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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 11CR594

Plaintiff,

vs.

February 8, 2013  
1:15 p.m.

SAMUEL MULLET, SR., ET AL.,

Defendants.

EXCERPT OF SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE DAN AARON POLSTER  
UNITED STATES DISTRICT JUDGE

1 APPEARANCES:

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17 Proceedings recorded by mechanical stenography.  
18 Transcript produced by computer-aided transcription.

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1 THE COURT: All right. Thank you,  
2 Ms. Brennan.

3 I assume that none of the victims wanted to  
4 testify. I know many of them testified at trial and there  
5 are some letters in the pre-sentence reports, but I just  
6 wanted to make sure that none of them want to say anything.

7 MS. BRENNAN: No. Nobody wants to speak  
8 today, Your Honor. Thank you.

9 THE COURT: Okay. All right. I guess now  
10 it's my turn.

11 All right. Everyone knows that the touchstone  
12 of sentencing is 18, U.S.C., 3553(a). I'm required to  
13 impose sentences on each defendant that is -- well, first,  
14 I'm to consider the advisory Guideline range. I'm to  
15 consider everything I can learn about each defendant,  
16 everything I can learn about the offenses -- of course, I  
17 sat through every moment of the trial -- and all the other  
18 factors set out in the statute, and then impose sentences  
19 that are sufficient but not greater or longer than necessary  
20 to accomplish four things: Punishment, deterrence,  
21 protecting the community, and rehabilitation.

22 It's easy to say. It's a lot harder to do.  
23 There's no mathematical formula for any of that. The  
24 statute does no weighing, it does no balancing, it does no  
25 calibrating. It just sets out these words, these factors.

1           Everyone who spoke referred to justice and  
2 mercy; sometimes both, sometimes one, sometimes the other.

3           Of course, what I've learned in my job is  
4 everyone wants justice when it's someone else; mercy when  
5 it's them or someone close to them. The two are  
6 irreconcilable. All any one Judge can do is wrestle with  
7 them each and every time he or she imposes a sentence, and  
8 that's what I have to do.

9           And any Judge who says he or she likes to  
10 sentence people shouldn't be on the Bench. It's the hardest  
11 thing any of us have to do. And I've been thinking about  
12 this day ever since I read all those jury verdicts several  
13 months ago. I knew that I would have to impose these  
14 sentences.

15           It's particularly hard in this case. The jury  
16 found, I believe correctly, that each defendant committed  
17 kidnapping in conjunction with violating the Hate Crime Act,  
18 and that raised the statutory maximum to -- from 10 years to  
19 life in prison, and so the corollary is because of the  
20 kidnapping, the advisory Guideline range, I think the lowest  
21 is at least 25 years; many of them are 30 years up to life.

22           And these are sentences that are typically  
23 reserved for armed career criminals, career offenders, drug  
24 kingpins, terrorists who take life. They're not for  
25 defendants such as this.

1                   So, of course, there are a number of factors  
2 supporting leniency. I think each defense counsel has  
3 articulately highlighted them.

4                   None of the defendants has any prior record.  
5 Up until these offenses in this two-month period, they were  
6 peaceful, law abiding, gainfully employed male and female  
7 homeowners and parents.

8                   Fortunately, the victims did not suffer any  
9 long-term physical injury, nor any economic loss. They, of  
10 course, are bearing the emotional scars and probably will  
11 for the rest of their lives.

12                   Most of the defendants have large numbers of  
13 very young children who, of course, are blameless in this,  
14 and they're dependent upon them for their economic and their  
15 emotional support.

16                   I think most of the defendants are not likely  
17 to re-offend. I think they have learned their lesson from  
18 this experience. Many of them have been incarcerated. And  
19 a number of them today I think for the first time in court  
20 apologized and expressed some genuine remorse.

21                   I mentioned a number of the defendants have  
22 been in custody. Some have been in custody for more than a  
23 year since the federal arrests in November, end of November  
24 of 2011. Several others have been in prison for four or  
25 five months since the jury's verdicts.

1                   And, of course, their wives have been deprived  
2 of their husbands' help and support and have had to care for  
3 the children on their own, and I've got to weigh and factor  
4 in all of those factors.

5                   On the other hand, there are a number of  
6 factors which argue for substantial prison sentences.  
7 Anyone who says this is just a hair and beard cutting case  
8 wasn't paying any attention. These victims were terrorized  
9 and traumatized. Some of them were ambushed in their own  
10 homes. Others were lured out through lies and deceptions.

11                   We, of course, learned through the trial that  
12 hair and beards have special religious and emotional  
13 significance for Amish men and women. It's no big deal if I  
14 have my hair real long like it was when I was in college or  
15 I get a Marine trim, it doesn't make a darn bit of  
16 difference. If I grow a beard, if I grow a long beard, a  
17 short beard, it's immaterial.

18                   It's not the case at all for Amish men and  
19 women, and we all know that and that is why these attacks  
20 were perpetrated. They were calculated to inflict the  
21 maximum emotional trauma and distress on the victims, and  
22 that's what they did.

23                   For as long as I live I won't forget the  
24 haunting testimony of Ms. Anna Schrock who came in here.  
25 She was stooped, she was frail, she was crestfallen, and I

1 think she was my age. She looked a heck of a lot older, and  
2 I think I would have probably looked like that if I had gone  
3 through what she did. She described how her children and  
4 grandchildren -- or grandson attacked her and her very ill  
5 husband and what it was like. And they were lured to  
6 Bergholz by lies and deception. They heard of the prior  
7 attacks. They didn't want to come, but their son and  
8 daughter-in-law assured them, promised them that they would  
9 be safe.

10 And Daniel and Linda Schrock not only -- or  
11 Emanuel and Linda Schrock not only deceived their parents,  
12 but they lied to the sheriff. They assured him that they  
13 would not do any harm to Anna and Melvin Schrock. He  
14 actually came into the house and looked them in the eye and  
15 said "I want to make sure there's no shenanigans going on  
16 here, nothing going on." They said "No, Sheriff, just a  
17 visit." Boom, almost the moment he left they attacked.

18 And Melvin passed away several months after  
19 the attack. Of course, there's no allegation that caused  
20 his death -- he had some undisclosed serious health  
21 problem -- but I'm sure that the psychological pain that his  
22 own family inflicted on him had to weaken his body's  
23 resistance to whatever illness he had.

24 And he was still disfigured when he died.  
25 Anna described that when he was laid out, his hair and beard

1 were only partially grown back.

2 And, of course, these attacks continued even  
3 after the State prosecutor arrested, charged, and jailed  
4 several of the defendants for the first two attacks. And  
5 the jury, of course, and I heard those jailhouse tape  
6 recordings in which some of the defendants could be heard  
7 joking about the attacks, saying that they're ready to do  
8 more, joking about the humiliation they had caused, and even  
9 wishing they had committed more before they were arrested.

10 And these defendants took pictures of the  
11 victims, came back and passed those pictures out so that  
12 others in the Bergholz community could see the victims in  
13 their anguished and disfigured condition.

14 And finally, and perhaps most significantly,  
15 each and every one of these defendants, each and every one  
16 of you, you did more than just terrorize, traumatize,  
17 disfigure your victims, you trampled on the Constitution,  
18 and particularly the First Amendment which guarantees each  
19 and every American religious freedom.

20 That's the reason why this country was  
21 founded. It was founded by men and women who left England  
22 because they couldn't pray in the way they wanted to pray.  
23 There was the Church of England. If you didn't want to pray  
24 in the Church of England, that's all they had, and they got  
25 in some rickety little ships and went across the Atlantic

1 for that First Amendment, what became the First Amendment.

2 And I took a very solemn oath nearly 15 years  
3 ago when I became a Judge to support, protect, and defend  
4 the Constitution, and the sentences I impose must do that so  
5 everyone can see it.

6 And in my opinion, the conduct of these  
7 defendants is particularly reprehensible because each of you  
8 has benefited significantly from the First Amendment to the  
9 Constitution.

10 The fact is that members of the Amish religion  
11 are excused from some very important rights and obligations  
12 of citizenship that the rest of us have to bear. You don't  
13 have to perform combat and the service in the Army. You're  
14 excused from the jury.

15 All right. There were no Amish men and women  
16 on the jury. That's not accidental. Every time I'm a  
17 miscellaneous Judge, one of my duties is to receive and  
18 review requests from prospective jurors to be excused, and  
19 every time I get a number of letters from men and women of  
20 the Amish faith and they indicate they can't pass judgment  
21 over their fellow men, and I automatically excuse them.

22 And while parents in almost every state,  
23 including Ohio, must send their children to school at least  
24 through age 16, the Supreme Court determined in the  
25 *Wisconsin versus Yoder* case that because of the particular

1 practices and belief of the Amish faith, an exception would  
2 be made and Amish children can be pulled out of school at  
3 14. And I think most of you have followed that.

4 So each of you has received the benefits of  
5 that First Amendment, and yet you deprived those benefits  
6 from other Amish citizens and through force and violence you  
7 tried to ram your religious beliefs down their throats.

8 And each of you elected to go to trial. That,  
9 of course, is your constitutional right and your privilege,  
10 and it would be wrong to impose any punishment upon you for  
11 exercising that constitutional right, and I, of course, am  
12 not doing that.

13 But by the same token, I addressed each and  
14 every one of you prior to trial. I advised each and every  
15 one of you of the plea offers that the government was  
16 extending, the conditional plea offers which would have  
17 preserved your right to appeal the legal rulings I made  
18 about the statute and the application. And you knowingly  
19 rejected those offers and elected to go to trial.

20 So you rejected the benefit you might have  
21 received had you opted for a plea.

22 And the jury rejected the only significant  
23 defense that any of you offered. No one really argued that  
24 they didn't participate in the attacks, but the defense was  
25 that these attacks were not motivated by the victims'

1 religion or religious practices, but they were motivated by  
2 family feuds and disagreements.

3 But the jury saw right through that because,  
4 yes, there were family feuds and disagreements, but  
5 underlying those feuds and disagreements were religious  
6 practices and beliefs.

7 The reasons we had parents and children sort  
8 of antagonized from each other was about particular  
9 religious practices and beliefs. And it's okay for parents  
10 and children to have different religious practices and  
11 beliefs. It happens all the time. But it's totally wrong  
12 and illegal for parents or children to try and force their  
13 religious beliefs down the throats of their parents or  
14 children by violence or by threats.

15 And I heard testimony that you were motivated  
16 by love and compassion and the belief that your parents or  
17 other Amish members had strayed from the true path and  
18 needed to be chastened or corrected to return to the true  
19 path. Sadly, this is the same logic, albeit the conduct was  
20 a little -- a lot less extreme, that the Inquisitors in  
21 Spain used 500 years ago when they tortured and burned their  
22 victims to the stake -- at the stake -- many of them were  
23 members of my religion -- supposedly to save their souls.

24 So my sentences must be significant enough to  
25 punish you for what you've done and to deter others who

1 might be tempted to let religious passion or zealotry become  
2 a rationale to inflict physical and psychological pain.

3 So the one thing everyone agrees upon is that  
4 the advisory Guideline ranges yield sentences that are  
5 greater than necessary to accomplish the statutory purposes  
6 of sentencing: Punishment, deterrence, protecting the  
7 community, and rehabilitation.

8 And I struggled long and hard to figure out  
9 what the appropriate sentences are, and I know in advance  
10 that anyone who reads or reacts, half the people will say my  
11 sentences are too long and half will say they're too short,  
12 and I guess that's why Federal Judges have lifetime  
13 appointments, to take the heat for whatever their decisions  
14 bring.

15 I agree with the government that there are  
16 essentially five, five tiers, and I think the way they've  
17 grouped them is correct.

18 Sam Mullet, Sr., I've concluded that you  
19 deserve the harshest, the longest sentence. I'm convinced  
20 from listening to this testimony that I did every day of the  
21 trial that these attacks would not have occurred but-for  
22 you. The jury clearly rejected the argument that because  
23 you did not directly participate in the attacks, you were  
24 not responsible for them. You ran the Bergholz community  
25 with an iron fist. Your law was the law. I guess it's okay

1 for religious practices and beliefs, but not for what  
2 happened here.

3 And I heard the evidence and it was clear that  
4 nothing of consequence occurred in that community without  
5 your direction and your approval. And I think that's why  
6 the first thing the other defendants did after the attacks  
7 was to bring the victims' hair and pictures of them  
8 disfigured to your house, to make sure you approved and you  
9 saw what was done.

10 And I was listening very carefully to what you  
11 said, and I don't believe you expressed any remorse for the  
12 harm you caused to the victims and to our Constitution, and  
13 you didn't during those jailhouse calls, and you didn't in  
14 the interviews to the media, and I don't think you did  
15 today.

16 And sadly, I consider that you are a danger to  
17 the community because of the control you possess over  
18 others. They listen to you. They respect you. And they  
19 follow what you say or what they think you want them to do,  
20 and I think they would do it today. Some of the things,  
21 some of the comments from the defendants today suggest to me  
22 that while they're sorry for what they did and they wouldn't  
23 do that again, that they still consider you their leader.

24 However, I think a sentence of life in prison  
25 is longer than necessary and is disproportionate for

1 what -- for what you did, so I'm going to impose a sentence  
2 of 15 years' custody of the Attorney General. And I guess  
3 it will be 15 years on the Hate Crime statute, all  
4 concurrent, and the statutes that have shorter sentences,  
5 the shorter sentences all concurrent. So it's 15 years.

6 For Johnny Mullet, Levi Miller, Eli Miller,  
7 and Lester Mullet, these four defendants lead the attacks at  
8 the Herschberger and Myron Miller homes. Eli Miller and  
9 Lester Miller conspired to conceal the camera used to  
10 memorialize the victims' shame. I've determined that the  
11 sentences of 25, 30 years to life that the Guidelines would  
12 yield are excessive, and I'm going to sentence each of you  
13 to seven years' custody of the Attorney General, 84 months.

14 Of course, each defendant, Sam Mullet, also,  
15 every sentence, every defendant gets credit for time served  
16 since their arrest in this case, whatever the date of the  
17 arrest was.

18 For the next three defendants, Emanuel  
19 Schrock, Daniel Mullet, and Lester Miller, all were  
20 deceptive and violent in their assaults. Emanuel Schrock  
21 lured his parents to Bergholz. I mean, there were three  
22 attacks before then. All right. It was clear it was  
23 illegal and everyone was worried, your parents were worried.  
24 You lured them to Bergholz and you lied to them and the  
25 sheriff.

1                   Lester Miller, you lead the attack on your  
2 parents, Marty and Barbara Miller, and you also provided the  
3 horse shears to Johnny Mullet.

4                   And Daniel Mullet, you held Bishop  
5 Herschberger in the rocking chair and pushed Sarah  
6 Herschberger into the wall.

7                   So each of these defendants I'm sentencing to  
8 five years in prison, 60 months' custody of the Attorney  
9 General.

10                  Linda Schrock and Raymond Miller, I'm  
11 sentencing each of you to 24 months' custody of the Attorney  
12 General.

13                  Linda Schrock, you helped lure your in-laws  
14 with deception. You lied to the sheriff. Whether you said  
15 anything directly, you were standing there, you knew what  
16 was going to happen, the evidence showed that.

17                  And Raymond Miller, just a few days after the  
18 local arrests, you were ready to go again, commit more  
19 assaults.

20                  All right. The last six defendants, Freeman  
21 Burkholder, Lovina Miller, Anna Miller, Emma Miller,  
22 Elizabeth Miller, Kathryn Miller, I agree with the  
23 government, I agree with your counsel, you are the least  
24 culpable. You participated in only one attack on parents or  
25 in-laws, as the case may be. However, this was a serious

1 attack, and I believe to accurately reflect the seriousness,  
2 seriousness of it and the 3553(a) factors, it warrants a  
3 prison sentence, and I'm going to sentence each of you to  
4 one year and one day custody of the Attorney General.

5 All right. As I mentioned, each defendant who  
6 has been in custody gets full credit for time served.

7 For some of these defendants, and I don't  
8 know, Ms. Parker, Ms. Brennan, it seems to me that the  
9 defendants who had a week or two or whatever in local  
10 custody should probably get some credit for that because  
11 they weren't prosecuted locally. So I'll have the Marshals  
12 look into that, but certainly any defendant who's been in  
13 custody since November 23rd and those few defendants who  
14 have been in custody since the jury verdict get full credit.  
15 That's obviously all federal time.

16 I'm imposing a two year period of supervised  
17 release on each defendant. All of the standard conditions  
18 apply.

19 I'm not going to impose any fine. None of the  
20 defendants, except Samuel Mullet, has any appreciable money  
21 or assets, and those other 15 clearly don't have the ability  
22 to pay. And I think a lot of Mr. Mullet's money obtained  
23 from the oil and gas rights have been going to support the  
24 other members of the community, so I'm not going to impose a  
25 fine on Mr. Mullet, either.

1                   There is a \$100 special assessment for each  
2 count of conviction. That's reflected in the pre-sentence  
3 report.

4                   So that's imposed and that's due and payable  
5 immediately.

6                   I'm going to do one other thing. I will defer  
7 execution of Kathryn Miller's sentence until Raymond Miller  
8 is released from custody, and I'm going to defer Elizabeth  
9 Miller, the execution of Elizabeth Miller's sentence until  
10 Lovina Miller and Linda Schrock are released, and that is to  
11 try and minimize the hardship on a lot of minor children in  
12 the community.

13                   I assume there's going to be a motion for  
14 voluntary surrender for those defendants not in custody.

15                   Does the government have any objection to  
16 that?

17                   MS. BRENNAN: I'm sorry, I didn't hear the  
18 last point, Your Honor.

19                   THE COURT: Is there any objection -- I assume  
20 each counsel is going to request voluntary surrender for  
21 those defendants who are not in custody.

22                   MS. BRENNAN: No, we don't.

23                   The one thing we would ask, Your Honor -- and  
24 this is where my head was -- you said Elizabeth's sentence  
25 would be deferred until after Lovina Schrock.

1 THE COURT: Lovina Miller.

2 MS. BRENNAN: Lovina Miller, but they have  
3 different terms.

4 THE COURT: I know that. I know one is a year  
5 and a day and one is two years, but I think it's -- I don't  
6 think Elizabeth Miller is a danger to the community so --

7 MS. BRENNAN: Oh, no, I don't object, Your  
8 Honor.

9 I'm just asking if the Court would consider  
10 deferring her until after Lovina Miller because if you do  
11 Lovina Miller and Linda Schrock, then it would be --

12 THE COURT: Well, I'm trying to keep -- to  
13 minimize the number of children who are -- who have no other  
14 people around, so I think I'll just do it this way.

15 All right. Any defendant who's not in custody  
16 may stay out on the same conditions that they've been under,  
17 and they're to report directly to the institution.

18 If you haven't received a designation by noon  
19 on Friday, April the 12th, you're to surrender to the  
20 Marshal's Office. If obviously you get a designation before  
21 then, you can either go right to the institution or  
22 surrender to the Marshals.

23 MR. BILLAK: Your Honor.

24 THE COURT: Yes, Mr. Billak.

25 MR. BILLAK: I would request the Court

1 recommend Elkton, to alleviate the --

2 THE COURT: What I'm going to do is request  
3 for each defendant the closest facility to their residence.

4 MR. BILLAK: That would be our request.

5 THE COURT: I think that's up to Bureau of  
6 Prisons' policy, but I'll request that for all defendants,  
7 the closest institution to their residence. It may be  
8 Elkton; it may be somewhere else.

9 All right. Are there any objections beyond  
10 those which have been made and which are preserved? I need  
11 to ask that formally.

12 All the objections that I said were preserved  
13 for the Guidelines computations are preserved and can be  
14 appealed, but any other objection anyone wants to put on the  
15 record?

16 MS. OVERMYER: Thank you, Your Honor. On  
17 behalf of Sam Mullet we would just obviously maintain those  
18 objections to the Guidelines, also our objections to the  
19 pre-sentence reports, and we object to the procedural  
20 substantive unreasonableness of the sentence based on the  
21 3553(a) factors.

22 THE COURT: You think it was procedurally  
23 unreasonable? I understand you disagree with the  
24 conclusion, but I think I followed the procedures.

25 I mean, other than an error in the Guidelines

1       computations, Ms. Overmyer, I guess technically it's  
2       procedural, but if you think there's any other procedure I  
3       didn't follow, I didn't mean to ignore it, so maybe I can  
4       correct it.

5                       MS. OVERMYER:   Procedurally it is the  
6       Guidelines, our objections to the PSR, and just the Sixth  
7       Circuit has ruled that consideration of 3553(a) factors can  
8       be both procedural and substantive, so to preserve that  
9       error for appeal we make that argument --

10                      THE COURT:   Okay.

11                      MS. OVERMYER:  -- at this time.

12                      THE COURT:   Okay.  Thank you.

13                      Anyone else want to put anything on the  
14       record?

15                      MS. KOTNIK:   Judge, I just want to clarify,  
16       did you say Kathryn Miller would report after Raymond  
17       Miller, after her husband, and Elizabeth Miller after  
18       Lovina?

19                      If we can structure it, Judge, too, so that  
20       Kathryn wouldn't be the only female incarcerated by herself.

21                      THE COURT:   Oh.  Oh, I hadn't thought of that.  
22       Well, I saw what the government said.  I took a look at  
23       this.  Maybe I didn't get it the best way.

24                      What are you suggesting, Ms. Kotnik?  I mean,  
25       I'll structure it differently if you wish.

1                   The idea is there are a whole lot of minor  
2 children who didn't do anything wrong and need to be cared  
3 for, and I want to take that into account. So what, what  
4 are you --

5                   MS. KOTNIK: Your Honor, it sounds like  
6 Kathryn Miller made arrangements for her children so she  
7 would prefer to go right now or at the same time as  
8 Elizabeth Miller so she wouldn't be by herself, but she's  
9 willing to go today if the Court would prefer.

10                  THE COURT: All right. Well, then, if that's  
11 the case, you don't have to self-surrender in April. If you  
12 want to go today, I guess you can. I've given you the right  
13 to stay out.

14                  MS. KOTNIK: I'm sorry, in April. I'm sorry,  
15 Judge.

16                  THE COURT: Okay. I won't defer Kathryn  
17 Miller's sentence, so I guess what I've left is deferring  
18 Elizabeth Miller until the release of now it would be  
19 Kathryn Miller. Well, then maybe it's sufficient to just  
20 defer Elizabeth until Kathryn and Lovina are released. I  
21 think that makes sense.

22                  MR. PIERCE: Judge, as I understand that, that  
23 would be a one year deferment of her sentence. She's  
24 comfortable with that.

25                  THE COURT: Roughly one year. There may be a

1 little reduction with good time, but approximately a year,  
2 but, okay, so we'll defer Elizabeth Miller until Kathryn  
3 Miller and Lovina Miller are released.

4 Okay. Are there any objections the government  
5 wishes to place on the record?

6 MS. BRENNAN: No, Your Honor.

7 THE COURT: Okay. Is there anything further  
8 any counsel wishes to place on the record?

9 MR. BRYAN: Your Honor, I believe you need to  
10 advise the defendants of their appellate rights.

11 THE COURT: Oh, thank you. Absolutely,  
12 Mr. Bryan.

13 Each of the 16 defendants, each of you, you  
14 have the right to appeal the conviction and/or the sentence.  
15 If you wish to do so, I think you have 14 days to file a  
16 notice of appeal, and each of you should consult with your  
17 lawyer about that. So I'm formally advising each defendant  
18 of that right.

19 Thank you, Mr. Bryan. I didn't want to forget  
20 that.

21 Anything else I may have neglected to cover?

22 All right. I want to commend all counsel for  
23 conducting this sentencing proceeding as you did the trial,  
24 in a very professional and dignified way. This was not an  
25 easy case to try, it wasn't an easy case to sentence, but we

1 had very excellent counsel on both sides for each of the  
2 defendants and for the government.

3 So the Court thanks you for that, and with  
4 that we are adjourned.

5 I've got to put one more -- I'm not sure if  
6 it's 10 days or 14 days, but the one thing I know, I cannot  
7 extend, I cannot extend the law or create a change in the  
8 law by my error because there's a Sixth Circuit case on  
9 that, so I think it was changed from ten to 14 days, but I'm  
10 not positive, and if it's only ten, then you have only ten.

11 So you need to follow it. And if I've got it  
12 wrong and it's ten, then it's ten.

13 (Proceedings concluded)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

**/s/Susan Trischan**

/S/ Susan Trischan, Official Court Reporter

Certified Realtime Reporter

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