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CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

BY

*[Signature]*

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

**CR 09 00122**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GERARD "JERRY" SNAPP, )  
 )  
Defendant. )

CR 09- **CR 09 00122**  
I N F O R M A T I O N  
[16 U.S.C. §§ 1538(a)(1)(F),  
1540(b)(1): Illegal Offer To  
Sell Endangered Species In  
Interstate Commerce; 16  
U.S.C. § 1540(e)(4)(A):  
Forfeiture of Endangered  
Species Offered For Sale In  
Interstate Commerce]  
(Class A Misdemeanor)

The United States Attorney alleges:

COUNT ONE

(16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1))

Beginning on or before December 9, 2008, and continuing to  
on or about December 11, 2008, in Los Angeles County, within the  
Central District of California, and elsewhere, defendant GERARD  
"JERRY" SNAPP did knowingly offer for sale in interstate commerce  
///

DM: dm

*DM*

1 endangered wildlife species, namely, one Asian elephant skull,  
2 without a permit issued by the United States Fish and Wildlife  
3 Service.

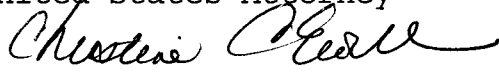
COUNT TWO

(NOTICE OF FORFEITURE)

(16 U.S.C. § 1540(e)(4)(A))

As a result of the offense alleged in Count One, defendant GERARD "JERRY" SNAPP shall forfeit to the United States one Asian elephant skull offered for sale in interstate commerce, in violation of the Endangered Species Act, Title 16, United States Code, Sections 1538(a)(1)(F) and 1540(b)(1).

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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA, ) No. CR 09-122(A)-RZ  
13 Plaintiff, ) TRIAL MEMORANDUM  
14 v. )  
15 GERARD "JERRY" SNAPP, ) 16 U.S.C. §§ 1538(a)(1)(F),  
16 Defendant. ) 1540(b)(1) (offering endangered  
wildlife for sale in interstate  
commerce)  
17 ) Trial Date: September 15, 2009  
18 ) Time: 9:00 a.m.  
19 ) Courtroom: Roybal 540

19 Plaintiff United States of America, by and through its counsel  
20 of record, Assistant United States Attorney Dennis Mitchell, hereby  
21 submits its trial memorandum.

22 I

23 CASE SCHEDULING MATTERS

24 Jury trial is set for September 15, 2009 at 9:00 a.m. The  
25 estimated time for the government's case-in-chief is 1-2 days. The  
26 government anticipates calling approximately 4-6 witnesses in its  
27  
28

1 case-in-chief. A list of those witnesses is attached hereto as  
2 Exhibit 1.

3 The defendant is out of custody.

4 II

5 THE INFORMATION

6 Defendant Gerard "Jerry" Snapp ("defendant") is charged in a  
7 two-count information with violating 16 U.S.C. §§ 1538(a)(1)(F),  
8 1540(b)(1)(offering an endangered species of wildlife for sale in  
9 interstate commerce). The government has the burden of proving the  
10 following elements:

11 1. Defendant knowingly offered to sell wildlife in interstate  
12 commerce;

13 2. The wildlife offered for sale by defendant was included on  
14 the list of endangered species set forth in 50 CFR Section 17.11;  
15 and

16 3. Defendant's conduct was unlawful, that is, defendant did  
17 not have permission from the agency that could issue permits and  
18 authorize such activity, i.e. the Department of Commerce or the  
19 Department of the Interior.

20 Note: For purposes of Section 1538(a)(1)(F), the term,  
21 "knowingly" means that the act was done voluntarily and  
22 intentionally and not because of mistake or accident. It does not  
23 mean that the government must show that defendant knew that the act  
24 he "knowingly" committed constituted a violation of law.

## III

STATEMENT OF FACTS

The government intends to prove at trial the following facts, among others:

Title 16, United States Code, Section 1538(A)(1)(F) prohibits an individual from offering to sell an endangered species in interstate commerce. In this case, Gerard "Jerry" Snapp ("Snapp"), who resides in Los Angeles, offered to sell an elephant skull (which constitutes an endangered species for purposes of Section 1538) to an undercover agent (the "UC").

In December 2008, defendant was running an internet advertisement on Craigslist for a "complete skull of mature female Asian elephant...." On December 9-10, 2008, the UC communicated via e-mail with defendant regarding the elephant skull. The UC made defendant aware that the UC resided in the State of Washington (which is where the UC was, in fact, assigned as a special agent with U.S. Fish & Wildlife Service). The UC also inquired about the cost of shipping the skull from California to Washington. Defendant responded by stating that he was willing to sell the skull at a reduced price of \$4,500 (it was originally offered by defendant on Craigslist for \$9,000).<sup>1</sup>

The UC made arrangements with defendant, via e-mail, to have another undercover agent, Ed Newcomer ("Newcomer") meet with defendant in Los Angeles to view the skull. In the course of those

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<sup>1</sup> The government will seek to introduce as exhibits (1) a copy of Snapp's Craigslist's advertisement offering to sell the elephant skull for \$9,000 and (2) a copy of the pertinent e-mails between the UC and defendant, including defendant's offer to sell the elephant skull for \$4,500.

1 e-mails, defendant also offered to sell a rhinoceros skull for  
2 \$3,500.<sup>2</sup>

3 **December 10, 2008 Recorded Phone Conversation Between**  
4 **Undercover Agent Newcomer and Defendant**

5 On December 10, 2008, Newcomer spoke with defendant by phone.  
6 During this recorded conversation, defendant stated,

7 "This is a chance for ... if he's just a regular skull  
8 collector and, uh, he's not a member of the wildlife people, is  
9 he? I'm not ... I'm trying not to get myself set up for a  
10 sting here."

11 When Newcomer asked defendant what he meant, defendant said  
12 that even though he was "a registered museum, there are some things  
13 you just aren't supposed to have." Defendant went on to describe  
14 the Convention of the International Trade In Endangered Species of  
15 Flora and Fauna ("CITES"), the Marine Mammal Protection Act ("MMPA")  
16 and the differences between legal and illegal ivory. Defendant also  
17 described the skull as having come from a captive Asian elephant at  
18 the Los Angeles Zoo that had gone "insane" and was euthanized after  
19 suffering from severe infections in her teeth and tusks.

20 Defendant also said that he had obtained the skull, with flesh  
21 still on it, from a rendering plant<sup>3</sup> in Los Angeles. Defendant  
22 claimed that he took the skull and other parts of the elephant back

---

23  
24 <sup>2</sup> Subsequent investigation, however, indicated that the  
25 rhinoceros skull was not from a species of rhinoceros which appears  
26 on the endangered species list. Consequently, defendant has not  
been charged with a violation of federal law by offering to sell the  
rhinoceros skull in interstate commerce.

27 <sup>3</sup> A rendering plant essentially converts the remains of dead  
28 animals into fertilizer product which is then sold overseas.

1 to his property where he used insects to remove the flesh from its  
2 bones.

3 During this phone conversation, defendant also indicated that  
4 even though he already had an offer from another prospective buyer,  
5 he would prefer to sell the skull to Newcomer. Defendant, as shown  
6 below, also made statements which reflected his knowledge of the  
7 restrictions placed on the sale of wildlife across state lines.

8 Snapp: "I have another offer from, um ... well, I haven't  
9 actually ... I told Steve that he could have it  
10 for \$4,500 bucks but, I, my asking price is  
11 \$9,000.

12 Newcomer: Right.

13 Snapp: And that's actually what it's worth. It's actually  
14 worth between \$9,000 and \$12,000.

15 Newcomer: Wow

16 Snapp: But, I would be much happier knowing that it was  
17 at somebody's home that I could call up once in  
18 awhile and say, 'Hey, I got something more cool  
19 for you or, you know, chat with a real person. An  
20 institute in Washington said that if I would  
21 provide the papers or at least the ..., [pause].  
22 If I sell this to them cross state lines, I need  
23 to be able to show that at least it's not covered  
24 by CITES and I'm having difficulty finding that  
25 exact paragraph in these hundreds of pages of  
26 stuff I've been reading through, so...



1 Newcomer: Hm.

2 Snapp: But from one private collector to another, I don't  
3 have to come up with any crap. I personally would  
4 rather sell it for less to a personal guy.

5 During the phone conversation, Newcomer expressed concern  
6 about personally driving the skull to the State of Washington.  
7 Defendant, as shown below, reassured Newcomer in the following  
8 exchange:

9 Newcomer: If I drive it up there, just for me, I mean  
10 if I get pulled over, like you said something  
11 about state lines, if I'm in Oregon and I get  
12 stopped.

13 Snapp: You'd be in a lot more trouble with the whale  
14 skull that I have in my backyard.

15 Newcomer: Okay, but the whale not the ... but the rhino and  
16 the elephant I'm going to be ...

17 Snapp: The rhino and the elephant ....., for one thing,  
18 you throw a tarp over them and you're just  
19 relocating. It's your own personal thing.  
20 Somebody's own personal thing is not anything.

21 Newcomer: So, I don't say, this is a ... I'm taking this ..  
22 My buddy bought it, I don't say anything ....

23 Snapp: Right, you're moving up to Washington and  
24 you're taking your first truck load of stuff. You  
25 put money down at a house, you're dropping this  
26 off, you're dropping it off at your mom's it  
27 doesn't make any difference but you're not  
28

1 'transporting something for sale.' That would be  
2 ... that might throw up a flag.<sup>4</sup>

3 As they ended their phone conversation, Newcomer and defendant  
4 arranged to meet at defendant's home on December 11, 2008 so that  
5 Newcomer could examine the skulls.

6 **Undercover Agent Newcomer's Visit To Defendant's Residence**

7 On December 11, 2008, Newcomer and another undercover agent met  
8 defendant at his residence. Upon entering the home, Newcomer saw a  
9 number of large skulls prominently displayed in the living room.  
10 Newcomer was able to recognize two of the skulls as being the Asian  
11 elephant skull and rhinoceros skull offered for sale by defendant.

12 During their meeting, defendant pointed to the elephant skull  
13 and said that he knew the difference between ivory and bone.  
14 Defendant specifically told Newcomer that the only part of the skull  
15 that is ivory were the tusks. Defendant also stated that the skull  
16 and ivory were legal but that he could not provide any papers.  
17 Defendant further said that no papers were necessary because the  
18 sale of the skull was legal.

19 Defendant also gave Newcomer and the other undercover agent a  
20 tour of his home and property and discussed his possession of  
21 various animal bones and skulls. Defendant also described some of  
22 the bones on display as belonging to marine mammals, such as seals  
23 and sea lions. He also outlined his basic understanding of the MMPA  
24 and the fact that it could be illegal to collect or possess marine

---

25 <sup>4</sup> At other times, defendant made statements to the effect that  
26 it was legal to sell the elephant skull. Nevertheless, as explained  
27 in the Evidentiary Issues section of this brief, defendant's  
28 knowledge or lack of knowledge of the illegality of his acts is  
irrelevant.

1 mammals parts but also said, "Of course, if I see [a dead] one, I  
2 throw it in my car."

3 Defendant also mentioned that he had another prospective buyer  
4 for the elephant skull, and that he wanted the UC to quickly make a  
5 decision about buying the skull. When Newcomer asked defendant  
6 about the other buyer, defendant identified the other buyer as a  
7 "research facility."

8 When asked by Newcomer if the other buyer was worried about  
9 buying it from defendant, defendant immediately answered, "Yeah,  
10 they were." Defendant further said that the other buyer wanted to  
11 make sure there was paperwork available and that they would not buy  
12 it if defendant could not provide paperwork or prove that he did not  
13 need paperwork to legally sell the skull.

14 After defendant concluded the tour of his home and property,  
15 Newcomer and the other undercover agent identified themselves to  
16 defendant as federal agents. Newcomer advised defendant that he was  
17 under investigation for offering to sell endangered species in  
18 interstate commerce and asked defendant if he could provide  
19 identification. Defendant stated that his identification was inside  
20 the house and also said that he was a registered museum and that he  
21 was allowed to possess and sell the items.

22 Defendant was also advised that he was not under arrest and was  
23 not required to answer any questions. Defendant, however, seated  
24 himself on a couch and voluntarily began asking and answering  
25 questions. During the ensuing interview, defendant stated,

26 "I thought I wasn't doing something wrong. I mean, these, to  
27 the best of my knowledge ... for one, I know I acquired them  
28

1 legally, I know that I'm not violating any laws. I did offer  
2 to sell it but that's what I ... as far as I knew, there was  
3 information available that would provide me with the ability to  
4 sell these without, you know, the CITES information in regard  
5 to ... since they are not imported illegally, they are a  
6 resident of California. And, I am allowed to sell this skull  
7 here within the state of California. And, all I was doing was  
8 waiting... and the same is true for the rhino skull."

9 Defendant also complained to the agents that he was in a  
10 desperate financial situation. He further stated that he was not  
11 trying to violate any laws by selling the skulls but that "I  
12 probably would have been willing to drive it over state lines... not  
13 because I'm a desperate criminal but because I'm a desperate dad."

14 **Evidence Pertaining To How Defendant Obtained The Elephant**  
15 **Skull**

16 As mentioned above, defendant indicated that the skull came  
17 from an elephant from the Los Angeles Zoo. Newcomer recently spoke  
18 with a Zoo official who indicated that the Zoo did have an elephant  
19 named Annie that had died in 1997.

20 An employee at the rendering plant told Newcomer that the plant  
21 has only received one elephant for processing

22 **Defendant Did Not Possess A Permit Allowing Him To Sell The**  
23 **Elephant Skull**

24 On January 6, 2009, Newcomer queried the Fish & Wildlife  
25 Service Permit Issuance Tracking System ("SPITS") and found that  
26 there were no records indicating that a permit had been issued to a  
27 "Jerry Snapp" or to anyone with the last name of "Snapp."



1 other than a species of the Class Insecta determined by the  
2 Secretary to constitute a pest whose protection under the provisions  
3 of this chapter would present an overwhelming and overriding risk to  
4 man."

5 Under Title 16, United States Code § 1532(8), the term "Fish or  
6 wildlife" is defined as "any member of the animal kingdom, including  
7 without limitation any mammal, fish, bird, ..., amphibian, reptile,  
8 ... and includes any part, product, egg, or offspring thereof, or  
9 the dead body or parts thereof."

10 Under the definitions set forth above, the elephant skull  
11 sought to be sold by defendant falls within the definition of  
12 "wildlife" and within the definition of "species."

13 In addition, defendant offered to sell the elephant skull in  
14 interstate commerce. The government anticipates that the Craigslist  
15 advertisement seen by the UC in the State of Washington and the  
16 recorded telephone conversations between defendant and Newcomer will  
17 clearly show that defendant offered to sell the elephant skull in  
18 interstate commerce.

19 2. The Elephant Skull Constitutes An Endangered Species Of  
20 Wildlife

21 Title 16, United States Code Section 1533 authorizes the  
22 Secretary of the Interior, pursuant to certain criteria, to  
23 determine which species of animals shall be placed on the List of  
24 Endangered Species of Wildlife. That list is published in the Code  
25 of Federal Regulations ("CFR") at 50 CFR Section 17.11.

26 The government intends to introduce a copy of that portion of  
27 the Endangered Species of Wildlife list into evidence to show that  
28 the Asian elephant species was included as an endangered species at

1 the time that defendant offered to sell the elephant skull in  
2 interstate commerce.

3 3. Defendant Did Not Have A Permit Authorizing Him To Sell An  
4 Elephant Skull In Interstate Commerce.

5 The government will also introduce testimony from the case  
6 agent to show that various queries run on a database maintained by  
7 the U.S. Fish and Wildlife Service failed to disclose the issuance  
8 of any permit authorizing defendant to sell an elephant skull in  
9 interstate commerce.

10 V

11 EVIDENTIARY ISSUES

12 A. Testimony Pertaining to Defendant's Lack Of Knowledge That His  
13 Conduct Was Illegal Is Irrelevant

14 The government anticipates that defendant may testify and claim  
15 that he was unaware that his offering to sell the elephant skull in  
16 interstate commerce was unlawful. Such testimony, however, is  
17 irrelevant to the determination of defendant's guilt and should be  
18 deemed inadmissible under Fed. R. Evid. 403.

19 In order to prove a criminal violation of 16 U.S.C.  
20 §§ 1538(a)(1)(F), 1540(b)(1), the government need only prove that  
21 defendant was aware that he was offering to sell an elephant skull  
22 as opposed to some other item. The government is not required to  
23 show that defendant knew that an Asian elephant was included on the  
24 list of endangered species or that his conduct was illegal.

25 In United States v. McKittrick, 143 F.3d 1170, 1176-77 (9th Cir.  
26 1998), the defendant shot and killed a Gray Wolf and later skinned  
27 and decapitated it and kept the hide and head to his home. Id. at  
28 1172. Defendant was later found guilty of various statutes,

1 including 16 U.S.C. §§ 1538(a)(1)(G), 1540(b)(1), and 50 CFR §§  
2 17.84(i)(3) (prohibiting the taking of a Gray Wolf and 16 U.S.C.  
3 §§ 1538(a)(1)(G), 1540(b)(1) and 50 CFR § 17.84(i)(5) (possession of  
4 a Gray Wolf). On appeal, one of defendant's arguments was that his  
5 taking of the wolf was not "knowing" because he did not realize what  
6 he was shooting. Id. at 1173.

7 In rejecting defendant's argument, the court pointed out that  
8 in 1978, Congress changed the wording of Section 11 of the  
9 Endangered Species Act (codified at 16 U.S.C. § 1540(b)(1)) "to  
10 reduce [] the standard for criminal violations from 'wilfully' to  
11 'knowingly.'" Id. at 1177 quoting H.R.Rep. No. 95-1625, at 26  
12 (1978), reprinted in 1978 U.S.C.C.A.N. 9453, 9476.<sup>5</sup> See United  
13 States v. Nguyen, 916 F.2d 1016, 1018-19 (5th Cir. 1990) (sustaining  
14 possession conviction did not require that defendant know animal's  
15 Endangered Species Act status and stating that the purpose behind  
16 amendment was to make criminal violations of the Endangered Species  
17 Act a general rather a specific intent crime subjecting importers  
18 and exporters of fish and wildlife and plants to strict liability  
19 penalties), United States v. Ivey, 949 F.2d 759, 766 (5th Cir.  
20 1991) (holding that violation of 16 U.S.C. § 1538(c) (prohibiting any  
21 possession or trade in species contrary to Convention on  
22  
23

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24 <sup>5</sup> Even though the McKittrick court held that the government  
25 did not need to show that defendant was aware that he had shot a  
26 wolf, the Solicitor General subsequently announced that the  
27 government will seek a jury instruction requiring a jury to find  
28 that the defendant was aware of the type of animal involved in his  
acts. Consequently, in this case, the government takes the position  
that it must prove that defendant was aware that he was offering the  
skull of an elephant for sale.



1 International Trade in Endangered Species of Wild Fauna and Flora)  
2 is a general intent crime).

3 The authorities cited above show that whether defendant knew  
4 that his offering the elephant skull was illegal is not relevant to  
5 the determination of his criminal liability for violating 16 U.S.C.  
6 § 1538(a)(1)(F). Consequently, the Court should preclude testimony  
7 from defendant to the extent that defendant attempts to testify that  
8 he was unaware that the offering of the elephant skull was illegal.  
9 Otherwise, the jury may become confused as to the elements it must  
10 find in determining whether defendant is liable for a criminal  
11 violation of Section 1538.

12 B. Business Records

13 1. A document is admissible under the business records  
14 exception to the hearsay rule if two foundational facts are  
15 established: (a) the document was made or transmitted by a person  
16 with knowledge at or near the time of the incident recorded, and (b)  
17 the document was kept in the course of a regularly conducted  
18 business activity. See United States v. Ray, 930 F.2d 1368, 1370  
19 (9th Cir. 1990); Kennedy v. Los Angeles Police Dept., 901 F.2d 702,  
20 717 (9th Cir. 1990).

21 2. In determining if these foundational facts have been  
22 established, the court may consider hearsay and other evidence not  
23 admissible at trial. See Fed. R. Evid. 104(a) and 1101(d)(1);  
24 Bourjaily v. United States, 483 U.S. 171, 178-179 (1986).

25 3. The foundation may be established either through a  
26 custodian of records or "other qualified witness." The phrase  
27 "other qualified witness" is broadly interpreted to require only  
28

1 that the witness understand the record keeping system. See Ray, 930  
2 F.2d at 1370; United States v. Franco, 874 F.2d 1136, 1139-40 (7th  
3 Cir. 1989); United States v. Hathaway, 798 F.2d 902, 906 (6th Cir.  
4 1986).<sup>6</sup>

5 4. The Government need not establish precisely when or by  
6 whom the document was prepared; all the rule requires is that the  
7 document be made "at or near the time" of the act or event it  
8 purports to record. See Ray, 930 F.2d at 1370; United States v.  
9 Huber, 772 F.2d 585, 591 (9th Cir. 1985); United States v. Basey,  
10 613 F.2d 198, 201 n.1 (9th Cir. 1979).

11 5. The use of a computer to create or store business records  
12 is not material to the analysis under Rule 803(6); "it is immaterial  
13 that the business record is maintained in a computer rather than in  
14 company books assuming that the proponent lays a proper foundation."  
15 United States v. Catabran, 836 F.2d 453, 457 (9th Cir. 1988),  
16 quoting United States v. De Georgia, 420 F.2d 889, 893 n.11 (9th  
17 Cir. 1969)).

18 6. Records of regularly conducted activity that would be  
19 admissible under Rule 803(6) do not require extrinsic evidence of  
20 authenticity as a condition precedent to admissibility if they are  
21 accompanied by a written declaration of a custodian of record  
22 certifying that the record (A) was made at or near the time of the  
23 occurrence of the matters set forth by, or from information  
24 transmitted by, a person with knowledge of those matters; (B) was

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25  
26 <sup>6</sup> "When a witness is used to lay the foundation for admitting  
27 records under Rule 803(6), all that is required is that the witness  
28 be familiar with the record keeping system." Hathaway, 798 F.2d at  
906.

1 kept in the course of the regularly conducted activity; and (C) was  
2 made by the regularly conducted activity as a regular practice.  
3 Fed. R. Evid. 902(11).

4 F. Admissibility of Public Records

5 1. Records and reports of public agencies setting forth  
6 matters observed pursuant to duty imposed by law as to which matters  
7 there was a duty to report are generally admissible as an exception  
8 to the hearsay rule. See Fed. R. Evid. 803(8).

9 2. Certified copies of a conviction and judgment are public  
10 records and are admissible under the hearsay exception set forth in  
11 Federal Rule of Evidence 803(22).

12 G. Best Evidence

13 1. A duplicate is admissible to the same extent as an  
14 original unless (1) there is a genuine question as to the  
15 authenticity of the original or, (2) in the circumstances, use of  
16 the duplicate would be unfair. See Fed. R. Evid. 1003.

17 2. Even a photocopy bearing extraneous handwriting not  
18 connected to the defendant can be admissible. See United States v.  
19 Skillman, 922 F.2d 1370, 1375 (9th Cir. 1990).

20 F. Cross-Examination of Defendant

21 1. A defendant who testifies at trial waives his right  
22 against self-incrimination and subjects himself to cross-examination  
23 concerning all matters reasonably related to the subject matter of  
24 his testimony. The scope of defendant's waiver is co-extensive with  
25 the scope of relevant cross-examination. See United States v.  
26 Cuozzo, 962 F.2d 945, 948 (9th Cir. 1992) United States v. Black,  
27 767 F.2d 1334, 1341 (9th Cir. 1985) ("Defendant's testimony on  
28

1 direct examination does not determine the extent of permissible  
2 cross-examination or of his waiver. Instead, the issue is whether  
3 the Government's questions are reasonably related to the subjects  
4 covered by the defendant's testimony).

5 2. Federal Rule of Evidence 404(b) "restricts the use of  
6 evidence solely for purposes of demonstrating a criminal proclivity.  
7 It does not proscribe the use of other act evidence as an  
8 impeachment tool during cross-examination." United States v. Gay,  
9 967 F.2d 322, 328 (9th Cir. 1992).

10 J. Authentication and Identification

11 1. The Federal Rules of Evidence treat authenticity and  
12 identification under Rule 901 as simply "a special aspect of  
13 relevancy." Fed. R. Evid. 901(a) (Advisory Committee Notes).

14 2. Under Rule 901, the condition or fact to be satisfied is  
15 whether there is sufficient evidence that the item proffered is what  
16 the proponent claims. See United States v. Whitworth, 856 F.2d  
17 1268, 1283 (9th Cir.), cert. denied, 489 U.S. 1084 (1989).

18 3. When proffered evidence is challenged on grounds of  
19 authenticity or identity, the evidence should be admitted once the  
20 government makes a prima facie showing of authenticity. See United  
21 States v. Black, 767 F.2d 1334, 1342 (9th Cir. 1985).<sup>7</sup>

22 4. As stated in Black, the trial judge's decision is simply  
23 whether "sufficient proof has been introduced so that a reasonable  
24 juror could find in favor of authenticity or identification." The

---

25 <sup>7</sup> In Black, the court stated that "[t]he rule requires only  
26 that the court admit evidence if sufficient proof has been  
27 introduced so that a reasonable juror could find in favor of  
28 authenticity or identification." 767 F.2d at 1343, quoting  
Weinstein's Evidence ¶ 901(a) [01], at 901-16 to -17 (1983).

1 credibility or probative force of the evidence offered is,  
2 ultimately, an issue for the jury. See United States v. Black, 767  
3 F.2d 1334, 1342 (9th Cir. 1985) (citing 5 J. Weinstein & M. Berger,  
4 Weinstein's Evidence, § 901(a)(1), at 901-17 (1983)).

5 K. Duplicates

6 A duplicate is admissible to the same extent as an original  
7 unless (1) a genuine question is raised as to the authenticity of  
8 the original, or (2) under the circumstances, it would be unfair to  
9 admit the duplicate instead of the original. See Fed. R. Evid.  
10 1003.

11 DATED: Sept. 10, 2009

Respectfully submitted,

12 GEORGE S. CARDONA  
Acting United States Attorney

13 CHRISTINE C. EWELL  
14 Assistant United States Attorney  
Chief, Criminal Division

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16 DENNIS MITCHELL  
17 Assistant United States Attorney

18 Attorneys for Plaintiff  
19 United States of America  
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FILED

2009 SEP -9 PM 3:50

CLERK, U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF  
LOS ANGELES

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) CR 09-122 (A) -RZ  
)  
Plaintiff, ) F I R S T  
) S U P E R S E D I N G  
v. ) I N F O R M A T I O N  
)  
GERARD "JERRY" SNAPP, ) [16 U.S.C. §§ 1538(a)(1)(F),  
) 1540(b)(1): Illegal Offer To  
Defendant. ) Sell Endangered Species In  
) Interstate Commerce; 16 U.S.C.  
) § 1540(e)(4)(A): Forfeiture of  
) Endangered Species Offered For  
) Sale In Interstate Commerce]  
)  
) (Class A Misdemeanor)  
)

The United States Attorney alleges:

COUNT ONE

(16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1))

Beginning on or before December 9, 2008, and continuing to on or about December 11, 2008, in Los Angeles County, within the Central District of California, and elsewhere, defendant GERARD "JERRY" SNAPP did knowingly offer for sale in interstate commerce endangered wildlife species, namely, one Asian elephant skull, without a permit issued by the Secretary of the United

DM:dm

1 States Department of the Interior or the Secretary of the United  
2 States Department of Commerce.

COUNT TWO

(NOTICE OF FORFEITURE)

(16 U.S.C. § 1540(e)(4)(A))

As a result of the offense alleged in Count One, defendant GERARD "JERRY" SNAPP shall forfeit to the United States one Asian elephant skull offered for sale in interstate commerce, in violation of the Endangered Species Act, Title 16, United States Code, Sections 1538(a)(1)(F) and 1540(b)(1).

GEORGE S. CARDONA  
Acting United States Attorney

*Daniel S. Goodman, Asst U.S. Atty, Deputy Chief,  
Criminal Division, For:*

CHRISTINE C. EWELL  
Assistant United States Attorney  
Chief, Criminal Division

JOSEPH O. JOHNS  
Assistant United States Attorney  
Chief, Environmental Crimes Section

DENNIS MITCHELL  
Assistant United States Attorney  
Environmental Crimes Section



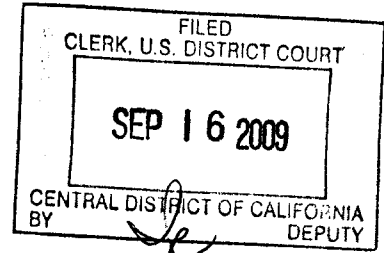
UNITED STATES OF AMERICA v. GERARD "JERRY" SNAPP

Case No. CR 09-122(A) -RZ

GOVERNMENT'S WITNESS LIST

1. Special Agent Steven Furrer
2. Special Agent Paul Montouri
3. Forensic Specialist Darby Morrell
4. Supervisory Forensic Scientist Bonnie Yates
5. Special Agent Lisa Nichols
6. Special Agent Ed Newcomer
7. Bob Bicknell

EXHIBIT 1



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GERARD "JERRY" SNAPP, )  
 )  
Defendant. )  
 )  
\_\_\_\_\_ )

CR No. 09-122 (A) - RZ

JURY INSTRUCTIONS

COURT'S INSTRUCTION NO. 1

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return -- that is a matter entirely up to you.

COURT'S INSTRUCTION NO. 2

The information is not evidence. The defendant has pled not guilty to the charges. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of each charge beyond a reasonable doubt.

COURT'S INSTRUCTION NO. 3

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

COURT'S INSTRUCTION NO. 4

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

COURT'S INSTRUCTION NO. 5

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

COURT'S INSTRUCTION NO. 6

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

- A. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
- B. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.
- C. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.
- D. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.



COURT'S INSTRUCTION NO. 7

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

COURT'S INSTRUCTION NO. 8

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness's testimony;
6. the reasonableness of the witness's testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

COURT'S INSTRUCTION NO. 9

The defendant is on trial only for the crime charged in the information, not for any other activities.

COURT'S INSTRUCTION NO. 10

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

COURT'S INSTRUCTION NO. 10

You have heard testimony from a person who, because of education or experience, is permitted to state opinions and the reasons for her opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

COURT'S INSTRUCTION NO. 12

Count One of the First Superseding Information charges defendant Gerard "Jerry" Snapp with having committed an offense in violation of Title 16, United States Code, Sections 1538(a)(1)(F) and 1540(b)(1).

I will now read Count One of the First Superseding Information.

The United States Attorney alleges:

COUNT ONE

(16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1))

Beginning on or before December 9, 2008, and continuing to on or about December 11, 2008, in Los Angeles County, within the Central District of California, and elsewhere, defendant GERARD "JERRY" SNAPP did knowingly offer for sale in interstate commerce endangered wildlife species, namely, one Asian elephant skull, without a permit issued by the Secretary of the United States Department of the Interior or the Secretary of the United States Department of Commerce.

COURT'S INSTRUCTION NO. 13

Section 1538(a)(1)(F) of Title 16 of the United States Code provides in pertinent part:

(a) Generally

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to--

(F) sell or offer for sale in interstate or foreign commerce any such species;

And, Section 1540(b)(1) provides that:

Any person who knowingly violates [16 U.S.C. § 1538(a)(1)(F)] shall be guilty of an offense against the United States.

COURT'S INSTRUCTION NO. 14

In order to find defendant guilty of the crime charged in Count One, the government must establish beyond a reasonable doubt each of the following elements on any date that falls within the time period charged:

1. Defendant knowingly offered for sale wildlife in interstate commerce;

2. The wildlife offered for sale by defendant was included on the list of endangered species set forth in 50 Code of Federal Regulations Section 17.11; and

3. Defendant's conduct was unlawful, that is, defendant did not have permission from the agency that could issue permits and authorize such activity, i.e. the Department of the Interior, U.S. Fish and Wildlife Service.



COURT'S INSTRUCTION NO. 15

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed reasonably near a date within the time period alleged in the Information, it is not necessary for the government to prove that the offense was committed precisely on a particular date.

COURT'S INSTRUCTION NO. 16

As to the first element of the crime alleged in Count One, that is, whether defendant knowingly offered for sale wildlife in interstate commerce, the government must establish beyond a reasonable doubt that defendant knew that he was offering wildlife for sale. You are instructed that the term wildlife means any member of the animal kingdom, including without limitation, any mammal, and includes any part, product, egg, or the dead body or parts thereof. Therefore, the government must prove beyond a reasonable doubt that defendant knew that he offered an elephant skull for sale.

In order to satisfy the first element of the crime charged in Count One, you must also find that defendant offered wildlife for sale in interstate commerce. Interstate commerce means commerce between one state, territory or possession of the United States and another state, territory or possession of the United States, including the District of Columbia. Commerce includes travel, trade, transportation, and communication. The element of interstate commerce may be satisfied if the defendant knew or understood that the wildlife he offered for sale would be transported in interstate commerce, even if the defendant himself would not transport the wildlife.

COURT'S INSTRUCTION NO. 17

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

COURT'S INSTRUCTION NO. 18

The second element of the crime charged in Count One, is satisfied if you find that during the time period charged in Count One, an Asian elephant was included on the list of endangered species of wildlife.

COURT'S INSTRUCTION NO. 19

1  
2 In regard to the third element of the crime alleged in Count One,  
3 that is, whether defendant's conduct was unlawful,  
4 you are instructed that the offering for sale of an endangered species  
5 of wildlife is unlawful unless the person offering the endangered  
6 species of wildlife for sale in interstate commerce had been granted  
7 a permit to do so from the United States Department of the Interior,  
8 U.S. Fish and Wildlife Service. This permit is commonly referred to  
9 as an Endangered Species Act permit. A person who has such a valid  
10 permit only had permission to offer that endangered species of wildlife  
11 into interstate commerce described in the permit and then only in  
12 accordance with the terms of the permit.

13 If you find from the evidence that a diligent search of the  
14 official records maintained by the United States Department of the  
15 Interior, U.S. Fish and Wildlife Service failed to disclose any valid  
16 Endangered Species Act permit issued to allow defendant to offer for  
17 sale the endangered species in question in interstate commerce, then  
18 you may, but are not required, to infer that no such permit was issued  
19 to defendant.  
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COURT'S INSTRUCTION NO. 20

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

COURT'S INSTRUCTION NO. 21

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

COURT'S INSTRUCTION NO. 22

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.



COURT'S INSTRUCTION NO. 23

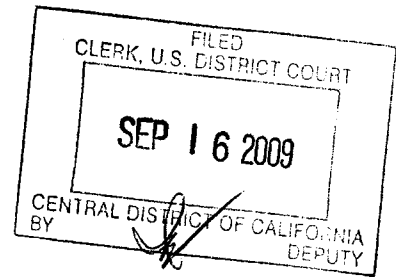
The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

COURT'S INSTRUCTION NO. 24

A verdict form has been prepared for you. There are 2 questions on the form. The first asks whether you find the defendant Guilty or Non Guilty. The second question is to be answered only if you find the defendant guilty. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

COURT'S INSTRUCTION NO. 25

If it becomes necessary during you deliberations to communicate with me, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone - including me - how the jury stands, numerically or otherwise, on the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GERARD "JERRY" SNAPP, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CR No. 09-122(A) - RZ

V E R D I C T

REDACTED VERDICT  
AS TO FOREPERSON  
SIGNATURE

VERDICT FORM

COUNT ONE:

1. For Count One of the First Superseding Information, We, the jury in the above-captioned action, unanimously find defendant Gerard "Jerry" Snapp:

GUILTY X

NOT GUILTY \_\_\_\_\_

Answer the following question only if you find the defendant guilty:

2. Is the elephant skull admitted as Exhibit 19 the elephant skull that defendant offered for sale in interstate commerce?

YES X

NO \_\_\_\_\_

REDACTED  
By COURT

\_\_\_\_\_  
FOREPERSON OF THE JURY

DATED: 16 Sep at Los Angeles, California.

# **EXHIBIT A**

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2

UNITED STATES DISTRICT COURT

3

CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

4

5

UNITED STATES OF AMERICA, )

6

)

PLAINTIFF, )

7

)

VS. )

8

)

CASE NO. CR 09-00122-RZ

9

GERARD "JERRY" SNAPP, )

LOS ANGELES, CALIFORNIA

10

)

JANUARY 25, 2010

)

(1:32 P.M. TO 1:58 P.M.)

DEFENDANT. )

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)

12

SENTENCING

13

BEFORE THE HONORABLE RALPH ZAREFSKY  
UNITED STATES MAGISTRATE JUDGE

14

15

16

APPEARANCES: SEE NEXT PAGE

17

COURT REPORTER: RECORDED; COURT SMART

18

COURTROOM DEPUTY: ILENE BERNAL

19

TRANSCRIBER: DOROTHY BABYKIN

20

COURTHOUSE SERVICES

1218 VALEBROOK PLACE

21

GLENORA, CALIFORNIA 91740

(626) 963-0566

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23

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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;  
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

25

1 APPEARANCES: (CONTINUED)

2 FOR THE PLAINTIFF: GEORGE CARDONA, ACTING  
3 UNITED STATES ATTORNEY  
4 CHRISTINE C. EWELL  
5 CHIEF, CRIMINAL DIVISION  
6 ASSISTANT UNITED STATES ATTORNEY  
7 BY: DENNIS MITCHELL  
8 ASSISTANT UNITED STATES ATTORNEY  
9 312 NORTH SPRING STREET  
10 LOS ANGELES, CALIFORNIA 90012

11 FOR THE DEFENDANT: SEAN K. KENNEDY  
12 FEDERAL PUBLIC DEFENDER  
13 BY: ANTHONY EAGLIN  
14 DEPUTY FEDERAL PUBLIC DEFENDER  
15 321 EAST SECOND STREET  
16 LOS ANGELES, CALIFORNIA 90012

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I N D E X

CASE NO. CR 09-00122-RZ

JANUARY 25, 2010

PROCEEDINGS: SENTENCING

1 LOS ANGELES, CALIFORNIA; MONDAY, JANUARY 15, 2010; 1:32 P.M.

2 THE CLERK: CALLING CASE NUMBER CR 09-00122-RZ,

3 UNITED STATES OF AMERICA VERSUS GERARD JERRY SNAPP.

4 COUNSEL, PLEASE MAKE YOUR APPEARANCES.

5 MR. MITCHELL: GOOD AFTERNOON, YOUR HONOR.

6 DENNIS MITCHELL APPEARING ON BEHALF OF THE UNITED

7 STATES.

8 THE COURT: GOOD AFTERNOON.

9 MR. EAGLIN: GOOD AFTERNOON, YOUR HONOR.

10 ANTHONY EAGLIN ON BEHALF OF GERARD EUGENE SNAPP,

11 WHO'S PRESENT AND BEFORE THE COURT.

12 YOUR HONOR, MAY I TAKE THE PODIUM?

13 THE COURT: ALL RIGHT. WHERE ARE YOU GOING TO TAKE

14 IT?

15 MR. EAGLIN: JUST STAND IN FRONT OF THE PODIUM,

16 YOUR HONOR.

17 THE COURT: ALL RIGHT. GO AHEAD.

18 ALL RIGHT. WE'RE HERE FOR SENTENCING.

19 MR. SNAPP, HAVE YOU READ THE PRESENTENCE -- THE

20 PRESENTENCE REPORT?

21 THE DEFENDANT: I BELIEVE I HAVE.

22 THE COURT: MR. MITCHELL, YOU'VE READ IT?

23 MR. MITCHELL: YES, YOUR HONOR.

24 THE COURT: AND MR. EAGLIN?

25 MR. EAGLIN: I HAVE, YOUR HONOR.

1 THE COURT: ALL RIGHT. ARE THERE ANY OBJECTIONS TO  
2 ANYTHING IN THE REPORT OTHER THAN WHAT YOU'VE PUT IN YOUR  
3 PAPERS ALREADY TO ME, MR. MITCHELL?

4 MR. MITCHELL: NO, YOUR HONOR.

5 THE COURT: MR. EAGLIN?

6 MR. EAGLIN: NO, YOUR HONOR.

7 THE COURT: ALL RIGHT. THERE ARE SOME CALCULATIONS  
8 UNDER THE SENTENCING GUIDELINES IN THE REPORT.

9 BOTH COUNSEL AGREE THEY ARE APPROPRIATE, MR.  
10 MITCHELL?

11 MR. MITCHELL: YES, YOUR HONOR.

12 THE COURT: MR. EAGLIN?

13 MR. EAGLIN: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT. MR. EAGLIN, I'LL HEAR FROM  
15 YOU AS TO WHAT YOU THINK AN APPROPRIATE SENTENCE SHOULD BE.

16 MR. EAGLIN: YOUR HONOR, WE ARE BEFORE THE COURT  
17 FOR SENTENCING AFTER MR. SNAPP HAVING BEEN CONVICTED BY A  
18 JURY IN THIS COURT OF OFFERING AN ENDANGERED SPECIES FOR  
19 SALE.

20 I NEED NOT GET INTO THE FACTS OF THIS CASE BECAUSE  
21 THE COURT WAS THERE, AND THE COURT HEARD ALL THE EVIDENCE IN  
22 THIS CASE.

23 THE COURT: JUST A MOMENT.

24 ARE WE ABLE TO PICK UP WHAT MR. EAGLIN IS SAYING?  
25 COULD YOU MOVE -- THERE YOU GO.

1 ALL RIGHT.

2 MR. EAGLIN: THE COURT HAS HEARD ALL OF THE  
3 EVIDENCE IN THIS PARTICULAR CASE.

4 MR. SNAPP WAS IN --

5 THE COURT: ONE MINUTE.

6 (THE COURT CONFERRING WITH CLERK.)

7 THE COURT: JUST KEEP YOUR VOICE UP SO WE CAN MAKE  
8 SURE WE RECORD YOU. ALL RIGHT?

9 MR. EAGLIN: I WILL, YOUR HONOR.

10 THE COURT: ALL RIGHT. GO AHEAD.

11 MR. EAGLIN: MR. SNAPP WAS IN POSSESSION OF THIS  
12 ELEPHANT SKULL FOR NO NEFARIOUS REASONS. MR. SNAPP IS A  
13 COLLECTOR. HE REFERS TO HIMSELF AS A -- HE IS A COLLECTOR OF  
14 BONES. HE SALVAGED -- HE'S A RECYCLER OF ANIMAL PARTS.

15 HE HAD A NUMBER OF PARTS IN HIS COLLECTION. AND  
16 THE COURT SAW THAT ELEPHANT SKULL THAT WAS IN THE COURT. IT  
17 WAS BY NO MEANS SOME -- THE COURT EXPRESSED SOME CONCERN  
18 INITIALLY PRIOR TO THE TRIAL AS TO WHETHER OR NOT THIS WOULD  
19 HAVE BEEN A SANITARY ITEM OR NOT.

20 AND THE COURT SAW THAT THIS WAS NOT ONLY A SANITARY  
21 SPECIMEN BUT THE MATTER WAS CLEAN. THE MATTER WAS PERFECTLY  
22 PRESERVED. AND SUCH WERE A LOT OF THE THINGS IN MR. SNAPP'S  
23 COLLECTION.

24 AND THE COURT IS AWARE OF HOW MR. SNAPP CAME INTO  
25 POSSESSION OF THIS ELEPHANT SKULL. THIS ELEPHANT WAS A

1 NATIVE ELEPHANT OF THE STATE OF THE CALIFORNIA -- NOT NATIVE,  
2 BUT THIS ELEPHANT WAS A MEMBER OF THE LOS ANGELES ZOO UNTIL  
3 THIS ELEPHANT DIED AND WAS BROUGHT TO A RENDERING PLANT.  
4 MR. SNAPP RESCUED OR OBTAINED THIS ELEPHANT SKULL FROM THE  
5 RENDERING PLANT. HE CURED IT. PLACED IT IN HIS COLLECTION.  
6 AND THEN AT A POINT IN TIME WHEN HE WAS EXPERIENCING EXTREME  
7 FINANCIAL DIFFICULTY HE OFFERED THE ELEPHANT SKULL FOR SALE.

8 I INDICATED IN MY PAPERS THAT IT WAS NOT AGAINST  
9 ANY FEDERAL LAW FOR MR. SNAPP TO HAVE -- POSSESS THIS  
10 ELEPHANT SKULL. IT WAS NOT AGAINST ANY FEDERAL LAW FOR MR.  
11 SNAPP TO OFFER THIS ELEPHANT SKULL FOR SALE EVEN WITHIN THE  
12 STATE OF CALIFORNIA.

13 BUT THE GOVERNMENT IN ITS PAPERS SUGGESTS THAT  
14 THERE IS POTENTIALLY SOME STATE STATUTE WHICH DEFENDANT  
15 PROBABLY COULD HAVE RUN AFOUL BY OFFERING THIS ELEPHANT SKULL  
16 FOR SALE IN THE STATE OF CALIFORNIA. BUT THAT'S BESIDE THE  
17 POINT. WE'RE HERE FOR SENTENCING.

18 AND WHEN THE COURT CONSIDERS ALL THE FACTS AND  
19 CIRCUMSTANCES IN THIS CASE, NOTWITHSTANDING THE GUIDELINE  
20 RANGE OF 10 TO 16 MONTHS, ALL OF THE PARTIES BEFORE THE COURT  
21 ARE IN AGREEMENT THAT A CUSTODIAL SENTENCE WITHIN THE  
22 RECOMMENDATION OF THE GUIDELINE RANGE IS MORE THAN NECESSARY  
23 TO ADDRESS THE NEEDS OF PUNISHMENT IN THIS PARTICULAR CASE.

24 THE PROBATION OFFICER RECOMMENDS TO THE COURT A  
25 SENTENCE OF THREE YEARS' PROBATION -- BUT SOMEHOW STILL

1 WEDDED TO THE GUIDELINE SUGGESTS -- RECOMMENDS THAT THIS  
2 COURT IMPOSE A SENTENCE OF TEN MONTHS OF HOME DETENTION AND  
3 IN ADDITION TO THAT SOME 250 HOURS OF COMMUNITY SERVICE. THE  
4 GOVERNMENT THINKS THAT THAT IS THE APPROPRIATE SENTENCE.

5 WE WOULD SUBMIT TO THE COURT THAT A SENTENCE LESS  
6 THAN THAT WOULD BE APPROPRIATE IN THIS CASE. IF THERE EVER  
7 WAS A CASE WHERE STRAIGHT PROBATION WOULD BE APPROPRIATE, I  
8 WOULD SUBMIT THAT THIS WOULD BE ONE OF THOSE CASES.

9 THIS DEFENDANT WAS NOT ENGAGED IN THE SELLING OF  
10 ANIMAL PARTS. THIS PERSON WAS INTERESTED IN PARTING WITH A  
11 COLLECTION OF HIS HOBBY. HE JUST CHOSE TO GO ABOUT IT WHICH  
12 RAN AFOUL OF THE LAW.

13 WE WOULD ASK THAT THE COURT IMPOSE A SENTENCE OF  
14 STRAIGHT PROBATION. AND IF THE COURT FEELS THAT THERE SHOULD  
15 BE SOME CONDITION ATTACHED TO PROBATION, WE WOULD SUGGEST  
16 THAT PERHAPS MAYBE A TERM OF HOME DETENTION LESS THAN THAT  
17 WHICH IS RECOMMENDED BY THE PROBATION OFFICER AND THE  
18 GOVERNMENT. A SENTENCE OF THREE MONTHS HOME DETENTION WOULD  
19 BE MORE THAN ADEQUATE TO ADDRESS PUNISHMENT IN THIS  
20 PARTICULAR CASE.

21 IN ADDITION, YOUR HONOR, THE PROBATION OFFICER ALSO  
22 RECOMMENDS 250 HOURS OF COMMUNITY SERVICE. THAT IS A  
23 SUBSTANTIAL NUMBER OF HOURS WHEN YOU CONSIDER THE ADDITIONAL  
24 RECOMMENDATION OF HOME DETENTION.

25 I WOULD ASK THAT THE COURT IMPOSE SOMETHING LIKE 50

1 HOURS OF COMMUNITY SERVICE, THREE MONTHS OF HOME DETENTION,  
2 THREE YEARS OF PROBATION. THAT WOULD BE A JUST SENTENCE.  
3 AND WE FEEL THAT THAT WOULD BE THE APPROPRIATE SENTENCE IN  
4 THIS CASE.

5 THE COURT: THANK YOU.

6 MR. MITCHELL.

7 MR. MITCHELL: THANK YOU, YOUR HONOR.

8 THE GOVERNMENT'S POSITION IS PRETTY WELL SPELLED  
9 OUT IN THE PLEADING THAT WAS FILED IN RESPONSE TO THE  
10 PRESENTENCE REPORT AND TO THE DEFENDANT'S SENTENCING  
11 POSITION.

12 THE BOTTOM LINE, YOUR HONOR, IS THAT GIVEN THE  
13 PARTICULAR HISTORY AND CHARACTERISTICS OF DEFENDANT AND THE  
14 NATURE OF THIS OFFENSE AND SO FORTH, WHEN ALL THOSE FACTORS  
15 ARE TAKEN INTO ACCOUNT A CUSTODIAL SENTENCE WOULD BE A LITTLE  
16 TOO MUCH HERE -- DESPITE THE FACT DEFENDANT DID GO TO TRIAL  
17 AND SO FORTH.

18 THERE SHOULD BE SOMETHING MORE THAN PROBATION. AND  
19 THE SENTENCE THAT'S BEEN RECOMMENDED BY THE PROBATION OFFICE  
20 REALLY STRIKES THE RIGHT BALANCE.

21 THERE SHOULD BE SOMETHING MORE THAN PROBATION  
22 BECAUSE DEFENDANT NOT ONLY VIOLATED A STATUTE, THE EVIDENCE  
23 SHOWS THAT HE KNEW HE WAS VIOLATING THE STATUTE. HE KNEW --  
24 OR, AT LEAST -- AT THE VERY LEAST, HE WAS DOING SOMETHING  
25 ILLEGAL.

1           THE EVIDENCE SHOWED THAT HE WAS GIVING SOME ADVICE  
2   ABOUT HOW TO AVOID DETECTION IN CASE THE PURCHASER OF THE  
3   SKULL WAS STOPPED. THAT KIND OF EVIDENCE SHOWS HE WAS NOT  
4   IGNORANT OF THE FACT THAT HE WAS VIOLATING THE LAW. AND SO  
5   SOMETHING THAT'S MORE SEVERE THAN PROBATION IS CALLED FOR.

6           AND, YET, THE DEFENDANT BASICALLY MOST OF HIS LIFE  
7   HAS LED A LAW-ABIDING LIFE. HE'S SHOWN A LOT OF  
8   CHARACTERISTICS OF SELFLESSNESS AND HELPING OTHERS.

9           AND IT ALSO IS CLEAR THAT HIS PRIME MOTIVATION FOR  
10   SELLING THE ELEPHANT SKULL, IT WASN'T A BUSINESS THAT HE HAD.  
11   HE WAS -- HE DIDN'T REALLY WANT TO SELL IT, BUT HE WAS  
12   DESPERATE FINANCIALLY. AND THAT WAS REALLY HIS MOTIVATION.  
13   IT WASN'T THAT HE HAD THIS KIND OF BUSINESS WHERE HE WAS JUST  
14   SELLING THESE THINGS ON AN ONGOING BUSINESS.

15           SO, IN SOME WAYS HIS MOTIVE WAS NOT AS CULPABLE,  
16   SHALL WE SAY, AS IT COULD BE WITH SOMEONE WHO WAS OPERATING  
17   THIS KIND OF A BUSINESS. AND, YET, ON THE OTHER HAND, HE DID  
18   KNOW THAT WHAT HE WAS DOING WAS VIOLATING THE LAW.

19           SO, A HOME DETENTION SENTENCE REALLY STRIKES THE  
20   RIGHT BALANCE. I DON'T THINK THERE'S ANYTHING TOO SEVERE  
21   ABOUT TEN MONTHS OF HOME DETENTION. THE GOVERNMENT HAS NO  
22   OBJECTION.

23           AND I SUSPECT THE PROBATION OFFICER WOULD PROBABLY  
24   ALLOW MR. SNAPP TO WORK DURING THE DAY. HOPEFULLY, HE CAN  
25   FIND EMPLOYMENT -- SO THAT IF HE NEEDS TO LEAVE HIS HOME OR



1 WORK DURING THE DAY, HE'D BE ABLE TO DO IT. BUT, OBVIOUSLY,  
2 YOU KNOW, THE NIGHT HOURS HE SHOULD BE SERVING HIS HOME  
3 DETENTION SENTENCE.

4 THE 250 HOURS OF COMMUNITY SERVICE IS APPROPRIATE.  
5 GIVEN, YOU KNOW -- MR. SNAPP'S GOT A LOT TO OFFER IN TERMS OF  
6 HIS KNOWLEDGE ABOUT SPECIES AND ENDANGERED SPECIES AND SO  
7 FORTH. MAYBE THERE'S SOME KIND OF COMMUNITY SERVICE HE CAN  
8 DO IN THAT REGARD. WHO KNOWS. BUT I DON'T THINK THAT OVER A  
9 THREE-YEAR PERIOD OF PROBATION IT WILL BE DIFFICULT AT ALL  
10 FOR MR. SNAPP TO COMPLETE 250 HOURS OF COMMUNITY SERVICE.

11 A FINE IS CLEARLY NOT WARRANTED HERE. DEFENDANT'S  
12 FINANCIAL CONDITION CERTAINLY DOESN'T ALLOW THAT.

13 SO, UNLESS, THERE'S FURTHER QUESTIONS FROM THE  
14 COURT, I THINK THAT THE SENTENCE THAT PROBATION HAS  
15 RECOMMENDED IS A FAIR ONE. IT'S JUST. IT REALLY FOLLOWS THE  
16 SPIRIT AND THE LETTER OF WHAT THE -- NOT ONLY SENTENCING --  
17 WELL, THE SENTENCING GUIDELINES, NO, BUT THE FACTORS SET  
18 FORTH IN TITLE 18, UNITED STATES CODE SECTION 3553(A) AND SO  
19 FORTH IN THAT SECTION.

20 AND THAT'S WHAT THE GOVERNMENT WOULD RECOMMEND.

21 THE COURT: ALL RIGHT.

22 MR. EAGLIN: YOUR HONOR, MAY I JUST ADD JUST A  
23 COUPLE MORE COMMENTS.

24 AND MR. SNAPP, HE JUST ADVISED ME THAT -- YOU KNOW,  
25 IN TERMS OF COMMUNITY SERVICE AND THE 250 HOURS OF COMMUNITY

1 SERVICE, MR. SNAPP ADVISED ME THAT HE DOES NOT LIVE IN A  
2 COMMUNITY.

3 AT THE TIME THAT MR. SNAPP WENT TO TRIAL, MR. SNAPP  
4 WAS LIVING ON A 10-ACRE --

5 (MR. EAGLIN CONFERRING BRIEFLY WITH CLIENT.)

6 MR. EAGLIN: IT WAS A THREE-ACRE COMPOUND OUT IN  
7 THE RURAL PARTS OF RIVERSIDE. SINCE THEN, MR. SNAPP HAS  
8 MOVED. HE LIVES IN AN EVEN RURAL -- MORE RURAL AREA. IT'S  
9 MY UNDERSTANDING HE LIVES IN APPLE VALLEY.

10 THE DEFENDANT: I LIVE APPROXIMATELY 10 MILES OUT  
11 OF APPLE VALLEY IN THE MIDDLE OF THE MOJAVE DESERT.

12 MR. EAGLIN: IN THE MIDDLE OF THE MOJAVE DESERT.

13 THE DEFENDANT HAD SOME PROBLEMS WITH TRANSPORTATION  
14 TO MAKE IT TO COURT DURING THE TRIAL. AT ONE POINT IN TIME  
15 THE COURT THREATENED TO SANCTION MR. SNAPP BECAUSE HE DID NOT  
16 APPEAR TIMELY. THERE WOULD BE SOME PROBLEMS WITH RESPECT TO  
17 COMMUNITY SERVICE. THERE'S VERY LITTLE, IF ANY, COMMUNITY  
18 SERVICE THE DEFENDANT COULD -- COULD DO WITHIN THE AREA IN  
19 WHICH HE LIVES.

20 I WOULD ASK THAT THE COURT CONSIDER THAT IN  
21 FASHIONING ANY SENTENCE THAT THE COURT THINKS IS JUST.

22 WITH THAT, WE WOULD SUBMIT THE MATTER, YOUR HONOR.

23 THE COURT: MR. MITCHELL, IS THERE ANYTHING  
24 FURTHER?

25 MR. MITCHELL: ONE OTHER ITEM, YOUR HONOR. AND I

1 SHOULD HAVE THOUGHT OF THIS EARLIER -- IT WAS THIS MORNING.  
2 I, UNFORTUNATELY, THOUGHT OF IT THIS LATE. AND THAT IS THAT  
3 I THINK IT'S NECESSARY FOR THE GOVERNMENT TO SUBMIT AN  
4 APPLICATION FOR A FINAL ORDER OF FORFEITURE ALONG WITH A  
5 PROPOSED ORDER OF FORFEITURE. AND I WILL -- I DID CHECK WITH  
6 --

7 THE COURT: WHY DO YOU THINK THAT'S NECESSARY?

8 MR. MITCHELL: I WENT TO THE ASSET FORFEITURE  
9 SECTION THIS MORNING, YOUR HONOR, AND SPOKE WITH ONE OF THE  
10 PEOPLE UP THERE WHO HAS SOME EXPERIENCE IN THAT AREA. AND  
11 SHE INFORMED ME THAT THAT'S TYPICALLY WHAT'S DONE.

12 WE ALREADY HAVE A PRELIMINARY ORDER.

13 THE COURT: YES.

14 MR. MITCHELL: THERE'S HAS BEEN A PUBLICATION OF A  
15 NOTICE. BUT I THINK THERE'S SOME FORMALITY WITH THIS THING  
16 WHERE THERE'S AN APPLICATION AND A PROPOSED FINAL ORDER.

17 AND SO --

18 THE COURT: THE LAW REQUIRES, AS I UNDERSTAND IT,  
19 THAT THE JUDGMENT INCLUDE A FINAL ORDER OF FORFEITURE. BUT I  
20 DON'T KNOW WHY YOU WOULD HAVE TO SUBMIT A FURTHER APPLICATION  
21 UNLESS YOU JUST WANT TO.

22 MR. MITCHELL: JUST TO PLAY IT SAFE.

23 MY UNDERSTANDING FROM THE AUSA WHO WAS TELLING ME  
24 ABOUT THIS WAS THAT YOU COULD HAVE A DEFENDANT SENTENCED AND  
25 STILL HAVE FORFEITURE PROCEEDINGS ONGOING.

1 MY SUGGESTION --

2 THE COURT: I THINK THAT USED TO BE THE LAW, BUT IT  
3 CHANGED IN DECEMBER.

4 MR. MITCHELL: OH. I APPRECIATE THAT. I DIDN'T  
5 KNOW THAT.

6 MY SUGGESTION, YOUR HONOR, WOULD SIMPLY BE -- IS  
7 THAT THE COURT, IF POSSIBLE, NOT ISSUE A FINAL JUDGMENT UNTIL  
8 LET'S SAY FRIDAY. AND THAT WAY I CAN GET AN APPLICATION IN  
9 TOMORROW OR WEDNESDAY AT THE LATEST AND LODGE THAT WITH THE  
10 COURT IF THE COURT THINKS THAT'S APPROPRIATE, YOU KNOW, TO  
11 PROCEED FROM THERE.

12 THE COURT: WELL, WHAT WOULD THIS APPLICATION SAY?

13 MR. MITCHELL: WELL, I LOOKED AT THE FORM THAT I  
14 WAS GIVEN, AND IT BASICALLY RECITES THE FACT THAT THERE WAS A  
15 PRELIMINARY ORDER, THAT A FINAL ORDER IS APPROPRIATE. IT  
16 WOULD RECITE THE FACT THAT THE DEFENDANT WAS CONVICTED. AND  
17 THAT UNDER THE LAW THE GOVERNMENT IS ENTITLED TO HAVE THE  
18 SKULL FORFEITED. THAT'S PRETTY MUCH WHAT IT WOULD SAY I  
19 THINK.

20 THE COURT: IS THERE ANY --

21 MR. MITCHELL: THERE'S A BOND THERE TOO.

22 THE COURT: IS THERE ANYTHING TO CONTEST IN THAT,  
23 MR. EAGLIN?

24 MR. EAGLIN: YOUR HONOR, WE TAKE NO POSITION WITH  
25 RESPECT TO THE GOVERNMENT'S FORMALITY.

1 THE COURT: LET ME ASK IT THIS WAY. LET'S ASSUME  
2 THAT MR. MITCHELL INSTEAD OF TELLING ME THAT HE WANTED TO PUT  
3 IN AN APPLICATION, HAD SUBMITTED AN APPLICATION THAT  
4 CONTAINED THE ITEMS HE JUST ENUMERATED.

5 WOULD YOU CONTEST IT?

6 MR. EAGLIN: I WOULD NOT, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MR. MITCHELL: ONE LAST FACT, YOUR HONOR --

9 THE COURT: YES.

10 MR. MITCHELL: -- JUST FOR THE SAKE OF FULL  
11 DISCLOSURE.

12 WHEN THE THING GOT PUBLISHED, THE NOTICE OR THE  
13 PRELIMINARY ORDER OF FORFEITURE, THE CASE NUMBER WAS CRIMINAL  
14 09-122-RZ. TECHNICALLY, I GUESS IT SHOULD HAVE HAD A PAREN,  
15 CAPITAL A, CLOSE PAREN, BECAUSE THE MATTER THAT WENT TO TRIAL  
16 WAS A SUPERSEDING INFORMATION.

17 BUT I DON'T BELIEVE THAT THAT SHOULD AFFECT  
18 ANYTHING. I THINK IF ANYBODY WANTED TO FIND THE CASE SIMPLY  
19 BY HAVING 09-122-RZ OR MR. SNAPP'S NAME, I THINK THEY WOULD  
20 BE ABLE TO FIND IT. BUT I JUST WANTED TO DISCLOSE THAT. I  
21 HAD ASKED TO PUT IN THE Z -- I MEAN, THE CAPITAL A, BUT  
22 APPARENTLY IT DIDN'T HAPPEN.

23 THE COURT: ALL RIGHT.

24 MR. MITCHELL: I SHOULD HAVE PUT IT IN MY PAPERS  
25 THERE WHEN I WAS GIVING IT TO THE PEOPLE WHO PUBLISHED IT.

1                   THANKS.

2                   THE COURT:   ALL RIGHT.   THE COURT RECEIVES THE  
3   PRESENTENCE REPORT AND ADOPTS ITS FINDINGS OF FACT AND  
4   CONCLUSIONS OF LAW.

5                   MR. SNAPP, YOU HAVE THE RIGHT TO ADDRESS THE COURT  
6   AS TO ANYTHING YOU THINK PERTINENT TO THESE PROCEEDINGS.   YOU  
7   DON'T HAVE TO, BUT IT IS YOUR ABSOLUTE RIGHT BEFORE I  
8   PRONOUNCE SENTENCE.   AND, SO, I GIVE YOU THAT OPPORTUNITY NOW  
9   IF THERE IS ANYTHING YOU WANT TO TELL ME.

10                  THE DEFENDANT:   WELL, YOUR HONOR, I DON'T REALLY  
11   HAVE A LOT TO SAY IN REGARD TO THIS.

12                  I THINK I'VE BEEN TREATED AS FAIRLY AND JUSTLY AS I  
13   COULD DO IN THE INSTANCE OF PLEADING NOT GUILTY.   I WILL  
14   FAITHFULLY FOLLOW THROUGH WITH WHATEVER I AM -- THE COURT  
15   DECIDES TO IMPOSE UPON ME.

16                  I'M -- I HAVE MY REGRETS FOR WHAT I'VE DONE.   I  
17   MEANT NO CRIMINAL INTENT AT ANY POINT IN TIME.   THAT DIDN'T  
18   OCCUR TO ME, A CRIMINAL INTENT.   SO, I AM WILLING TO FOLLOW  
19   THROUGH WITH THE BEST OF MY ABILITY WHATEVER IS IMPOSED UPON  
20   ME.

21                  THE COURT:   ALL RIGHT.   THANK YOU.

22                  IS THERE ANY LEGAL CAUSE WHY SENTENCE SHOULD NOT BE  
23   PRONOUNCED, MR. MITCHELL?

24                  MR. MITCHELL:   NO, YOUR HONOR.

25                  THE COURT:   MR. EAGLIN?

1 MR. EAGLIN: NO, YOUR HONOR.

2 THE COURT: THE COURT HAS CONSIDERED ALL THE  
3 SENTENCING FACTORS WHICH ARE LISTED IN THE STATUTE 18, USC  
4 SECTION 3553 SUBSECTION A.

5 AND THE COURT HAS CONSIDERED THE GUIDELINES, WHICH  
6 ARE ADVISORY, WHICH BASED UPON AN OFFENSE LEVEL OF 12 AND A  
7 CRIMINAL HISTORY OF -- CRIMINAL HISTORY CATEGORY OF ROMAN  
8 NUMERAL I, SUGGESTS AN IMPRISONMENT SENTENCE RANGE OF 10 TO  
9 16 MONTHS.

10 IT IS ORDERED THAT THE DEFENDANT SHALL PAY TO THE  
11 UNITED STATES A SPECIAL ASSESSMENT OF \$25, WHICH IS DUE  
12 IMMEDIATELY.

13 ALL FINES ARE WAIVED. THE COURT FINDS THE  
14 DEFENDANT DOES NOT HAVE THE ABILITY TO PAY A FINE.

15 THE COURT FINDS THAT THE PROPERTY WHICH HAS BEEN  
16 IDENTIFIED IN COUNT TWO OF THE INFORMATION AND WHICH WAS  
17 SPECIFIED IN THE PRELIMINARY ORDER OF FORFEITURE HAS BEEN  
18 DETERMINED TO BE SUBJECT TO FORFEITURE. THE PRELIMINARY  
19 ORDER OF FORFEITURE IS INCORPORATED BY REFERENCE INTO THE  
20 JUDGMENT AND IT IS MADE FINAL. AND THE ELEPHANT SKULL WHICH  
21 WAS ADMITTED AS EVIDENCE IN THE TRIAL IS FORFEITED TO THE  
22 UNITED STATES.

23 THE DEFENDANT, GERARD SNAPP, IS HEREBY PLACED ON  
24 PROBATION ON COUNT ONE OF THE INFORMATION FOR A TERM OF THREE  
25 YEARS UNDER THE FOLLOWING TERMS AND CONDITIONS:

1 THE DEFENDANT SHALL COMPLY WITH THE RULES AND  
2 REGULATIONS OF THE UNITED STATES PROBATION OFFICE AND GENERAL  
3 ORDER 318, A COPY OF WHICH WILL BE PROVIDED TO THE DEFENDANT  
4 BY THE PROBATION OFFICE AND EXPLAINED TO HIM.

5 THE DEFENDANT SHALL REFRAIN FROM ANY UNLAWFUL USE  
6 OF A CONTROLLED SUBSTANCE.

7 THE DEFENDANT SHALL SUBMIT TO ONE DRUG TEST WITHIN  
8 15 DAYS OF RELEASE FROM -- 15 DAYS FROM THE DATE OF JUDGMENT  
9 AND, AT LEAST, TWO PERIODIC DRUG TESTS THEREAFTER NOT TO  
10 EXCEED EIGHT TESTS PER MONTH AS DIRECTED BY THE PROBATION  
11 OFFICE.

12 THE DEFENDANT SHALL PARTICIPATE FOR A PERIOD OF  
13 THREE MONTHS IN A HOME DETENTION PROGRAM WHICH MAY INCLUDE  
14 ELECTRONIC MONITORING, GPS OR VOICE RECOGNITION AND SHALL  
15 OBSERVE ALL RULES OF SUCH A PROGRAM AS DIRECTED BY THE  
16 PROBATION OFFICER.

17 THE DEFENDANT SHALL MAINTAIN A RESIDENTIAL  
18 TELEPHONE LINE WITHOUT DEVICES AND/OR SERVICES THAT MAY  
19 INTERRUPT AN ERUPTION OF THE MONITORING EQUIPMENT.

20 THE PROGRAM SHALL ALLOW THE DEFENDANT TO LEAVE HIS  
21 HOME AS NECESSARY, TO WORK, ATTEND MEDICAL APPOINTMENTS, MAKE  
22 ANY COURT APPEARANCES OR ATTORNEY VISITS THAT ARE NECESSARY,  
23 TRANSPORT HIS ADOPTED SON TO AND FROM SCHOOL AND ATTEND  
24 SCHOOL FUNCTIONS, AND PERFORM OTHER TASKS WHICH ARE  
25 AUTHORIZED BY THE PROBATION OFFICER.



1 THE DEFENDANT SHALL PERFORM 100 HOURS OF COMMUNITY  
2 SERVICE OR OTHER SIMILAR SERVICE DIRECTED BY THE PROBATION  
3 OFFICER.

4 THIS SENTENCE IS A DEPARTURE FROM THE SENTENCING  
5 GUIDELINES WHICH, AS I INDICATE, PROVIDE FOR A TERM OF  
6 IMPRISONMENT IN CIRCUMSTANCES LIKE THIS. THE COURT FINDS  
7 THAT A DEPARTURE IS APPROPRIATE FOR THE FOLLOWING REASONS:

8 FIRST, IT IS CLEAR TO THE COURT, AND THE COURT  
9 BELIEVES IT WAS CLEAR TO THE JURY, THAT THE DEFENDANT DID NOT  
10 ACT OUT OF A DESIRE TO MAXIMIZE A PROFIT BUT, RATHER, BECAUSE  
11 HE FOUND HIMSELF IN DIRE CIRCUMSTANCES WITH LITTLE OTHER  
12 METHOD TO PROVIDE THE NECESSITIES OF LIFE.

13 SECOND, THE DEFENDANT HAS A HISTORY OF SERVICE TO  
14 THE COMMUNITY HAVING TAKEN SIGNIFICANT AND TANGIBLE STEPS TO  
15 HELP THOSE WHO HAVE FALLEN ON HARD TIMES.

16 THIRD, THE DEFENDANT HAS A HISTORY OF SIGNIFICANT  
17 REDEMPTION IN HIS OWN PERSONAL LIFE HAVING BATTLED AN  
18 ADDICTION AND FOR A QUARTER OF A CENTURY HAVING ARRESTED ITS  
19 HOLD ON HIM. AND THE DEFENDANT HAS APPARENTLY BEEN FREE OF  
20 CRIMINAL BEHAVIOR FOR A LONG PERIOD OF TIME.

21 FOURTH, THE CRIME, LIKE ALL CRIMES, IS SERIOUS, BUT  
22 IT IS MITIGATED SOMEWHAT BY THE FACT THAT THE DEFENDANT WAS  
23 IN LAWFUL POSSESSION OF THE ELEPHANT SKULL AND DID NOT  
24 PROCURE THE SKULL FOR THE PURPOSE OF VIOLATING THE LAW BY  
25 OFFERING IT FOR SALE IN INTERSTATE COMMERCE.

1           FIFTH, THE DETERRENT VALUE OF A MORE SEVERE  
2   SENTENCE WOULD BE SLIGHT. THE OFFER FOR SALE WAS OUT IN THE  
3   OPEN, TRANSPARENT TO ALL, AND NOT PART OF ANY UNDISCLOSED  
4   SCHEME, THE ENCOURAGEMENT OF WHICH IS TO BE AVOIDED.

5           SIXTH, A SENTENCE OF IMPRISONMENT WOULD DEPRIVE AN  
6   EIGHT-YEAR OLD SON OF HIS ADOPTED FATHER FURTHER INCREASING  
7   THE TRAUMA THAT THE CHILD ALREADY HAS UNDERGONE.

8           AND, FINALLY, IN THE COURT'S VIEW, THE IMPOSITION  
9   OF PROBATION TOGETHER WITH A REQUIREMENT THAT THE DEFENDANT  
10  PERFORM A SIGNIFICANT NUMBER OF HOURS OF COMMUNITY SERVICE OR  
11  LIKE SERVICE REINFORCES THE NOTION THAT THE COURT AND THE  
12  JUSTICE SYSTEM TAKE THE VIOLATION SERIOUSLY. AND THEY WARN  
13  THE DEFENDANT SUFFICIENTLY THAT SIMILAR ACTS IN THE FUTURE  
14  MAY BRING A MORE SEVERE RESULT.

15          MR. SNAPP, I'M ADVISING YOU THAT YOU HAVE A RIGHT  
16  OF APPEAL OF THE SENTENCE. AND THE APPEAL OF THE SENTENCE  
17  MAY BE TAKEN WITHIN -- BY POSTING A NOTICE WITH THE CLERK  
18  WITHIN TEN DAYS FROM TODAY'S DATE. FAILURE TO FILE A NOTICE  
19  OF APPEAL WILL RESULT IN THERE BEING NO REVIEW OF THE COURT'S  
20  SENTENCE.

21          YOU'VE ALREADY QUALIFIED FOR THE APPOINTMENT OF  
22  COUNSEL. I FEEL CONFIDENT YOU COULD QUALIFY FOR THE  
23  APPOINTMENT OF APPELLATE COUNSEL.

24          MR. EAGLIN, IF MR. SNAPP WISHES TO APPEAL, WILL YOU  
25  ASSIST HIM IN FILING SUCH A NOTICE?

1 MR. EAGLIN: I WILL, YOUR HONOR.

2 THE COURT: THERE'S A BOND IN THIS CASE. ANY  
3 REASON NOT TO EXONERATE IT?

4 MR. MITCHELL: NO, YOUR HONOR.

5 MR. EAGLIN: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. THE BOND IS EXONERATED.  
7 IS THERE ANYTHING FURTHER TO DO TODAY?

8 MR. MITCHELL: YOUR HONOR, I JUST WASN'T SURE. THE  
9 TEN-DAY PERIOD, DOES IT RUN FROM THE TIME THAT THE COURT  
10 ISSUES ITS JUDGMENT OR FROM THE ORAL PRONOUNCEMENT? THAT WAS  
11 THE ONE THING I WASN'T SURE OF. I MAY BE WRONG. I JUST --

12 THE COURT: I BELIEVE IT IS FROM THE TIME THAT THE  
13 JUDGMENT IS ENTERED.

14 MR. MITCHELL: OKAY.

15 THE COURT: BUT I'M NO LONGER AUTHORIZED TO  
16 PRACTICE LAW, MR. MITCHELL.

17 MR. EAGLIN, YOU WILL ADVISE THE DEFENDANT ON HOW TO  
18 BEST PROTECT HIMSELF IN THE EVENT HE CHOOSES TO TAKE AN  
19 APPEAL.

20 MR. EAGLIN: I WILL, YOUR HONOR.

21 THE COURT: ALL RIGHT. ANYTHING ELSE?

22 MR. MITCHELL: NO, YOUR HONOR.

23 THE COURT: MR. EAGLIN.

24 MR. EAGLIN: ONE MATTER, YOUR HONOR.

25 THE COURT, HAVING WAIVED THE FINE IN THIS CASE

1 BECAUSE THE DEFENDANT LACKED THE ABILITY TO DO SO, I THINK  
2 THE THREE MONTHS OF HOME DETENTION WITH ELECTRONIC MONITORING  
3 WE WOULD ASK THAT THE COURT WAIVE ANY COSTS ASSOCIATED --

4 THE COURT: I DID NOT ORDER THAT HE PAY -- PAY FOR  
5 IT.

6 MR. EAGLIN: VERY WELL, YOUR HONOR.

7 THE COURT: FOR A SIMILAR REASON. I LOOKED AT WHAT  
8 THE PROBATION OFFICE WAS RECOMMENDING, THAT HE BE ORDERED TO  
9 PAY OR THAT HE POSSIBLY BE ORDERED TO PAY, AND THEY WERE  
10 ORDERING -- RECOMMENDING TEN MONTHS' DETENTION. BY MY  
11 CALCULATION THAT WORKED OUT TO SOME \$3,600, WHICH SEEMED  
12 INCONSISTENT WITH AN INABILITY TO PAY A FINE.

13 MR. EAGLIN: YOUR HONOR, I JUST RAISED IT BECAUSE  
14 POTENTIALLY IT COULD HAVE BECOME AN ISSUE LATER ON BECAUSE  
15 THE COURT DID NOT ADDRESS IT ONE WAY OR ANOTHER.

16 THE COURT: WELL, IT'S THE COURT'S ORDER THAT THE  
17 DEFENDANT NOT BE REQUIRED TO PAY FOR THE ELECTRONIC  
18 MONITORING.

19 MR. EAGLIN: THANK YOU, YOUR HONOR. WE HAVE  
20 NOTHING MORE.

21 THE COURT: MR. MITCHELL, LAST CHANCE.

22 MR. MITCHELL: NOTHING FURTHER, YOUR HONOR. THANK  
23 YOU.

24 THE COURT: ALL RIGHT. GOOD LUCK, MR. SNAPP.

25 THE DEFENDANT: THANK YOU, YOUR HONOR.

1 THE COURT: WE'LL BE IN RECESS.

2 (PROCEEDINGS COMPLETED 1:58 P.M.)

3

4 C E R T I F I C A T E

5

6 I CERTIFY THAT THE FOREGOING IS A CORRECT  
7 TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE  
8 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

9

10 DOROTHY BABYKIN 3/4/10

11 \_\_\_\_\_

12 FEDERALLY CERTIFIED TRANSCRIBER DATED

13 DOROTHY BABYKIN

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