's anything in the record, Your Honor. The government has not set forth any evidence that he had received a 1099 in 2001 through 2009. But this was a policy of HSBC, that particular bank. But he had other accounts where he did -- that were foreign accounts where he did receive 1099s.

So I don't think the government can argue that he employed sophisticated means by having some foreign accounts where he didn't receive 1099s and some where he did.

Your Honor, it's also important to point out there's absolutely no evidence in the record — none — that Arvind Ahuja knew that he wasn't receiving 1099s. The government called four witnesses. Nobody ever testified that Arvind Ahuja was ever told at any time by anybody, anybody at HSBC, Mr. Bhasin or anybody else, that he would not be receiving 1099s from HSBC. It never happened. HSBC never told him that. Certainly if they had, the government would have put that witness on the stand to testify that he or she told Arvind Ahuja that he would not receive 1099s. He was never informed of that.

Your Honor, the government talks about this --

THE COURT: I do recall something concerning some forms that were executed and indicated -- that indicated that the bank -- a bank would not be -- wouldn't be issuing a 1099 or may not issue a 1099 and the person had to consult with their tax accountant or financial advisor.

MR. KIRSCH: I don't think that's -- I think the document said -- Your Honor, they didn't mention 1099. What they said was that a taxpayer is responsible for his income and has to consult with his tax advisor, which is standard language whenever anybody opens any type of financial account. It had absolutely nothing to do with 1099s. The government --

THE COURT: But it has something to do with income. Right?

MR. KIRSCH: With income. But it's never been our position that he somehow thought that he didn't have to report certain income on his tax return. It's never been disputed in this case. The issue is whether or not -- he had this tax-preparation process. The issue is whether or not he knew that he was not going to receive 1099s from HSBC.

THE COURT: Well, it's a little more than that, isn't it? Isn't it more a matter of whether or not he knew that the interest earned was reportable and taxable?

MR. KIRSCH: Yes, Your Honor, that's correct. But I don't think there's ever been any issue as to whether or not that interest was reportable and taxable. The issue was whether or not he knew what he was receiving from HSBC or what he was not -- now keep in mind, he was receiving a 1099 from HSBC for the money that he had in the United States.

THE COURT: Yes.

MR. KIRSCH: Which made it even more confusing. He

never saw it. He never saw the 1099. That was explained in detail. It would have been received by Mr. Branch. It would have been turned over with hundreds of other documents to Mr. Miller. He never saw it.

02:26 He would have had no reason to know that that HSBC -- Your Honor, just, there's one fundamental thing here. The amount of unreported income on Dr. Ahuja's tax return was less than 1.8 percent of his total tax liability. Less than --

THE COURT: You argued that at trial.

02:26 MR. KIRSCH: I know. But I just wanted to make that point that he did not know that he was not receiving 1099s.

But as far as a sophisticated means enhancement, when the government says that offshore bank accounts are inherently nontransparent, Your Honor, the Citibank account was entirely 02:26 transparent. We know that because he got a 1099, it was turned over to his accountant, and the interest was reported on Schedule B and the taxes were paid.

So there's just -- I mean, this is such a far cry from sophisticated means. The government relies on a check. They 02:27 talk about this check.

And, Your Honor, they very carefully -- they very carefully say that Dr. Ahuja likely -- he likely handed it to an HSBC banker. I mean, that is not proof of anything. That's simply speculation.

02:27 There is some burden of proof, although it's a lesser

burden of proof. Certainly they can't walk in here and say, well, Judge, he likely did this and therefore you should find even by a preponderance of the evidence that that's what he did. There's no evidence of it. We're just purely speculating that
02:27 that's what he did because that's what we think he did.

Your Honor, that's not proof by a preponderance of the evidence. That's not anything.

With respect to -- the government talks about he has these accounts but he opened his HSBC account in New York. He
02:27 communicates with them in his own name. For years. No shell corporation. The accounts at HSBC are in his name. Him and his wife's name. They're joint accounts.

The change of address, that was explained by Ramit Bhasin. This check in British pounds was sent to Wisconsin. It
02:28 was then deposited at a bank account in Great Britain and he withdrew it. Maybe it was deposited in a bank account in Great Britain because it was written in Great British pounds. I guess I don't know what I'd do with a check in Great British pounds. I don't know. But regardless, the government can't come here
02:28 and guess as to why -- they sent it to his address in -- that is not sophisticated means, Your Honor.

Your Honor, may I have one second?

THE COURT: Certainly.

(Defense counsel confer.)

02:28 MR. KIRSCH: Your Honor, I just want to make one

comment about Mr. Bhasin. It was the government that called Mr. Bhasin as a truth-sayer, not the defense.

THE COURT: I recall.

MR. KIRSCH: Okay.

02:28 THE COURT: And he wasn't especially forthright with regard to his testimony.

MR. KIRSCH: I agree with that. Although -- I certainly agree with that. Although with respect to this issue, Your Honor, I guess -- he explained as to -- he -- and the

02:29 e-mails -- by the way, if you remember, the e-mails that the government introduced bear out his testimony in this issue. Because he was the one that sent the e-mail that told Dr. Ahuja exactly what to do. Dr. Ahuja then forwarded it to the banker in New York. He forwarded Ramit Bhasin's e-mail to the banker

02:29 in New York. She then took care of it for him.

So it just had -- why would he send it to the banker in New York if it had anything to do with concealment? It just didn't, Your Honor.

THE COURT: Well, it may very well have had something

02:29 to do with concealment. But when I take into account the essence of what transpired here, I have to conclude, as you assert, Mr. Kirsch, that sophisticated means were not employed by your client in committing his offense.

And, therefore, the Court is sustaining your objection

02:30 to the presentence report and the enhancement that is applied in

paragraph 101 under U.S. Sentencing Guideline 2T1.1(b)(2). I don't believe the government has shown anything exceptionally sophisticated about when it comes to depositing checks for interest or concealing from the tax preparer funds that otherwise would have been subject to tax and disclosure on Schedule B of Dr. Ahuja's 1040.

That being so, the defendant's offense level would have to be reduced by two points.

Let's turn now to discussion of the loss calculation in this case. Does the defense wish to be heard briefly on this?

MR. KIRSCH: Yes, Your Honor. We make two arguments with respect to the loss calculation:

First, that the base offense level should be 6 because there is no tax loss under the guidelines.

And the second argument is that even if there is tax loss, it should be limited to the 2009 tax year.

And if I can, Your Honor -- well, as far as the base offense level being 6, I argued as to why I think the base offense level should be 6. And I'm certainly happy to answer any questions the Court may have on that. But I don't think there's any -- I think the jury and the Court, as the jury did, rejected the theory that Dr. Ahuja willfully failed to report interest income from HSBC. The argument that the government made for '06, '07, '08, and '09 was exactly the same for all of

those years.

THE COURT: Well, I don't think that we can conclude that the jury did not believe your client failed to report income for the earlier years. Instead we must conclude that the jury did not believe the government had shown beyond a reasonable doubt that your client had willfully failed to report such income.

Now, when it comes to enhancements and determining offense levels, a lesser level of proof is necessary; wouldn't you agree?

MR. KIRSCH: Absolutely, Your Honor.

THE COURT: So that being so, why should the Court not conclude that the government has not presented a preponderance of evidence to support a base offense level of 20 instead of the 6 that you propose?

MR. KIRSCH: Well, first of all, I don't think they can get -- they can't get to 20. Well, Your Honor, they argue the base offense level I think is 18. I don't think they argue -- well, wait a minute. No, I'm sorry, they do argue 20. They do argue 20.

Your Honor, they can't get to 20 because '05, '06, '07 and '08, they have entirely failed to show for those years, '05 through '08, that Dr. Ahuja did anything willfully.

Your Honor, we've recognized this in our papers. The evidence in '09 differs from the evidence in the earlier years.

But they can't take the evidence in '09 -- even if their argument is that he learned in '09, they cite the e-mail, the Ramit Bhasin e-mail which I suggest to the Court shows nothing but they relied on that. They relied on these conversations --

02:34 THE COURT: Well, doesn't that e-mail show your client's awareness of the need to -- well, the need to disclose foreign income?

MR. KIRSCH: No, I don't think it does at all. Ramit Bhasin worked at HSBC. And Ramit Bhasin testified that

02:35 Dr. Ahuja would forward him Bloomberg news articles having to do with HSBC sometimes two or three times a day. So that one e-mail by itself with no context, I don't think it shows that. Certainly not by a preponderance of the evidence.

THE COURT: Well, again, we're not just looking at

02:35 that piece of evidence in a vacuum.

MR. KIRSCH: I agree.

And, Your Honor, I started by saying the evidence in '09 is different than the earlier years. But the government certainly cannot take evidence from 2009 and then sort of roll

02:35 that back in time and say that maybe he knew in '09 when he sent this e-mail to Ramit Bhasin, which was about the same time that he had a meeting with Mark Miller, that because maybe he knew in '09 then his actions in '08, '07, '06, and '05 were willful. They can't do that.

02:36 And if you stop the clock on April 15th of 2009, which

is when he would have filed his -- by April 15th of 2009 his returns for '05, '06, '07 and '08 had been filed, Your Honor -- I respectfully suggest there is no evidence — none — prior to April 15th of 2009, that he willfully committed any tax violation.

Certainly, certainly there's evidence that he didn't pay tax on his HSBC interest income. But there's no evidence regarding any conversations with Mark Miller; any conversations regarding Ramit Bhasin; any conversations regarding anybody at HSBC. There's nothing.

The government put on four witnesses.

Four: Special Agent Cook;

The woman from HSBC, who never met Arvind Ahuja, says no record of any conversations between Dr. Ahuja and HSBC bankers when he opened these accounts;

Miller, who never ever testified to any conversations with Dr. Ahuja prior to April 15th of 2009 regarding foreign interest or foreign income or foreign reporting requirements.

There's nothing.

And there's Ramit Bhasin. He didn't testify -- the first thing he said as you recall, was this call -- this silly conversation that he says occurred on a golf course in Pebble Beach in the summer of '09.

So the government can't cite to a thing -- they want to come in and say, well, because the jury found him guilty in

'09 he must have been guilty in '08 and going back all the way to the beginning of when he opened these accounts. That's not -- Your Honor, that's simply not the way the process works.

For each count the government has to prove by a
02:37 preponderance of the evidence. They can't do it. They -- I think -- they just can't do it, Your Honor. And I respectfully submit -- I don't know what else to say except that there's just no evidence prior to April 15th of 2009 of Dr. Ahuja committing any willful tax violation.

02:38 THE COURT: Does the government wish to reply?

MS. SISKIND: Yes, Your Honor.

The events of late 2008 going to 2009 do provide a basis for the Court to conclude that by a preponderance of the evidence that the defendant's failure to report his interest
02:38 income and the existence of his accounts in the earlier years was willful as well.

Because in August and December, when he was being informed that there are these foreign bank account reporting requirements, if it really all had been innocent mistake all
02:38 those years and he really did want to come clean and say, "Oh, my God, I made a mistake, I'm going to make it all right now," he would have told Mark Miller at that point about the account. He would have reported it correctly in 2009. He would have amended his earlier tax returns.

02:38 But that's not what happened. Even after three times

being informed by his accountant that there's foreign bank account reporting requirements, he continued to conceal those accounts from Mr. Miller. And it's that continued concealment in the face of direct knowledge about these reporting
02:39 requirements that speaks volumes about his intent in the earlier years as well.

And the events of 2009, while they are highly probative of his mental state, are not the only facts that support a finding that he was willful in those earlier years.
02:39 There's the background of this defendant as a sophisticated investor. He was a day trader. He engaged in $245 million in trades in 2008. Does it really make sense that someone who is this sophisticated of an investor, this involved in his financial affairs, would not look into the tax
02:39 consequences of these investments he was making abroad?

He knew he had CDs. He knew they earned income interest in all of these years. He signed that account opening form where he acknowledged that he was required as a U.S. citizen to pay tax on his worldwide income. He signed other
02:39 documents like the tax declaration acknowledging there were tax implications to what he was doing in all of these years.

And he knew that this interest income was not being reported on all the earlier years. Some of the reasons we discussed already; namely, that Schedule B plays prominently on
02:40 a line item on the first page of the tax return. For each of

these years he knew that he was earning interest income and it wasn't being reported.

And at the same time he was hands-on with the management of this account — not just in 2009, but going back through all of the years at issue.

He directed how money was to be spent from the account. He put money into the account. He broke CDs. Transferred money. Checked up on interest rates. This was not some money he put over in India and forgot about. On a regular basis he was in communication with bankers about these accounts.

The defense keeps coming back to this issue of 1099s and how this at all relates to whether he was willful in these earlier years. And the government put on evidence at trial that it didn't matter that he was receiving a 1099, because even absent that form he knew he was receiving interest income. And he knew how to get information from the bank if he needed to know exactly how much interest he had earned.

We saw an example of an e-mail where Priti Dhanani, his banker at HSBC, sent him a copy of his HSBC-Jersey account statement when he requested it.

There were other examples that we cite in our sentencing memorandum of bankers providing the defendant with information about the specifics of his account whenever he wanted it.

So a 1099 is not -- it's not some magical form without

which he was completely unable to comply with his legal responsibilities with respect to reporting missed income and this account. Even without it he knew he had an account and it was earning interest income.

02:41 We would submit that all of the facts of this case, his financial savvy, his involvement with the accounts, and these quite important events that occurred in late 2008 leading up to the 2009 return, all taken together, can establish willfulness by a preponderance of the evidence for 2005 through
02:42 2008.

THE COURT: I concur with the government on this particular point, after taking into account the involvement of the defendant in his personal financial affairs, including his communication with his bankers over the years, his communication
02:42 with his accountant regarding his filing obligations, and his execution of tax returns from 2005 through 2009.

Therefore, the enhancement -- I should say the base offense level will be -- as set forth in the presentence report is adopted by the Court which, as a result, means that the total
02:43 base offense level in this matter would be 20 with a criminal history category of I.

Is there any exception to that determination?

MS. SISKIND: No, Your Honor.

THE COURT: Mr. Kirsch?

02:43 MR. KIRSCH: Subject to our earlier objections,

Your Honor, no. That's a correct application of the guidelines.

THE COURT: Thus, the fine range under the guidelines would be from 7500 to $75,000.

Are there any more guideline determinations that you'd like to address?

MS. SISKIND: Not from the government, Your Honor.

MR. KIRSCH: No, Your Honor.

THE COURT: All right. Let's now address the matter of sentencing and 3553(a)(2) factors. Does the government wish to be heard with regard to sentencing?

MS. SISKIND: Yes, Your Honor.

Your Honor, this case involves a multiyear scheme to defraud the government by concealing more than $2.7 million in interest income. And what we saw over the course of the trial is that it was about more than just filing a few false documents.

The defendant didn't have a momentary lapse in judgment. This wasn't a mistake. This wasn't an accident. This was a calculated decision to conceal information from his accountant and, in turn, from the IRS in order to avoid paying tax on his additional income.

And while it's true that the defendant has since amended his tax returns and paid everything that was due on that income, that only happened after he learned he was under criminal investigation.

It didn't happen in 2008 when Mark Miller told him about foreign bank account reporting requirements. It didn't happen when he sat down in either of those meetings and talked about foreign bank account reporting. It happened after he got
02:45 a letter from the Department of Justice telling him that he was the subject of a criminal investigation relating to his offshore accounts.

The Court needs to, as 3553(a) makes clear, take into account as well the history and characteristics of the
02:45 defendant. And we've seen the letters, the binder of letters from colleagues and friends and family members in support of the defendant. And they tell the story of a self-made man who came to this country and achieved the American dream. He grew up in poverty and now can report a net worth of more than $63 million.

02:46 He could have easily paid taxes on the additional income that he was earning. And as the defense pointed out, the additional tax only amounted to a fraction of what he paid in each of these years.

So the only possible explanation for why the defendant
02:46 didn't report this income to the government is greed. He had to pay a lot of tax on income that he was earning in this country and that he couldn't do anything about because the financial institutions in the United States were already reporting that income to the government. The only place where he was able to
02:46 avoid paying taxes on that income that was earned offshore, at a

bank that was not going to tell the IRS about it.

And it's impossible to examine the history and characteristics of this defendant without looking at his employment and his family. As the defense has pointed out he's
02:47 a world-renowned neurosurgeon. He has a loving family, wife and daughters, and extended family who wrote these compelling letters to the Court on his behalf. And the government is not disagreeing that it is appropriate for the Court to take all that into account when imposing sentence. But the government
02:47 submits that what the Court should not do is allow the defendant's character and his family ties to overshadow the other coequal sentencing factors that the Court also must consider under 3553(a). So history and characteristics is an important factor, but there are others as well that the Court
02:47 needs to consider.

And I want to make a few comments on some issues that I know the defense is going to raise, particularly relating to the defendant's medical license and how a sentence in this case could impact his license, and also how it might impact his
02:47 surgical privileges at hospitals where he currently works.

A lot of the defendant's -- much of the defendant's argument in support of a probationary sentence in this case rests on the speculation about what might happen to his medical license and to his surgical privileges if he's incarcerated.
02:48 But when the defendant goes before the Medical Board, if they

make a finding that unprofessional conduct occurred in his case the Medical Board has a wide range of sanctions that it can impose on the defendant taking into account his unique circumstances. They can be all the way from a reprimand up to
02:48 loss of a license. And I don't think it's appropriate to speculate what might happen when this independent fact-finding body takes a look at the defendant's case and decides how to proceed.

In his letter to the Court John Zwieg, who formerly
02:48 prosecuted cases in front of the Medical Board, indicates that there's a higher probability that if a person's incarcerated they will lose their license. But he's not distinguishing between cases like this one where it's a white collar crime and a crime that really has no bearing on the defendant's ability to
02:49 render quality medical care or take care of his patients, versus an assault or a drug case where there is a nexus between the crime and the provision of medical care.

And I would think that the Medical Board would deal differently with cases depending on the connection between what
02:49 the defendant is convicted of and the ability to render medical care. And I don't think that Mr. Zwieg was able to distinguish which of the cases where people went to jail were tax or which they were something else.

There's also nothing in the regulations that govern
02:49 the Medical Board that says that the type of sentence a person

receives should be some kind of determinative factor in what kind of sanction the board should impose. So it's possible that if the defendant receives probation he could still lose his license; or if he goes to jail he could still get it back when
02:50 he is released. And I don't know that there's anything to suggest a connection between the two, other than perhaps anecdotal evidence.

And I would think that Dr. Ahuja's stature in the medical community, his -- and his contributions and the esteem
02:50 that he is held in by his peers, is going to have a bigger impact on the Medical Board's decision than the type of sentence he receives.

The defense points out several times that Dr. Ahuja is the only endovascular neurosurgeon in Milwaukee. Well, if
02:50 that's the case I would think the Medical Board is a lot less likely to revoke his license upon release from incarceration if his services are that vital to the medical community here in Milwaukee.

And the same is true for his privileges at hospitals.
02:50 The defendant no doubt brings prestige and revenue to whatever hospital he practices at, in light of his unique skill set. And I find it hard to believe that a hospital would forego that because he was incarcerated. Instead he does have an important role to play in the medical community in this city, and both the
02:51 Medical Board and the hospitals where he practice are going to

recognize that when deciding how to deal with this case.

And that brings us to the defendant's argument that this court needs to consider the detrimental effects on the doctor's patients if he's incarcerated. He is claiming that
02:51 people will die if he goes to prison. And that is a bold claim. He may be the only surgeon in Milwaukee that performs his particular subspecialty, but he doesn't account for doctors in other parts of Wisconsin, in Chicago which, at most, a two-hour drive away. It is certainly not unheard of this in this country
02:52 for people who are in dire need of specialized medical care to travel in order to seek that medical care. Just think of the more than a million people every year that go to the Mayo Clinic to seek specialized treatment there, traveling from all parts of the world.

02:52 Receiving high-quality care is not always convenient for patients, but it's certainly not as if a person is going to forego that care because they have to drive to Chicago to meet with a doctor.

And what's possibly most troubling about his argument
02:52 is he's essentially saying that a doctor should be permitted to violate the law with impunity simply because he provides a valuable service to his community. And that simply cannot be true. Doctors, like any other person in any other profession who comes before this court, need to be held responsible for
02:53 violations of the law.

And allowing surgeons to avoid jail time simply because they are surgeons is not going to deter other people in the defendant's position from committing similar crimes in the future. Instead it will tell them that they have nothing to
02:53 fear because they are so important that no one's gonna send them to jail.

Your Honor, focusing so heavily on the effects of incarceration on third parties significantly overshadows another sentencing factor that the Court needs to consider which is the
02:53 need to provide just punishment.

A sentence of probation in this case would not provide just punishment for the offenses. And, in fact, the realities of this case demonstrate that a sentence of probation is essentially no sentence at all. Because a sentence that a
02:54 person is going to regard as trivial, that's not just punishment for an offense.

When determining how this sentence is going to be regarded by the defendant, the Court should look at how he was affected by pretrial supervision in this case. Because that's
02:54 the best indication we have about how he's going to be impacted by a sentence that does not include incarceration.

If Your Honor looks at the docket in this case it reflects that under the -- that during the approximately one-year period he was under indictment he was granted
02:54 permission to travel outside of the district approximately 20

times. He went on vacation. He visited family and friends. He spoke at medical conferences. He went to his house in Aspin. If that's what life is going to be like for him on probation, then how can a sentence of probation --

02:54 THE COURT: It wouldn't. I would tell you right now. It wouldn't be that way.

MS. SISKIND: Your Honor, it still brings us back to the point that it needs to be a sentence that is going to be regarded as significant by the defendant. And I would submit

02:55 that a sentence of probation will have a limited impact on the defendant's life, and that cannot be just punishment for the offense.

THE COURT: So what under the circumstances do you believe is reasonable but no greater than necessary under all

02:55 the circumstances, taking into account the factors that the defense has cited and what you just mentioned? In particular, Dr. Ahuja's specialty; Dr. Ahuja's lack of a criminal record; the seriousness of his two crimes; the need to deter him and others from engaging in similar conduct in the future; as well

02:56 as, and I think this is an important thing, the need to avoid unwarranted disparities in sentencing.

MS. SISKIND: Your Honor, I'm glad you mentioned the unwarranted sentencing disparities. And both sides have cited different cases in their respective submissions on that issue.

02:56 This is the first case of its kind to go to trial.

All of the other cases cited particularly in the government's paper are individuals with offshore bank accounts who before they were indicted came into court, accepted responsibility, many of them agreeing to cooperate against the banks where they had accounts, and pled guilty.

That is different than a defendant who does not accept responsibility, does not agree to cooperate, and puts the government to its burden of proof. Which is his constitutional right. But still, the guidelines reflect a difference in how people should be treated if they plea or if they go to trial with acceptance of responsibility. And this is not a defendant who's accepted responsibility for his offenses. It's not a defendant who came in early before indictment and pled guilty.

And so when we have these cases of people -- that are cited in our papers -- of people that receive probation, those already are significant departures below their respective guideline ranges.

So in this case, to have a guideline range as high as the defendant does, even if the Court were to vary downward from that range to reflect some of the specific circumstances of this case including his profession and the effect on patients. It still puts us in a position where some sentence of incarceration, some term that is significant enough to make an impression on this defendant and make an impression on other people like him out there. A sentence of incarceration that is

significant enough to reflect that over a multiyear period he deprived the United States of a significant amount of tax revenue.

So whether that sentence is within the guideline range or not, the government does believe that the sentence needs to include a period of incarceration.

THE COURT: Thank you greatly.

MR. WEBB: Your Honor, and I apologize for my cold and I'm going to try to speak into the microphone. If you don't hear me just tell me.

I understand the sentencing guideline decisions you've made, and I accept them, of course. The -- as Your Honor knows, since Booker those guideline ranges are purely advisory and Your Honor has every right to pick the appropriate sentence you believe is justified based on the specific facts and circumstances of this case. That's the progeny of Booker and we all are very much aware of that.

I'm going to talk for a bit here. I'm going to try to be concise but I have some points I want to make. But let me start with my conclusion.

We believe that the appropriate sentence in this case is probation. And we believe the appropriate sentence is probation because of very specific unique factors that relate to Dr. Ahuja. All we do is respectfully ask Your Honor to individualize these factors and apply them to Dr. Ahuja, and we

believe — we respectfully suggest to you anyway — that the appropriate sentence should be probation.

And the first factor I want to talk about is what the government alluded to which I'll call -- that's referred to under the case law as "collateral consequences to innocent third parties," which the government agrees and everyone agrees is an appropriate consideration for Your Honor to take into consideration in reaching a decision in this case.

02:59

And we cite a number of cases, and I'll come to them in a moment, where courts have held that those factors can very well lead to probation because of the collateral consequences. This is an extraordinary, unique case.

02:59

THE COURT: But in that connection I did not note in your memorandum any significant discussion of the other members of Dr. Ahuja's practice group.

03:00

MR. WEBB: I'm sorry, I didn't hear the last part of your question.

THE COURT: I do not recall seeing anything regarding other members of Dr. Ahuja's practice group.

03:00

MR. WEBB: We have a letter from one of those that's referred to, Your Honor. It's actually -- it's the -- it's Dr. William McCallum. That's one of the neurosurgeons. It's in the -- it should be in Tab 61 of the binder that we gave you of letters from different people. Do you have a binder?

03:00

THE COURT: Somewhere.

MR. WEBB: And I can get you a copy of the letter if you'd like, Your Honor.

THE COURT: Yes, I have it. All right, I have it.

MR. WEBB: And what he points out, he addresses -- he's one of the neurosurgeons that the government says they believe can just pick up Dr. Ahuja's practice. And what he says, and I'll quote from one paragraph of his letter.

"Our group is composed of five neurosurgeons including Arvind. However, it would not be practical to reassign his patients if Dr. Ahuja is not practicing. Dr. Ahuja's patient base represents such a large volume there is no way myself and the other partners could absorb them into our practices while assuring appropriate attention."

Second, and this is the most important I believe:

"None of the other four partners are trained as endovascular neurosurgeons and do not perform many of the procedures that Arvind performs."

And that is the point I want to make, Your Honor, is that I don't think -- I know I've never been at a sentencing where I ever suggested to a judge that my client was irreplaceable. And if I should be sentenced some day no one could suggest I'm not, I can tell you that. But I will say, and I try to say this without overstating it, as far as being an endovascular neurosurgeon in the Milwaukee area, he is irreplaceable. I have learned that from talking to so many

people in gathering these letters today.

This is an extraordinary circumstance. But the fact is you've got these doctor letters from people in this community that have pointed out that what he does -- by the way, I think 03:02 he was the second person licensed in this whole nation to be an endovascular neurosurgeon. And he brought this practice to Milwaukee. And he may be the best in the country at doing it. And he's certainly by far -- there's no one around here that does it.

03:03 And what that does is I think -- I don't want to get -- he basically -- you don't have to crack someone's skull. They snake a wire up through your arteries from your groin up and you end up in the brain and the things they can do up there, Your Honor, as far as doing actual surgeries and/or dissolving 03:03 clots with strokes, it's truly a phenomenal thing he does.

And what counsel says, well, let them go to Chicago. Well, you've got letters, I'll come to one in a minute, where doctors are saying that's just not realistic if you're dealing with someone that we -- to be able to dissolve that clot, save 03:03 that person's life, or at least make sure they don't have long-term disabilities, we're not gonna put them in a car to Chicago. It is not going to work. And that's what the doctors have said. And that's the truth.

I'm not going to be overly -- how do I know if he's 03:03 going to save lives? He's saved hundreds of lives over the

years because he can do this and there's undoubtedly going to be some in the future. My only point is that there is nobody else here that can do that. And we've put this forth in the letters over and over again in our briefs. And I could call more of them to Your Honor's attention than I already have, but I want to quote from one.

Dr. Bobustuc, who is a very prominent surgeon here in Milwaukee, this is the way -- I read from his letter which is letter number 2 in your binder. Here's what he said:

"I know there will be patients who will not be able to go to Chicago in a heartbeat, or not have the right insurance which for Arvind has never been an issue, and I know that some of them will die. This is the basic truth."

Now, that's what this doctor said to this court and the government doesn't dispute. There is no other endovascular neurosurgeon in this area. Zero. And these other neurosurgeons admit over and over again they cannot do what he does.

And so when you're dealing -- and, by the way, his -- he has -- Your Honor, he's got -- besides the surgeries he's doing now, he's got thousands of patients he's actually still seeing at least on an occasional basis that come back for treatment from him.

But, you know, if you want to talk about sentencing him, besides all of that, what I was even maybe more impressed with and I'll just emphasize to Your Honor — besides that he's

the only one that can do it — he's the only neurosurgeon in this city that has the track record that when people are uninsured and cannot afford what he does, he will do it. In fact, we've given you letter after letter. When patients call up and say to him "I'm not going to keep my appointment because I can't pay anymore," and he brings them in every single time to perform the procedures on them.

So anyway, this is set forth over and over again in these letters, that he does things here to treat patients over and over again.

One of patients is Bart, B., Tab 18. She wrote of how her insurance carrier refused coverage for several delicate brain surgeries that Dr. Ahuja was performing while treating her. When the patient discussed her inability to pay and her insurance problems that developed during treatment, Dr. Ahuja said, "You come in here, I will absorb the entire bill of $150,000."

Your Honor, there are many letters like that spread throughout what we put in your binder there. And it's true. He is irreplaceable in this community. Now the question is: Well, what's the difference between jail time and probation? And I've done the best I can.

I've given you a letter which is tab 106, Jack Zwieg. He's the most experienced attorney I could find in Wisconsin who spent 30 years working for the Wisconsin Medical Board handling

disciplinary proceedings for that board. And he has done a five-year survey. A five-year survey. I'm not trying to guess and speculate, I'm doing the best I can with what exists out there in the world. He's done a five-year survey. And what he
03:07 has told the Court in his letter is that he has found 20 disciplinary orders against doctors in cases resulting from criminal convictions which were the basis for the disqualification.

So I have a universe of 20. 15 of the 20 cases ended
03:07 up with jail sentences. And in those 15 cases the board suspended, revoked -- or revoked the doctor's license. There are five cases where the doctor got probation, and all five cases the medical disciplinary board gave that doctor a reprimand so he could continue to practice medicine.

03:08 Now, that's the best data I have in this state today. And I don't doubt for a minute that the way Your Honor's gonna view this case in your judgment and wisdom is going to have an enormous impact on that medical disciplinary board. If you decide that the appropriate sentence based on all the
03:08 circumstances is probation, I don't doubt for a minute that he will be able to maintain his license because of the value he's got to this community. Can I guarantee it? No. But I speak from everything I can glean from the statistics and facts that we have.

03:08 So collateral consequences, we cited case after -- the

cases, by the way, that both sides have cited, things such as your employees are gonna lose their job, found to be good enough for probation.

A water treatment company didn't -- thought that this 03:09 one defendant was so valuable in treating water, even though there's others that might do it, the court said no probation. And so you've got these cases here. Another was someone who was exceptionally talented in her catering business.

Compared to the collateral consequence in this case, 03:09 there's enormous authority out there that this collateral consequence issue -- I don't see any other case where you can have this type of collateral consequence.

And, by the way, what probably pales in comparison but it's true in this case, he does employ about 30 people in his 03:09 practice. And if he's sent to jail and his license is revoked and his practice is shut down, those 30 people are going to be unemployed. And hopefully people will find places for them. And I'm not -- but they will not have a job anymore because that clinic, his practice, will be shut down.

03:09 So, Your Honor, yes, you can tell I feel pretty emotional about this. This is a unique case. This is a unique circumstance. And because of his skills and because of what's going to happen if he goes to jail, I respectfully suggest that the appropriate sentence is probation.

03:10 But, I don't have to stop there. I can at least

mention some other factors under 3553(a) that I believe are consistent and put a -- let's call them an additive value for probation and not the least of which, by the way, is the actual nature and circumstance of his crime.

03:10 I'm not going to minimize it. He was convicted of two felonies. But he was -- you know, we started this case with a conspiracy count which left the case because they couldn't prove any conspiracy with anyone at HSBC. That's where we started the case, with the big serious conspiracy charge gone.

03:10 Then we go through eight counts. You threw one count out for lack of evidence. Seven go to a jury, five of them come back not guilty. And the two that he was found guilty of, it is basically for not disclosing that he had foreign bank accounts, not for not reporting income.

03:11 I won't minimize it. They're felonies. But it's felonies dealing with not disclosing that you have foreign bank accounts. So if you're talking about, in the scheme of the world out here, of serious tax cases, this is not one of them.

And, by the way --

03:11 THE COURT: Well, it depends on how seriously you believe the government takes unreported foreign income.

MR. WEBB: I want to talk about that. Can I answer that question? That's a fair question.

THE COURT: Yes.

03:11 MR. WEBB: I do believe sometimes our lives are so

wrapped up with fate and events that sometimes we don't have total control over. The government has amnesty for this -- they have amnesty programs for this very issue of foreign income. There are 30,000 people that got amnesty during this time period when Dr. Ahuja got singled out to be indicted. No review of the facts.

03:11

People that had shell corporations, huge amounts of money, lying, stealing, cheating on the way they set these foreign accounts up. He doesn't do it that way. His is all in his own name. Anyway, they don't get charged. They don't get indicted at all because they filed the application for amnesty. He didn't. And do you want to know why? Because he honestly didn't know that HSBC had not sent him 1099 forms.

03:12

And so then they sent him a target letter and said oops, you're out of luck, Doctor. You got a target letter, we tried to do it, and they said, nope, you can't do it, and you're going to be prosecuted.

03:12

So as far as -- I'm not -- yeah, I'll accept that there's two felonies and they're here and we accept that. But as far as the seriousness in light of the amnesty program, at least I think it's something for Your Honor to look at. And the fact by the way --

03:12

THE COURT: Of course, you did argue the amnesty issue early in this case.

03:12

MR. WEBB: We did, Your Honor. But I'm just pointing

out as far as -- well, I point it out for what it's worth.

As far as the seriousness of the crime, it is only 2 percent of his -- of the taxes that he owed. He did pay all of the taxes due and owing long before this indictment came down. That's gotta be in his favor.

And, by the way, he reports every -- this is interest income. All the money that -- he's given the federal government tens of millions of dollars for his medical income. And so this is not some tax cheat that hasn't paid huge sums of money to the government.

All these are factors that I just respectfully ask that you consider when you consider the nature of the crime as he stands before you convicted. And of course --

THE COURT: I do have to say that I agree with what you said regarding payment of taxes. To the extent that your client did submit what he believed were properly due and owing taxes, that weighs heavily in his favor.

MR. WEBB: Okay, thank you. I mean, he has paid huge amounts of money in taxes, tens of millions of dollars over the years. No allegation that he ever didn't pay a dime in his -- all the income that he had from medical.

And, by the way, he reported all his interest income too, other than this 1099 from this particular company. But I'm not going to reargue the facts. They're there.

THE COURT: What I would like you to address is

whether or not your requested probationary sentence would be inappropriate considering other cases where people have evaded taxes or filed false returns and have, in fact, been sentenced by not just this court but other courts.

03:14 MR. WEBB: I'll address that. Maybe the best way to address it is, I went back this morning and looked at the briefs we filed on this issue of sentencing, disparity of sentencing issue. As far as the briefs that we filed, both sides cite tax cases to argue to you what the appropriate sentence would be.

03:15 So both sides did that.

I count, if my count is correct, between the two parties we cite to you 14 tax cases to argue what each side thinks should be the appropriate sentence. So we got 14. 12 of them resulted in probation. 12 of those sentences are probation

03:15 out of 14 that both sides called to your attention. One of them was a one day of jail. So one -- so I got 12 probations, one case one day in jail, and then one outlier, one year and one day in jail. From 14 different cases.

So this case, if you decide to --

03:15 THE COURT: I believe there must have been another one because I believe I sentenced someone recently to --

MR. WEBB: I think these are the cases that are not Judge -- is that correct? I want to make sure of that.

THE COURT: If I recall the government cited my case

03:16 in its brief.

MR. WEBB: Your Honor, these are the offshore account cases that we're trying to --

THE COURT: You're only referring to offshore account cases.

03:16 MR. WEBB: Yes, I'm on offshore account cases because I thought that was most applicable to this case.

THE COURT: Okay.

MR. WEBB: So those cases would show that if you decide to impose probation because he did not properly handle

03:16 his offshore accounts, that you're in very good territory of imposing probation.

Now, if you impose probation, let me respectfully have a suggestion or at least a -- that we could do a sentence of probation that would help him maintain his license and benefit I

03:17 don't know how many people that are his patients now or in the future. But also you can impose, in your judgment and discretion, a period of community service where he has to donate time to some worthy organization during his time of probation.

We've actually -- this would be entirely up to you and

03:17 any program you wanted, but we've looked into that. And there are programs out there. Actually the one we've been dealing with is, it's called the United Neighborhood Centers. They basically have 10 organizations that provide services to underserved people in the Milwaukee area. There's a Mr. Cox

03:17 there that runs one of their organizations, and we've talked to

him about whether he would be willing to, if you will, supervise Dr. Ahuja to certify to the Court that Dr. Ahuja performed community service consistent with whatever you might decide. Whatever. You pick a number of hours.

03:18 But there's two medical centers that are part of their organization. And while he would go there and he would work the number of hours donating his time to the community, and he's somewhat of an expert on what's called "outreach" because he set up two different stroke centers over the years where people can

03:18 come in if they're having a stroke and get that blood clot dissolved quickly. Those programs are key to outreach where you have to educate people that they exist or they won't come into centers.

And so he could work at these centers and work in --

03:18 both in the centers providing medical services and also help them in outreach. And so that period -- that condition of probation which is in Your Honor's discretion would have the ability of not only preserving him as a doctor in endovascular neurosurgery and for his patients, but it would also be helpful

03:18 to the community.

And, by the way, he's a first-time offender. I mean, he's never done anything wrong in his life. Look, I could go on and on about his family. This Indian is such a tight-knit family. The loyalty that he has to this family and how tight it

03:19 is and how close they are, everything about this man's life.

But you are sentencing a good man. If you read those letters, his staff talked over and over again how it doesn't matter whether he's on vacation. It didn't even matter when -- when he was on trial before you I told him "you do not go to
03:19 that hospital, I need you here," he went to the hospital. He performed several surgeries while this case was ongoing. And his staff submitted written letters explaining "because people had to have it done." And so he snuck away from me and went to the hospital at night and performed surgeries because that's
03:19 what -- and he's done it his entire life.

And these uninsured patients. One of the staff members said I have never seen him -- every single time it's happened when someone has no insurance, when he had no insurance he insists they gotta come in and they gotta be treated. And
03:20 he's done it consistently.

He is a good man. He's not a bad person. He's a first-time offender. And there's conditions you can put on probation. And I just respectfully ask Your Honor to consider probation.

03:20 Thank you.

THE COURT: Thank you, Mr. Webb.

Mr. Karolewicz, is there anything that you can add that may be helpful?

PROBATION OFFICER: I would just add that he did come
03:20 in today and submit a urine screen which tested negative for

controlled substances. And he continued to comply with your order and gave us all of his travel itineraries up to today.

THE COURT: Thank you greatly.

Dr. Ahuja, you certainly have the right to be heard at this stage if you wish to make any statements. However, I do also emphasize you are not required to make any statements.

THE DEFENDANT: If I could. Can we take a two-minute break?

THE COURT: Surely. We'll take a break.

THE BAILIFF: All rise.

(Recess taken at 3:21 p.m., until 3:40 p.m.)

THE COURT: Dr. Ahuja, do you wish to be heard?

THE DEFENDANT: Yes, I do. Thank you. Thank you for the bathroom break.

(Brief pause.)

THE DEFENDANT: Sorry.

THE COURT: That's okay.

THE DEFENDANT: I've prepared some notes to help me do my presentation today.

Your Honor, I read the papers that have been submitted to the Court. I've listened to Mr. Webb's statement about me, about my life, my patients, and my effect on the community. And I must tell you that I'm truly humbled in all that's been said and written.

I strongly believe that anything I have achieved is

due to God's blessing and my parents' hard work and sacrifice. Despite what anybody may say or present, the last two years have been a very painful part of my life. But I had to get through that, for my kids and over 27,000 patients I have to take care
03:42 of. As Mr. Webb said, even when I'm in trial worrying about my life, I worked before and after because I couldn't say no.

I'm extremely sorry for my role in bringing all of us here today. In my medical practice I'm ultimately responsible for every procedure that's performed. This is true regarding
03:43 any action taken by me or a member of my team.

It is the same in this case. Even though I assigned the responsibility to my accountants in preparation of my tax returns, I signed them. And I should have done more. And I am the one ultimately responsible for the errors in those returns,
03:43 and I'm deeply sorry.

I did not dedicate my life of being a neurosurgeon for pursuit of money or being recognized. The reason I love my work is that I can help people, and that is what gives meaning to my life. If it was greed that I wanted to make extra money, I
03:44 wouldn't be donating four to five times the money every year that I paid in any tax. And it's never been about money for me.

And I feel great sorrow for the effect that my errors may have on my wife, children, my four parents and my patients. I really would like to deeply thank them for their support.
03:44 Without their support, I could not be here without them.

I come before the Court today believing in all my heart that my life's work hangs in the balance based on your decision. But I will not let you down. And in my heart never did I want to cheat or nudge the system. If I'm sentenced to
03:45 prison time I do not believe that I will be able to continue practicing neurosurgery and help those that need my help. And more than anything, the penalty would also cut my heart out.

And, Your Honor, if I receive probation and able to continue in my medical practice, I pledge never to stray from my
03:45 obligation to follow the law and, with God's help, would do my very best to serve my patients. And I will continue to be deeply committed to fulfilling the community service that my counsel has discussed with this court and really continue to make a meaningful difference for additional patients in this
03:45 community.

I thank you for all the efforts you made in the trial for this case, and to give me the opportunity to express the truth that's in my heart.

Thank you.

03:46 THE COURT: Thank you.

Dr. Arvind Ahuja, you were adjudged guilty on Counts 5 and 9 of the indictment, following a trial on August 23rd of last year. The charges were for filing a false income tax return, contrary to Section 7206(1) of Title 26, and failure to
03:46 file reports of foreign bank and financial accounts, Count 9,

contrary to Sections 5314 and 5322 of Title 31 of the U.S. Code.

The Court has heard arguments respecting the guidelines and has determined, after hearing those arguments and deciding your objections, that you are at offense level 20 of
03:47 criminal history category I, which translates into an advisory guideline range of from 33 to 41 months of imprisonment as to those counts of conviction, at least 1 but not more than 3 years supervised release, and a fine range of from 7500 to $75,000, coupled with a special assessment of $200.

03:48 The Court further notes that the statutes involved set a maximum fine of $100,000 as to Count 1 and $250,000 as to -- I said Count 1, it's Count 5 -- and $250,000 as to Count 9.

The government has requested a period of incarceration, and the defense has requested a sentence of
03:48 probation.

The Court is mindful of the sentencing factors that have to be taken into account under 18 U.S.C. Section 3553(a)(2). And any sentence imposed should therefore take into account the seriousness of the offense, the need to promote
03:49 respect for the law, the need to impose a just sentence that is in the form of punishment, and is reasonable under all the circumstances so as to deter future criminal conduct with regard to you in particular and others in general.

There's also a need to protect the public under
03:49 certain circumstances, and here I don't believe that is a

substantial factor.

Further, the Court must not impose a sentence that's inordinately disparate if under the circumstances that's inappropriate. So the Court does have to determine whether or
03:50 not a sentence will be out of line with other sentences in similar cases.

The Court has heard a number of arguments with regard to why you should be incarcerated, Dr. Ahuja. One such argument is the fact that you concealed substantial interest income by
03:50 virtue of your conduct, and you frustrated the interest of the government in uncovering foreign bank accounts.

The defense has also pointed out the nature of your work; the impact of any sentence of incarceration on your patients; as well as the hospitals where you practice and the
03:51 group with whom you practice medicine.

The Court has also been made aware of the high regard that your patients have for your work; your efforts to provide needed medical care to persons who are unable to afford such care out of their own meager means; the fact that you paid taxes
03:52 on income that had previously been unreported, although that came somewhat tardily and after it was apparent that you were under suspicion and investigation.

The Court has also been told how a period of incarceration may impact your livelihood, and in particular your
03:52 ability to continue practicing medicine.

It has also been noted that you are open to providing community service in the form of healthcare if you're given an opportunity to do so.

Your ability to access various hospitals if you are
03:53 given a sentence that involves confinement has also been brought to the Court's attention.

I have weighed these matters and all of the issues that the defense and the government have raised today. I've given thought to other cases involving medical professionals who
03:54 have been in this court, defendants who have come before this court in tax cases, and the cases that both sides have cited in their submissions. And I will tell you that all of them indicate to me that this is a rather unusual case, one that does not provide clear lines that this court should follow.

03:55 And so, in the final analysis, this court has to treat you in a somewhat unique way. In my judgment, punishment is required. Responsibility for your crimes must be shouldered by you as a result of the expensive and rather drawn-out proceedings that have been brought by the government. It has to
03:56 be made clear that it is essential that offshore income earned by taxpayers must be reported, and that taxpayers such as yourself who earn such income, particularly substantial income as in this case, have to report that income and decline to hide behind the smoke and mountains of paper and layers of clouds
03:57 that may obscure from the government the funds that they've

earned outside of the United States.

Therefore, it's my judgment that as to Counts 5 and 9 of the indictment that you serve a term of three years of probation with six months of home confinement.

03:58 In addition, let me point out that that term varies substantially from the guidelines in this case. And, that that term takes into account the factors that have been cited, particularly those concerning the impact of this sentence on third parties, not the least of whom are your patients.

03:58 It also serves as notice generally that it is essential that taxpayers file accurate returns and disclose their offshore income.

Now, in addition, the Court is of the view that fines are appropriate here. The Court is therefore imposing a fine of 03:59 $100,000 as to Count 5 and $250,000 as to Count 9, for a total of $350,000 in fines. Those fines are greater than the guidelines call for. But in order for this court to provide measured punishment within the statutes and to deter not just you but others, the Court is satisfied that this is reasonable 04:00 under all the circumstances in this case.

Additionally, special assessments of $100 are imposed on each count, for a total of $200 in the special assessments.

With regard to the probationary term and the period of home confinement, the Court notes that your probation will 04:00 commence today. And, that you must comply with the standard

conditions of probation which have been adopted by this court, coupled with special conditions as follows:

You are allowed to work during your term of probation with such work hours to be determined in conjunction with your supervising probation officer. I'm not going to fix those hours at this time for several reasons, not the least of which is emergencies certainly arise within the medical profession. And if there are emergencies I am satisfied that it will be appropriate for those to be accommodated, within reason.

While you're on probation you are required to perform each year 150 hours of community service as approved by your supervising probation officer, as to each one of the years of probation.

You may not during your probationary period possess any firearms, ammunition or dangerous weapons, as such possession will result in revocation of your supervision term. Nor may you illegally possess any controlled substances, as such possession will also result in revocation of your probationary term.

The Court is of the view that you are at low risk for illegal drug use and, therefore, I am going to suspend the drug testing requirement.

You are also required to cooperate with the Internal Revenue Service in the preparation of any tax returns that may be due and owing.

And you are required to provide to your supervising probation officer monthly financial reports as well as copies of your federal and state income tax returns which returns are to be timely filed and submitted immediately after they have been filed.

Lastly, inasmuch as you've gone to trial in this case you are entitled to appeal your convictions. If you wish to have the clerk of court file a notice of appeal on your behalf you must make that known before you leave the courtroom today.

Alternatively, you will have 14 days after the judgment of conviction has been docketed to file a notice of appeal on your own or to have your counsel file that notice of appeal.

Your counsel is to consult with you respecting your appeal rights and is asked to submit a report verifying that you have met with respect to the same.

Under all the circumstances do you wish to have the clerk file a notice of appeal?

THE DEFENDANT: No.

THE COURT: All right. You still have the other option which is, if you change your mind, and to submit the notice of appeal through counsel or on your own.

Is there anything else from the defense?

MR. WEBB: No, Your Honor. Just maybe one clarification which I believe I can understand, but during the

time of probation he can work. I take it that also includes the home confinement. During the home confinement part of the probation he can go to work in his medical practice.

THE COURT: That is correct.

04:05 MR. WEBB: Thank you.

THE COURT: I mentioned something earlier and I need to make this clear.

Throughout probation Dr. Ahuja is not to travel internationally and he is not to travel outside of Wisconsin

04:06 except as essential to maintaining his credentials or for health reasons, other than the need to have rest and relaxation. In other words, I don't want him to ask for time to go on a vacation outside of the state of Wisconsin. I want his travel to be restricted. And if he has extra time, I would expect that

04:07 extra time will be used for the purposes that you mentioned, that is, Dr. Ahuja's desire to provide some healthcare and assistance within this community. I want this to be rather restricted probation.

THE DEFENDANT: Can I ask a question?

04:07 THE COURT: Yes.

MR. WEBB: Your Honor, one question. He has children that are outside --

THE COURT: I understand that. If he were incarcerated they'd have to come to him.

04:07 MR. WEBB: Yes, Your Honor. One second, Your Honor.

THE COURT: That's certainly better than incarceration.

MR. WEBB: Your Honor, we understand completely. Can we at least have the option to come back -- there may be special events that will be at their children's schools.

THE COURT: I understand that. No. No.

Now, I did not articulate how the fines are to be paid. Do you wish to be heard in that regard? Because I will tell you under most circumstances I will limit a defendant's ability to transfer any property without the prior approval of the court, at least to the extent that that property is valued at a sum in excess of $500.

Do you have any comments you would like to make with regard to the payment of the fine? Otherwise I'll address that before we conclude.

MR. WEBB: We will have the fine paid by Monday.

THE COURT: All right. And if that fine is not paid by Monday then what I will do is address that in a further determination.

Does the government wish to be heard?

MS. SISKIND: No, Your Honor.

THE COURT: Let me see if there's anything else I need to address.

All right. I think that I've addressed the counts of conviction which are Counts 5 and 9. We've disposed of the

other -- the other counts have been disposed of by the jury and the Court.

Are there any issues that were raised in your memoranda that you'd like to bring up before we conclude? I just want to make sure I did not miss any issues that were raised.

04:10

MS. SISKIND: Nothing from the government, Your Honor.

MR. WEBB: No, Your Honor.

THE COURT: Very well. All right, we stand in recess.

04:10

(Proceedings concluded at 4:10 p.m.)

* * *

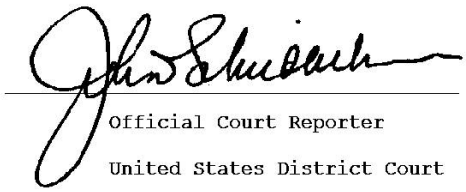
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter for the United States District Court, Eastern District of Wisconsin, do hereby certify that I reported the foregoing proceedings, and that the same is true and correct in accordance with my original machine shorthand notes taken at said time and place.

Dated this 4th day of February, 2013

Milwaukee, Wisconsin.



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