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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

UNITED STATES OF AMERICA )  
VS. ) Criminal Action  
MICHAEL DEWAYNE WILLIAMS ) No. 5:15-CR-0063-01

OFFICIAL TRANSCRIPT OF PROCEEDINGS - SENTENCING  
BEFORE THE HONORABLE S. MAURICE HICKS, JR.  
UNITED STATES DISTRICT JUDGE  
SHREVEPORT, LOUISIANA  
JULY 21, 2016

**FOR THE GOVERNMENT:**  
AUSA Joseph G. Jarzabek  
AUSA Brandon B. Brown  
U.S. Attorney's Office  
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**FOR THE DEFENDANT:**  
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Produced by mechanical stenography, transcript produced by computer.

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1 (Court called to order with the defendant  
2 present at 3:22 p.m.)

3 THE COURT: Thank you. Court will come to order.  
4 Please be seated.

5 I apologize for being late. We were detained upstairs on  
6 a lengthy civil case involving serious personal injuries, and  
7 it ran longer than we anticipated. My apologies.

8 All right. Are we ready to proceed in the sentencing  
9 hearing in the matter of United States vs. Michael Dewayne  
10 Williams? Mr. Jarzabek?

11 MR. JARZABEK: Your Honor, calling United States of  
12 America vs. Williams, 15-00063-01, for sentencing. Ready to  
13 address the issues of the objections at your -- the Court's  
14 pleasure.

15 THE COURT: All right. Mr. Richey, you're prepared  
16 to proceed?

17 MR. RICHEY: We are, Your Honor.

18 THE COURT: All right. The presentence report has  
19 been filed in this particular matter showing a calculated net  
20 offense level of 11, a criminal history category of Roman  
21 numeral I, placing it into Zone B of the sentencing guidelines.  
22 The confinement sentence per statute is 20 years per count.  
23 The guideline range, as calculated in this instance, is 8 to 14  
24 months. We have issues that have been raised in objections to  
25 the presentence report.

1           Let me state, for the record, that this sentencing  
2 hearing is being held as a result of a guilty verdict having  
3 been reached by a jury in this matter, following trial, to  
4 Counts 1 through 5 and Counts 7 through 12 involving wire  
5 fraud, in violation of Title 18, U.S. Code, Section 1343.

6           In this instance, the first objection that is made by the  
7 Defense to the presentence report is to paragraph 7, where the  
8 defendant contends that SWAG Nation was a for-profit entity and  
9 that characterizing the organization as something else  
10 overrepresents the fraudulent activity for which the defendant  
11 was convicted. However, the defendant acknowledges that the  
12 characterization of SWAG Nation as acting as a nonprofit  
13 organization -- and that's in quotes -- does not directly  
14 affect the guideline calculations.

15           In this instance, Mr. Jarzabek, do you have any reply?

16           MR. JARZABEK: Your Honor, the Government's  
17 contention -- the source of the confusion comes from the  
18 documents associated with SWAG Nation. You have a Texas  
19 S corporation, and when they registered in Louisiana, one of  
20 the boxes that was checked was "nonprofit." I don't -- I'm  
21 willing to concede the fact that that might have been accident.  
22 And I further would go so far as to say, and from the  
23 Government's point of view, it just doesn't matter.

24           THE COURT: Mr. Richey, did I correctly summarize  
25 your objection to paragraph 7?

1           MR. RICHEY: Yes, sir, I believe that you did. And I  
2 would agree with Mr. Jarzabek that, ultimately, it should not  
3 make any difference. It certainly makes no difference under  
4 the calculation of the guidelines.

5           THE COURT: I would concur with that, and the Court  
6 finds that the objection to paragraph 7 does not impact  
7 guideline calculations in this matter.

8           The Court notes that the presentence report describes  
9 SWAG Nation, USA, Incorporated as, quote, "in essence, acting  
10 as a nonprofit organization, but notes that it was incorporated  
11 in Texas as an S corporation," end quote.

12          The PSR appears to have made the "in essence" statement  
13 referring to the nature of SWAG Nation's business goals and  
14 practices, that is, working with at-risk youth ages 7 to 17 to  
15 further their educational pursuits and develop their maturity  
16 for the betterment of the community.

17          The Court notes that the mission mirrors the mission of  
18 any nonprofit organization's: to benefit the public generally  
19 for a specific group of defined individuals. Accordingly, I'm  
20 going to overrule the objection, to the extent that a ruling is  
21 necessary. However, the Court does not believe that a ruling  
22 is necessary. Just for the record, it's overruled.

23          The second objections or second set of objections have to  
24 do with paragraphs 20, 29, and 39. And the summary,  
25 Mr. Richey, as I understand it, is the objection to these three

1 paragraphs relate to so-called acceptance of responsibility.

2 The defendant objects because he was not awarded a  
3 two-point reduction for acceptance of responsibility, and the  
4 argument is that the exclusion of the discussion of Mary  
5 Hughes's testimony in the presentence report which indicated  
6 that he was authorized -- although not by resolution by the  
7 corporation, the Court notes -- to use the debit card was  
8 improper.

9 He also argues on behalf of Mr. Williams that his  
10 decision to, quote, "put the government to its burden of proof  
11 at trial," end quote, was not premised on a denial of any  
12 conduct, but only a denial that the conduct amounted to wire  
13 fraud.

14 That's the best I can do in summarizing that, Mr. Richey.  
15 Am I on point?

16 MR. RICHEY: I think that's correct, Your Honor, that  
17 the mere fact that Mr. Williams chose to put the government to  
18 its burden of proof in establishing that he had violated the  
19 wire fraud statute is -- or that his conduct, which was not  
20 disputed, violated the wire fraud statute is not the same thing  
21 as to say that he did not accept responsibility for conduct. I  
22 think that there is something of a distinction to be made  
23 there, and I think the guidelines understand that and draft for  
24 that and provide for that.

25 The probation officer pointed out in the report that the

1 guideline talks about that being in rare cases where defendants  
2 go to trial in order to challenge the legality or illegality of  
3 the conduct as opposed to denying the existence of the conduct  
4 or whether that that's what occurred. Well, that is the rare  
5 case that we're dealing with.

6 And, of course, it would always be rare when one goes to  
7 trial, but the mere fact of going to trial and asking for a  
8 legal determination that the conduct violated the statute is  
9 not in itself a denial of acceptance of responsibility.

10 The Court has reminded me on more than one occasion when  
11 I attempted to obtain dismissals pretrial based on assertion  
12 that the conduct did not violate the statute there just is not  
13 a mechanism for that in the criminal process. One has no  
14 choice but to go to trial, have the government establish the  
15 facts, and then argue to the jury that the facts do not amount  
16 to a violation of the charged statutes.

17 Now, Mr. Williams was quite clear in the statements that  
18 he made, that the probation officer pointed to during the  
19 course of the investigation, that he understood that there was  
20 misconduct here. I think that his -- and that when we're  
21 looking at a question of accepting responsibility from that  
22 moral perspective is one thing, but when we're talking about  
23 legal responsibility in a courtroom for conduct and whether  
24 particular conduct falls in the ambit of a statute, that's --  
25 that's where we are.

1           So it's my contention that he has accepted responsibility  
2 all along. There's very little factual dispute about the core  
3 issues here, which were -- the Government's theory was  
4 nondisclosure to the commissioners that he would receive funds  
5 from SWAG Nation once the Commission had approved those funds  
6 and those funds were paid to SWAG Nation and according to any  
7 subsequent contract. That's the core of the fraudulent  
8 activity of which he was convicted. That's the Government's  
9 theory. Never disputed that he did not disclose that.

10           So -- and, in fact, there's no dispute that the SWAG  
11 Nation officers were aware that he was taking funds. One way  
12 or another, they were aware of it. All three of the officers  
13 that testified were aware of it.

14           So the fraudulent activity, again, goes to whether or not  
15 his nondisclosure in that situation was -- fell in the ambit of  
16 the wire fraud statute and the facts as they were, largely  
17 undisputed at trial.

18           THE COURT: Mr. Jarzabek?

19           MR. JARZABEK: I have myself at odds with  
20 Mr. Richey's characterization of the evidence.

21           THE COURT: There are times that the Court wonders  
22 whether the same evidence presented at trial was the same  
23 evidence that the defendant believes was presented at trial.

24           MR. JARZABEK: Well, my characterization of what the  
25 Government did prove at trial is thus: The Government, I

1 believe, proved that Mr. Williams withdrew the money without  
2 authorization.

3 The only evidence that there was evidence came through  
4 the testimony of Ms. Hughes. Nobody else testified. The two  
5 people that were administering the funds, Mr. Robinson and the  
6 later person, basically said -- Robinson quit when he realized  
7 what was going on. He said, "I'm out of here." And the other  
8 one said, "I never knew. I never saw the withdrawals."

9 THE COURT: There was only one debit card --

10 MR. JARZABEK: Correct.

11 THE COURT: -- in the name of SWAG Nation. That was  
12 issued to Mary Hughes.

13 MR. JARZABEK: Well, there were two cards: one  
14 issued to Mary Hughes, and he -- the testimony is clear that  
15 almost as soon as the card was issued, she turned it over to  
16 Mr. Williams and that she never used the card again.

17 THE COURT: And the trial testimony revealed that  
18 Ms. Hughes just happened to be the defendant's fiancée.

19 MR. JARZABEK: Well, I'm going to refresh the  
20 Court's --

21 THE COURT: According to her.

22 MR. JARZABEK: That's correct. But, also, I'm going  
23 to refresh the Court's memory that I solicited permission to  
24 treat the witness as hostile.

25 THE COURT: And was granted permission.

1           MR. JARZABEK: Correct. And at the end of that  
2 testimony, she admitted that whatever she was saying about  
3 authorization -- she didn't have personal knowledge of it --  
4 came from Mr. Williams. I remember that testimony vividly.

5           I just can't agree with the characterization that  
6 somehow -- now, after the fact, am I aware that certain board  
7 members have said that? Yeah. But there's no evidence of  
8 that. None. The only evidence that was presented of  
9 authorization was through Ms. Hughes, and I think that  
10 testimony was completely discredited.

11           Also, if you look at the -- the very nature of the use of  
12 the card is deceptive. Nowhere does anybody ever get to  
13 Mr. Williams getting a card. It's over a year and a half him  
14 using the card that's actually issued in another person's name.

15           And then, finally, all of this goes -- and I will concede  
16 this one point to Mr. Richey: It does go to the -- and if I  
17 might slop over into the next area, because I think it's  
18 relevant here. I agree with Mr. Richey, the Government's  
19 ultimate point in all of this was -- is that the real harm was  
20 that Mr. Williams never disclosed the fact that he had a  
21 personal interest in SWAG Nation when the vote was taken to  
22 allocate the funds.

23           The problem with that is that Mr. Williams was the  
24 deciding vote. Plus we had at least one other commissioner  
25 testified had he known that Mr. Williams was going to receive

1 funds, he would never have voted for the allocation. We also  
2 have testimony that says that that would have been -- doing  
3 that would have been a clear violation of the ethics procedures  
4 for the Commission.

5 All of that goes to this point: But for Mr. Williams  
6 hiding, concealing his involvement in that -- and not admitted  
7 to until the FBI was questioning him. He admitted then he  
8 probably should have recused himself. But up until that point,  
9 he never disclosed to anybody that he had a personal interest  
10 in this thing. And but for that, the SWAG Nation would not  
11 have received a single red cent.

12 So it all goes back to the fact that he's never accepted  
13 responsibility for that or the fact that he's basically  
14 embezzling money from SWAG Nation. There's no dispute that all  
15 of those monies -- there's no evidence to show -- I mean, for  
16 instance, even Ms. Hughes was less than clear about how that  
17 trip to Fort Worth -- I mean, in Dallas -- was in the interest  
18 of SWAG Nation. There was one meeting. One meeting.

19 THE COURT: Well, the Margaritaville --

20 MR. JARZABEK: There's the other one --

21 THE COURT: -- he did --

22 MR. JARZABEK: Yes, sir.

23 THE COURT: -- on the birthday of the defendant,  
24 Michael Williams --

25 MR. JARZABEK: Eldorado --

1 THE COURT: -- with her in attendance, celebrating  
2 his birthday at Margaritaville. And I forgot the number; it  
3 was 400 or \$800. Multiple transactions disclosed under  
4 cross-examination are indicative of a concerted effort to use  
5 funds under the control of SWAG Nation as a personal piggy  
6 bank.

7 MR. JARZABEK: That is the Government's contention.  
8 And I believe all of this -- my final point, Your Honor. I  
9 believe all of this was resolved -- these arguments were made,  
10 essentially, to the jury --

11 THE COURT: They were.

12 MR. JARZABEK: -- and they found him guilty. And  
13 that's where we're at. I mean, that's the Government's  
14 position.

15 THE COURT: In this instance, would you address the  
16 issue, Mr. Jarzabek, of whether this constitutes, under Note 2,  
17 in the application note 2 in Section 3E1.1, where this is a,  
18 quote, "rare situation," end quote, where the defendant goes to  
19 trial to assert and preserve issues that don't relate to  
20 factual guilt.

21 MR. JARZABEK: I do not agree with that, Your Honor.  
22 I do not believe Note 2 applies, and that's the reason I went  
23 through this whole dissertation showing, no, it's not an  
24 unusual situation. He was denying key elements at trial of his  
25 conduct to conceal the fact that he was, in fact, taking money.

1 That's a factual dispute this jury clearly went against him on.

2 THE COURT: I concede that the applicability of the  
3 wire fraud statute was raised. That was ruled upon by the  
4 Court. The wire fraud counts were clearly the gut of the  
5 jury's finding of guilt on the counts enumerated here at the  
6 outset of this hearing.

7 In this particular instance, factual guilt appears to be  
8 one of convenience and appears to be one of varying reasons.  
9 The presentence report, I think, indicates that Mr. Williams  
10 provided a written admission of wrongdoing; and yet during the  
11 presentence investigation, he maintained he'd been given  
12 authorization to make the purchases, where that was never  
13 really part of the original admission of guilt process.

14 I am unaware, in my experience on the bench, of a  
15 two-point reduction being given for acceptance of  
16 responsibility in any instance where government resources have  
17 not been conserved absent the, quote, "rare instance," end  
18 quote, or rare set of circumstances, which I have not seen in  
19 13 years.

20 MR. JARZABEK: I haven't seen it since '84, Your  
21 Honor.

22 THE COURT: And since the enactment of the Sentencing  
23 Reform Act of 1984, I've never known that to be applied to  
24 anything.

25 MR. JARZABEK: Not in this district that I'm aware

1 of.

2 THE COURT: I've only been here 13 years. You have  
3 me by many years' senior in prosecution.

4 But I don't think that a defendant can benefit from  
5 having admitted it, pressing the matter to trial on factual  
6 dispute, and then claiming authorization.

7 Although there's nothing in writing. This was not  
8 treated like a corporation in any manner, way, shape, or form  
9 except for the fact of its formation. There are no receipts  
10 for any check that was ever written, and the repeated number of  
11 transactions, most of which that are on camera either with the  
12 defendant's car being easily identified or the defendant's  
13 picture being taken at the respective ATM machines, indicates  
14 anything other than an intent to take money from SWAG Nation  
15 for whatever personal purpose he saw fit, on whatever time he  
16 saw fit, and under whatever circumstance he saw fit, including  
17 his own birthday celebration with the lady in whose name the  
18 card had been issued.

19 MR. JARZABEK: That is the Government's position,  
20 Your Honor.

21 THE COURT: In this instance, the objection could  
22 impact the guideline calculation and does require a ruling by  
23 the Court.

24 The Government proceeded to trial on the argument that he  
25 had been given authorization to make purchases as reimbursement

1 to himself for so-called "expenses," end quote, incurred in the  
2 formation and start-up of a corporation.

3 The Court notes that while the Government may concede  
4 that the Louisiana authorization to transact business form on  
5 file with the Secretary of State indicated a not-for-profit  
6 purpose, that the Texas formation of the corporation over the  
7 border to the west indicates that it was made for-profit.

8 And the absence of any investigation and due diligence by  
9 the Caddo Parish Commission on the true nature of this  
10 corporation raises serious questions about the availability of  
11 funding for otherwise legitimate corporations that serve useful  
12 and necessary public services.

13 The Court is aware of the evidence produced at trial of  
14 the services done by people whose hearts were in the right  
15 place, and I saw that at trial. This Court is also painfully  
16 aware of the personal piggy bank privilege used by this  
17 defendant in removing funds at his whim on the occasions that  
18 are noted, for which he was found guilty by a jury.

19 In this instance, to have formed the corporation in  
20 Texas, to have indicated its for-profit status, to have decided  
21 to attempt to get the company funded with a \$100,000 payment  
22 from the Caddo Parish Commission -- and being successful in  
23 doing so -- and then removing funds of the public dedicated to  
24 the use of the valid purposes of SWAG Nation constitutes the  
25 gut of wire fraud through the use of ATM machines, which

1 clearly, in this Court's opinion, constitutes wire fraud.

2 The purchases and withdrawals made by him were found to  
3 be fraudulent. Testimony to the contrary, such as that of  
4 Ms. Hughes, is not relevant to the determination of acceptance  
5 of responsibility, and it is so held by this Court.

6 The defendant's statement pretrial and his position  
7 during trial in statements and positions post-verdict were  
8 factors used in determining the application of Section 3E1.1.  
9 Indeed, the defendant has cited Application Note 2, which  
10 references rare situations where the defendant goes to trial to  
11 assert and preserve issues that do not relate to factual guilt.

12 The Court notes it here that while Mr. Williams may have  
13 challenged the applicability of the wire fraud statute to his  
14 conduct, he also denied factual guilt of making fraudulent  
15 charges.

16 Prior to trial, Mr. Williams provided written admission  
17 of wrongdoing, yet at trial and during the presentence  
18 investigation, through witnesses, he maintained he had been  
19 given personal authorization to make personal purchases.

20 There was no denial of having made the purchases for the  
21 withdrawals from the ATMs, yet the reasoning behind the  
22 withdrawals and these purchases has changed and constitutes a  
23 moving target, also indicative, in the opinion of the jury and  
24 as a finding under preponderance of the evidence -- I listened  
25 to the same testimony that the lawyers and the defendant did in

1 this case -- that it was for purely personal purposes.

2 The objection filed by the defendant is overruled. The  
3 Court finds that under these circumstances, that this does not  
4 qualify as a rare situation, implicating the application  
5 note 2, and is overruled.

6 Paragraphs 25, 27, and 89 relating to restitution are the  
7 next set of objections. Mr. Richey, let me summarize this and  
8 let me ask you again, as I typically do, if I've done this  
9 correctly.

10 The defendant's objection relates to restitution under  
11 Section 5E1.1 as to the amount and the recipient of  
12 restitution.

13 There is a contention made by the defendant that the  
14 transaction made on August 31 of 2013 in the amount of \$1600  
15 was, in fact, SWAG Nation-related; thus restitution should be  
16 reduced from a calculated amount of \$8,584.68 to \$6,984.68.

17 The argument is also made that the Caddo Parish  
18 Commission suffered no monetary loss in this case and thus is  
19 not the proper victim or recipient of the restitution award  
20 that is required to be made by law. The objection does not  
21 impact the guideline calculation but will require a ruling by  
22 the Court as it does affect the amount of restitution owed as  
23 well as the designation of a victim.

24 Have I correctly summarized your objection, which, of  
25 course, is in writing in your memorandum, Mr. Richey?

1           MR. RICHEY: Yes, sir, I think you have correctly  
2 summarized it.

3           I do -- I will note, for the record, I do not have -- do  
4 not intend to present any evidence with regard to the \$1600  
5 other than the record itself which shows that it was paid to  
6 a -- I believe it's Trademark Express, which -- on behalf of  
7 SWAG Nation.

8           THE COURT: All right.

9           MR. RICHEY: That's all. And, again, that does  
10 not -- while it does not affect the guideline calculation, it  
11 was simply a point that we felt was worth noting.

12          THE COURT: All right. Mr. Jarzabek, do you have any  
13 comment on this?

14          MR. JARZABEK: Yes, Your Honor. First of all, yes,  
15 it was made to Trademark Express, but there is no indication it  
16 was used for SWAG Nation.

17          The testimony -- I put Deputy May on the stand, and we  
18 went through every one of these items, including the \$1600.  
19 There's -- in the other items, you can go through, you can see  
20 the records from the checks where people were paid. There was  
21 money paid for the use of the church. There was money paid for  
22 food. There was money paid for graduation ceremonies. The  
23 only things that Deputy May identified were the ones mostly --  
24 mostly the transactions at ATM. But this was also one that  
25 there's no paperwork to say that it was for SWAG Nation.

1 THE COURT: There's not a receipt documenting the --

2 MR. JARZABEK: There's not a receipt.

3 THE COURT: -- expenditure.

4 MR. JARZABEK: There's nothing.

5 And I understand Mr. Richey makes the assertion in good  
6 faith, but there is no record to assert, and nor has any record  
7 been presented to assert -- and I will just make this  
8 representation to the Court: Prior to trial, we tried to talk  
9 to the guy, the head of this operation. He never returned our  
10 phone calls.

11 So I'm just saying there's no record to say that this was  
12 for SWAG Nation. And, again, at some point in time there gets  
13 to be a burden of persuasion issue, not a burden of proof but a  
14 burden of persuasion, and I believe we've long crossed that in  
15 this case as far as the \$1600 is concerned.

16 THE COURT: Talk to me, briefly, about the status of  
17 a victim in this case. In drug cases, restitution is generally  
18 not an issue because the victim is viewed under the sentencing  
19 guidelines as society as a whole as opposed to a specific  
20 entity or a specific individual. You would concur with that?

21 MR. JARZABEK: I would, Your Honor.

22 THE COURT: In this particular instance, is the, what  
23 I'll call the "ATM withdrawals" and the expenditures made  
24 through the use of the debit card by the defendant on which he  
25 was found guilty by the jury -- who's the victim? SWAG Nation?

1           MR. JARZABEK: No, Your Honor. You could argue that  
2 point, but that's not what we alleged in our --

3           THE COURT: SWAG Nation is now defunct based on --

4           MR. JARZABEK: Correct.

5           THE COURT: -- what I can see from the presentence  
6 report.

7           MR. JARZABEK: But if you read the indictment, the  
8 indictment clearly identifies the Caddo Commission as the  
9 victim in this case, and Mr. Richey is completely correct on  
10 that. And the reason for that is -- and that's why I -- if I  
11 might go off the trail just a minute, Your Honor?

12           Mr. Richey argues that -- and has argued at trial and  
13 argues in his brief -- that, okay, services were provided; once  
14 the services were provided, the Caddo Parish Commission would  
15 have paid the amount of money. No harm, no foul. Services  
16 were rendered; they were only paid for those services. No  
17 harm, no foul.

18           Well, that ignores the key -- and I alluded to this  
19 earlier, and I'm coming back to it. The key problem in all of  
20 this is that but for Mr. Williams concealing his personal  
21 involvement in SWAG Nation, there would not have been any funds  
22 given to SWAG Nation by the Commission.

23           In that vein, you could argue that restitution could be  
24 the whole hundred thousand dollars that was ordered -- I mean,  
25 that was given -- because but for Mr. Williams's vote, there

1 wouldn't have been any allocation of funds to SWAG Nation.  
2 That's a matter of record. We proved that it was one vote that  
3 carried that.

4 And we also had the evidence of another commissioner who  
5 voted on that, for the allocation, that had he known that  
6 Mr. Williams was going to have a personal involvement, an  
7 interest in this environment, he never would have voted for the  
8 money.

9 So what I'm arguing, what the Government has argued from  
10 the beginning is, all these monies that were withdrawn for  
11 Mr. Williams's personal use -- we didn't get into the SWAG  
12 Nation; we spotted that. But all the money that was used for  
13 his personal use after the vote was basically him paying  
14 himself for his vote. It was a bribe to himself. That's the  
15 harm, and that's why the restitution is to the Commission,  
16 because it was his action as a commissioner and his deceit as a  
17 commissioner that is the basis of the fraud.

18 That is the Government's point, and that's why the  
19 restitution amount, in the Government's view, is, A, as I have  
20 said to others -- first of all, it's mandatory in this case if  
21 a victim is identified. Well, to me, I think the evidence is  
22 crystal clear that the victim is the Caddo Commission.

23 MR. RICHEY: To the extent that there has been a loss  
24 as a result of that nondisclosure, what has been determined to  
25 be the fraud by Commissioner Williams, that loss was to SWAG

1 Nation. I believe the Government informed me prior to our  
2 proceeding that they would stipulate that funds were not  
3 provided to SWAG Nation until after that -- services were  
4 performed by SWAG Nation.

5 MR. JARZABEK: I will so stipulate.

6 THE COURT: Noted.

7 MR. RICHEY: So the money that we're dealing with  
8 here again comes back to money that is laid out in the  
9 presentence report, that \$8500 received directly by  
10 Mr. Williams through the use of that ATM card.

11 By the way, Your Honor, if I may --

12 THE COURT: Let me ask you a quick question.

13 MR. RICHEY: Sure.

14 THE COURT: Is there any evidence that SWAG Nation  
15 received a penny from anyone other than the Caddo Commission?  
16 Short answer is: I can't find it. But I may be wrong. I may  
17 have missed something.

18 MR. JARZABEK: No, Your Honor. If I might? There's  
19 the \$25 that was initially made to open the account. Other  
20 than that \$25, even though you get into another \$9,000 payment  
21 from another individual, those monies also came from the Caddo  
22 Commission. Every dollar that went into that account  
23 originated with the Caddo Commission.

24 THE COURT: That was my recollection and the Court's  
25 inference, if you will, from the testimony that was adduced at

1 trial.

2 MR. RICHEY: Correct, Your Honor. I don't -- there's  
3 no dispute that the money that went into SWAG Nation was money  
4 that came from the Caddo Parish Commission. That's the --

5 THE COURT: Per the vote of your client,  
6 Mr. Williams, and per introducing the ordinance in order to  
7 allow the payments to be made, up to the sum of \$100,000.

8 MR. RICHEY: Yes, sir. The only other money that  
9 came via the Commission was money that Mr. Cooper, Bobby  
10 Cooper, in a separate ordinance in a separate vote received for  
11 his project and then he then paid to SWAG Nation to perform  
12 services that he had contracted to do and they did when he  
13 forwarded -- when he sent people to him -- sent students to him  
14 for that purpose.

15 The -- so when you get down to the money that  
16 Mr. Williams obtained that he benefitted from, it's still that  
17 same number that came from SWAG Nation after they received  
18 money for payment of services. So --

19 THE COURT: Let me take you a step further. The law  
20 requires for a nonprofit corporation to have a resolution on  
21 file that in the event of dissolution, that funds on deposit  
22 shall be paid to XYZ, and there's never been anything in  
23 writing in the form of a resolution authorizing Ms. Hughes --  
24 except through the bank -- to have a debit card, and there's  
25 never been minutes kept by that corporation, and there's never

1 been anything in the record that I've seen indicating that SWAG  
2 Nation, albeit defunct, has on file a resolution as a nonprofit  
3 to do business in Louisiana for the distribution of those  
4 funds; therefore, I can eliminate SWAG Nation as a victim.  
5 They're gone.

6 MR. RICHEY: Well, I think that the Court can --  
7 chooses to make that decision, I think that certainly you can  
8 say that. I would --

9 THE COURT: Now let's talk --

10 MR. RICHEY: -- disagree with that, clearly.

11 THE COURT: I understand, but I -- I'll note that.

12 MR. RICHEY: I'm --

13 THE DEFENDANT: But let me ask you this question.  
14 The other victim is either society as a whole because of the  
15 damage that Mr. Williams's conduct has done to the process of  
16 funding of otherwise valid nongovernmental organizations --

17 MR. RICHEY: And I would agree with that, and that's  
18 why --

19 THE COURT: And that's serious damage.

20 And the Caddo Parish Commission's lack of due diligence,  
21 oversight, and auditing of public funds is a disservice to  
22 every person in the parish of Caddo. And I realize full well  
23 that this is an eight-parish area, but the extent or the  
24 lack -- not the extent, the lack of due diligence in auditing,  
25 in assuming that money appropriated by the Caddo Parish

1 Commission pursuant to what seemed to be on its face a valid  
2 ordinance, is appalling to this Court.

3 But you know what I find truly odd?

4 Mr. Guthrie, you're sitting in for Mr. Cram. Would you  
5 tell the Court what the reply of the Caddo Commission was with  
6 respect to its potential restitution.

7 THE PROBATION OFFICER: Your Honor, the probation  
8 office was contacted on July the 11th by an attorney  
9 representing the Caddo Parish Commission, and they indicated  
10 they were not reporting a loss of income, they did not consider  
11 themselves a victim in this particular offense.

12 THE COURT: That attorney was Henry Bernstein?

13 THE PROBATION OFFICER: That's correct.

14 MR. JARZABEK: May I address that point, Your Honor?

15 THE COURT: I'm trying to figure out how a victim can  
16 say, "I'm not a victim," and be a public body having allocated  
17 up to \$100,000, having its purse purloined by a commissioner  
18 who authored the ordinance, set up the corporation for profit,  
19 may have accidentally put "nonprofit" in Louisiana in its  
20 authorization to transact business in this state, be found  
21 guilty of multiple counts of wire fraud, and not have that  
22 money go back to the Commission because they don't want it and  
23 they don't consider itself to be a victim. I find that  
24 disingenuous at best.

25 Of course, Mr. Bernstein is not here. Simply a telephone

1 communiqué.

2 Yes, Mr. Jarzabek?

3 MR. JARZABEK: Your Honor, the Government -- the  
4 probation office reported that conversation to Mr. Brown,  
5 initially, and then later to me, and I contacted -- we've been  
6 in contact.

7 And the argument basically assumes -- Mr. Elton Richey's  
8 argument -- that this was a mere contract: Services were  
9 provided, and once the services were provided, that's it.

10 When I explained the Government's position is, hey, this  
11 goes back to the fact that he shouldn't have voted on it, the  
12 money shouldn't have been appropriated in the first place, he  
13 said, "Well, you know, I hadn't -- we basically hadn't thought  
14 about that." So they were looking at it purely from a contract  
15 point of view.

16 And I also would say, Your Honor, in defense, if I might,  
17 of the Commission, I said, "Look, if this is going to be your  
18 position, I need somebody to put it on the record." And that  
19 has not happened.

20 THE COURT: I do have a character reference by the  
21 Chief Financial Officer for the Commission, but it doesn't say  
22 anything about victim status or not.

23 MR. JARZABEK: Again, I can only tell you what  
24 contact we've had in relation to the contact that was made with  
25 the probation office.

1 THE COURT: All I know is what I read and what I hear  
2 in the form of testimony.

3 Mr. Richey?

4 MR. RICHEY: Yes, Your Honor. What I think the point  
5 is that may be being missed here -- and I think I stated at the  
6 beginning of my response that, yes, society at large is a  
7 victim. The question is one of restitution, and really it's a  
8 question of disgorgement of ill-gotten gains. That's what  
9 we're dealing with here, which is --

10 THE COURT: But to whom.

11 MR. RICHEY: Right. Exactly. And my --

12 THE COURT: And where was the origination of the  
13 funding for the money that was pulled out, as found by the  
14 jury, by your client.

15 MR. RICHEY: The origination of the funds went to the  
16 Caddo Parish -- was from Caddo Parish Commission, which is --

17 THE COURT: The origination of the funds came from  
18 the taxpayers of this parish.

19 MR. RICHEY: Which is why I suggest a fine in the  
20 amount of the loss is the appropriate method of disgorgement,  
21 Your Honor, to cover the cost of the prosecution and the  
22 Government's cost of investigating and bringing this matter.

23 It's not our position that there shouldn't be a  
24 disgorgement. The question is one of what's the appropriate  
25 receptacle for that money, and my --

1 THE COURT: Fines --

2 MR. RICHEY: My position is that a fine is the  
3 appropriate method for doing that.

4 THE COURT: And I will tell you --

5 MR. RICHEY: For all the reasons that I've stated.

6 THE COURT: I will tell you that a fine does not  
7 reach back to reimburse the investigating agencies or the U.S.  
8 Attorney's Office for the time, money, and expenses connected  
9 with the investigation having been made, or for the cost of the  
10 trial of the case, or for the subpoenas issued by the witness,  
11 or the cost of anything else.

12 MR. RICHEY: Absolutely not. But it does --

13 THE COURT: It goes directly into the treasury of the  
14 United States.

15 MR. RICHEY: That's correct, Your Honor. But what it  
16 does do is, quite effectively, disgorge those ill-gotten gains,  
17 and that is at least what can be done with clarity here.

18 So I don't think that there is a dispute with the Defense  
19 that there should be that disgorgement. The real question is:  
20 Is it restitution or should it go as a fine? So that's my  
21 position.

22 THE COURT: Being the cynic over the misuse of public  
23 funds as a result of having watched this trial and having  
24 watched other trials over the course of my time on the bench, I  
25 sometimes wonder about the motivation of the Caddo Parish

1 Commission in not wanting any money back as possible precedence  
2 setting for acts of this sort that may occur in the future.

3 MR. RICHEY: Your Honor, I can't speak for the Caddo  
4 Parish Commission --

5 THE COURT: I can't either, except that they deny  
6 being a victim even though they fit the meaning of a victim  
7 squarely within the purposes of the law, being directly and  
8 proximately harmed by the loss.

9 Yes, Mr. Jarzabek?

10 MR. JARZABEK: Your Honor, the Victim and Witness  
11 Protection Act, which I am bound to enforce, as is this Court,  
12 in this case mandates restitution to the victim, and that's why  
13 I took the position. And I would disagree with the Court in  
14 this context: I don't believe the Commission has, in fact --  
15 there was an opinion rendered by an employee of the Commission.  
16 Once they realized the other aspect of the coin, I basically  
17 put them on notice that if this is going to be their position,  
18 I need something official to be done, and they chose not to do  
19 it. I don't think the Caddo Parish Commission has chosen not  
20 to be a victim.

21 THE COURT: Who was your contact at the Caddo Parish  
22 Commission regarding restitution that you had discussions with?

23 MR. JARZABEK: I had most of them with the lead  
24 attorney for the Commission, Ms. Donna Frazier.

25 THE COURT: All right. Did Ms. Frazier ever provide

1 you anything in writing with respect to the Caddo Parish  
2 Commission's official viewpoint?

3 MR. JARZABEK: That's my point, Your Honor. I told  
4 her that if I was -- if that was going to be their position, I  
5 needed something in writing or somebody to make that assertion  
6 in court. And that did not happen.

7 Because I believe, as I stated to this Court, the  
8 victimhood of the Caddo Commission is clear, and unless  
9 somebody was willing to come forward and actually challenge  
10 that -- I also made the point for her that if this -- it had to  
11 be official, and the reason for that is that under the Victim  
12 and Witness Protection Act, if this Court rules that they're  
13 not a victim, all it takes is one commissioner saying, "I  
14 didn't vote on that," and the Fifth Circuit has to kick it back  
15 because they have standing to challenge the restitution issue.

16 So all of that comes into play. I don't believe that the  
17 Caddo Commission, as an entity, has taken the position that  
18 they are not a victim.

19 THE COURT: In this instance, under the law, who  
20 represents the victim?

21 MR. JARZABEK: I would assert the Commission itself.  
22 And without a vote from the Commission that says, "We don't  
23 want the restitution," there is no assertion before this Court  
24 that there not be restitution.

25 THE COURT: Who bears the burden of the proof --

1 MR. RICHEY: I'm not --

2 THE COURT: Let me ask this, Mr. Richey, before you  
3 speak.

4 Mr. Jarzabek, who bears the burden of proof on the issue  
5 of proving the victim's actual losses? Does that also -- which  
6 is the Government, by the way.

7 MR. JARZABEK: Yeah.

8 THE COURT: Does that also have the Government with  
9 the burden of proving who the victim is?

10 MR. JARZABEK: Well, Your Honor, I --

11 THE COURT: By affirmative evidence or by negative  
12 evidence.

13 MR. RICHEY: Is that a question for me or  
14 Mr. Jarzabek?

15 THE COURT: Mr. Jarzabek.

16 MR. JARZABEK: Your Honor, as I have said repeatedly  
17 and I'll say again, the indictment specifically identified the  
18 Commission, and the jury so found the Commission as the victim;  
19 and until that is undone, I believe that is the status of this  
20 case.

21 THE COURT: Mr. Guthrie, is there anything in the  
22 probation file in the form of an ordinance or a resolution or  
23 other official communiqué in writing from the Caddo Parish  
24 Commission regarding its status as the victim by virtue of the  
25 wire fraud of the defendant involving money supplied by the

1 Commission as authorized by an ordinance to SWAG Nation?

2 THE PROBATION OFFICER: The only information provided  
3 to me, Your Honor, by Mr. Cram was the telephone call. I'm not  
4 aware of anything else.

5 THE COURT: All right. Mr. Richey, your turn.

6 MR. RICHEY: I had difficulty hearing him because he  
7 wasn't speaking into the microphone and I had my earmuffs on.

8 THE COURT: Basically, that there is nothing in  
9 writing from the parish commission.

10 MR. RICHEY: But he has direct communication from  
11 Henry Bernstein, who is an attorney --

12 THE COURT: Who claimed to be a private counsel with  
13 them, who does not have an official status in writing anywhere  
14 with this court.

15 I've known Mr. Bernstein for as long as he's been  
16 practicing law, but I have nothing directed to the Court, I  
17 have nothing directed to the Government, I have nothing  
18 directed to the U.S. probation officer on behalf of the Caddo  
19 Commission indicating that the Commission itself has declined  
20 officially, as an act of the Commission, to be the victim to  
21 receive funds as restitution in this case.

22 It's an odd position to be in; I'll concede that.

23 MR. RICHEY: Your Honor, it is what it is.  
24 Ms. Frazier, the attorney who represents the Parish, is present  
25 in the courtroom. The Government brought her here and has not

1       bothered to present her forward.

2               Mr. Bernstein, I think the Court can take judicial  
3       notice, is her employee as a member of her office. He has  
4       communicated directly with the probation officer, and I think  
5       it would be -- I think it can be appropriately presumed that as  
6       an attorney representing that commission, he is representing a  
7       decision of the commission made not necessarily in a public act  
8       but has consulted with commissioners in his capacity as counsel  
9       in that bar --

10               THE COURT: Well, there's a leap if I've ever heard  
11       one. I tell you what --

12               Ms. Frazier, you're in court?

13               MS. FRAZIER: I am, Your Honor.

14               THE COURT: You may present her as a witness,  
15       Mr. Jarzabek.

16               MR. JARZABEK: The Government calls Donna Frazier.  
17       (Witness sworn.)

18   DIRECT EXAMINATION

19       BY MR. JARZABEK:

20       Q.     Your full name for the record, ma'am?

21       A.     Donna Yvette Frazier.

22       Q.     And your employment, ma'am?

23       A.     I'm the Caddo Parish Attorney.

24       Q.     Okay. You testified as the Caddo Parish Attorney at the  
25       trial in this matter, did you not?

1 A. That is correct.

2 Q. And you and I have had multiple conversations; is that  
3 correct?

4 A. That is correct.

5 Q. Directing your attention -- you have been in the court  
6 during the whole colloquy regarding restitution between the  
7 Court, the U.S. Attorney's Office, and Mr. Richey?

8 A. Yes, sir.

9 Q. Have I accurately represented the phone call conversation  
10 that you and I had?

11 A. Yes, sir.

12 Q. Did I, in fact, ask the Commission that if they were  
13 going to take this position, that I needed something formal in  
14 writing or a witness to testify that that was, in fact, the  
15 official position of the Caddo commission?

16 A. Yes.

17 Q. And was that based on the fact as I represented to this  
18 Court, the fact that I now represent to you, that without such  
19 an official matter, this whole thing could be overturned on  
20 appeal by the Victim and Witness Protection Act?

21 A. You did.

22 Q. And based on that, nobody has come forward to make that  
23 assertion; is that correct?

24 A. That is correct.

25 MR. JARZABEK: No further questions, Your Honor.

1 THE COURT: Mr. Richey, any questions?

2 MR. RICHEY: If I might have a moment?

3 I don't think I have any questions, Your Honor.

4 EXAMINATION BY THE COURT:

5 Q. Ms. Frazier, in the indictment, page 2, paragraph B,  
6 Count 1, it says:

7 "Beginning on or about October 1,  
8 2012, and continuing through on or about  
9 July 1, 2014, in the Western District of  
10 Louisiana, and elsewhere, the defendant,  
11 MICHAEL DEWAYNE WILLIAMS, did knowingly and  
12 intentionally devise and intend to devise a  
13 scheme and artifice to defraud and to  
14 fraudulently obtain money and property by  
15 means of false and fraudulent pretenses,  
16 representations and promises, well knowing  
17 at the time that the pretenses,  
18 representations and promises would be and  
19 were false and fraudulent when made, which  
20 scheme and artifice is more fully described  
21 as follows:

22 "(1) The object of this scheme and  
23 artifice to defraud was for the defendant,  
24 MICHAEL DEWAYNE WILLIAMS, to obtain monies  
25 from the Commission and other institutions  
to which he was not entitled.

"(2) It was part of the scheme and  
artifice to defraud that MICHAEL DEWAYNE  
WILLIAMS urged the Caddo Parish Commission  
to appropriate public funds to SWAG Nation  
aimed at social development programs for at  
risk youth and eventually voted in favor of  
this fund allocation."

So forth and so on about the Caddo Parish Commission.

Did the Caddo Parish Commission pass a resolution by a  
majority of its membership, under the quorum requirements for  
the meeting of the Commission, to decline to receive or to

1 decline to view itself as the victim in this case?

2 A. No, Your Honor.

3 Q. Was such a resolution ever drafted?

4 A. No, Your Honor.

5 Q. Were you requested to draft that resolution?

6 A. No, Your Honor.

7 Q. Was private counsel outside of the employ of the Caddo  
8 Parish Commission asked to draft such a resolution?

9 A. No, sir, Your Honor.

10 And if I may, I will point out, for the record, that  
11 Henry Bernstein is employed by the Commission as the Assistant  
12 Parish Attorney as opposed to outside counsel.

13 Q. Ah. All right. And upon whose authority was he acting?  
14 Yours?

15 A. Your Honor, I think there has been a misunderstanding. I  
16 was actually on vacation when that phone call came through, and  
17 I'm not privy to the conversations between Dr. Woodrow Wilson,  
18 who is the Administrator, and Mr. Bernstein.

19 I know Dr. Wilson and I had talked prior to my going on  
20 vacation, and the consensus of that conversation was that we  
21 were not going to take a position and that, also -- I guess  
22 more that maybe we did not know if we were owed restitution, or  
23 the Commission, simply because as we've been called a witness  
24 in the case, we weren't privy to the State's theory of the case  
25 or all of those facts in the indictment. So that was kind of

1 the consensus.

2 Q. Well, when you say a "consensus," you're not referring to  
3 the voting members of the Commission elected in their  
4 respective district?

5 A. No, sir. I'm referring to a conversation between  
6 Dr. Wilson and myself, which he is authorized by the charter to  
7 handle the contracting on behalf of the parish of Caddo.

8 Q. Ma'am, is it your opinion that it would take the  
9 Commission itself, by means of a resolution, to declare itself  
10 not to be a victim under these circumstances?

11 A. I think if we were going to take that position formally,  
12 yes, it would.

13 Q. Would it require a resolution or would it require the  
14 passage of an ordinance in accordance with the rules of the  
15 Commission?

16 A. It would require a resolution, as it would not be a law.  
17 It would be an expression of the will of the Commission or the  
18 opinion of the Commission.

19 Q. And to do that, there would be a reading of the  
20 resolution?

21 A. Correct.

22 Q. Could it be taken up on the same day as the reading of  
23 the resolution and voted upon on the same day, or would it have  
24 to lay over for a period of time until it could be voted upon  
25 under the rules?

1 A. It would take one reading. What would happen is that it  
2 would be placed on the agenda at the work session, which is the  
3 Monday before the regular meeting. It would be moved to the  
4 Thursday meeting, which at that time a vote would be taken on  
5 it. And so that's considered one reading.

6 If it had been an ordinance, it would be introduced at  
7 that Thursday session and then laid over to the next Thursday  
8 session.

9 Q. To your knowledge, based on your conversations with the  
10 administrator for the Caddo Parish Commission, Dr. Wilson, was  
11 such a resolution ever drafted?

12 A. No, sir.

13 Q. To your knowledge, did any commissioner request that a  
14 resolution as such be drafted?

15 A. No, sir.

16 THE COURT: The Court has no further questions of the  
17 witness. Mr. Jarzabek?

18 MR. JARZABEK: No, Your Honor.

19 THE COURT: Mr. Richey?

20 MR. RICHEY: I don't think I have any questions, Your  
21 Honor.

22 THE COURT: All right. Thank you. You may step  
23 down.

24 You have any other witnesses on this particular matter?

25 MR. JARZABEK: No, Your Honor. And revert back to my

1 prior arguments.

2 THE COURT: In this instance, the Court finds that  
3 under the circumstances, that the Government bears the burden  
4 of proving the identity of a victim under the Mandatory Victim  
5 Restitution Act, or identified simply as "MVRA." The Court  
6 also finds restitution under the law is mandatory if the victim  
7 is identifiable.

8 Under this particular set of circumstances, given the  
9 testimony at the trial which this Court heard, given the  
10 testimony of the parish attorney, Ms. Frazier, called today,  
11 under oath, given the allegations contained in the indictment  
12 and the guilty verdicts entered by the jury to the indictment  
13 on those counts, this Court finds that the Government has met  
14 its burden of proving the identifiable victim as the Caddo  
15 Parish Commission. Accordingly, restitution is hereby ordered  
16 to be made by this defendant to the Caddo Parish Commission.

17 With respect to the amount due to the Caddo Parish  
18 Commission under these circumstances as restitution --  
19 Mr. Jarzabek, refresh my memory as to the \$1600 difference  
20 between Mr. Richey's claim, which was SWAG-related, as opposed  
21 to the \$8,584.68 total amount of restitution as proved in each  
22 count of the indictment to the jury.

23 MR. JARZABEK: Well, each count basically -- we only  
24 had some of the -- none of the counts dealt with the 1600.

25 THE COURT: Correct.

1           MR. JARZABEK: It was ATMs, and only selected ATMs at  
2 that. But as I said before --

3           THE COURT: We're calling it "proved to restitution"  
4 by virtue of the evidence adduced at trial.

5           MR. JARZABEK: I understand. And I was about to say,  
6 Your Honor, Deputy May took the stand and we went through line  
7 by line item of identifying all of the ATM machines and the  
8 1600 and that there was no evidence to support the payment of  
9 the \$1600, and that at that point, that's when we asserted --  
10 and have asserted through trial and with the probation  
11 office -- the total amount was \$8,584.68.

12           THE COURT: In this instance, for sentencing purposes  
13 on restitution, the burden of proof is by a preponderance of  
14 the evidence?

15           MR. JARZABEK: And that's correct, Your Honor.

16           THE COURT: Mr. Richey, would you concede that as a  
17 point of law?

18           MR. RICHEY: Yes, Your Honor.

19           THE COURT: In this instance, the Court finds that  
20 the full amount of restitution in this matter to be paid by  
21 this defendant to the Caddo Parish Commission is in the full  
22 and true sum of \$8,584.68, without reduction from the claimed  
23 \$1600 payment that has no receipt, no other support from this  
24 particular matter, indicating that it was an extraneous  
25 floating sum somehow. There's simply not a receipt to prove

1 it. That was a matter that was presented to, and considered  
2 by, the jury and therefore is included in the restitution  
3 amount without deduction per the claim and argument of the  
4 Defense. That objection is overruled.

5 Let's see. Mr. Richey, we go back to paragraph 33 and  
6 the contention that the specific offense characteristic found  
7 in U.S. Sentencing Guideline Section 2B1.1(b)(9)(A) is  
8 inapplicable.

9 The Court notes that that section applies a two-level  
10 increase to the base offense level, quote, "if the offense  
11 involved a misrepresentation that the defendant was acting on  
12 behalf of a charitable, educational, religious, or political  
13 organization, or a government agency," period, end quote.

14 The Court notes, based on the summary that was just  
15 provided, that the Defense objection as to that point could  
16 impact the guideline calculation.

17 In this instance, the probation office agreed with the  
18 Defense and found that the two-level enhancement under  
19 Section 2B1.1(b)(9)(A) does not apply, and the PSR was revised  
20 on June 3, 2016. Mr. Richey, is that your understanding?

21 MR. RICHEY: That's my appreciation, Your Honor.

22 THE COURT: The objection is now moot, requires no  
23 ruling by the Court.

24 As to paragraph 35 -- but because of the revision, it's  
25 now numbered as paragraph 34 -- the defendant contends that the

1 specific offense characteristic found in U.S. Sentencing  
2 Guideline Section 3B1.3 incorrectly applies a two-level  
3 increase to the base offense level.

4 The guidelines state that Section 3B1.3 applies, quote,  
5 "if the defendant abused a position of public or private trust  
6 or used a special skill in a manner that significantly  
7 facilitated commission or concealment of the offense," end  
8 quote.

9 The Court, having summarized that paragraph, notes that  
10 the objection raised by the defendant potentially impacts the  
11 guideline calculation.

12 Mr. Richey, do you have anything to add other than what  
13 you have contained in your very well-done memorandum on this  
14 point?

15 MR. RICHEY: I do not, Your Honor. I think that that  
16 summarizes our position on that as pretty succinctly, and it's  
17 based on the statements that were offered in support of that,  
18 the application of that guideline.

19 THE COURT: Mr. Jarzabek?

20 MR. RICHEY: By the presentence report.

21 THE COURT: All right. Thank you.

22 Mr. Jarzabek?

23 MR. JARZABEK: Your Honor, the Government agrees with  
24 the probation officer's analysis of the response, but we have  
25 an additional argument. And I keep coming back to this point,

1 but it was the focal point at trial. If, instead of looking at  
2 Mr. Williams's position at SWAG Nation, we look at what the  
3 Government contends is the ultimate fraud in this case -- and  
4 that is his vote as a commissioner to fund SWAG Nation so that  
5 he could steal from it -- that clearly is an abuse of position  
6 of trust as a commissioner.

7 He failed to disclose it. He failed -- and we have  
8 unchallenged testimony that had other commissioners known that  
9 he was going to take money, they wouldn't have voted for it.

10 So it's not just his position with SWAG Nation. Going  
11 back to the Government's ultimate theory in this case, acting  
12 as a commissioner, he clearly abused his position of power and  
13 trust.

14 THE COURT: All right. In this instance, based on  
15 the evidence presented at trial and on information contained in  
16 the presentence report, this Court finds that Mr. Williams was  
17 not an employee of SWAG Nation but he was, in fact, responsible  
18 for the creation of the organization in Texas and its  
19 authorization to do business in Louisiana.

20 The Court expresses no opinion on any potential ethical  
21 violations that may involve state and/or local law concerning  
22 his involvement. This Court is concerned purely with the jury  
23 verdict on the multiple counts of wire fraud in this particular  
24 matter.

25 The Court finds that he was also responsible for

1 recommending that the Caddo Parish Commission utilize SWAG  
2 Nation services and described himself only as the, quote, "face  
3 of the program," end quote. He was, in this Court's opinion,  
4 the figurative spokesman for SWAG Nation as well as holding an  
5 elected office as a member of and duly elected by the people to  
6 the Caddo Parish Commission. This Court finds that he abused  
7 his position of public trust within both organizations as well  
8 as the position in the community for which he served.

9 Williams's participation in the implementation of SWAG  
10 Nation's curriculum, his role in the organization, including  
11 hiring and potentially paying speakers, from the evidence, as  
12 well as his access to the organization's funds for  
13 business-related expenses, enabled him to be in a unique  
14 position to make what this Court believes to be unauthorized  
15 withdrawals, as found by the jury.

16 Mary Hughes, his fiancée or girlfriend, provided  
17 testimony to case agents and in this court that she had given  
18 the debit card to Williams because of his role with the SWAG  
19 Nation organization. This debit card was clearly used for  
20 Williams's personal gain.

21 The presentence report in this matter is not changed.

22 In this particular instance, his position, whether  
23 private trust with respect to SWAG Nation or public trust with  
24 respect to the Caddo Parish Commission, contributed in a  
25 significant way to the facilitation of his crimes for which the

1 jury found him guilty.

2 The deceit, scheme, and artifice to defraud made the  
3 detection of this offense more difficult because of his  
4 possession of the debit card issued in someone else's name and  
5 certain charges on that debit card seemingly to appear  
6 legitimate which were not part of the wire fraud evidence  
7 presented to the jury, such as the retention of speakers and  
8 the payment of speakers to SWAG Nation.

9 Therefore, that objection by the defendant is overruled.

10 Are there any further objections to be presented at this  
11 time, Mr. Richey?

12 MR. RICHEY: No, Your Honor. And -- no. That's all  
13 we had on that. And as I -- in response to -- although the  
14 Court has ruled. Our objection to that was based solely on  
15 what was presented at the time in the presentence report, and  
16 the argument that Mr. Jarzabek has made in court was not  
17 presented and so we didn't respond to that.

18 THE COURT: Do you have an opportunity to respond?  
19 Would you like to respond now?

20 MR. RICHEY: I don't have an objection to it on that  
21 basis. I think that that clearly is in line with the theory  
22 that was presented by the Government at trial and the verdict  
23 as found; so I would not have objected to it had that basis  
24 been submitted.

25 THE COURT: All right. Thank you.

1           Do you have any objections to the presentence report as  
2 amended?

3           MR. JARZABEK: No, Your Honor.

4           THE COURT: The Court finds the guidelines to be  
5 correctly calculated based on the addendum to the presentence  
6 report and the probation office's finding in the removal of the  
7 two-level enhancement as shown in the final presentence report  
8 in this matter.

9           Would your client like to address the Court before we  
10 proceed to imposition of sentence?

11          MR. RICHEY: He does, Your Honor.

12          THE COURT: Mr. Richey, would you accompany him to  
13 this center podium, please, sir.

14          MR. RICHEY: Yes, sir.

15          THE COURT: Mr. Williams, good afternoon.

16          THE DEFENDANT: Your Honor, to the Court, to my  
17 family, Your Honor, I would like to apologize to the community,  
18 to the Court, and my family for my misconduct. I know that in  
19 these troubling times, I know I can be a much needed force for  
20 the promotion of peaceful and calm dialogue within our  
21 community. I'm dedicated to doing that and that what I know.  
22 I'm a man of honor. So I am asking the Court for a probated  
23 sentence so I can attempt to turn this conviction around and  
24 produce something good and useful out of my misconduct for this  
25 community. Thank you.

1 THE COURT: All right, sir. Anything further?

2 THE DEFENDANT: No, sir.

3 THE COURT: Mr. Richey, do you have any concluding  
4 remarks?

5 MR. RICHEY: No, Your Honor. I believe I've  
6 submitted to the Court my sentencing recommendations in this  
7 matter, and --

8 THE COURT: With your usual thoroughness.

9 MR. RICHEY: Yes, Your Honor. Thank you. And I  
10 don't know that I have anything additional to add to that other  
11 than we are asking for a sentence of probation, and I know that  
12 that is an option within Zone B of the guidelines, which is, I  
13 believe, where we find ourselves, and we think that for the  
14 reasons submitted, that it is an appropriate sentence.

15 THE COURT: All right. Thank you. You may resume  
16 your seats.

17 Mr. Jarzabek, concluding remarks on behalf of the United  
18 States at this time?

19 MR. JARZABEK: Brief, Your Honor.

20 THE COURT: Come forward.

21 MR. JARZABEK: Your Honor, given the overall  
22 circumstances of the case, I'm going to simply state -- and I  
23 don't think we need to rehash everything. I think I've made my  
24 position clear in addressing the various objections. But I  
25 just don't believe a probated sentence is appropriate in this

1 case. And on that, I'll conclude my remarks.

2 THE COURT: All right. The Court's going to take a  
3 10-minute recess, after which time we will resume and proceed  
4 to the sentencing phase of this hearing.

5 (Recess had 4:30 - 4:39 p.m.)

6 THE COURT: Thank you. Court will come to order.  
7 Please be seated.

8 At the outset, the Court notes two things. First of all,  
9 Mr. Richey, it's permissible for the defendant to remain seated  
10 per our usual standing order on sentencing.

11 I have also reviewed the additional sentencing materials  
12 that were submitted, which are made part of the file, as well  
13 with the U.S. probation office, and I received not only a  
14 family and friends letters index from you, Mr. Richey, but a  
15 separate letter dated June 7, 2016, regarding a character  
16 reference letter from Dr. Wilson which I have also reviewed in  
17 this matter.

18 I neglected to ask. Are there any additional sentencing  
19 materials that need to be provided to the Court for review?

20 MR. RICHEY: I do not believe so. I believe we  
21 submitted to you our sentencing recommendations, which I  
22 believe --

23 THE COURT: You did.

24 MR. RICHEY: -- the Court has reviewed.

25 THE COURT: That is correct. And I'll consider that

1 just as part of your submissions as the total sentencing  
2 memorandum package, if you will.

3 MR. RICHEY: Thank you.

4 THE COURT: All right. In this instance, the Court  
5 adopts the factual findings of the probation office as  
6 contained in the presentence report and its addendum. And as  
7 amended, the presentence report correctly calculates not only  
8 the net offense level but also the correct characterization of  
9 the defendant's criminal history, which is a first time  
10 offender, Roman numeral I.

11 This Court is required to do two things under the law:  
12 first, that the sentencing tables are correctly calculated,  
13 which this Court finds that they are. And the second thing is  
14 to consider the recommendation of the Sentencing Commission on  
15 the sentencing table or chart, which works out to a sentencing  
16 range of 8 to 14 months under the circumstances.

17 The Court also has the duty to review what are so-called  
18 judge factors found in Title 18 of the United States Code,  
19 Section 3553(a).

20 In this instance, the Court, under Section 3553(a)(1),  
21 has examined the nature and circumstances of the multiple  
22 offenses in this case, and especially Section (a)(2)(A), the  
23 need to reflect the seriousness of these offenses, provide just  
24 punishment, and promote respect for the law; and, finally,  
25 under Section 3553(a)(2)(B), the need to afford adequate

1 deterrence to this same kind of criminal conduct from  
2 reoccurring. The Court has also looked at Section  
3 3553(a)(2)(C) and the need to protect the public from the  
4 further crimes of this defendant.

5 The Court, therefore, adopts the factual findings of the  
6 probation office as contained in the presentence report and its  
7 addendum.

8 Pursuant to the Sentencing Reform Act of 1984, it is the  
9 judgment of this Court that the defendant, Michael Dewayne  
10 Williams, is hereby committed to the custody of the Bureau of  
11 Prisons for a term of 14 months as to Counts 1 through 5 and  
12 Counts 7 through 12.

13 As stated previously, this sentence was selected after  
14 consideration of the factors contained in Title 18 of the U.S.  
15 Code Section 3553(a) pertaining to the defendant's lack of  
16 significant criminal history, personal characteristics, as well  
17 as his involvement and planning and exclusion of the scheme or  
18 artifice to defraud in this case.

19 Restitution in the amount of \$8,584.68 is ordered to be  
20 paid to the following victim as specified, which is due and  
21 payable immediately. The victim is identified, per the Court's  
22 previous ruling, as the Caddo Parish Commission, Government  
23 Plaza, 505 Travis Street, Suite 800, Shreveport, Louisiana,  
24 71101, in the full and true sum of \$8,584.68.

25 The Court finds that this defendant does not have the

1 ability to pay any interest or penalty on the restitution  
2 amount; and, accordingly, the Court will waive interest and  
3 penalty requirements in this case.

4 The Court also, in this particular instance, orders a  
5 fine in the amount of \$10,000 to be paid by this defendant,  
6 which is also ordered immediately and is due and payable  
7 immediately.

8 For the reasons previously stated under Section 3553(a),  
9 this Court does not believe it is possible to simply repay but  
10 a portion of the proved amount to the victim in this case and  
11 be done with financial penalty in this case.

12 In this particular matter, the Court notes that this  
13 defendant will be housed in a federal correctional facility at  
14 the cost of some \$30,000 -- actually, over that amount -- over  
15 a year's time.

16 This Court believes that based on the conduct of the  
17 defendant, that he will be able to earn a release under the  
18 14-month penalty imposed by this Court based on good conduct  
19 while incarcerated.

20 With respect to the fine, this Court does not believe  
21 this defendant has the ability to pay interest or any penalty  
22 on the fine; and, accordingly, the Court waives the interest  
23 and penalty requirement otherwise required in this case.

24 The defendant is ordered to make restitution payments  
25 from the wages earned while in prison, in accordance with the

1 Bureau of Prisons Financial Responsibility Program. Any  
2 portion of the restitution that is not paid in full at the time  
3 of the defendant's release from imprisonment shall become a  
4 condition of supervised release.

5 The Court finds that this defendant, pursuant to law,  
6 shall make complete restitution first, before making payments  
7 toward the fine imposed by the Court in this particular  
8 instance. Any portion of the fine that is not paid in full at  
9 the time of the defendant's release from imprisonment shall  
10 likewise become a condition of supervised release.

11 The defendant is ordered to notify the United States  
12 attorney for this district within 30 days of any change of  
13 mailing or residence address that occurs while any portion of  
14 the financial obligations ordered by this Court remain  
15 outstanding or unpaid.

16 This Court orders that any federal income tax refund  
17 payable to this defendant from the Internal Revenue Service  
18 shall be turned over to the Clerk of Court and applied toward  
19 any outstanding balance with regard to the financial  
20 obligations ordered by this Court, with restitution being made  
21 first, before payments for the fine.

22 After release from confinement, the defendant, Michael  
23 Dewayne Williams, shall be placed on supervised release for a  
24 term of 3 years as to Counts 1 through 5 and 7 through 12, to  
25 run concurrently.

1           Within 72 hours following his release from custody, the  
2 defendant shall report to the U.S. probation office in the  
3 district into which he is released.

4           While on supervised release, he shall not commit another  
5 federal, state, or local crime; shall not possess a firearm,  
6 ammunition, or other dangerous weapon or destructive device;  
7 and shall comply with all standard conditions of supervision  
8 adopted by this Court.

9           The defendant is ordered to pay \$100 per count, for a  
10 total of \$1,100, to the Crime Victim Fund, payable immediately  
11 to the U.S. Clerk of Court.

12           The following special conditions of supervised release  
13 are hereby imposed:

14           First, the defendant shall be subject to financial  
15 disclosure throughout the period of supervised release and  
16 shall provide U.S. Probation with all requested financial  
17 documentation. The defendant shall report all household income  
18 to U.S. Probation as requested. The defendant is prohibited  
19 from incurring new credit charges or opening additional lines  
20 of credit or opening additional bank accounts without prior  
21 approval of the probation officer in this case.

22           In the event that restitution is not paid before  
23 commencement of supervised release, the defendant is ordered to  
24 make monthly payments at a rate of not less than 15 percent of  
25 the defendant's gross monthly income, payable to the District

1 Clerk of Court, for disbursement to the victim in this case.  
2 Payments shall begin not later than 30 days following his  
3 release from imprisonment under supervised release. The same  
4 applies to the fine, after restitution has been paid in full.

5 In this particular instance, does the Crime Victim Fund  
6 prime the fine as well, Mr. Jarzabek?

7 MR. JARZABEK: I believe it does, Your Honor.

8 THE COURT: Does it prime restitution as well? Well,  
9 restitution and the Crime Victim Fund are two different things  
10 in this case.

11 MR. JARZABEK: That's correct, Your Honor.

12 THE COURT: Which primes which?

13 MR. JARZABEK: I believe Crime Victim -- restitution  
14 primes the Crime Victim fund.

15 THE COURT: The Court, therefore, prioritizes the 15  
16 percent of gross monthly income as follows: first, payable to  
17 restitution; second, to the Crime Victim Fund; third, to the  
18 fine imposed by the Court, those being the final obligations  
19 ordered in this particular case.

20 The defendant is ordered to cooperate in the collection  
21 of a DNA sample as directed by the U.S. Probation Office.

22 The Court notes that this defendant has been in full  
23 compliance with his bond, and he is ordered to surrender for  
24 service of sentence at the institution designated by the Bureau  
25 of Prisons not later than 2:00 p.m. August 29, 2016.

1           The Court believes, based on information contained in the  
2 presentence report, that this particular individual is not at a  
3 high risk of substance abuse. However, this Court orders that  
4 periodic screens shall be conducted at the sole discretion of  
5 the U.S. Probation Office during the course of the -- on a  
6 random basis throughout the course of the 3 years of supervised  
7 release. The probation officer shall have the right, as deemed  
8 necessary, in the event that this happens -- and the Court  
9 believes that it's at a low risk for happening -- that  
10 substance abuse is detected, and such treatment, whether  
11 inpatient or outpatient treatment, be ordered pursuant to the  
12 U.S. probation officer.

13           At this time, the defendant is notified of his right to  
14 appeal. In the event that a notice of appeal is timely filed  
15 under Title 18 of the U.S. Code, Section 3742, for a review of  
16 sentence, the clerk is directed to transmit the presentence  
17 report under seal to the Court of Appeal.

18           Should you wish to appeal -- Mr. Richey, you are required  
19 to confer with your client regarding such decision on whether  
20 to appeal or not, and to timely file the notice of appeal but  
21 then coordinate the efforts with the Federal Public Defender's  
22 Office following that to be sure that his appellate rights are  
23 protected in the event that that is made and someone other than  
24 you is not -- is selected to prosecute that appeal.

25           This Court requires that if a timely notice of appeal is

1 not filed, that you file into the record of these proceedings a  
2 letter, on your letterhead, stating that you have conferred  
3 with your client about his right to appeal, the appellate  
4 delays involved, as well as the decision of your client whether  
5 to appeal or not. It is to also be signed by your client and  
6 filed of record in this proceeding, with a copy of to the Court  
7 and to the Prosecution.

8 That is the sentence of this Court. Is there any reason  
9 why this sentence as stated should not be imposed,  
10 Mr. Jarzabek?

11 MR. JARZABEK: Not from the Government's point of  
12 view, Your Honor.

13 THE COURT: Mr. Richey?

14 MR. RICHEY: None, Your Honor, other than our  
15 objections to the sentence as determined.

16 THE COURT: Those are noted and preserved for appeal.  
17 The sentence is hereby imposed as stated.

18 Is there any further business to come before the Court  
19 this afternoon?

20 MR. JARZABEK: No, Your Honor.

21 THE COURT: Mr. Richey?

22 MR. RICHEY: No, Your Honor.

23 THE COURT: Very well. This Court stands adjourned.

24 Thank you.

25 (Proceedings concluded at 4:52 p.m.)

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Certificate

I hereby certify this 10th day of August, 2016, that the foregoing is, to the best of my ability and understanding, a true and correct transcript from the record of proceedings in the above-entitled matter.

/s/ Marie M. Runyon  
Official Court Reporter