

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA,

4 v. 16 Cr. 683 (CM)

5 RALPH GROEN,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 March 23, 2017  
3:00 p.m.

10 Before:

11 HON. COLLEEN MCMAHON,  
12 District Judge

13 APPEARANCES

14 DEPARTMENT OF JUSTICE  
15 Antitrust Division  
16 BY: REBECCA RYAN  
17 SAMSON ASIYANBI  
Assistant United States Attorney

18 FLORIAN MIEDEL  
19 Attorney for Defendant

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1 (Case called)

2 MS. RYAN: Rebecca Ryan on behalf of the United  
3 States.

4 MS. ASIYANBI: Samson Asiyanski on behalf of the United  
5 States.

6 MR. MIEDEL: Good afternoon. Florian Miedel with  
7 Mr. Groen.

8 THE COURT: Hello, Mr. Miedel. How are you?

9 MR. MIEDEL: Nice to see you.

10 THE COURT: Have a seat.

11 This matter is on for sentencing under docket number  
12 683-01, United States versus Ralph Groen.

13 Mr. Groen, having been found guilty by plea of  
14 obstruction of justice through witness tampering, a Class C  
15 felony in violation of 18 United States Code 1512(c)(2). This  
16 crime carries a statutory maximum penalty of 20 years'  
17 imprisonment, three years' supervised release, a \$250,000 fine,  
18 and a \$100 special assessment.

19 In connection with today's proceedings, I have  
20 received and reviewed the presentence report prepared by U.S.  
21 probation officer Stephanie McMahon. It is dated January 6,  
22 2017, and it has been revised in light of some objections that  
23 were made to the draft.

24 I have also read the government's sentencing  
25 memorandum from Ms. Ryan and Mr. Asiyanski, and a sentencing

1 memorandum from Mr. Miedel. I believe that is everything that  
2 I have seen on this case, which was transferred to me from  
3 Judge Forrest.

4 Is there anything else that I should have seen in  
5 writing prior to today's proceedings from the government?

6 MS. RYAN: No, your Honor.

7 THE COURT: From the defendant?

8 MR. MIEDEL: No, your Honor.

9 THE COURT: Thank you.

10 Has the government reviewed the presentence report?

11 MS. RYAN: Yes, your Honor, we have.

12 THE COURT: Other than your suggestion, which is  
13 concurred by the defense, that a two-level enhancement is  
14 duplicative and should not be imposed, which would affect the  
15 guideline, is there any other additions, deletions, or  
16 corrections that the government needs to make to the  
17 presentence report?

18 MS. RYAN: No, your Honor.

19 THE COURT: Thank you. Does the government wish to be  
20 heard on sentencing?

21 MS. RYAN: Yes, your Honor, if we may.

22 THE COURT: Absolutely.

23 MS. RYAN: As stated in our written submission, we  
24 believe that the guidelines calculation at 15 to 21 months as  
25 calculated under the plea agreement is appropriate in this

1 case. Specifically, we were advocating for a custodial  
2 sentence of 15 months to reflect the serious nature of  
3 Mr. Groen's crime.

4 In this case, Mr. Groen knowingly and repeatedly  
5 obstructed a federal investigation. He made untruthful  
6 statements, provided false testimony, and ordered his  
7 subordinates to conceal and destroy material that was relevant  
8 and responsive to a civil merger investigation. As vice  
9 president of his company and as the director of the IT  
10 Department, this was in blatant disregard of his obligations to  
11 his employer, his responsibilities to his subordinates, and  
12 compliance with the law.

13 We've discussed the 3553 factors thoroughly in our  
14 written submission, so I'd just like to highlight three points  
15 here today, if I may.

16 THE COURT: Please.

17 MS. RYAN: With respect to the nature and circumstance  
18 of the offense, Mr. Groen was the one that was solely  
19 responsible for directing this obstructive conduct. However,  
20 in doing so, he involved at least three of his subordinates  
21 whom he instructed to engage in illegal conduct, exposing them  
22 to criminal liability. While obviously the subordinates are  
23 ultimately responsible for their own actions, I think it's  
24 important to highlight that they were acting at the sole  
25 direction of Mr. Groen and derived no personal benefit from

1 their own actions. One eventually lost his job, along with  
2 Mr. Groen.

3 The government believes that additionally, the need  
4 for adequate deterrence supports a sentence of a term of  
5 imprisonment. For both civil and criminal antitrust  
6 investigations, we rely on the good faith of the companies and  
7 their employees when conducting our investigations. When  
8 individuals decide to obstruct the government's investigation,  
9 for whatever reason, the division's process is jeopardized. It  
10 prevents the government from making prompt decisions, it can  
11 increase the risk of error in our decision-making, and  
12 ultimately creates distrust in the merger review process on all  
13 sides, jeopardizing the work that the division does.

14 Here, Mr. Groen's attempt to save face required the  
15 government to embark on an extensive investigation to determine  
16 the confines of his obstructive conduct and who was involved in  
17 it. It stalled merger litigation for over a year and cost the  
18 government, as well as his employer, Coach USA, significant  
19 resources.

20 During this time, Mr. Groen had ample opportunity to  
21 correct his mistakes, to admit his errors, but time and time  
22 again he chose to hide the truth, manipulate evidence, and  
23 expose himself and others to criminal liability, which brings  
24 me to one last point regarding the characteristics of the  
25 defendant.

1           It is true that the defendant here is a category I in  
2 terms of his criminal history. We believe that this only  
3 mitigates in favor of a sentence at the lower end of the  
4 guidelines range, as we've recommended. Regardless of his  
5 motivations, the consequences of his actions are the same on  
6 the government and on his employer. The government incurred  
7 significant cost to vindicate our investigative process in this  
8 case.

9           Throughout this time, Mr. Groen has continually tried  
10 to downplay the significance of his conduct and claimed that  
11 his motivation should excuse, or at least seriously mitigate,  
12 any punishment. But regardless of his motivation, the crime is  
13 the same. He obstructed justice, and the sentencing guidelines  
14 provide for a range between 15 to 21 months.

15           Given these factors, as well as the other ones that  
16 we've indicated in our written submission, we believe that a  
17 custodial sentence of 15 months is necessary, and we'd be happy  
18 to answer any other questions your Honor may have.

19           THE COURT: Thank you. I would like to commend the  
20 Antitrust Division for doing what my local U.S. Attorney's  
21 Office so rarely does, and that is, giving me lots of detail  
22 and then actually taking a position. It's commendable.

23           MS. RYAN: Thank you, your Honor.

24           THE COURT: Maybe I should move to Washington, D.C.

25           Mr. Miedel, have you reviewed the presentence report

1 and gone over it with your client?

2 MR. MIEDEL: Yes, I have.

3 THE COURT: And noted, are there any additions,  
4 deletions, or corrections other than the one relating to the  
5 two-point enhancement?

6 MR. MIEDEL: No.

7 THE COURT: Then I will hear you.

8 MR. MIEDEL: All right. I will take a position, also.

9 THE COURT: But you always do, that's why I like  
10 working with defense counsel.

11 MR. MIEDEL: Your Honor, I know that you've read the  
12 submissions carefully, and I'm not going to spend a lot of time  
13 going over it all over again. I do want to say that not every  
14 case -- not every person convicted of a federal crime has to go  
15 to prison. Not in every case is prison required to send a  
16 message, not in every case is prison required to deter other  
17 people's misconduct.

18 Now, the government, in its sentencing letter,  
19 downplays the seriousness of, I think, what it feels like for  
20 an otherwise normal, productive, law-abiding member of our  
21 society to be tarred a felon, having a federal felony  
22 conviction. It doesn't consider it to be enough to lose your  
23 job, to lose your prospects of having another job in your  
24 chosen field, as a middle-aged person, to suffer the  
25 embarrassment and humiliation of knowing that your friends and

1 neighbors know what you've done, to be restricted in your  
2 travel, to be supervised by a probation officer; those are all  
3 consequences of a felony conviction.

4 In this case, under the particular circumstances of  
5 this case, for this particular man right here, I think that  
6 those consequences are enough, because context matters, your  
7 Honor, and here, Mr. Groen's misconduct, as serious as it was,  
8 did not rise to the level of gravity where only prison can  
9 achieve a just and reasonable sentence.

10 Now, the obstruction guideline which is applicable  
11 here, 2J1.2, is very broad. It covers a great variety, a range  
12 of potential misconduct. And the application as to that  
13 guideline range describes some of the activities that would be  
14 encompassed in the guideline, and those include: Using threats  
15 or force to intimidate or influence a juror or federal officer,  
16 stealing or altering court records, unlawfully intercepting  
17 grand jury deliberations, using intimidation or force to  
18 influence testimony, alter evidence, evade the legal process,  
19 obstructing the communication of a judge or law enforcement  
20 officer --

21 THE COURT: Okay, yes, but let's go back to  
22 intimidation. He's the boss. He's the boss. And it's pretty  
23 well-settled under our law -- let's take an analogous area of  
24 law, the law of employment -- that being told to do something  
25 by your boss, being subjected to harassment by your boss, being



1 asked to have sex by your boss, being ordered to commit an  
2 illegal act by your boss is inherently coercive, is inherently  
3 intimidating because that is your boss, the person that can  
4 fire you, right?

5 MR. MIEDEL: Sure. I don't disagree with that. But  
6 here, Mr. Groen instructed his subordinates to take certain  
7 actions, and it's really just the issue of the backup tapes,  
8 everything else was on him entirely. And those subordinates  
9 were not subject to criminal prosecution.

10 THE COURT: One of them got fired.

11 MR. MIEDEL: One of them got fired, but I think that  
12 that had to do with more than just this.

13 But in any event, your Honor, the guideline here would  
14 be the same if Mr. Groen had, in fact, obstructed the DOJ's  
15 antitrust case by intentionally getting rid of the backup tapes  
16 because they contained some sort of damaging information for  
17 the company if he had done it at the instruction of his  
18 superiors who were trying to hide something that they didn't  
19 want DOJ to know, but as we know, that wasn't the case here.  
20 That's not what happened. And this is precisely why the  
21 guideline range is just one of the factors, obviously, that the  
22 Court must consider, and because the guideline, as broad as it  
23 is in this case, cannot precisely count for the individual  
24 specifics of each offense and of each defendant.

25 Anyway, that's why I keep saying that motivation

1 matters. Here, the motivation is really important. I  
2 understand that the DOJ says it doesn't matter really,  
3 ultimately, what the motivation was, the effect was important,  
4 and I get that. But criminal law, nonetheless, is largely  
5 about intent, about mens rea. What is the intent of the person  
6 who acted? Was he intending to obstruct the Department of  
7 Justice?

8 THE COURT: Of course he is. He was intending -- to  
9 accept his version of events, which I don't completely -- he  
10 misunderstood the scope of things, and as a result made  
11 misrepresentations to Covington & Burling, which were then made  
12 to the bankruptcy court, and when he realized, belatedly, that  
13 he had screwed up, he set out to protect himself rather than to  
14 come clean and allow the investigation to take its normal  
15 course. If that's not trying to -- I don't -- that's not  
16 trying to obstruct the investigation for his own personal  
17 benefit to keep his own great persona as a wonderful person in  
18 the company, I don't know what is.

19 MR. MIEDEL: Well, I guess what I'm simply trying to  
20 distinguish it from, which I think -- I don't know, maybe you  
21 disagree -- but I think seems more culpable is if somebody is  
22 obstructing by hiding evidence that is important to the other  
23 side.

24 THE COURT: He did. He hid it in the closet.

25 MR. MIEDEL: I know, but he didn't do it with the

1 intent of obstructing.

2 THE COURT: Yes, he did. He did it with the intent  
3 that no one would find out that he had given erroneous  
4 information in the context of a federal investigation. He may  
5 not have thought of the word "obstruct", you don't have to  
6 think of the word "obstruct". He tried to hide the fact that  
7 he had given misinformation in the context -- and this is  
8 looking at it from the best possible way for him, which I  
9 don't.

10 MR. MIEDEL: Well, there's no evidence --

11 THE COURT: Oh, yes, there is, and I'll be happy to go  
12 through it for you when I sentence your client.

13 MR. MIEDEL: Okay, but --

14 THE COURT: But it starts with the literal words of  
15 the document he signed, which I'm going to go through with him  
16 and ask him what he thinks they mean.

17 MR. MIEDEL: You mean the litigation hold?

18 THE COURT: Yes. I'm going to ask him what he thinks  
19 those words mean, and then I'm going to ask him to point to the  
20 words in the document that say, 'and it doesn't apply to the IT  
21 Department'.

22 MR. MIEDEL: Your Honor, look.

23 THE COURT: I think he's lying. I think he's  
24 minimizing. I think it's bologna.

25 MR. MIEDEL: I think that it's important to place

1 himself in the position -- not as a lawyer, as we all are when  
2 we deal with some sort of instruction like that from a law  
3 firm, obviously, it's something that's taken seriously -- but  
4 in the context of this bus company --

5 THE COURT: Excuse me. I was taught as a small child  
6 to take very seriously telling the truth --

7 MR. MIEDEL: Of course. Of course. But I'm talking  
8 about --

9 THE COURT: -- and following instructions from the  
10 government. I was taught to take these things very seriously.

11 MR. MIEDEL: No question. But we're talking here  
12 about a memo, essentially, that was sent around to various  
13 different people. People all had their own computers, all had  
14 their own hard drives where they were instructed to not erase,  
15 you know, whatever was on them. The issue was whether that IT  
16 Department had to now keep every backup tape in perpetuity.

17 THE COURT: "At the network and systems administration  
18 level, this directive requires us to preserve and retain all  
19 potentially relevant files stored on servers and to refrain  
20 from doing any administrative work that has any potential to  
21 destroy potentially relevant files. Any automatic deletion or  
22 cleanup process must be disabled. Any accessible backup tapes  
23 must be identified, preserved, and retained. All relevant  
24 information that is not typically backed up should be backed up  
25 as soon as possible upon receipt of this letter. If there is a

1 question regarding a document's relevance, such document should  
2 be identified, preserved, and retained until our attorneys  
3 confirm what should be done with the document."

4 What is your client's native language?

5 MR. MIEDEL: English.

6 THE COURT: Thank you very much.

7 MR. MIEDEL: Your Honor, I know that. I know that.

8 But this went on -- this was -- went on for years. It wasn't  
9 done with the intent --

10 THE COURT: Yes, they do. But guess what, so what?

11 So what?

12 MR. MIEDEL: Okay, well --

13 THE COURT: He read it. It's his native language.  
14 He's an educated man. He signed it, and he blew it off from  
15 the beginning. It says "retain and identify to us all backup  
16 tapes". There's no excuse, no excuse for saying 'well, I  
17 didn't think it applied to our backup tapes'. It says it  
18 applied to the backup tapes.

19 MR. MIEDEL: I know, your Honor. I know. But the  
20 fact that -- I mean, this is not -- I'm not suggesting it's  
21 excusable, it shouldn't have been done. I'm sure it happens  
22 almost every day in civil litigation, but it shouldn't have  
23 been done here. The question is whether it means he has to go  
24 to prison.

25 THE COURT: Yes, it does.

1 MR. MIEDEL: That's what it means.

2 THE COURT: That's what it means. That's what it  
3 means.

4 MR. MIEDEL: Look. In the spectrum of cases --

5 THE COURT: If a poor black kid who sells a little  
6 dope on the street in order to have enough money to find some  
7 food has to go to prison, then when an educated man signs a  
8 document that anybody with his level of education -- or  
9 substantially below -- can read because its terms are very  
10 clear, and where it specifically says "if you have a question  
11 come and ask", and he neither comes and asks nor complies with  
12 the terms of the document, I just don't buy this. I don't buy  
13 this. 'Oh, my God, I didn't think this applied to me.' Only  
14 an idiot would think it doesn't apply to him. It's not a  
15 credible explanation.

16 MR. MIEDEL: I think it's a negligence, right? It's  
17 sort of disregard for what he shouldn't have disregarded and  
18 there's no question about that. But, you know, there are  
19 sentences available short of custody for cases like this where  
20 no one was hurt, where society was not damaged --

21 THE COURT: Really? No one is really hurt in my  
22 opinion if the kid sells a little dope on the street.

23 MR. MIEDEL: Right, and that person shouldn't go to  
24 jail.

25 THE COURT: Well, but you know he does all the time.

1 MR. MIEDEL: Well, in any event, one other thing I  
2 want to point out is, you know, obviously, Mr. Groen had no  
3 chance to avail himself of any sort of 5K considerations.  
4 There was no one to cooperate against, even though I think the  
5 government --

6 THE COURT: Yeah, because he's the villain.

7 MR. MIEDEL: The government was very interested, and I  
8 believe for a long time that he was --

9 THE COURT: But so what? But so what? I would never  
10 dream of taking it into account that a defendant had no  
11 opportunity to --

12 MR. MIEDEL: No, I know that, but what I wanted to  
13 point out is that he did, I think under the circumstances, do  
14 the next best thing, which is when he learned DOJ was  
15 considering charges against him, I went to Washington, I met  
16 with these folks, we did not dispute the facts, we admitted  
17 Mr. Groen's conduct. When charges were filed, he immediately  
18 surrendered, accepted responsibility --

19 THE COURT: There came a point when the jig was up,  
20 when he couldn't hide it anymore.

21 MR. MIEDEL: Well, the civil case settled. The civil  
22 case was done with, right? It was over with a year before, or  
23 he -- I don't know exactly how long before the DOJ decided to  
24 bring charges. There wasn't anything to go in and reveal at  
25 that point.

1 THE COURT: That's right. But I have never in 18 and  
2 a half years reduced a sentence because the defendant didn't  
3 have anybody he could rat out.

4 MR. MIEDEL: No. I'm not -- look, I'm not saying  
5 that.

6 THE COURT: I've never done that. I've never done  
7 that. I think that's an illogical proposition. You just told  
8 me to take into account the fact that he had no opportunity to  
9 proffer and get a 5K letter.

10 MR. MIEDEL: No. I want you to take into account that  
11 he accepted responsibility as soon as the opportunity arose.  
12 And I think that differentiates him from a number of defendants  
13 who stretched things out for a long time before ultimately  
14 coming around. That's not -- I'm not suggesting --

15 THE COURT: That may keep him within the guidelines  
16 for me.

17 MR. MIEDEL: Your Honor, I'm --

18 THE COURT: Sorry, Mr. Miedel. This is exactly the  
19 kind of crime that I think the government should be prosecuting  
20 much more frequently. It's the kind of crime that the poor  
21 black kids think people are allowed to get away with.

22 MR. MIEDEL: I think the poor black kids think people  
23 get away with significant fraud and financial misdealings and  
24 things like that. That's not what happened here. He  
25 obstructed for personal reasons, not for reasons to keep DOJ



1 from discovering whether there was an antitrust violation. And  
2 while that is conduct that warrants an indictment and charges,  
3 I understand that, I guess I would disagree that it warrants --

4 THE COURT: You should disagree, he's your client.

5 MR. MIEDEL: Well, whether he's my client or not, I  
6 think I would disagree under the circumstances that it warrants  
7 prison time.

8 But, your Honor, look. Mr. Groen made a destructive  
9 decision to cover up this mistake. It's all true. I know that  
10 there were consequences as a result of that, as the government  
11 has set out. But I think that under the -- mindful of the  
12 purposes of sentencing and 18 U.S.C. 3353(a), a reasonable  
13 sentence here does not call for a custodial sentence.

14 THE COURT: Thank you, Mr. Miedel.

15 Anything else from the government?

16 MS. RYAN: Your Honor, I would just highlight that  
17 when Mr. Miedel said that the fact that the records did not  
18 necessarily change the civil litigation was not taken into  
19 account, I think the plus two enhancement that we've declined  
20 to apply for destruction of a central or especially probative  
21 documents does account for that fact.

22 And the government would also contend that Mr. Groen,  
23 while he did accept responsibility, it was at the time when we  
24 were prepared to indict him and had already built a case  
25 against him.

1 THE COURT: So Mr. Groen, do you have anything you  
2 want to say to me before I sentence you?

3 THE DEFENDANT: Yes, your Honor. I appreciate the  
4 opportunity to speak to you and the Court. I realize that I've  
5 committed an obstruction of justice in a civil case and am now  
6 guilty of a felony in a criminal case.

7 As my lawyer has explained, I acted of a desire to  
8 cover my own mistake but, of course, I understand now how  
9 destructive that ended up being. The bitter irony is that I  
10 hurt myself and my loved ones through my misconduct far more  
11 than being honest originally would ever have done.

12 These past three years have been the most difficult of  
13 my life. I know that my actions will live with me forever. My  
14 criminal record will prevent me from working as a business  
15 professional again. My place in the community, my status as a  
16 respected person has always been important to me, and maybe  
17 that's what got me into trouble in the first place. But now, a  
18 formal criminal record check would not even be necessary to  
19 look into my mistake in life, all a friend, neighbor,  
20 acquaintance, coworker, employer would need to do is a simple  
21 Google search of my unique name and understand that I'm guilty  
22 of a felony crime.

23 And I know I have no one else to blame for that but  
24 myself. I made a serious mistake, and I know I must face the  
25 consequences. In fact, I'm already beginning to face those

1 consequences. But once again, I hope you understand and  
2 believe that I never meant to keep anyone -- anyone from  
3 finding emails or files important to the litigation, so I  
4 humbly and remorsefully stand before you and ask for compassion  
5 and leniency. Thank you.

6 THE COURT: What do you think the following words  
7 mean: "Any accessible backup tapes must be identified,  
8 preserved and retained"?

9 THE DEFENDANT: I understand them differently now than  
10 when I read them in 2009.

11 THE COURT: Really? Tell me how you understood them  
12 in 2009.

13 THE DEFENDANT: In 2009, I read them as I needed to  
14 make sure that I could restore the systems to the way they were  
15 that particular day.

16 THE COURT: It doesn't say anything about restoring.  
17 It says, "Any accessible backup tapes must be identified,  
18 preserved, and retained." I mean, I don't know -- see, this is  
19 the problem for me, Mr. Groen. You deliberately misread this  
20 document. It's not possible for a man of your education to  
21 have misunderstood the meaning of that sentence or the sentence  
22 that says, "If you're in any doubt about anything, come ask the  
23 lawyers." So I don't buy -- there's -- something else is going  
24 on here that I don't know about.

25 THE DEFENDANT: There really was not. I know that you

1 feel I'm lying, but I'm telling you my state of mind in 2009.

2 I simply read the document, made a quick interpretation, didn't  
3 read it thoroughly --

4 THE COURT: It doesn't need to be interpreted.

5 THE DEFENDANT: No.

6 THE COURT: The words say what they say. And why  
7 didn't you go to a lawyer?

8 THE DEFENDANT: First of all, we did not have  
9 in-house --

10 THE COURT: "Why didn't you tell me what this means?  
11 Does this mean I really have to keep every single backup tape?"  
12 The lawyer would have said, "Yes." You'd be fine today.

13 THE DEFENDANT: I know. I realize that now. And I  
14 realize that mistake. And that never came up, and in all  
15 honesty --

16 THE COURT: Never came up because you never raised it.  
17 I'll never know why.

18 THE DEFENDANT: Okay.

19 THE COURT: Okay. Keep going. No, keep talking. You  
20 have more to say, undoubtedly.

21 THE DEFENDANT: No.

22 THE COURT: All right. Actually, you had finished.

23 I have to tell you, this case is astonishing to me.

24 It's just astonishing. And there's a missing piece here, and  
25 I'll never be able to put the last piece in the puzzle.

1           The IT guy doesn't stick his neck out, and the  
2 instructions, which this highly educated vice president of a  
3 company signed, are perfectly clear. "At the systems and  
4 network level". You're systems and network. "Keep all backup  
5 tapes. Identify them. Keep them all. In fact, if you don't  
6 normally back things up, start now. Start backing stuff up."  
7 There was obviously a big effort being made to be sure there  
8 was backup for everything. And a person who, in my mind, could  
9 not conceivably have misunderstood what those words mean, tells  
10 me that he gave them a strained and implausible interpretation  
11 and decided that he didn't have to do what it was that he said  
12 that he confirmed he had read and would comply with. "I will  
13 comply with the document preservation notice from Dale Moser."  
14 He sought no clarification, though frankly none is needed.

15           I'm not sure at all that I buy Mr. Groen's explanation  
16 of how he came to find himself on one day in 2012 suddenly  
17 confronted with the horrible knowledge that he had, in fact,  
18 made a misrepresentation to Covington & Burling and to the  
19 bankruptcy court, but let's assume that happened. What was  
20 Mr. Groen's response? Was it to go to the lawyers at  
21 Covington & Burling and say, "You know, you're going to think  
22 I'm a complete idiot. Well, I really screwed up here. Here  
23 are some backup tapes" that you had in the closet. No. He  
24 told people to destroy them. He told people to get rid of  
25 them. He told his underlings.

1           One of the things that I hate the most about white  
2 collar criminals is that they get other people in trouble with  
3 them. People who report to them. People who rely on them for  
4 raises, people who can fire them, people who have coercive  
5 power over them, and probably people who, because they weren't  
6 at the same level as you, didn't have to sign off on this. I  
7 don't know. I don't know how low it went.

8           As the government notes, the obstructive conduct in  
9 this case involved at least five distinct instances of  
10 willfully obstructive actions over the course of several  
11 months, 2013, not 2012.

12           Mr. Groen sent emails to Covington saying, "We  
13 discontinued the use of backup tapes in the Fall of 2012," and  
14 that, "All the tapes would contain data from only 30 days back  
15 at the very most." A, it was a lie, B, it already demonstrated  
16 that you had failed to comply with your obligation under the  
17 agreement that you signed. So already, you had confessed to an  
18 error because that agreement said you had to keep all the  
19 backup tapes, you had to back everything up, and you were to  
20 stop -- what was -- it says "stop erasing things. Retain all  
21 potentially relevant files stored on servers and refrain from  
22 doing any administrative work that has any potential to destroy  
23 files". In other words, if you have a 30-day discard policy,  
24 disable to. So the obstructive acts that you were engaged in  
25 weren't even designed to conceal that you had goofed, which is

1 the reason that you say you did it.

2           You admit that you had failed to live up to your  
3 obligations to the corporation. And did you stop with this?  
4 Certainly not. You told your subordinates to conceal  
5 end-of-month backup tapes. You told a subordinate to put tapes  
6 in a bin marked for off-site destruction. You doctored a copy  
7 of the backup policy, which was suddenly of great relevance to  
8 Covington & Burling because they were dealing with the  
9 bankruptcy court. And then you lied under oath at a  
10 deposition. And none of that logically could have been to  
11 conceal your noncompliance with the process because you had  
12 already confessed to it, to your noncompliance with the  
13 document that you signed.

14           And as a result of your actions, you cost the company  
15 a huge amount of money. I know what Covington & Burling  
16 charges. You delayed the resolution of the antitrust matter.  
17 You caused one of your subordinates, at least in part, to be  
18 fired. And misinformation was given to a court of law. And  
19 all that is without regard to the Antitrust Division, which  
20 spent a lot of taxpayer money on a frolic and detour occasioned  
21 by you. It's more than robbing a convenience store in terms of  
22 the amount of money you caused other people to spend.

23           So the only reason that this crime would not be deemed  
24 worthy of jail is if there's some special exemption for highly  
25 intelligent people who ignore, or worse, their responsibilities

1 and then try to cover them up just because they're highly  
2 intelligent, educated people. On the contrary, I think it  
3 should be just the reverse. The message we need to send in  
4 this society is that no one is above the law and that everyone  
5 has an obligation to be forthright. I don't think that  
6 Mr. Groen has been forthright at all.

7           Anyway, I've reviewed the presentence report. I  
8 accept and adopt as my findings a description of the offense  
9 and the offense conduct.

10           The guideline calculation is in error, as both the  
11 government and the defense point out, so paragraph 25 is  
12 stricken. Paragraph 29, "19" is changed to "17". And  
13 paragraph 33, "16" is changed to "13", I think.

14           MS. RYAN: I believe it would be "14", your Honor.

15           THE COURT: "14". You're right. And that results  
16 with the defendant's criminal history category being zero and a  
17 guideline range of 15 to 21 months.

18           I must tell you that my initial reaction was to  
19 sentence at the top of the guidelines. The government doesn't  
20 seek the top of the guidelines. Accordingly, I'll accept the  
21 government's recommendation, but it will be nothing less than  
22 the bottom of the guidelines.

23           I have considered all of the Section 3553(a) factors,  
24 and I conclude that the nature of the crime as described in  
25 great detail in the government's very fine sentencing



1 memorandum requires an incarcerative sentence at the guideline  
2 level of a defendant with this defendant's advantages and  
3 educational attainments, who deliberately chose to hide the  
4 truth, deliberately chose to involve others who were  
5 subordinate to him in his scheme, and who, as a result, has  
6 cost both the government and his former employer a great deal  
7 of money, as well as disrupting the operations of the  
8 bankruptcy court for a considerable amount of time.

9 I believe such a sentence is necessary to punish this  
10 defendant for what he did. I don't believe that a slap on the  
11 wrist would punish him at all. Collateral consequences are  
12 felt as punishment, but they are not punishment. And I  
13 understand that this has collateral consequences, and that  
14 because the defendant has much, the collateral consequences are  
15 deeply felt. The defendant should have thought about that  
16 before he did what he did.

17 I also believe that the punishment I'm going to impose  
18 is necessary to send a message to the white collar community.  
19 This kind of behavior is every bit as bad as robbing the  
20 convenience store or the ATM and it will not be tolerated.

21 Will you please stand, sir?

22 By the way, I should also say, I accept and adopt my  
23 findings of the defendant's characteristics set forth beginning  
24 at paragraph 39 of the presentence investigation report under  
25 docket 683-001, and a total offense level of 14, and a Criminal

1 History Category I, with a guideline range of 15 to 21 months.

2 I hereby sentence you, Ralph Groen, to be remanded to  
3 the custody of the Attorney General of the United States and  
4 the Bureau of Prisons for a term of 15 months, to be followed  
5 by a term of two years' supervised release. You are required  
6 to pay a fine to the United States of \$5,000 and a special  
7 assessment of \$100, which is court costs, both of them due and  
8 payable immediately.

9 Mr. Miedel, request about place of incarceration?

10 MR. MIEDEL: Yes. A couple of things. One, I think,  
11 with the consent of the government, I'd ask that Mr. Groen be  
12 allowed to surrender to whatever facility he's designated to.

13 THE COURT: I was planning to let him go today.

14 MR. MIEDEL: And then that you recommend to the Bureau  
15 of Prisons that he be designated to a facility -- whatever is  
16 an appropriate facility as close to North Carolina where he  
17 lives as possible.

18 THE COURT: No problem. I'll do that.

19 MR. MIEDEL: Thank you.

20 THE COURT: I don't know what that facility might be  
21 but --

22 MR. MIEDEL: I don't know, either.

23 THE COURT: Okay.

24 Mr. Groen, when you are released from custody, you  
25 actually have to return to this district to report to a United

1 States probation officer in this building. You have 72 hours  
2 to do that. I rather imagine that they will transfer  
3 jurisdiction of your supervised release down to North Carolina.

4 MR. MIEDEL: Is that possible to do that before so he  
5 doesn't have to come up to report here?

6 THE COURT: If it is, I will.

7 MR. MIEDEL: Okay.

8 THE COURT: I'm not transferring entirely, however.  
9 You can be supervised in North Carolina, but I'm your judge.

10 For a term of two years, you'll report to a United  
11 States probation officer. You will do everything the probation  
12 officer tells you to do, and you will refrain from doing  
13 anything that the probation officer tells you not to do.

14 There are a number of standard conditions of  
15 supervision, all of which will be applicable to you. I'll  
16 highlight the principal ones.

17 You shall not commit another, federal, state, or local  
18 crime. You shall not illegally possess a controlled substance.  
19 You shall not possess a firearm or a destructive device of any  
20 sort. And that's true. If you have a hunting rifle, get rid  
21 of it.

22 You shall cooperate in the collection of DNA as  
23 directed by your probation officer.

24 I am suspending the mandatory drug testing condition  
25 based on my determination on the recommendation of probation

1 that you pose a low risk of future substance abuse.

2 You have to obtain and maintain legitimate and  
3 variable employment.

4 You may not be found in places where criminal activity  
5 is being carried out, and you may not associate with persons  
6 who have been convicted of crimes without the permission of  
7 your probation officer.

8 You have to keep your probation officer advised of  
9 where you live and where you work, and you cannot change either  
10 location without receiving permission from the probation  
11 officer in advance, except in the case of an emergency such as  
12 a fire, in which case you have 24 hours after you are forced to  
13 evacuate the premises to notify the probation officer of your  
14 whereabouts.

15 All of the other standard conditions of supervision  
16 will be provided to you in writing. You'll be asked to sign  
17 off on them.

18 Mr. Miedel, we're going to give them to you right now.

19 Mr. Miedel will go over them with you.

20 As I said, you need to report to the nearest probation  
21 office within 72 hours of your release from custody, and it's  
22 my supervised that you be supervised by a probation officer in  
23 your district of residence.

24 The fine of \$5,000 should be paid prior to the time  
25 that you surrender. As I said, the \$100 is due and payable

1 immediately. That being so, there should be no reason for the  
2 probation officer to have to have access to financial  
3 information in order to approve new credit charges because all  
4 of the financial penalties should be taken care of. If there's  
5 going to be any problem with that and they are not taken care  
6 of, then they will be deducted from your prison wages at the  
7 rate of \$25 per calender quarter or 15 percent of your grossly  
8 monthly Unicore Grade I through IV earnings, and if anything is  
9 still unpaid when you are released, you will be required to  
10 make payments toward that fine at the rate of 15 percent of  
11 your gross -- not net, your gross -- monthly earnings.

12 Was there an appeal waiver in this case? No, there  
13 wasn't, because the Department of Justice did this, so we don't  
14 have our standard Southern District of New York appeal waiver.

15 Mr. Groen, you have a right to take an appeal from the  
16 sentence imposed upon you. You have a right to counsel in  
17 connection with any appeal you might choose to file, and if you  
18 cannot afford a lawyer, one will be appointed to represent you  
19 without charge. Do you understand.

20 THE DEFENDANT: Yes.

21 THE COURT: Thank you. You may be seated.

22 Surrender date June 19 to the facility that's  
23 designated by the Bureau of Prisons. They'll call Mr. Miedel.  
24 Mr. Miedel will call you. You need to understand that you've  
25 got to be there before 2:00 in the afternoon, because if I hear

1 at 2:01 that you're not there, I'll issue a warrant for your  
2 arrest.

3 Anything else from the government?

4 MS. RYAN: No, I do not believe so, your Honor. Thank  
5 you.

6 THE COURT: There are no underlying counts or other  
7 indictments or anything like that that need to be dismissed?

8 MS. RYAN: No, your Honor.

9 THE COURT: Mr. Miedel, anything else for the  
10 defendant?

11 MR. MIEDEL: Nothing further. Thank you.

12 THE COURT: Thank you very much. These proceedings  
13 are closed.

14 (Adjourned)

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